

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1553
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MANUEL REYES,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:93-CR-039-P
- - - - -
(March 24, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:*

Manuel Reyes pleaded guilty to possession with intent to distribute heroin. For sentencing purposes, the district court found that Reyes could reasonably foresee a codefendant's possession of a firearm. Reyes appeals, contending that the district court's finding is clearly erroneous.

U.S.S.G. § 2D1.1(b)(1) requires a two level increase in the offense level where a firearm was possessed. The Government must prove possession by a preponderance of the evidence. United

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

States v. Aquilera-Zapata, 901 F.2d 1209, 1215 (5th Cir. 1990). When another individual involved in the offense possessed the firearm, the Government must show that the defendant could have reasonably foreseen that possession. Foreseeability may be inferred from a codefendant's knowing possession of the firearm. United States v. Hooten, 942 F.2d 878, 882 (5th Cir. 1991); Aquilera-Zapata, 901 F.2d at 1215. Firearm possession is a factual determination and is reviewed for clear error. United States v. Paulk, 917 F.2d 879, 882 (5th Cir. 1990).

Reyes acknowledges that Serna's knowing possession of a firearm gives rise to an inference of reasonable foreseeability. Reyes argues, however, that this inference is rebutted by the facts that he did not know Serna, he played only a minimal part in the offense, and he had not been involved in drug trafficking before this offense. Although these facts warrant the conclusion that Reyes did not have actual knowledge of firearm possession, Reyes could nevertheless reasonably foresee that a firearm would be present. The district court stated that Reyes had been paid \$1000 to deliver a briefcase which he knew to contain some form of narcotic. Having been paid an extravagant sum of money for this minor task, Reyes should have known that the briefcase contained a valuable load of illicit contraband. Given this knowledge, Reyes could reasonably foresee that a firearm would be present in the limousine. As the district court's finding is plausible in light of the record as a whole, the finding is not clearly erroneous, and the sentence is AFFIRMED.