

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

1 At a stated term of the United States Court of Appeals
2 for the Second Circuit, held at the Thurgood Marshall United
3 States Courthouse, 40 Foley Square, in the City of New York,
4 on the 30th day of June, two thousand sixteen.

5
6 **PRESENT: DENNIS JACOBS,**
7 **GUIDO CALABRESI,**
8 **REENA RAGGI,**
9 **Circuit Judges.**

10
11 - - - - -X

12 **UNITED STATES OF AMERICA,**
13 **Appellee,**

14
15 **-v.-** **15-2147**

16
17 **MOBUTU THORNHILL,**
18 **Defendant-Appellant.**

19 - - - - -X

20
21 **FOR APPELLANT:** Andrew Patel, Esq.,
22 New York, NY.

23
24 **FOR APPELLEE:** Rebecca Mermelstein (with Anna
25 M. Skotko on the brief),
26 Assistant United States
27 Attorneys, for Preet Bharara,
28 United States Attorney for the

1 Southern District of New York,
2 New York, NY.
3

4 Appeal from a judgment of the United States District
5 Court for the Southern District of New York (Karas, J.).
6

7 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED**
8 **AND DECREED** that the judgment of the district court be
9 **AFFIRMED.**

10
11 Defendant Mobutu Thornhill appeals from the judgment of
12 conviction in the United States District Court for the
13 Southern District of New York (Karas, J.), for being a felon
14 in possession of a firearm, in violation of 18 U.S.C.
15 §§ 922(g)(1) and (e). We assume the parties' familiarity
16 with the underlying facts, the procedural history, and the
17 issues presented for review.
18

19 Thornhill argues that the district court improperly
20 allowed a lay witness to offer expert testimony concerning
21 the identification of the weapon in violation of Rule 701 of
22 the Federal Rules of Evidence. Because the defendant did
23 not object in the district court, our review is limited to
24 plain error. See United States v. Edwards, 342 F.3d 168,
25 179-80 (2d Cir. 2003).
26

27 A lay witness, with or without specialized knowledge,
28 may testify to personal observations. See Fed. R. Evid.
29 602, 701. A witness is not offering opinion testimony
30 unless the "personal perceptions [take the] form of
31 inferences or conclusory opinions." United States v.
32 Garcia, 413 F.3d 201, 211 (2d Cir. 2005). Here, the
33 witness's testimony was based on his first-hand
34 observations, *i.e.*, that he saw the defendant with what
35 appeared to him to be a "22 long rifle target pistol."
36 App'x at 191. The witness testified that he recognized the
37 gun based on his previous work as a regiment weapons officer
38 for an army unit in the Jamaica Defense Force. Because this
39 testimony was based on his personal observations informed by
40 his personal life experiences, it was appropriate lay
41 testimony and did not require qualification under Rule 702.
42 See Fed. R. Evid. 701 advisory committee's note to 2000
43 amendment (observing that lay witness could testify that
44 substance appeared to be narcotic based on personal life
45 experience; United States v. Brewer, 36 F.3d 266, 271 (2d
46 Cir. 1994) (approvingly referencing lay witness describing

1 fire arm as "machine gun"). Accordingly, the defendant's
2 challenge to the admission of this testimony fails.
3

4 For the foregoing reasons, and finding no merit in the
5 defendant's other arguments, we hereby **AFFIRM** the judgment
6 of the district court.
7

8 FOR THE COURT:
9 CATHERINE O'HAGAN WOLFE, CLERK
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