

September 24, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 02-51157  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROBERT LEE WILSON; JOSEPH THOMAS FELICE, JR.,

Defendants-Appellants.

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Appeals from the United States District Court  
for the Western District of Texas  
(P-02-CR-173-1)  
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Before JOLLY, WIENER, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Defendants-Appellants Robert Lee Wilson and Joseph Thomas Felice, Jr., appeal from the judgments entered after their jury trial, in which they were found guilty of two counts of aiding and abetting the possession with the intent to distribute controlled substances. In addition, Wilson (who was also found guilty of using and carrying a firearm in relation to a drug trafficking offense) appeals his conviction for the firearm offense. Felice appeals his sentence as well as his conviction.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Wilson argues that because he and his gun were not present in the same vehicle as the drugs, the evidence was insufficient to sustain his conviction for using or carrying a firearm in relation to a drug trafficking offense. Wilson possessed the gun in the van, the last vehicle in the three-vehicle caravan, which followed behind and watched over the middle vehicle, the RV in which the controlled substances were transported. The van traveled approximately five minutes behind the RV. A jury could have found that the gun was used to protect the load. Thus, the court's denial of Wilson's motion for an acquittal was not erroneous. See United States v. Tolliver, 116 F.3d 120, 126 & n.6 (5th Cir. 1997).

Felice argues that the district court erred when it failed to resolve a factual dispute regarding the role of Wilson's gun before applying to Felice a two-level upward adjustment under U.S.S.G. § 2D1.1(b)(1). He argues that by failing to resolve this dispute, the district court did not comply with FED. R. CRIM. P. 32(c)(1). Felice presented no rebuttal evidence demonstrating that the information relied on by the court was materially untrue, inaccurate, or unreliable. The court was therefore free to adopt the findings in the PSR, as it did, without further inquiry or explanation. See United States v. Glinsey, 209 F.3d 386, 393 (5th Cir. 2000). Consequently, the judgments of the district court are AFFIRMED.

