

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10655
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FULGENCIO JUAN ORTIZ,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:94-CR-039-T

- - - - -
(March 22, 1995)

Before GARWOOD, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Fulgencio Juan Ortiz appeals his sentence in a conviction for possession of a semi-automatic rifle by an illegal alien and for aiding and abetting that crime (count six) and possession with intent to distribute approximately 300 grams of cocaine and for aiding and abetting that crime (count 11). He contends that the district court erred in finding that he was an "organizer, leader, manager or supervisor" and increasing his base offense level by two levels under U.S.S.G. § 3B1.1(c). Ortiz further argues that it was error for the district court to rely solely on

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

the probation officer's report in increasing the base offense level.

Section 3B1.1(c) requires a two-level increase in a defendant's offense level if the defendant was an organizer, leader, manager, or supervisor of the criminal activity. United States v. Alvarado, 898 F.2d 987, 993 (5th Cir. 1990). The district court determination of the role of a defendant is a factual finding reviewed for clear error. Id.

The facts provided in the presentence report support an inference that Ortiz occupied a position of authority. Undercover agents reported that cocaine was being sold at a club owned and operated by Ortiz. Agents negotiated the purchase of cocaine with Juana Emm Flores (Juana), the club's manager. Juana walked over to the bar, spoke with Ortiz, returned to the officers to tell them that she could sell them the drugs, and subsequently sold them cocaine. Undercover officers purchased a semi-automatic rifle from Juan Flores (Juan) at a garage operated by Juan and Ortiz. Juan conferred with Ortiz several times and agreed to sell the firearm and to arrange the sale of fully automatic weapons within the next week. In a follow-up conversation, Juana told an officer that she had machine guns for sale but that they would have to negotiate with Ortiz. Officers met with Ortiz, Juan, and Juana at the rear exit of Ortiz's club. Ortiz went back into the club, and Juana went into the bar to confer with Ortiz several times. The officers purchased guns and cocaine from Juana and Juan. They observed Ortiz monitoring the transaction and saw him receive the money for the purchase from

Juana. The district court's findings that Ortiz was an organizer or leader are not clearly erroneous.

AFFIRMED.