

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

January 6, 2023

Lyle W. Cayce
Clerk

No. 21-11267

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

NYGEL DEJON FREEMAN,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:19-CR-96-1

Before HIGGINBOTHAM, JONES, and OLDHAM, *Circuit Judges.*

PER CURIAM:

Nygel Dejon Freeman appeals his jury trial conviction for possession of a firearm as a convicted felon under 18 U.S.C. §§ 922(g)(1), 924(a)(2).^{*} He argues that the evidence was insufficient to prove he possessed a firearm.

Because Freeman preserved his challenge to the sufficiency of the evidence, we review the claim de novo but afford “great deference” to the

^{*} At the time of Freeman’s offense and sentencing, 18 U.S.C. § 924(a)(2) set forth the imprisonment term for an 18 U.S.C. § 922(g)(1) offense. Effective June 25, 2022, the penalty provision moved to 18 U.S.C. § 924(a)(8).

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jury verdict. *United States v. Zamora-Salazar*, 860 F.3d 826, 831 (5th Cir. 2017) (quotation omitted). We evaluate the evidence in the light most favorable to the Government and draw all reasonable inferences in support of the verdict. *United States v. Terrell*, 700 F.3d 755, 760 (5th Cir. 2012). The sufficiency standard remains the same whether the evidence is direct or circumstantial: “whether *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *United States v. Huntsberry*, 956 F.3d 270, 279 (5th Cir. 2020) (quotation omitted).

Although the Government presented no direct evidence of possession, a reasonable jury could conclude that Freeman possessed the firearm. The jury saw videos of Freeman running from the police—first in his car and then on foot. And it heard testimony that suspects who run often have narcotics or weapons in their possession. *United States v. Martinez*, 190 F.3d 673, 678 (5th Cir. 1999) (“Evidence of an accused’s flight is generally admissible as tending to establish guilt.”). The Government also presented evidence that police recovered the gun in a field about twenty feet from Freeman’s flight path. The jury heard testimony that a grown man could easily have thrown the two- or three-pound gun this distance. And officers testified that Freeman gave up the chase not far from where they located the gun. The jury also learned that there was a major storm the night before the incident that would have left certain marks on a gun, and then it heard testimony that the gun did not bear any such markings. Finally, witnesses familiar with the area testified that they had never seen anyone enter the field and they would not expect to find a weapon there. From this evidence, the jury could easily infer that the firearm was only in the field for a brief time, and that Freeman threw it into the field before surrendering to police.

Our highly deferential review compels us to conclude that “the totality of the evidence permits a conclusion of guilt beyond a reasonable

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doubt.” *United States v. Nieto*, 721 F.3d 357, 365 (5th Cir. 2013) (quotation omitted).

AFFIRMED.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

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January 06, 2023

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 21-11267 USA v. Freeman
USDC No. 5:19-CR-96-1

Enclosed is a copy of the court's decision. The court has entered judgment under **FED. R. APP. P. 36**. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

FED. R. APP. P. 39 through **41**, and **5TH CIR. R. 35**, **39**, and **41** govern costs, rehearings, and mandates. **5TH CIR. R. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following **FED. R. APP. P. 40** and **5TH CIR. R. 35** for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

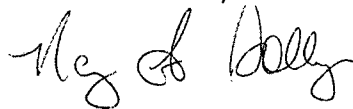
Direct Criminal Appeals. **5TH CIR. R. 41** provides that a motion for a stay of mandate under **FED. R. APP. P. 41** will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under **FED. R. APP. P. 41**. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you **MUST** confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Nancy F. Dolly, Deputy Clerk

Enclosure(s)

Ms. Sarah Gunter
Mr. Brian W. McKay
Mr. Adam Nicholson

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J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.