

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

United States Court of Appeals
Fifth Circuit

FILED

August 11, 2011

Lyle W. Cayce
Clerk

No. 10-10498
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JESUS ORTEGA,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:09-CR-160-4

Before SMITH, GARZA, and DeMOSS, Circuit Judges.

PER CURIAM:*

Jesus Ortega pleaded guilty to conspiracy to smuggle goods from the United States. He was sentenced to 48 months of imprisonment and three years of supervised release. He now appeals, arguing that he was entitled to a minor participant adjustment pursuant to U.S.S.G. § 3B1.2(b).

Whether a defendant is a minor participant is a “sophisticated factual determination” reviewed for clear error. *United States v. Garcia*, 242 F.3d 593, 597-98 (5th Cir. 2001) (citation omitted). “[I]n order to qualify as a minor

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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participant, a defendant must have been peripheral to the advancement of the illicit activity.” *United States v. Miranda*, 248 F.3d 434, 446-47 (5th Cir. 2001) (citation omitted). Ortega wrapped and concealed 33 firearms and thousands of rounds of ammunition in a vehicle and participated in the attempted exportation of the firearms from the United States to Mexico. He was aware the guns were being smuggled to Mexico illegally and for money. The conclusion that his contribution to the illegal activity was more than peripheral is plausible in light of the record as a whole; thus, it is not clearly erroneous. *See United States v. Villanueva*, 408 F.3d 193, 203-04 (5th Cir. 2005); *United States v. Brown*, 54 F.3d 234, 240-41 (5th Cir. 1995).

The judgment of the district court is AFFIRMED.