

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-4869

Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOHN R. D'ANNA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Louisiana  
(CR 92 50090 01)

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( October 22, 1993 )

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:\*

I

The government charged the defendant, John R. D'Anna, of hunting over a baited field in violation of 16 U.S.C. § 703 and 50 C.F.R. § 20.21(i). D'Anna consented to trial before a magistrate judge. The magistrate judge convicted D'Anna, sentencing him to one year of unsupervised probation and ordering him to pay a \$200

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\*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

fine and a \$10 special assessment. D'Anna appealed his conviction to the district court pursuant to Fed. R. Crim. P. 58(g). The district court affirmed the conviction. D'Anna again appeals. We affirm.

## II

On September 5, 1992, John R. D'Anna attended a dove hunt. For most of the hunt, D'Anna remained in the location which he was initially assigned by the host. The government does not allege that D'Anna was hunting over a baited field during this period. After slightly more than two hours, the host requested that D'Anna change his location. D'Anna complied.

The host brought D'Anna to a new location, approximately ten to fifteen feet from an area of the road that was covered with wheat. D'Anna began to hunt. After a few minutes had passed, a State Wildlife Agent arrived at D'Anna's new site and arrested D'Anna for hunting over a baited field in violation of 16 U.S.C. § 703 and 50 C.F.R. § 20.21(i).

## III

The only issue before this court is whether there was sufficient evidence to establish that, as required for a conviction, D'Anna knew or should have known that the area where he was hunting was baited. See United States v. Delahoussaye, 573 F.2d 910, 912 (5th Cir. 1978) (holding that "the bait . . . must have been so situated that [its] presence could reasonably have been ascertained by a hunter properly wishing to check the area of his activity."); United States v. Sylvester, 848 F.2d 520, 522 (5th

Cir. 1988) (requiring that the defendant "knew or should have known" that the area was baited). We review the evidence in the light most favorable to the government and affirm if substantial evidence supports the conviction. Sylvester, 848 F.2d at 522 (citations and internal quotation marks omitted).

Had D'Anna made even a cursory inspection of his surroundings, he would have discovered the exposed wheat lying within fifteen feet of his position. That he had not noticed wheat elsewhere does not excuse his failure to undertake such an inspection. The magistrate judge, therefore, had a sound basis for finding, and the district court for affirming, that D'Anna should have known the area was baited. As a result, we

AFFIRM.