

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40203
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SHAWN O'BANNON,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 93-50024-01
- - - - -
(July 22, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:*

Shawn O'Bannon appeals his conviction for knowingly and intentionally possessing marijuana in violation of 21 U.S.C. § 844.

When evaluating the sufficiency of the evidence after conviction at a bench trial, this Court must determine whether the finding of guilt is supported by "substantial evidence." United States v. Jennings, 726 F.2d 189, 190 (5th Cir. 1984). In making this determination, "[i]t is not [this Court's] function

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

to make credibility choices or to pass upon the weight of the evidence. The test is whether the evidence is sufficient to justify the trial judge, as trier of the facts, in concluding beyond a reasonable doubt that the defendant was guilty." Id. (internal quotations and citation omitted).

"[A] person can be convicted and sentenced for simple possession of any quantity of `a controlled substance.'" United States v. Deisch, 20 F.3d 139, 143 (5th Cir. 1994) (quoting § 844(a)). Section 844 does not require a quantitative finding of the amount of marijuana. See id.

The evidence presented to the magistrate judge as trier of fact was sufficient to justify the conclusion beyond a reasonable doubt that O'Bannon had knowingly possessed the marijuana. The rolling papers containing a small amount of marijuana were found in O'Bannon's pocket. O'Bannon told SSgt Kenneth Tarver and Louis Lumpkins testified that O'Bannon had smoked marijuana in the car on the way to the base.

There is substantial evidence to support a conclusion beyond a reasonable doubt that O'Bannon knowingly possessed marijuana in violation of 21 U.S.C. § 844. This Court need not further address the question of possession of the marijuana found outside the guard shack.

O'Bannon's conviction is AFFIRMED.