IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-2591
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARY CERCILE OAKS and
MYESHA DENISE TROTMAN,

Defendants-Appellants.

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Appeal from the United States District Court
for the Southern District of Texas
USDC No. CR-H-92-0067-02
- - - - - - - - - - -
August 19, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Mary Cercile Oaks and Myesha Denise Trotman appeal their drug convictions. When reviewing a district court's ruling in a suppression hearing, we generally "must view the evidence in the light most favorable to the party prevailing below[.]" United States v. Lanford, 838 F.2d 1351, 1354 (5th Cir. 1988). "In sustaining the district court's denial of a pretrial motion to suppress, we may consider . . . evidence . . . at the trial itself." United States v. Comstock, 805 F.2d 1194, 1197, n.2

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* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

(5th Cir. 1986), cert. denied, 481 U.S. 1022 (1987).

So long as an officer is legally "at the place from which the evidence could be plainly viewed," Horton v. California, 496 U.S. 128, 110 S.Ct. 2301, 2308, 110 L.Ed.2d 112 (1990), "a truly cursory inspection -- one that involves merely looking at what is already exposed to view, without disturbing it -- is not a `search' for Fourth Amendment purposes[.]" Arizona v. Hicks, 480 U.S. 321, 328, 107 S.Ct. 1149, 94 L.Ed.2d 347 (1987). Chaney was invited into the house by Spears, a co-conspirator and co-defendant of Oaks, who held ownership rights to the house. Oaks implicitly consented to Chaney's presence in the house when she consummated a "crack" transaction with him. See United States v. Kelley, 981 F.2d 1464, 1470 (5th Cir.), cert. denied, 61 U.S.L.W. 3788 (1993); Johnson v. Smith County, 834 F.2d 479, 480 (5th Cir. 1987). Chaney therefore was legally in Oaks's house. Chaney conducted no search. Nevertheless, the "crack" and drug paraphernalia on the table were in Chaney's plain view shortly after he entered the house.

Under the Sentencing Guidelines in effect when Oaks and Trotman were sentenced, "[i]f the defendant clearly demonstrates a recognition and affirmative acceptance of personal responsibility for his criminal conduct, [the district court shall] reduce the offense level by 2 levels." U.S.S.G. § 3E1.1(a)(1991). The defendant bears the burden of showing that he is entitled to the adjustment. United States v. Villarreal, 920 F.2d 1218, 1224 (5th Cir. 1991). Additionally, "the determination of acceptance of responsibility remains a factual

one committed to the trial court, to which this court accords even greater deference than under the clearly erroneous standard." United States v. Brigman, 953 F.2d 906, 909 (5th Cir.), cert. denied, 113 S.Ct. 49 (1992).

A defendant's "guilty plea does not automatically entitle him to a reduction of his sentence." Villarreal, 920 F.2d at 1224; see U.S.S.G. § 3E1.1(c). Oaks and Trotman have produced no evidence regarding their state-court guilty pleas that would indicate that those pleas reflected "affirmative acceptance of personal responsibility" regarding their federal offenses. The mere fact of those pleas, standing alone, is inadequate to merit a downward adjustment.

An adjustment generally is inappropriate when the defendant "puts the government to its burden of proof at trial by denying the essential factual elements of guilt, is convicted, and only then admits guilt and expresses remorse." U.S.S.G. § 3E1.1, comment. (n.2). However, a defendant who proceeds to trial may be entitled to an adjustment, "where [he] goes to trial to assert and preserve issues that do not relate to factual guilt[.] . . . In each such instance, however, a determination that a defendant has accepted responsibility will be based primarily upon pre-trial statements and conduct." Id.

Oaks and Trotman have produced no evidence to support their assertion that they went to trial to protect their Fourth Amendment contention. Even had they produced such evidence, the record is devoid of evidence of pre-trial statements and conduct that demonstrate acceptance of responsibility.

Finally, a district court considering an acceptance-of-responsibility adjustment should consider "the timeliness of the defendant's conduct in manifesting the acceptance of responsibility." U.S.S.G. § 3E1.1, comment. (n.1(g)). Oaks's and Trotman's concessions of culpability to the probation officer came only after the two women were convicted. The acceptance-of-responsibility guideline was not designed to reward such eleventh-hour expressions of remorse. U.S.S.G. § 3E1.1, comment. (n.2).

AFFIRMED.