

December 16, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-10448  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JESUS WILFREDO FABELA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 7:02-CR-00012-ALL  
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Before SMITH, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:\*

Jesus Wilfredo Fabela appeals his sentence following a guilty plea conviction of conspiracy to possess with intent to distribute 500 grams or more of cocaine. Fabela argues that the district court erred in applying a two-level increase to the base offense level pursuant to U.S.S.G. § 2D1.1(b)(1) for possession of a dangerous weapon during the offense.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

The Government need not prove that Fabela had knowledge of the weapon's existence. See United States v. Flucas, 99 F.3d 177, 179 (5th Cir. 1996). A review of the record indicates that Fabela did not meet his burden of proving that it was "clearly improbable that the weapon was connected with the offense." See U.S.S.G. § 2D1.1, comment. (n.3); United States v. Marmolejo, 106 F.3d 1213, 1216 (5th Cir. 1997). Because the Government showed that Fabela's co-defendant knowingly possessed a weapon while they committed the offense and because firearms are the "tools of the trade" in drug conspiracies, the district court did not clearly err in finding that Fabela should have foreseen his co-defendant's possession of a dangerous weapon. See United States v. Aguilera-Zapata, 901 F.2d 1209, 1215 (5th Cir. 1990).

AFFIRMED.