

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-40726
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FRANK EDWARD HARMON,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:96-CR-81-2
- - - - -
December 18, 1998

Before DAVIS, DUHE', and PARKER, Circuit Judges.

PER CURIAM:*

Frank Edward Harmon was convicted of one count of theft of firearms from a federal licensee. On appeal, he argues that the trial court abused its discretion in permitting his codefendant, James Tyson, to invoke his Fifth Amendment privilege against self-incrimination.

After a review of the briefs and the record, we hold that the district court did not abuse its discretion in permitting Tyson to invoke this privilege. A corroboration of Harmon's defense, that Harmon and Tyson entered the pawn shop to steal

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

money but not guns, would have left Tyson open to charges in state court. We also hold that the trial court, in giving Tyson an opportunity to explain why he wished to invoke the privilege and giving Harmon the opportunity to rebut that contention, did not abuse its discretion in finding that Tyson had properly asserted his privilege. The decision of the trial court is therefore AFFIRMED.