

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-5286  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAMES ARTHUR CHEATHAM,

Defendant-Appellant.

- - - - -  
Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 92-CR-16-4  
- - - - -  
(March 24, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:\*

The sentencing court engaged in a thorough exchange with James Arthur Cheatham's counsel about whether Cheatham's offense involved more than minimal planning as cited in U.S.S.G.

§ 2B1.1(b)(5). The record shows that counsel urged his objection that the multiple meetings between Cheatham and undercover agents were by the agents' design. The record also shows that the district court understood the objection, overruled it, and adopted the findings in the Presentence Investigation

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Report. The requirements of Fed. R. Crim. P. 32(c)(3)(D) were satisfied. United States v. Charroux, 3 F.3d 827, 836 (5th Cir. 1993).

Acts repeated over a period of time are evidence of "more than minimal planning," unless they clearly were "purely opportune." U.S.S.G. § 1B1.1, comment. (n.1(f)). "Conduct is 'purely opportune' only if it is spur of the moment conduct, intended to take advantage of a sudden opportunity." United States v. Ivery, 999 F.2d 1043, 1046 n.4 (6th Cir. 1993); accord United States v. Rust, 976 F.2d 55, 57 (1st Cir. 1992); United States v. Gregorio, 956 F.2d 341, 343 (1st Cir. 1992); United States v. Kopp, 951 F.2d 521, 536 n. 22 (3d Cir. 1991).

The several meetings between Cheatham and the agents were due in part to Cheatham showing the equipment and asking a higher price and due in part to the agents viewing the equipment and offering a lower price. Cheatham was hardly taking advantage of sudden opportunities. The finding that Cheatham engaged in more than minimal planning is not clearly erroneous. See United States v. Brown, 7 F.3d 1155, 1158 (5th Cir. 1993).

AFFIRMED.