

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**

October 14, 2009

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No. 07-20798  
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Charles R. Fulbruge III  
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellant

v.

REGINALD KEITH HAGEN,

Defendant - Appellee

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Appeal from the United States District Court  
for the Southern District of Texas  
(4:07-CR-222-ALL)  
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Before HIGGINBOTHAM, and STEWART, Circuit Judges, and FELDMAN,  
District Judge.\*

PER CURIAM:\*\*

On May 31, 2007, Reginald Keith Hagen was charged with possession of firearms and making false statements or representations to a licensed firearms dealer in violation of Title 18 U.S.C. §§ 922(g)(9), 924(a)(2), 922(a)(6), 924(a)(2) and 924(a)(1)(A). The government alleged that Hagen had been convicted of a

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\* District Judge, Eastern District of Louisiana, sitting by designation.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

misdemeanor crime of domestic violence, and as a result made a false statement on ATF Form 4473 in order to purchase two firearms.

Hagen moved to dismiss the indictment on the grounds that he was convicted for “assault of a family member” under Texas Penal Code § 22.01(a)(1) and (b)(2) which he argues does not qualify as a “misdemeanor crime of domestic violence” under 18 U.S.C. § 921(a)(33)(A). The district court granted the motion. The district court relied on this court’s ruling in *United States v. Villegas-Hernandez*,<sup>1</sup> in deciding to not follow *United States v. Shelton*.<sup>2</sup> We agree with the district court and AFFIRM the dismissal of the indictment.

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<sup>1</sup> 468 F.3d 874 (5th Cir. 2006).

<sup>2</sup> 325 F.3d 553 (5th Cir. 2003).