IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-1993

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WILLIE ARTHUR DOUGLAS, a/k/a Joe Boy,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
(4:92-CR-141-Y(5))

(August 10, 1994)

Before HIGGINBOTHAM, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:[*]

Willie Arthur Douglas plead guilty to one count of possessing with intent to distribute cocaine base. The count involved 43.42 grams of cocaine base. The district court found that Douglas' relevant conduct for sentencing included jointly undertaken activity involving between 500 grams and 1.5 kilograms of cocaine base. Douglas argues on appeal that the evidence did not

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

establish, and that the judge made no findings regarding, his participation in this jointly undertaken activity. The court also found that Douglas' offense involved possession of a firearm, which warranted a two-level enhancement of his sentence. Douglas claims this finding was error. We affirm.

I.

Douglas owns Pesky Rabbit Car Care. A confidential informant of the FBI met Douglas at Pesky Rabbit on June 2, 1992 and asked Douglas to sell him two ounces of crack cocaine. Douglas agreed to do so for $2,100. The two drove together to another business where Douglas met with his brother, an organizer and leader of the family drug ring, and another member of the ring. Douglas' brother made an unsuccessful telephone call to an unknown person and, after a brief interval, Douglas said he would handle the transaction himself.

The informant then drove Douglas to another location on Douglas' instruction, where the informant handed Douglas $1,600. Douglas left the car for about ten minutes, returned with a package of crack cocaine, and gave the package to the informant. The informant paid the remaining $500, which Douglas placed in a small paper sack. The two returned to the business location where they had met Douglas' brother. The informant observed Douglas talking with his brother and then saw the brother hand the small paper sack of drug money to an unknown person, who drove away. Douglas plead guilty to this sale of drugs.

The sale was not an isolated incident. The police had arrested Douglas on an earlier occasion after they watched him prepare for a drug transaction at the Pesky Rabbit on January 18, 1992. Other members of the Douglas family drug ring sold crack cocaine at the Pesky Rabbit, and Douglas attended at least one of these transactions. The drug ring sold well in excess of 15 kilograms of cocaine base. The Presentence Investigation Report[1] recited these facts and others supporting its recommendation that Douglas' relevant conduct should include in excess of 15 kilograms of cocaine base. The court recognized that it could hold Douglas accountable for participating in joint activity that Douglas should have reasonably foreseen involving this amount of drugs. The court chose, however, to hold Douglas accountable for between 500 grams and 1.5 kilograms of cocaine base. As the court noted, a half to one-and-a-half kilograms of cocaine was an "almost minuscule" part of the sales made by the joint activity to which Douglas was a party. The court did not commit clear error by refusing to hold Douglas accountable for less than this amount of cocaine base.[2]

Douglas relies on U.S. v. Mitchell[3] to support his position on appeal. In Mitchell, we vacated a sentence in part because we

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[1] The Presentence Investigation Report "is considered reliable and may be considered as evidence by the trial judge in making factual sentencing determinations." U.S. v. Lghodaro, 967 F.2d 1028, 1030 (5th Cir. 1992).

[2] See U.S. v. Mitchell, 964 F.2d 454, 457 (5th Cir. 1992) (applying clearly erroneous standard).

[3] Id.

found it "quite a leap"[4] to attribute to a defendant sales of 20 kilograms of drugs where he only requested "a couple of ounces"[5] of drugs from the seller and where he only acknowledged participating in a conspiracy of over 500 grams. The district court's findings in this case reflect the sort of proportionality we suggested in Mitchell. The court related the amount of drugs Douglas dealt with to the amount deemed reasonably foreseeable to him. The court's inclusion of up to 1.5 kilograms of drugs in Douglas' relevant conduct was not too high.

Douglas asserts on appeal not only that the court had an inadequate basis for attributing to him drugs sold by the joint criminal activity, but also that the court made insufficient findings in response to his arguments at sentencing. The court responded directly, however, to Douglas' objections:

> There is, I believe, jointly undertaken criminal activity. There is foreseeability on the part of the defendant, and the Court believes, at least at this point, that 500 grams to 1.5 kilograms is certainly reasonably foreseeable to this defendant, and that results in a base offense level of 35.

We have held that overruling an objection may by itself constitute a specific finding where the content of the court's decision was clear in context.[6] Here, the court was explicit in its findings. The basis for its decision was apparent and sound.

II.

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[4] Id. at 460.

[5] Id. at 456 (internal quotation marks omitted).

[6] See U.S. v. Sparks, 2 F.3d 574, 588 (5th Cir. 1993).

Douglas also challenges on appeal the two-level increase to his sentence for use of a weapon in the commission of a crime. The court overruled Douglas' objection to the sentence enhancement "for the reasons set out in the presentence report, the addendum thereto, and the government's response to [Douglas'] objections to the presentence report." The Presentence Investigation Report recommended the two-level adjustment because, although there was no evidence that Douglas possessed a firearm during commission of the crime, he should have foreseen that other members of the Douglas drug ring would.[7] The Presentence Investigation Report notes, and Douglas does not contest, that over 30 firearms were seized by the government and that these were an integral part of the conspiracy. Douglas focuses instead on guns seized at his residence, contending that the government did not establish that he owned the guns or that they had any spatial or temporal relationship to any drug deals. The validity of the enhancement turns, then, on whether Douglas' sentence may reflect the possession of guns by participants in the joint agreement or, alternatively, whether his sentence must be based only on guns possessed during the particular crime for which he plead guilty.

We resolved this issue in U.S. v. Paulk.[8] We held that reasonably foreseeable possession of firearms by co-conspirators in

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[7] See U.S. v. Hooten, 942 F.2d 878, 882 (5th Cir. 1991) (recognizing that enhancement appropriate where defendant possessed weapon during commission of crime, or where possession of weapon by others in joint activity was reasonably foreseeable).

[8] 917 F.2d 879 (5th Cir. 1990).

furtherance of joint activity to which the defendant was a party warranted a two-level sentence enhancement, even though the defendant plead guilty only to a single offense and not the conspiracy.[9]

AFFIRMED.

[9] Id. at 884.