

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

United States Court of Appeals
Fifth Circuit

FILED

June 30, 2010

Lyle W. Cayce
Clerk

No. 09-50773

Summary Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

KEVIN SHORTER

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:08-CR-281-1

Before JONES, Chief Judge, and GARZA and BENAVIDES, Circuit Judges.

PER CURIAM:*

Kevin Shorter appeals his conviction for possession with intent to distribute more than five grams of a mixture and substance containing a detectable amount of cocaine base. He argues that the district court erred by admitting physical and documentary evidence pertaining to the cocaine involved in his offense because the chain of custody of the cocaine was not sufficiently established.

Shorter challenged the admission of the evidence below, and we therefore review his claim for an abuse of discretion. *See United States v. Dixon*, 132 F.3d

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

192, 197 (5th Cir. 1997). “[A] ‘break in the chain of custody simply goes to the weight of the evidence, not its admissibility.” *Id.* (quoting *United States v. Sparks*, 2 F.3d 574, 582 (5th Cir. 1993)). When the defendant questions the authenticity of evidence, the district court must determine whether there is substantial evidence from which the jury could infer that the evidence is authentic. *United States v. Jardina*, 747 F.2d 945, 951 (5th Cir. 1984).

The record establishes that the Government set forth sufficient evidence to establish the authenticity of the disputed evidence. *See id.*; *United States v. Smith*, 481 F.3d 259, 264-65 (5th Cir. 2007). Accordingly, the district court did not abuse its discretion in allowing the evidence to be admitted. *See Dixon*, 132 F.3d at 197.

The judgment of the district court is AFFIRMED.