

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8478
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MICHAEL ANTHONY BALLARD,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
(93-CR-14-1)

(February 21, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Having been convicted after trial to the court of four counts of making a false statement in order to purchase firearms, Ballard contends the evidence was insufficient to support two of those counts and that the court admitted irrelevant rebuttal testimony. Finding no error, we affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Ballard argues that the government did not show that Cash America No. 4 and Broadway Pawn did not have valid federal firearms licenses, an element of violating 18 U.S.C. § 922(a)(6). Ballard does not quarrel with the existence of testimony, for employees of both companies testified that they did have valid firearms licenses. Instead, he contends that in the absence of offering proper forms and licenses, the employees' testimony was "bare assertion." In United States v. Frazier, 547 F.2d 272, 273 (5th Cir. 1977), this court held that the government is not required to produce a license in order to prove that a store is a federally licensed firearms dealer. Three clerks testified that Cash America had a valid license during the relevant period; one clerk testified that Broadway Pawn had a valid license during the relevant period, and Ballard's cross-examination introduced the Broadway Pawn license into evidence. This was sufficient to sustain the trial court's finding.

Ballard also objects to the district court's admission of a videotape and testimony concerning a shoplifting incident in which Ballard was involved three months after the firearms offenses. He alleges that it was too remote in time and irrelevant to his insanity defense. If admissible, the testimony was properly introduced in rebuttal to Ballard's insanity defense. Moreover, it was admissible under the circumstances identified by the trial judge. The shoplifting evidence suggested that Ballard was in control of his faculties at the time he deliberately attempted to steal a stereo from a military post exchange in San Antonio. At

the time, Ballard said he was trying to "get out of the store without paying," that he "hadn't been taking his medication" and was very agitated. Ballard never mentioned hearing voices and could carry on a coherent conversation. Courts should be particularly sensitive to the purpose and scope of proffered evidence concerning mental illness. The court carefully focused his consideration here, and the evidence was relevant to determining Ballard's general mental awareness of his acts. There was also considerable other evidence in the record refuting Ballard's defense that he was insane at the time of the firearms offenses.

The judgment of the district court is AFFIRMED.