

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8506
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee,

v.

MICHAEL EDWARD NICHOLS,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
(A 91 CR 102)

(April 25, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.*

PER CURIAM:

After some initial missteps in his prosecution, appellant Nichols pleaded guilty to one count of attempted manufacture of methamphetamine conditioned on his right to appeal the denial of his motion to suppress evidence. After two hearings, the district court concluded that voluntary fireman Mobley and deputy sheriff Allyn reasonably decided to open an opaque plexiglass window into a shed that stood a mere 11 1/2 feet from a burning building and

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

had been singed by the fire. Further, he found that their purpose was to contain the spread of the fire rather than to search for evidence of criminal activity. Finding no error in the trial court's rejection of Nichols' Fourth Amendment claim that the shed should not have been "searched", we affirm.

Appellant's basic quarrel seems to be with the district court's fact finding on disputed evidence that there was a possibility even two hours after the principal fire had been put out that the fire would rekindle in the singed shed where the methamphetamine lab was ultimately found. Based on the evidence presented, this finding is not clearly erroneous. Appellant also contends that the actions of the fireman and deputy sheriff intruded unreasonably into the shed for their expressed purposes, but again, the district court's finding to the contrary is well supported by the evidence.

On appeal, appellant also argues that the fire department's "search" for fire extension into the shed was illegal because it was not conducted pursuant to any written policy and, alternatively, that it was illegal because the Pedernales Fire Department was acting outside of their jurisdiction in fighting the fire in the first place. There is neither legal support for the first contention nor factual support for the second one. We reject these contentions.

AFFIRMED.