UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20445
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

HAROLD DOUGLAS JONES,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(CR H 93 0289 2)

August 17, 1995

Before JOLLY, JONES, and STEWART, Circuit Judges.

PER CURIAM:*

Appellants Harold Douglas Jones (Harold) and Casey Dwayne Jones (Casey) were found guilty of conspiracy to possess with intent to distribute in excess of 50 grams of a mixture containing cocaine base (crack) (count one), aiding and abetting each other to possess with intent to distribute in excess of 50 grams of crack (count two), and aiding and abetting each other to use and carry a

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

firearm during and in relation to the drug trafficking crimes (count three). They were each sentenced to concurrent terms of imprisonment of 210 months on counts one and two and a consecutive term of 60 months on count three, and other punishment. On appeal, Casey challenges the sufficiency of the evidence, and each appellant raises one sentencing issue. The points are meritless. We affirm.

Casey contends that the evidence was insufficient to support the convictions. He argues that there was no agreement between him and Harold, he did not exercise dominion and control over the narcotics, and there was insufficient evidence of association or participation in the drug trafficking offense.

To show the existence of a conspiracy, the Government must prove the following elements: "(1) the existence of an agreement to possess narcotics with the intent to distribute, (2) knowledge of the agreement, and (3) voluntary participation in the agreement." United States v. Fierro, 38 F.3d 761, 768 (5th Cir. 1994), cert. denied, 115 S. Ct. 1388 and 1431 (1995). "Aiding and abetting has three elements: The defendant must have (1) associated with a criminal venture, (2) participated in the venture, and (3) sought by action to make the venture successful." Fierro, 38 F.3d at 768. To convict for possession of contraband with intent to distribute, the Government must prove "possession of the illegal substance, knowledge, and intent to distribute." Id. Possession may be actual or constructive, and may be joint among

several defendants. United States v. Cardenas, 9 F.3d 1139, 1158 (5th Cir. 1993), cert. denied, 114 S. Ct. 2150 (1994).

Finally, to establish the firearms offense, the Government must prove that Casey "(1) used or carried (2) a firearm during or in relation to a drug trafficking crime." United States v. Foy, 28 F.3d 464, 475 (5th Cir.), cert. denied, 115 S. Ct. 610 (1994). The Government must show some relationship between the gun and the offense but need not show "that the gun was used, handled or brandished in an affirmative manner." United States v. Molinar-Apodaca, 889 F.2d 1417, 1424 (5th Cir. 1989).

Among the evidence at trial was the following. Venus Williamson, an ex-convict and paid informant, testified that he went to 8715 Valley Flag with two other people to see about some narcotics. Casey was at the door of the house and permitted the two people accompanying Williamson to enter but did not want to let Williamson in the house because Casey had heard that Williamson was a snitch. Harold was in the kitchen, heard Casey talking with Williamson, and told Casey to let Williamson come in. Casey had a .357 caliber revolver tucked in his waistband during the entire meeting.

Williamson's cousin, Mario, was already at the location and had brought with him a kilo of powdered cocaine in a brown bag. Mario and the other two people complained to Casey that the powdered cocaine was not "cooking up" properly and that they wanted to return it.

The group joined Harold in the kitchen where he was cooling crack in a bowl of water, a step in the process of making crack cocaine out of powdered cocaine. Williamson stated that there were two kilos of cocaine in the kitchen. One kilo was in the original packaging and had not been opened.

Williamson weighed a "cookie" that Harold had produced to make the point that the cocaine was not good, and it weighed 27.5 grams. The cookie produced from one ounce of cocaine should have weighed no more than 26 grams; therefore, the implication was that the extra weight was attributable to adulterants. Continuing the demonstration, Williamson then took one ounce of powder from Mario's supply and cooked it. The resulting "cookie" weighed only 19 grams. R. 14, 170. Harold agreed to give the money back but said that he needed two hours.

Williamson, Mario, and the other unidentified two men departed, and Williamson notified his contact and "control agent", City of Houston Police officer Walter Redman, about the drug-dealing. Agent Redman supplied Williamson with Agent Don DeBlanc's pager number, and Williamson "paged" Agent DeBlanc. The agent returned Williamson's call, and Williamson advised Agent DeBlanc that two kilograms of powder cocaine presently were being "converted over into crack" at Valley Flag by Harold and Casey. De Blanc informed his supervisor, established surveillance, and got a search warrant for Valley Flag and an arrest warrant for Casey and Harold.

Houston Police Officer Marvin Nickerson was sent to maintain a visual surveillance of the house on Valley Flag. Over a period of two hours, Nickerson observed many people arrive in cars, enter the house, and leave after a short while. Casey and Harold were at the house during the surveillance and were at times seen outside talking with people. At one point, Harold placed a white plastic bag into the trunk of a green Lexus parked in the driveway. Based on his training and experience, Nickerson concluded that illegal drug trafficking was being conducted from the house.

After the officers apprehended the suspects, they all returned to Valley Flag, the officers gained entry to the house through the garage and searched the house. DeBlanc found a loaded .357 magnum on the dining room table, and Officer Miller informed him that a loaded 9 mm. pistol and an extra clip were found "sticking from underneath the sofa." Davis searched the northeast bedroom inside the house and found crack cocaine in a clear plastic bag. The plastic bag was stuffed inside a black Fila tennis shoe in a closet. He also found approximately $10,020 in a dirty clothes hamper and a loaded 9 mm. pistol under the bed in the southwest bedroom, which was determined to be Casey's bedroom.

When Davis announced what he had found, Casey stated: "Hey, man, that's mine. My brother or them didn't have nothing to do with this." After Casey was provided his Miranda warnings, in a tape-recorded conversation, Casey denied possession of the crack cocaine found inside the residence. He admitted though that he

lived with his brother in the house. The realtor responsible for managing the premises located at Valley Flag testified that Casey negotiated the lease for the residence and that the lease ultimately was placed in Harold's name.

In a taped statement to Davis after Miranda warnings, Harold confessed that he was "responsible" for the presence of the cocaine in the residence. However, he claimed that the cocaine did not belong to him and denied that the substantial sums of cash found inside the house and in the Lexus were drug proceeds. Harold also claimed that Casey was not involved with the drug transactions occurring inside the premises. At Harold's instruction, Davis retrieved a key to the Lexus from under a dresser in the northwest bedroom.

DeBlanc and Nickerson then went to the address to which the Lexus had been driven. The owner of the house where the Lexus was parked gave permission to search the Lexus, and the officers found a white plastic bag containing approximately $21,971 in the wheel well of the spare tire in the trunk of the Lexus.

A drug-sniffing canine ("Daisy") positively alerted to the presence of narcotics in two places: near the kitchen sink and in the northeast bedroom closet. A police chemist testified that the substance tested positive for cocaine base (also known as crack). Daisy also alerted to the presence of narcotics on money seized from Casey's bedroom and the trunk of the Lexus.

Contrary to Casey's assertion, the evidence is not scant. Viewing the evidence in the light most favorable to the verdict,

the evidence was sufficient to show that Casey conspired with Harold to engage in drug trafficking, that they aided and abetted each other in drug trafficking, and that Casey aided and abetted using and carrying firearms during and in relation to the drug trafficking offense. A reasonable jury could have inferred from the evidence that Casey shared with Harold dominion and control over the house and the large amount of cocaine, participated and agreed with Harold to accomplish a successful drug trafficking venture, and used the guns found in the residence in relation to that end. Moreover, the jury is in a unique position to determine the credibility of the various witnesses such as the informant Williamson. United States v. Layne, 43 F.3d 127, 130 (5th Cir.), cert. denied, 115 S. Ct. 1722 (1995). This court defers to the jury's resolutions of conflicts in the evidence. Id.

Casey also contends that the district court's enhancement of his sentence pursuant to U.S.S.G. § 3C1.1 for obstruction of justice is clearly erroneous. The probation officer recommended that the district court increase the offense level by two levels because Casey, while on bond, "willfully attempted to impede or obstruct the investigation of prosecution of this case by threatening and intimidating [the confidential informant,] a potential witness in this case." PSR ¶¶ 20, 29; R. 3, 187. Casey argues that the only evidence that he obstructed justice stems from the informant's testimony and that the informant's testimony is not credible.

In a bond revocation hearing, the magistrate judge, determining that there was probable cause to believe that Casey fired at Williamson in order to intimidate or retaliate against him as a potential government witness, revoked Casey's release. At sentencing, the district court agreed with the magistrate judge's assessment of the credibility of the two witnesses and overruled Casey's objections to a two-level increase for obstruction of justice. The findings of the district court are not clearly erroneous.

Harold contends that the district court erred in declining to reduce his offense level for acceptance of responsibility under § 3E1.1. He argues that he "accepted responsibility for the cocaine in his house through his taped pretrial statement." Harold admits that he did not make an honest statement concerning the money found in the Lexus but explains that he was afraid and did not have a lawyer. Moreover, Harold contends that his testimony at trial demonstrates an acceptance of responsibility because he did not minimize his involvement. The testimony acknowledged that he knew what was going on in his house and that he had an agreement with Charles Hutchinson, not Casey, to cook crack cocaine. He told another tale of his involvement to the probation officer, however. The district court did not find Harold credible or remorseful. This court will not overturn the district court's carefully considered finding.

For the foregoing reasons, Casey Dwayne Jones's conviction and both brothers' sentences are AFFIRMED.