

Appendix A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-17135
Non-Argument Calendar

D.C. Docket No. 1:16-cr-20352-KMW-1

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

THOMAS ISAAC LAFLEUR,

Defendant - Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(March 28, 2018)

Before TJOFLAT, MARTIN, and NEWSOM, Circuit Judges.

PER CURIAM:

Thomas LaFleur appeals his conviction for knowingly possessing an unregistered firearm. LaFleur asks us to reverse his conviction because (1) the gun he possessed did not need to be registered, (2) even if it did, the language of the

registration requirement is unconstitutionally vague as applied, and (3) the district court directed a verdict against him. As to his first two claims, we find no plain error. For the third, we conclude that he invited the error. Therefore, we affirm.

I.

A grand jury indicted LaFleur for knowing possession of an unregistered firearm, in violation of 26 U.S.C. § 5861(d). Section 5861(d) makes the possession of an unregistered firearm unlawful. 28 U.S.C. § 5861(d). A weapon concealable on a person that can discharge a shot through explosion qualifies as a firearm, but a pistol with a “rifled bore” does not. Id. § 5845(a), (e).

At his jury trial, LaFleur admitted that he knowingly possessed an unregistered gun; that he attached a grip to the barrel of the gun (“foregrip”); and that he knew the foregrip was on the gun when police recovered it from his backpack.

The government’s trial theory centered on the foregrip. The foregrip, the government contended, transformed the gun from a pistol into a firearm that had to be registered. In support of that theory, the government presented the testimony of firearms expert Officer Eve Eisenbise of the Bureau of Alcohol, Tobacco, and Firearms. Officer Eisenbise testified that a gun is a pistol only if it is designed to be used by one hand. The addition of a foregrip, Officer Eisenbise opined, meant

that the gun was “no longer designed to be used with one hand,” and thus no longer a pistol, meaning that it had to be registered.

At the close of the government’s case, LaFleur made an oral motion for a judgment of acquittal, arguing that the government failed to prove that he knew the gun had to be registered due to the foregrip. The district court denied LaFleur’s motion, reasoning that LaFleur merely needed to know that the grip was on the gun.

After both sides presented their evidence, the district court instructed the jury that the government “only has to prove beyond a reasonable doubt that the Defendant knew about the specific characteristics or features of the firearm that made it subject to registration, namely the forward grip.” LaFleur and the government jointly proposed this instruction, and LaFleur did not object to the instruction at the charging conference or when the district court read it to the jury.

The jury convicted LaFleur as charged. During his allocution at sentencing, LaFleur objected to his conviction, arguing that federal law does not prohibit the possession of an unregistered pistol with two grips. The district court sentenced LaFleur to 14-months imprisonment followed by 3-years supervised release. This appeal followed.

II.

On appeal, LaFleur argues that his conviction cannot stand for three reasons: (1) the gun at issue did not need to be registered; (2) even if it did apply to his gun, the registration requirement is void-for-vagueness as applied to him; and (3) instructing the jury that the “forward grip” made the gun subject to registration left nothing for the jury to decide. All three of LaFleur’s arguments fail on procedural grounds. We address each in turn.

LaFleur’s first argument can be construed either as a statutory interpretation argument or a sufficiency argument. Either way, we must review it for plain error, because we find no timely objection in the trial record. See United States v. Leon, 841 F.3d 1187, 1196 (11th Cir. 2016); see also United States v. Wilson, 788 F.3d 1298, 1310 (11th Cir. 2015); United States v. Parrish, 427 F.3d 1345, 1347, 1348 (11th Cir. 2005) (per curiam).

At sentencing, LaFleur did raise the objection that his gun did not need to be registered. However, this objection was too late to be timely because it was made more than two months after his conviction. See Parrish, 427 F.3d at 1348. It is true that LaFleur’s counsel argued in his motion for judgment of acquittal that the government had failed to prove LaFleur knew the gun had to be registered on account of the foregrip; however, that argument is different than the one he raises here. Therefore, we review his claim for plain error. See Leon, 841 F.3d at 1196.

The statutes at issue do not directly resolve this question. Our precedent doesn't either. Thus, the district court did not commit plain error. See United States v. Lejarde-Rada, 319 F.3d 1288, 1291 (11th Cir. 2003) ("It is the law of this circuit that, at least where the explicit language of a statute or rule does not specifically resolve an issue, there can be no plain error where there is no precedent from the Supreme Court or this Court directly resolving it.").

For similar reasons, LaFleur's vagueness challenge to the registration requirement fails as well. LaFleur did not object to the registration requirement on vagueness grounds, so we are bound to review for plain error. See United States v. McKinley, 732 F.3d 1291, 1296 (11th Cir. 2013) (per curiam) (noting that constitutional objections not raised before the district court are reviewed for plain error). Again, this Court's precedent does not squarely resolve whether the statutory language provides adequate notice that a pistol with a foregrip requires registration. Therefore, no plain error occurred. See Lejarde-Rada, 319 F.3d at 1291.

Last, we turn to LaFleur's third claim: that the district court improperly instructed the jury that the foregrip made LaFleur's pistol subject to registration. Preliminarily, we reject the government's argument that LaFleur waived this argument for supposedly making only a passing reference to it in his brief. In his initial brief, LaFleur did not merely describe the instruction that is the subject of

AFFIRMED.

UNITED STATES OF AMERICA vs. THOMAS ISAAC LAFLEUR, Defendant.
UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA
2016 U.S. Dist. LEXIS 148233
CASE NO. 16-CR-20352-KMW
October 26, 2016, Decided
October 26, 2016, Entered on Docket

Counsel For Thomas Isaac LaFleur, 09261-104, YOB 1983 English, Defendant:
Terrence Moons, Jr., Law Offices of Terrence Moons, Jr. PA, Sunrise, FL.
For USA, Plaintiff: Marianne Curtis, LEAD ATTORNEY, US
Attorney's Office, Miami, FL; Daniel Cervantes, United States Attorney's Office, Miami, FL.
Judges: PATRICIA A. SEITZ, UNITED STATES DISTRICT JUDGE.

Opinion

Opinion by: PATRICIA A. SEITZ

Opinion

ORDER DENYING MOTION FOR NEW TRIAL

This matter is before the Court on the Defendant's Motion for a New Trial [DE-40]. Defendant moves for a new trial pursuant to Federal Rule of Criminal Procedure 33, which provides that a court may "grant a new trial if the interest of justice so requires." Defendant seeks a new trial based on several evidentiary rulings, which Defendant maintains prevented him from presenting his defense and were unduly prejudicial. Defendant, however, has not shown that he is entitled to a new trial. Consequently, his motion is denied.

Defendant was charged with a violation of the National Firearms Act (the Act), specifically, possessing a firearm that was not properly registered to him in the National Firearms Registration and Transfer Record. After a jury trial, Defendant was found guilty. Defendant's motion is based on the third element of the crime, as set out in the jury instructions: "Defendant knew of the specific characteristics or features of the firearm that made it subject to registration under the National Firearms Registration and Transfer Record." Defendant maintains that he was prevented from presenting his defense of lack of knowledge and that the admission into evidence of several guns and ammunition magazines was unduly prejudicial.

Defendant contends that he was precluded from arguing his lack of knowledge. Defendant wanted to argue at trial that the element at issue required knowledge of two things: knowledge of the specific characteristic of the firearm that made it subject to registration and knowledge of the registration requirement. However, the case law is clear that the only requirement is knowledge of the specific characteristic of the firearm that made it subject to registration; knowledge of the registration requirement is not an element of the crime. See *United States v. Owens*, 103 F.3d 953, 956 (11th Cir. 1997) (holding that knowledge that a firearm must be registered under the Act is not an element of the crime). Defendant never offered any authority to the contrary or any authority establishing that ignorance of the law is a defense to the crime charged. Thus, whether Defendant knew of the Act or

the registration requirement is irrelevant to the crime at issue and would not constitute a valid defense. Consequently, Defendant's inability to present evidence to support his lack of knowledge defense is not a valid basis for a new trial.

Defendant also maintains that he was unduly prejudiced by the admission of several ammunition magazines, a .45 caliber pistol, and the admission of a shotgun. In his motion, Defendant argues that none of this evidence was "material or relevant to prove or disprove any material fact at issue." As discussed in more detail below, the admission of these items was relevant to prove facts at issue. Accordingly, the Court did not err in admitting this evidence and their admission does not provide a reason to grant a new trial.

The Government had the burden of proving that Defendant had knowledge of the forward grip on the Kel-Tec, which was the basis for the crime charged. The ammunition magazines, the .45 caliber pistol, and the shotgun all provided circumstantial evidence that Defendant had firearm knowledge and would, thus, have knowledge of the forward grip that made the Kel-Tec subject to registration under the Act. The .45 caliber pistol not only was relevant to explaining the circumstances of Defendant's arrest but also showed that Defendant had knowledge of pistols, which the Kel-Tec had been before modification. The ammunition magazines were also relevant to Defendant's knowledge of firearms because they were not standard size for the Kel-Tec and, thus, showed that Defendant knew that the Kel-Tec could be modified. Therefore, the magazines showed not only awareness of firearms but also awareness of modifications to the firearm at issue. Finally, the shotgun was not initially admitted into evidence as part of the Government's case in chief. However, when Defendant took the stand, he testified about the shotgun and about moving different firearm accessories between his various firearms. Defendant testified that he moved the scope of the shotgun onto the Kel-Tec. Only after this testimony was the shotgun admitted into evidence. This testimony and the shotgun were relevant to Defendant's knowledge of firearms and their modification and the shotgun was admitted only after Defendant's own testimony made it relevant. Consequently, these evidentiary rulings do not require a new trial.

Lastly, Defendant also maintains that testimony about a shooting in the neighborhood also should not have been admitted and justifies a new trial. "Evidence, not part of the crime charged but pertaining to the chain of events explaining the context, motive and set-up of the crime, is properly admitted if linked in time and circumstances with the charged crime, or forms an integral and natural part of an account of the crime, or is necessary to complete the story of the crime for the jury." *United States v. McLean*, 138 F.3d 1398, 1403 (11th Cir. 1998) (quoting *United States v. Williford*, 764 F.2d 1493, 1499 (11th Cir.1985)). The testimony about the shooting in the neighborhood was relevant to explain why Defendant was stopped and why the Defendant was removed from his vehicle at gunpoint. Thus, the testimony about the shooting was relevant to the chain of events leading to the arrest of Defendant and was necessary to complete the story for the jury. Consequently, the admission of the testimony does not justify a new trial.

Accordingly, it is

ORDERED that the Defendant's Motion for a New Trial [DE-40] is DENIED.

DONE AND ORDERED in Miami, Florida, this 26th day of October, 2016.

/s/ **Patricia A. Seitz**

PATRICIA A. SEITZ

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-17135-AA

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

THOMAS ISAAC LAFLEUR,

Defendant - Appellant.

Appeal from the United States District Court
for the Southern District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: TJOFLAT, MARTIN, and NEWSOM, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:


UNITED STATES CIRCUIT JUDGE

ORD-42

**UNITED STATES COURT OF APPEALS
For the Eleventh Circuit**

Appendix N

No. 16-17135

District Court Docket No.
1:16-cr-20352-KMW-1

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

THOMAS ISAAC LAFLEUR,

Defendant - Appellant.

Appeal from the United States District Court for the
Southern District of Florida

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: March 28, 2018
For the Court: DAVID J. SMITH, Clerk of Court
By: Jeff R. Patch

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-17135-AA

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

THOMAS ISAAC LAFLEUR,

Defendant - Appellant.

Appeal from the United States District Court
for the Southern District of Florida

BEFORE: TJOFLAT, MARTIN, and NEWSOM, Circuit Judges.

PER CURIAM:

The petition(s) for panel rehearing filed by Appellant Thomas Isaac Lafleur is DENIED.

ENTERED FOR THE COURT:


UNITED STATES CIRCUIT JUDGE

ORD-41

**Additional material
from this filing is
available in the
Clerk's Office.**