

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20247
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

STANLEY BOYD MCMURRY,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CR H 93-91-4
- - - - -

(January 25, 1995)

Before POLITZ, Chief Judge, and HIGGINBOTHAM and DeMOSS,
Circuit Judges.

PER CURIAM:*

Stanley Boyd McMurry argues that the district court erred in assessing two levels under U.S.S.G. § 2D1.1(b)(1) because he did not foresee his co-conspirators' possession of a firearm and because the district court made only a general determination that the possession was reasonably foreseeable but did not specifically find that Stanley McMurry could have reasonably foreseen the possession.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Pursuant to § 1B1.3(a)(1)(B), a defendant's offense level may be increased (in the case of jointly undertaken criminal activity) to reflect "all reasonably foreseeable acts and omissions of others in furtherance of the jointly undertaken criminal activity." "[T]his Court has repeatedly observed [that] firearms are 'tools of the trade' of those engaged in illegal drug activities." United States v. Aguilera-Zapata, 901 F.2d 1209, 1215 (5th Cir. 1990) (internal quotation and citation omitted). "Sentencing courts, therefore, may ordinarily infer that a defendant should have foreseen a co-defendant's possession of a dangerous weapon, such as a firearm," if the government shows that another participant knowingly possessed a weapon during the joint commission of the offense. Id. Because of (1) the scope of the conspiracy and Stanley McMurry's role in it, (2) this Court's acknowledgment that firearms are "tools of the [drug-trafficking] trade," and (3) Stanley McMurry's failure to present any evidence to rebutting the inference, the district court's determination that he should have reasonably foreseen that some of the conspirators might possess dangerous weapons was not clearly erroneous.

Stanley McMurry's suggestion, without citation, that the district court's failure to make a specific finding that he should have reasonably foreseen the possession invalidates the determination is unavailing. At the sentencing hearing, the district court noted that the defendants objected to the adjustment, and responded that the court considered and overruled the objections, because "there were enough firearms in this case

that it was certain they were all connected to the drugs, and certainly, it reasonably foreseeable on your part that firearms were involved." The district court specifically addressed Stanley McMurry and his counsel, who reiterated the objection but did not articulate any reason that the court's finding should not be applied to him. The district court did not clearly err.

AFFIRMED.