

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-41437  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

TAI TAN DUONG; CHI THIEN DUONG,

Defendants-Appellants.

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Appeal from the United States District Court  
for the Eastern District of Texas  
(1:93-CR-16-1-2)

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July 15, 1999

Before DAVIS, DUHÉ and PARKER, Circuit Judges.

PER CURIAM:\*

Tai Tan Duong, federal prisoner #04216-078, and Chi Thien Duong, federal prisoner #04236-078, appeal from the district court's denial of their 28 U.S.C. § 2255 motion. They argue that the evidence was not sufficient to support their convictions under 18 U.S.C. § 924(c) for carrying and using firearms and that the district court's jury instruction on what constituted use of a firearm was erroneous. Although the record evidence is not sufficient to support the conviction under the use prong of § 924(c), (See Bailey v. United States, 515 U.S. 137 (1995)), it is

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

sufficient to support the conviction under the "carrying" prong. We also conclude that the erroneous "use" instruction was harmless because the jury found beyond a reasonable doubt the facts necessary to support the Duongs' convictions for "carrying." See United States v. Brown, 161 F.3d 256, 259 (5th Cir. 1998)(en banc). Accordingly, the judgment of the district court is

AFFIRMED.