

December 9, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-50339  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GUADALUPE SARDANETA MARTINEZ, JR.,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. W-02-CR-151-3  
- - - - -

Before DAVIS, EMILIO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM:\*

Guadalupe Sardaneta Martinez, Jr., (Martinez) appeals the district court's application of U.S.S.G. § 2D1.1(b)(1) to increase his offense level for possession of a weapon during and in connection with the drug conspiracy to which he pleaded guilty. He argues that the increase was improper since the Government failed to demonstrate that the firearms possession conduct recited in the presentence report (PSR) was connected to any illegal drug activity. In response, the Government maintains

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

that the increase was proper since Martinez possessed a dangerous weapon during the time-frame of the conspiracy for which he was charged.

Review of the record in this case reveals a sufficient link to support the U.S.S.G. § 2D1.1(b)(1) increase. Specifically, the record demonstrates that Martinez and his co-conspirators conducted at least a portion of their drug-trafficking activities out of the Land Sharks Audio business -- the location where a confidential informant observed a handgun fall to the ground from Martinez's pants. Although Martinez contends that the PSR failed to identify a specific date for this event, he does not dispute the probation officer's statement that Land Sharks Audio opened for business in 1999, thereby placing Martinez's gun possession conduct within the time-frame of the conspiracy.

Because Martinez was observed with a gun where at least a portion of the drug-trafficking activities took place, it was not clearly improbable that the weapons possession conduct was connected to the drug conspiracy offense. See U.S.S.G. § 2D1.1, comment. (n.3); see also United States v. Eastland, 989 F.2d 760, 770 (5th Cir. 1993). Accordingly, the district court did not clearly err in assessing the U.S.S.G. § 2D1.1(b)(1) increase. See United States v. Broussard, 80 F.3d 1025, 1041 (5th Cir. 1996).

AFFIRMED.