

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-50869
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RANDY JOE WHITE,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. W-94-CR-68
- - - - -

August 2, 1996

Before HIGGINBOTHAM, WIENER, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Randy Joe White appeals his jury conviction for being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a). White argues that the district court committed plain error in refusing to allow a defense witness to testify because she was present during the Government's presentation of two witness' testimony in violation of the district court's sequestration order. Because White and his trial counsel had knowledge and consented to the witness'

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

presence in the courtroom after the district court imposed the sequestration order, the district court did not commit plain error in excluding the testimony. United States v. Kilijan, 456 F.2d 555, 560 (8th Cir. 1972).

White also argues that the Government did not present sufficient evidence to support his conviction for being a felon in possession of a firearm. He contends that there was not sufficient evidence that he possessed the firearm. Because White failed to move for a judgment of acquittal at the close of the evidence, his claim is reviewable only to determine whether there was a manifest miscarriage of justice. United States v. Laury, 49 F.3d 145, 151 (5th Cir.), cert. denied, 116 S. Ct. 162 (1995). We have reviewed the record and it is not "devoid of evidence pointing to guilt" or "so tenuous that a conviction would be shocking." United States v. Pierre, 958 F.2d 1304, 1310 (5th Cir.), (en banc), cert. denied, 506 U.S. 898 (1992).

AFFIRMED.