UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-30132
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANTHONY BATTISTE,

Defendant-Appellant.

Appeal from the United States District Court
For the Middle District of Louisiana
(CR 93-61-A-1)

(January 30, 1995)

Before POLITZ, Chief Judge, KING and STEWART, Circuit Judges.

PER CURIAM:*

Anthony Battiste appeals his conviction of possession of an unregistered firearm in violation of 26 U.S.C. § 5861(d). Finding no reversible error, we affirm.

Background

Responding to complaints from neighbors, local narcotics

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

agents approached Battiste and two friends as they gathered around his car. After allowing the agents to search the passenger compartment, Battiste opened the trunk, which contained a .28 gauge Model 1148 Remington sawed-off shotgun. Battiste admitted ownership of the shotgun. He was indicted for possession of an unregistered firearm, convicted by a jury, and sentenced to 41 months imprisonment. This appeal timely followed.

Analysis

The National Firearms Act[1] requires registration of statutorily defined firearms, including, as relevant herein, shotguns with a barrel length of less than 18 inches or an overall length of less than 26 inches.[2] Battiste challenges the sufficiency of the evidence that he was aware of the features of the shotgun that subjected it to the Act's registration requirement.[3] Our review of the record leads inexorably to the conclusion that a reasonable trier of fact could have inferred such knowledge. The shotgun obviously had been cut down -- the cut was crude and the barrel length was only 12 inches. As the district court observed in denying Battiste's motion for a judgment of acquittal, it was apparent on sight that the gun had been modified to a barrel length of less than 18 inches. Battiste's obvious

[1]26 U.S.C. §§ 5801-5872.

[2]26 U.S.C. §§ 5845(a), 5861(d).

[3]See **Staples v. United States**, 114 S.Ct. 1793 (1994) (a conviction under section 5861(d) for possession of an unregistered gun requires proof that the defendant knew the gun had automatic firing capability, bringing it within the scope of the Act).

dismay when the officers discovered the weapon lends further support to an inference of guilty knowledge.

Battiste next complains that the district court prevented him in closing argument from challenging the reliability of the certificate proffered by the government to prove the weapon was not registered. It is well established that National Firearms Registration and Transfer Record certificates, such as that submitted herein, are admissible as evidence of non-registration under Fed.R.Evid. 803(10).[4] We do not decide whether the adoption of Rule 803(10) forecloses argument about the reliability of NFRTR certificates because any error in excluding such argument was harmless; there was no real dispute that Battiste failed to register the shotgun.[5]

Battiste also challenges the limitations placed on his cross-examination of Marcus Thornton, a government witness who testified that the shotgun belonged to Battiste. He sought to attack Thornton's credibility by eliciting an admission of a juvenile delinquency adjudication for which he was in detention at the time of trial. Notwithstanding the general rule that evidence of a juvenile adjudication is inadmissible,[6] Battiste invokes **Davis v. Alaska**[7] in support of the contention that the confrontation

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[4]**United States v. Harris**, 551 F.2d 621 (5th Cir.), cert. denied, 434 U.S. 836 (1977).

[5]See **United States v. Johnson**, 577 F.2d 1304 (5th Cir. 1978).

[6]Fed.R.Evid. 609(d).

[7]415 U.S. 308 (1974).

clause mandates inquiry into Thornton's status as a detainee for the purpose of showing a motive to curry favor with the government. We do not reach the merits of this argument because it was waived. In pretrial proceedings the district court reserved the issue until Thornton testified; Battiste did not raise it at that time. In any event, the exclusion of the inquiry was harmless beyond a reasonable doubt;[8] Thornton's testimony essentially was cumulative to that of the arresting agents.

Finally, Battiste assigns error to the district court's refusal to allow cross-examination of Thornton about drug use. Battiste does not satisfy a prerequisite to such cross-examination: the demonstration of a good faith factual basis for the question.[9] He insists that a factual basis is not necessary when the purpose of the question is to test witness capacity rather than credibility. We admire counsel's tenacity but our cases do not support such a distinction.[10]

AFFIRMED.

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[8]See **Delaware v. Van Arsdall**, 475 U.S. 673 (1986) (applying harmless error analysis to confrontation clause violations).

[9]**United States v. Crosby**, 713 F.2d 1066 (5th Cir.), cert. denied, 464 U.S. 1001 (1983).

[10]See **United States v. Nixon**, 777 F.2d 958 (5th Cir. 1985) (applying the factual basis prerequisite to cross-examination probing a defense character witness's familiarity with the defendant).