

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-10766  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CARL RIP LEE LEITER,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:94-CR-23-A  
- - - - -  
March 21, 1995

Before GARWOOD, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:\*

Carl Rip Lee Leiter pleaded guilty to one count of opening and maintaining a place for the manufacturing of marijuana. The district court overruled Leiter's objections to the upward adjustment for an aggravating role in the offense and the denial of a downward adjustment for acceptance of responsibility, and Leiter challenges these findings on appeal.

This court reviews the sentencing court's determination that a defendant was an organizer or leader in the criminal activity

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

for clear error. United States v. Watson, 988 F.2d 544, 550 (5th Cir. 1993), cert. denied, 114 S. Ct. 698 (1994). The defendant bears the burden of demonstrating that the evidence relied on by the district court was materially untrue. United States v. Shipley, 963 F.2d 56, 59 (5th Cir.), cert. denied, 113 S. Ct. 348 (1992). Seven factors should be considered in making a leadership finding. They are "(1) the exercise of decision-making authority; (2) the nature of participation in the commission of the offense; (3) the recruitment of accomplices; (4) the claimed right to a larger share of the fruits of the crime; (5) the degree of participation in planning and organizing the offense; (6) the nature and scope of the illegal activity; and (7) the degree of control and authority exercised over others." United States v. Barreto, 871 F.2d 511, 512 (5th Cir. 1989); § 3B1.1, comment. (n.4).

Drug Enforcement Administration agent DeLaFlor stated that Leiter was the leader and organizer of the criminal activity. Leiter rented the property where the operation was based; recruited his codefendants to assist him; and planned the operation. Leiter also recruited one codefendant to transport marijuana from Erath County, Texas, to Arkansas and posted his bond when he was arrested in Oklahoma. Although Leiter argues that the information relied on by the district court was materially untrue, he declined to present sworn testimony to refute the presentence report and, therefore, he failed to meet his burden of demonstrating that the information was materially untrue. Shipley, 963 F.2d at 59. The district court's finding

that Leiter was an organizer or leader of the criminal activity was not clearly erroneous.

The defendant bears the burden of demonstrating that he is entitled to a downward adjustment for acceptance of responsibility under U.S.S.G. § 3E1.1, and this court reviews the sentencing court's determination with even more deference than the pure clearly erroneous standard. United States v. Bermea, 30 F.3d 1539, 1577 (5th Cir. 1994), cert. denied, 115 S. Ct. 1113 (1995); § 3E1.1, comment. (n.5). Although a defendant is not required "to volunteer, or affirmatively admit, relevant conduct beyond the offense of conviction," a defendant who "falsely denies, or frivolously contests, relevant conduct that the court determines to be true has acted in a manner inconsistent with acceptance of responsibility." § 3E1.1, comment. (n.1(a)); see United States v. Smith, 13 F.3d 860, 866 (5th Cir.), cert. denied, 114 S. Ct. 2151 (1994).

Leiter admitted his involvement and participation in the growing of the marijuana, but maintained that he believed the marijuana was being grown for the personal use of those involved and was not being harvested for distribution. Agent DeLaFlor stated that based on his experience, the quantity of marijuana involved was inconsistent with personal use. Leiter was also involved with the interstate transportation of one-pound of marijuana and had a leadership role in the offense. Because Leiter "falsely denied" his involvement in the relevant conduct which the district court found to be true and his leadership role in the operation, he has not demonstrated that the district

court's finding regarding acceptance of responsibility was clearly erroneous. See Shipley, 963 F.2d at 59.

AFFIRMED.