

United States Court of Appeals For the First Circuit

No. 18-1092

UNITED STATES,

Appellee,

v.

BENITO RIVERA,

Defendant, Appellant.

Before

Torruella, Lynch and Kayatta,
Circuit Judges.

JUDGMENT

Entered: June 14, 2019

Appellant Benito Rivera appeals from his conviction for being a felon in possession of a firearm under 18 U.S.C. §922(g)(1). Appellant has filed a counseled brief and a pro se supplemental brief raising additional issues. The government has moved for summary disposition of all claims raised in both briefs.

After our own careful review of the record and the submissions of both parties, including appellant's pro se submission, we affirm. Reviewing the jury-instructions challenge de novo, we find no error in the court's instructions, which repeatedly reiterated the appropriate "reasonable doubt" standard. See United States v. Rodriguez-Cardona, 924 F.2d 1148, 1160 (1st Cir. 1991) ("We have emphasized in the past, and do so again here, that reasonable doubt does not require definition."). We disagree with appellant's contention that comments by the court encouraged the jury to apply a lesser standard.

As for appellant's pro se challenge to the denial of his motion to suppress, appellant has waived any challenge by failing to address the grounds actually relied upon by the district court when denying the motion to suppress. See Vargas-Colon v. Fundacion Damas, Inc., 864 F.3d 14, 24-25 (1st Cir. 2017) (failure to address grounds actually relied upon by district court works waiver) (citing United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990)). In any event, we conclude that the district court supportably found the search was appropriately conducted incident to

appellant's arrest. See Virginia v. Moore, 553 U.S. 164, 171 (2008) ("[W]e have said that when an officer has probable cause to believe a person committed even a minor crime in his presence, the balancing of private and public interests is not in doubt. The arrest is constitutionally reasonable."); see also United States v. Ryan, 731 F.3d 66, 69 (1st Cir. 2013) (applying Moore). Appellant's claim of governmental misconduct is not relevant to the grounds on which the district court denied the motion to suppress and cannot on its own clear the hurdle of plain error review. See United States v. Valdes-Ayala, 900 F.3d 20, 36 (1st Cir. 2018) (detailing plain error standard applicable to unpreserved claims of error).

The government's motions for summary disposition are granted. The judgment of the district court is affirmed.

By the Court:

Maria R. Hamilton, Clerk

cc:

Steven Alan Feldman
Benito Rivera
Mark T. Quinlivan
Cynthia A. Young
David Gerard Tobin
Randall Ernest Kromm
Nicholas Soivilien
Anne Paruti
Caitlin E. Keiper