

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 93-7489
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

JOHNNY RAY RICHARD,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Mississippi
(CR-1:93-6-GR)

(March 4, 1994)

Before THORNBERRY, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

THORNBERRY, Circuit Judge:*

Johnny Ray Richard was convicted by a jury of being a felon in possession of a weapon and making a false statement to a firearms dealer. Richard was sentenced to concurrent terms of imprisonment of twenty-seven months on each count to be followed by concurrent three-year terms of supervised release. Richard timely appeals to

*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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

this Court contending that the evidence adduced against him at trial is insufficient to support his conviction.

Discussion

After both the Government and Richard rested, Richard made a motion for a directed verdict¹, urging that the Government had not shown that he knowingly purchased the weapon or had knowledge of the existence of the weapon.² The district court is obliged to grant a defendant's motion for acquittal if "the evidence is insufficient to sustain a conviction" for the offense charged. Fed. R. Crim. P. 29(a). To evaluate sufficiency, this Court examines the evidence in the light most favorable to the prosecution, making all reasonable inferences and credibility choices in favor of the verdict. **United States v. Vasquez**, 953 F.2d 176, 181 (5th Cir.), **cert. denied**, 112 S.Ct. 2288 (1992). The evidence is sufficient if a reasonable trier of fact could have found that it established guilt beyond a reasonable doubt. **Id.**

Richard relies on the testimony of his sister and fiancée to support his insufficiency argument. Richard's sister, Judy Gervais, testified that she asked her sister-in-law, Lydia Hubbard,

¹ "Motions for directed verdict are abolished and motions for judgment on acquittal shall be used in their place." Fed. R. Crim. P. 29(a).

² The essential elements of possession of a firearm by a convicted felon under 18 U.S.C. § 922(g) are: (1) knowing receipt or possession of a firearm by the defendant; (2) defendant was previously convicted in a court for a crime punishable by imprisonment for a term in excess of one year; and (3) the firearm possessed by the defendant was in or affecting commerce. **United States v. Dancy**, 861 F.2d 77, 81 (5th Cir. 1988).

to purchase a gun for her because Gervais had lost her driver's license. Richard, Gervais and Hubbard went to a pawn shop. Hubbard had a Louisiana driver's license and was not allowed to purchase the gun. According to Gervais, Richard was asked to sign the requisite ATF form to purchase the gun, but Richard was not told what he was signing or why he was signing the form. Gervais testified that Richard never knew that she was purchasing a gun and that he never saw the gun.

Lydia Hubbard, Richard's fiancée, testified that she purchased the pistol for Gervais, but put it in Richard's name because she did not have a Mississippi driver's license. Hubbard stated that she did not advise Richard of Gervais's intent to buy a gun, and that Richard signed the paper with no knowledge of its contents and then walked away.

"Assessing the credibility of the witnesses and weighing the evidence is the exclusive province of the jury." **United States v. Greenwood**, 974 F.2d 1449, 1458 (5th Cir. 1992), **cert. denied**, 113 S.Ct. 2354 (1993). The jury was free to reject the testimony of the defense witnesses and to accept the testimony of the pawn shop dealer that firearms are sold only to the individual who completes, signs and dates the ATF form. In addition, the dealer testified that his established procedure for selling firearms involves explaining to the purchaser that the federal firearms form is to be read carefully and completed only by the purchaser. He also customarily asks to see the purchaser's driver's license and then verifies the purchaser's identity. Finally, an expert in

handwriting verified that the signature on the ATF form was the same as the defendant's signature contained in his penitentiary packet.

Viewing the evidence in the light most favorable to the Government, a rational trier of fact could have found beyond a reasonable doubt that Richard, a convicted felon, knowingly took possession of a firearm.

Next, Richard argues that the district court erred in denying his motion for a "directed verdict" as to count two, making a false statement to a licensed firearm dealer in violation of 18 U.S.C. § 922 (a)(6).³ Richard argues that he was unaware that he was signing a form to purchase a firearm and that the defense witnesses established that he did not read the form nor was the form explained to him.

Again, the jury could have determined that Richard knowingly made a false statement to the dealer based on the pawn dealer's testimony that he always required the purchaser to complete the questionnaire on the ATF form. Viewing the evidence in the light most favorable to the Government, a rational trier of fact could have found beyond a reasonable doubt that Richard knowingly made a false statement in connection with the purchase of the firearm.

³ A person violates § 922 (a)(6) if he (1) knowingly makes a false statement while acquiring a firearm from a licensed dealer; and (2) the misrepresentation was intended or was likely to deceive the dealer with respect to any fact material to the lawfulness of the sale. **See United States v. Chambers**, 922 F.2d 228, 230-31 (5th Cir. 1991).

Conclusion

Based on the foregoing, we affirm Richard's conviction and sentence.

AFFIRMED.