United States Court of Appeals
for the Fifth Circuit

No. 21-10351
Summary Calendar

United States of America,

Plaintiff—Appellee,

versus

Kaleb Gattis,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:20-CR-276-1

Before Wiener, Dennis, and Haynes, *Circuit Judges.*

Per Curiam:*

Kaleb Gattis pleaded guilty to being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2) and was sentenced within the advisory guidelines range to 87 months of imprisonment and three years of supervised release. Gattis argues that the district court plainly erred

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* Pursuant to 5th Circuit Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Circuit Rule 47.5.4.

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in concluding that his possession of two firearms at his home in October 2020 was relevant conduct to his charged firearm offense, which took place in March 2020 and involved the discovery of a firearm in his vehicle.

As Gattis acknowledges, we review for plain error because he failed to urge a relevant conduct objection in the district court.[1] *See Puckett v. United States*, 556 U.S. 129, 135 (2009). To prevail, Gattis must show (1) a forfeited error, (2) that is clear or obvious, and (3) that affects his substantial rights. *See id.* If he makes such a showing, we have the discretion to correct the error, but only if it "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings."   *Id.* (internal quotation marks and citation omitted).

The PSR calculated a base offense level of 20 because one of the firearms recovered from Gattis's home was a semiautomatic firearm capable of firing a large-capacity magazine. *See* U.S.S.G. § 2K2.1(a)(4)(B). It added two levels because the offense involved between three and seven firearms, § 2K2.1(b)(1)(A); two more levels because one of the firearms recovered from Gattis's home was stolen, § 2K2.1(b)(4)(A); and four additional levels because Gattis possessed the firearms found in his home in connection with another felony offense, § 2K2.1(b)(6)(B). Thus, the district court's relevant conduct determination bore upon all these calculations.

Gattis has not shown any clear or obvious error in the district court's finding that the firearms found in October 2020 constituted relevant conduct

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[1] Gattis contends that the plain error standard should be relaxed in this case because he urged a closely related objection about whether he actually or constructively possessed the firearms at his home. But Gattis's district court objection and present argument are not of the type that this court has sometimes found to warrant a more lenient standard. *See United States v. Lopez*, 923 F.2d 47, 50 (5th Cir. 1991), *abrogated on other grounds by Davis v. United States*, 140 S. Ct. 1060 (2020); *cf. United States v. Brown*, 555 F.2d 407, 420-21 (5th Cir. 1977); *Alexander v. United States*, 390 F.2d 101, 103 n.3 (5th Cir. 1968).

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to his March 2020 offense. "[W]ith respect to offenses of a character for which [U.S.S.G.] § 3D1.2(d) would require grouping of multiple counts," relevant conduct includes conduct that was part of either "the same course of conduct" or a "common scheme or plan" as the offense of conviction. U.S.S.G. § 1B1.3(a)(2). Gattis has not pointed to any controlling or persuasive authority to show that these offenses would not be subject to grouping under § 3D1.2(d), which instructs that offenses covered by § 2K2.1 should be grouped. Further, Gattis's possession of at least three different firearms on two occasions within a seven-month period showed the necessary degree of similarity of the offenses, regularity of the offenses, and temporal connection between the offenses to support the relevant conduct finding. *See United States v. Brummett*, 355 F.3d 343, 344-45 (5th Cir. 2003).

AFFIRMED.