

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-8360
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DOUGLAS MONROE SALVO,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. EP-91-CR-112-2
- - - - -

June 23, 1993

Before POLITZ, Chief Judge, WIENER, and DeMOSS, Circuit Judges.

PER CURIAM:*

Douglas Salvo contends that the district court erred by enhancing his offense level under U.S.S.G. § 2K2.1(b)(5). He argues that the court failed to make a finding that he transferred a firearm with the knowledge or reason to believe it would be used in connection with another felony offense.

The district court must resolve specifically disputed factual issues if it intends to use the facts as a basis for its sentence. See Fed. R. Crim. P. 32(c)(3)(D). Rule 32(c)(3)(D)

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

does not, however, "require the district court to mouth any particular magic words or to make a talismanic incantation of the exact phraseology of the rule[.]" United States v. Piazza, 959 F.2d 33, 37 (5th Cir. 1992).

Viewing the court's statements regarding whether Salvo knew that the weapons were to be used for felonious activity, in the context of the record -- including the presentence report (PSR) -- as a whole, the court made an adequate finding that Salvo "transferred [a] firearm . . . with knowledge . . . or reason to believe that it would be used or possessed in connection with another felony offense[.]" U.S.S.G. § 2K2.1(b)(5).

The court's finding on this issue is not clearly erroneous. The PSR indicates that an agent with the Bureau of Alcohol, Tobacco, and Firearms (ATF), posed as an "enforcer" for a large-scale drug trafficker seeking weapons to protect his dealings. The agent used this "cover" story throughout the conspiracy, including on the date of the last weapons transfer when Salvo was present. Moreover, the factual resume to the plea agreement points out that the agent met with Salvo and others "for the purpose of exchanging narcotics for a fully automatic M-2 type machine gun." There was no contrary evidence. The finding is thus supported by a preponderance of relevant and sufficiently reliable evidence. U.S.S.G. § 6A1.3, p.s.

The sentence is AFFIRMED.