

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-2527
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CARLOS ARTURO GALVIZ,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CR-H-92-5-1
- - - - -

May 7, 1993

Before REAVLEY, KING, and DAVIS, Circuit Judges.

PER CURIAM:*

The district court's decision to increase Galviz's offense level by two points pursuant to U.S.S.G. § 2D1.1(b)(1) is a factual determination which is reviewed only for clear error. United States v. Devine, 934 F.2d 1325, 1339 (5th Cir. 1991), cert. denied, 112 S.Ct. 954 (1992). A drug offense level is increased by two points "[i]f a dangerous weapon (including a firearm) was possessed." § 2D1.1(b)(1). "The adjustment should be applied if the weapon was present, unless it was clearly

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

improbable that the weapon was connected with the offense."

§ 2D1.1, comment. (n. 3).

The presentence report, as adopted by the court, indicates that during the search of the bedroom, agents discovered three kilograms of cocaine in the bedroom closet and found the revolver between the mattress and box springs of the bed in the same bedroom. Galviz's argument that the gun was not in close physical proximity with the cocaine is without merit. Because it is not clearly improbable that the gun was related to the drug offenses, the court did not err in adjusting the offense level under § 2D1.1; therefore, the court's judgment and sentence is AFFIRMED.