UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-20205
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

HENRY CASTILLO-CANDELO,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(CR-H-93-0003-02)

(June 19, 1995)

Before GARWOOD, HIGGINBOTHAM and DAVIS, Circuit Judges.

PER CURIAM:[1]

Castillo-Candelo appeals his conviction and sentence on cocaine trafficking charges. We affirm.

I.

Henry Castillo-Candelo was convicted by a jury of conspiracy and possession with intent to distribute cocaine and was sentenced to 151 months' imprisonment and five years' supervised release. Because of the sufficiency of the evidence challenge Castillo makes

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[1] 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 Pursuant to that Rule, the court has determined that this opinion should not be published.

in this appeal, we outline below in some detail the record evidence in the light most favorable to the verdict.

United States Customs Service agent Richard Kane testified at trial that he was assigned to the Houston High Intensity Drug Trafficking Area Task Force ("HIDTA"), which was working with Memphis, Tennessee Drug Task force personnel investigating drug trafficking between Houston, Texas, and Memphis, Tennessee. The evidence at trial consisted of the testimony of surveillance team members, as well as the testimony of Paul DuVentre, a coconspirator, who cooperated with authorities following his arrest and pleaded guilty.

Kane testified that HIDTA agents learned that Victoriano Minnota, Milton Valencia, and Merrick Thomas were arrested in Carthage, Texas, on August 4, 1991, for possession of 15 kilograms of cocaine. HIDTA agents also learned that on June 9, 1992, Laurentino Valdez (Valdez) and three others were stopped by City of Houston airport officers and found in possession of $176,000 in suspected drug proceeds. Vladez, who was also known as Walter Valencia, was identified as Milton Valencia's brother.

Based on theses events, HIDTA began surveillance of activities and people associated with the above individuals. HIDTA agents identified several residences connected to the investigation. Those included the residence of Victoriano Minnota located at 12315 Hedgedown in Houston; a residence located at 15007 Forest Lodge in Houston, Texas, leased by Jose Alicano, a known cocaine trafficker; Alicano's apartment located at 1351 Greens Parkway, no. 95; Valdez'

a/k/a Walter Valencia's residence located at 2518 Ridgehollow in Houston; and Jaime Gill's home located at 10315 Oaklimb Drive in Houston.

Kane testified that on November 24, 1992, agents followed a red Nissan Sentra to 12315 Hedgedown, Victoriano Minnota's residence. Based upon previous surveillance, Kane knew that the red Nissan Sentra was usually driven by Castillo-Candelo. On this occasion however, the driver, Maritza Ramos, was accompanied by one child and four adults including Victoriano Minnota's brother, Claudemiro Minnota. The Sentra arrived at the Hedgedown residence at approximately 5:20 p.m. and entered one of the bays to the garage.

Two hours later, a white Chevrolet Lumina, driven by Victoriano Minnota, backed out of the garage and into the driveway. Minnota reentered the house. Ten minutes later, Alicano arrived in a white Toyota Supra and parked behind Minnota's Lumina. Ten minutes later, both men left in their respective vehicles and drove to Vladez' residence at 2518 Ridgehollow. Both men entered the premises, departed, and drove in their separate vehicles to 15007 Forest Lodge. Agents also ascertained that a vehicle driven by Milton Valencia was present at the Ridgehollow address.

En route to Alicano's residence located at 15007 Forest Lodge, Minnota and Alicano engaged in counter-surveillance activity. They bypassed the logical entrance to the Heatherwood subdivision; instead, they drove slowly through the subdivision, stopping at one point. Alicano parked in his driveway, and Minnota drove off.

At approximately 10:10 p.m. that same evening, Alicano pulled out of his Forest Lodge driveway in the Toyota Supra, followed by a black Ford Taurus bearing Tennessee license plates. The Taurus had been parked in Alicano's garage. The Toyota Supra and Ford Taurus stopped at a gas station. The driver of the Taurus, later identified as Castillo-Candelo, filled the gas tank to the Taurus while he and Alicano conversed. Castillo-Candelo paid for the gas, and they departed in their respective vehicles. Surveillance followed them to an apartment complex located at 1351 Greens Parkway in Houston, Texas. Both men entered Alicano's apartment, no. 95.

Ten minutes later, Alicano, Castillo-Candelo, an unknown black female, and a third man, later identified as Michael Drain, exited the apartment. Alicano got into the Toyota Supra, the female and Castillo-Candelo got into a Pontiac Grand Prix, and Drain got into the Taurus. The three vehicles travelled to the access road to Interstate Highway 45 (I-45), the Pontiac Grand Prix went south on I-45, the Toyota Supra, driven by Alicano, "almost stopped" on the access road to I-45, while the Taurus, driven by Drain, entered the expressway northbound.

The Taurus was followed by surveillance team members, and, at their request, the Taurus was stopped by DPS Trooper Daniel J. Racca in Huntsville, Texas. Drain gave written consent to search the vehicle, and four kilograms of cocaine secreted in a hidden compartment in the "rocker panel" of the passenger's side of the vehicle were discovered and seized. The cocaine was packaged

inside freezer "baggies", and then covered with sheets of "Bounce" fabric softener and mustard to mask the contraband's odor.

Tony Paonessa, a Houston Police Officer assigned to HIDTA, testified that on December 15, 1992, at approximately 3:40 p.m., surveillance team members conducting surveillance at 15007 Forest Lodge observed two persons in a white Ford pickup truck, bearing Tennessee license plates, arrive at 15007 Forest Lodge and back into the driveway. The driver was later identified as Paul DuVentre. DuVentre was accompanied by Alicano. The two men entered the residence, and approximately 14 minutes later, the garage door was opened and Alicano and DuVentre were observed unloading several five-gallon buckets from the bed of the pickup truck and placing them in the garage. They then closed the garage door.

At 4:31 p.m., DuVentre exited the front door of the residence, retrieved an object which appeared to be a tool of some type from his pickup truck, and reentered the house. At 4:52 p.m., DuVentre exited the house again and entered the cab of the pickup truck. Appearing to retrieve another item, he then reentered the house.

At 5:02 p.m., Paonessa testified that he observed Castillo-Candelo arrive at 15007 Forest Lodge in the red Nissan Sentra, parking the vehicle next to the Ford pickup truck in the driveway. He entered the residence through the front door. Two minutes later, the garage door opened, and Alicano and DuVentre removed additional buckets from the rear of the truck and carried them inside the garage. The garage door lowered again.

At 5:12 p.m., Castillo-Candelo exited the front door, retrieved a small unknown item from the trunk of the Sentra, and returned inside the house. Leonard Gregg Jones, Jr., a U.S. Customs Service Criminal Investigator assigned to the HIDTA investigation, testified that at approximately 5:55 p.m., he observed the garage door open. Castillo-Candelo, DuVentre, and Alicano loaded several five-gallon buckets from the garage to the bed of the white pickup truck. Jones observed Castillo-Candelo place a medium-sized box in the trunk of the red Nissan Sentra.

At approximately 6:05 p.m., Castillo-Candelo departed the residence in the red Nissan Sentra, followed by HIDTA surveillance team members. Although on other occasions Castillo-Candelo had been observed engaging in "heat runs" or counters surveillance by changing lanes and his direction of travel without signalling and driving through yellow "caution" and red lights, on this occasion Castillo-Candelo was driving "very cautiously". Kane requested Harris County Sheriff's deputies to stop the red Nissan. They stopped the Nissan and arrested Castillo-Candelo upon his failure to produce a driver's license or proof of insurance. As an inventory search was to commence on the vehicle, a drug-sniffing canine arrived and alerted to the trunk of the vehicle and then alerted to the box that was inside of the trunk. Inside the box was $158,960 in United States currency. The money had tar on it. Also contained in the trunk was a bag containing "ziplock" baggies, freezer bags, wrapping tape, and a bottle of mustard.

Paonessa testified that at 6:45 p.m., DuVentre and Alicano departed the residence in the white Ford pickup truck. DuVentre circled the neighborhood, drove slowly by the south side of Forest Lodge, and exited the neighborhood. A Harris County Sheriff's deputy pulled over the vehicle. A search of the vehicle revealed eight kilogram-packages of cocaine secreted inside of two buckets.

DuVentre told the officers that there was a ninth kilogram of cocaine which had been missed by the agents inside one of the buckets. The cocaine was packaged in tape, then placed inside a baggie, inside a freezer bag, and then submerged in the buckets of tar. The tar looked similar to the tar on the money found in the box in the trunk of the Nissan driven by Castillo-Candelo.

A search was conducted at Alicano's house at 15007 Forest Lodge. Two loaded handguns and $17,000 cash were seized. Agents discovered $15,000 inside an air duct and the remainder was found scattered around a bedroom. Agents found a Ford Taurus station wagon in Alicano's garage which had two hidden compartments identical to the compartments found in the Ford Taurus driven by Drain.

DuVentre testified at the trial in conformance with a plea agreement he entered with the government. DuVentre testified that he had travelled to Houston on two prior occasions approximately 6 weeks to two months before December 15, 1992. He explained that he agreed to deliver a car in order to cancel a gambling debt he owed to Curtis McDonald. At the behest of Mose Williams, a acquaintance of both McDonald and Duventre, DuVentre agreed to "drop off a car"

in Houston. On the second trip, he flew into Houston, and drove the same blue Ford Taurus that he previously had dropped off in Houston. For each trip he made, DuVentre was credited $1,000 toward his debt. On the third and final trip, Mose Williams indicated that DuVentre's complete debt would be excused on condition that DuVentre "[do] a roof job for him."[2]

Mose Williams took two of Duventre's roofing tar buckets for several hours, and then returned them to DuVentre to take to Houston.

DuVentre and his friend Maurice Beaty departed Tennessee with nine buckets of roofing tar in the bed of Duventre's Ford pickup truck. Upon their arrival in Houston, DuVentre telephoned a contact in Memphis, Alice Johnson, and asked her to notify Mose Williams that he had arrived. DuVentre told Johnson that he was going to get a manicure at "Cindy's Nails." Approximately ten minutes later, Alicano arrived at the manicure shop to meet with DuVentre.

Alicano gave DuVentre $40 and instructed him to drive across the street to a "Target" store and purchase Christmas lights. Alicano drove DuVentre's friend to his (Alicano's) nearby apartment. DuVentre returned to the manicure shop and told Alicano that the store did not have any more Christmas lights. DuVentre and Alicano then drove to Alicano's house to see the "roof job."

DuVentre and Alicano arrived at the Forest Lodge residence between 3:00 and 3:30 p.m. on December 15, 1992. Duventre backed

[2] DuVentre testified that he owned a roofing business.

his truck into the driveway, and the two men entered Alicano's house. After Alicano made several phone calls from his cellular phone, the two men entered the attached garage. Alicano opened the garage door and asked DuVentre to bring in the two buckets from Mose Williams. DuVentre brought the two buckets into the garage, and Alicano pulled the garage door back down. Alicano then put on rubber gloves and poured the tar out of the two buckets and into an empty bucket that was already inside the garage. Two large, plastic freezer bags containing money came out of the buckets. One of the bags of money had a tear in it, and tar got on some of the money. Alicano counted the money and told DuVentre that it totaled $176,000. Alicano then placed the money in a cardboard box and taped it shut.

Alicano and DuVentre went back inside the house. Alicano then made a phone call on his cellular phone. Ten minutes later, Castillo-Candelo arrived. Castillo-Candelo carried a vacuum cleaner box into the house, and the three men walked into the garage. Castillo-Candelo opened the box and poured out nine kilogram-packages of cocaine onto the floor. Castillo-Candelo and Alicano placed the packages of drugs into freezer bags and then into the buckets of tar, and instructed DuVentre to seal the buckets. Castillo-Candelo and Alicano then used gasoline to clean the outside of the buckets. The garage door was reopened, and Castillo-Candelo, Alicano, and DuVentre placed the buckets back onto the bed of DuVentre's truck. Alicano gave Castillo-Candelo the "money box", and Castillo-Candelo placed the money box in the

trunk of red Nissan Sentra. Castillo-Candelo departed. DuVentre showered, and he and Alicano left the residence. They were pulled over by law enforcement officers, who found the drugs in the buckets.

II.

A. Stop and Search of Red Nissan Sentra

Castillo-Candelo argues that the officers who stopped the vehicle he was driving on December 15, 1992, did not have reasonable suspicion or sufficient articulable facts to justify stopping his car. He contends that they did not have any information regarding illegal activity, and that they acted simply on a hunch.

The district court denied the motion to suppress after a suppression hearing.

On November 24, 1992, officers of the HIDTA task force had reason to believe that a residence at 15007 Forest Lodge was being used by drug traffickers and they placed this house under surveillance. Agents observed Alicano retrieve a package in a paper shopping bag from his car and go into his house. Around 10:00 p.m., the agents observed a black Ford Taurus driven by appellant Castillo-Candelo drive out of Alicano's garage. Alicano, in the white Toyota Supra, also left. The two were followed to a gas station, where Castillo-Candelo got gas and they had a conversation. An agent observed that Castillo-Candelo's black Ford Taurus had Tennessee license plates. Checking out the plates, the agents learned that they were registered to Capria Woodhall, who

Memphis officials confirmed was involved in cocaine trafficking. The two cars then drove cautiously below the speed limit to Alicano's apartment, number 95, at 1351 Greens Parkway. Agent Kane testified that in his experience people driving a car loaded with contraband try to observe traffic laws strictly. When the two men reached the apartment complex, they exited their vehicles and went into number 95.

Ten minutes later Alicano and Castillo-Candelo came out of the apartment with Michael Drain and an unknown female. Alicano got into the Supra, Drain into the black Taurus previously driven by Castillo-Candelo, and Castillo-Candelo and the female in a Pontiac Grand Prix. They all headed toward I-45. The Grand Prix then drove south on I-45, but surveillance did not follow. The Taurus and the Supra headed to the northbound entrance of the freeway. Alicano pulled off to the side of the road and Drain drove the Taurus onto the Interstate. The agents communicated with a DPS officer assigned to HIDTA, who contacted troopers at the Department of Public Safety (DPS), reported that they believed a narcotics transaction had occurred, and asked them to stop the black Taurus. After the stop, Drain signed a written consent to search form. In a hidden compartment on the passenger side of the Taurus, the DPS officers found four kilograms of cocaine.

Approximately three weeks later, on December 15, 1992, surveillance officers, watching Alicano's house at 15007 Forest Lodge Drive, observed a white Ford pickup truck with Tennessee license plates back into the driveway at approximately 3:40 p.m.

Alicano was the passenger, and DuVentre was driving. The two went into the house, and fifteen minutes later, the agents saw them unloading five-gallon plastic buckets out of the bed of the truck into the open garage. A grey Ford Taurus station wagon then backed into the garage. The Memphis task force had alerted the agents that a car matching its description was a "load vehicle" with hidden compartments used to transport narcotics and money in the past.

At 5:00 p.m., agents observed Castillo-Candelo arrive at the house on Forest Lodge in a red Nissan Sentra. He parked in the driveway and entered the house. Ten minutes later he came out, retrieved a box from the Sentra's trunk, and took it into the house. Approximately forty minutes later, the garage door opened and the agents observed Alicano, Duventre, and Castillo-Candelo load buckets from the garage back into the pickup truck. Castillo-Candelo then placed a cardboard box into the Sentra's trunk and drove away, followed by surveillance. He followed the speed limit and traffic regulations, in sharp contrast to a previous occasion on which surveillance agents had clocked him at high speeds and going through caution lights in the same area.

Surveillance agents requested assistance from the Harris County, Texas, Sheriff's Office to stop of the red Nissan Sentra driven by Castillo-Candelo because they believed that a transaction had occurred. Harris County deputies stopped the Nissan. Castillo-Candelo refused to consent to a search of the vehicle. He was arrested because he did not have a driver's license or

insurance. A narcotics dog arrived and alerted. During an inventory search, a box was found and the narcotics dog alerted to the box.

Castillo-Candelo's counsel argued at the hearing that the police had only a hunch that paid off, but that they did not have probable cause or any articulable facts to support the initial stop of Castillo-Candelo's vehicle.

The district court denied the motion to suppress, finding Kane's testimony credible and sufficient to establish a reasonable suspicion for stopping the car. The district court further found that while the police were entitled to conduct an inventory search pursuant to Castillo-Candelo's arrest for driving without a license or insurance, that the narcotics dog's alert provided probable cause to search the car for drugs.

In reviewing a district court's ruling on a motion to suppress, this court reviews factual findings for clear error and conclusions of law *de novo*. United States v. Ishmael, ___ F.3d ___, (5th Cir. Mar. 15, 1995, No. 94-40159) slip. p. 3026. The evidence is viewed in the light most favorable to the prevailing party. Id.

The district court did not err in concluding that the officers had articulable facts to create a reasonable suspicion justifying the stop in this case. When they stopped Castillo-Candelo's vehicle on December 15, 1992, agents knew that on November 24, the last time Castillo-Candelo and Alicano had been seen together at Alicano's home, the black Ford Taurus driven by Castillo-Candelo

and then by Michael Drain had been found to contain cocaine. They also knew that the Taurus station wagon seen in Alicano's garage on December 15 had been identified as a load vehicle. The officers' belief that a drug transaction had just occurred at Alicano's house on December 15 was reasonable based on the totality of the facts available, justifying the stop of Castillo-Candelo's vehicle.

Castillo-Candelo also argues that assuming the stop and detention were legal, the officers had no legal basis to open the box in the trunk. He also argues that there was no support for the district court's finding that a valid inventory search was needed or conducted. He further argues that the government failed to present sufficient evidence that the canine positively alerted because the dog handler did not testify and Officer Kane was not qualified to give evidence on this fact. Blue brief, 20-21.

Kane testified that Ray Daniels, a certified narcotics dog handler, told him that his trained and certified canine alerted on the cardboard box. Hearsay testimony is admissible at suppression hearings. United States v. Lopez-Gonzales, 916 F.2d 1011, 1012 n.1 (5th Cir. 1990). The district court did not commit any error in accepting and relying on Kane's testimony.

Castillo-Candelo did not argue in the district court that the search of the car, box, or trunk was illegal. His argument was limited to the legality of the initial stop of the vehicle. Therefore, we review this argument for plain error.

See United States v. Calverley, 37 F.3d 160, 162-64 (5th Cir. 1994) (en banc) (citing United States v. Olano, 113 S. Ct. 1770, 1776-79 (1993)), cert. denied, 115 S. Ct. 1266 (1995).

Kane testified that the narcotics dog alerted in the vicinity of the red Nissan Sentra and on the cardboard box. At trial[3] he testified that the dog alerted to the trunk of the car and on the box. The fact that the dog alerted to the trunk and then the box provided probable cause to search both. United States v. Seals, 987 F.2d 1102, 1107 (5th Cir.), cert. denied, 114 S. Ct. 155 (1993). Therefore, there was no need to justify the search as an inventory search. Castillo-Candelo has not demonstrated any error, plain or otherwise, in the district court's denial of his motion to suppress.

B. Sufficiency of the Evidence

Castillo-Candelo argues that the evidence was insufficient to show that he knew of and voluntarily participated in a conspiracy to distribute cocaine. He argues that the evidence showed mere presence and association with others in the conspiracy. He contends that there was no evidence of his role in the conspiracy or that he had a financial stake in it.

Castillo-Candelo also argues that the evidence was insufficient to show that he actually or constructively possessed cocaine with intent to distribute on either November 24 or December

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[3] Trial testimony can be used to sustain a denial of a motion to suppress. See United States v. Comstock, 805 F.2d 1194, 1197 n.2 (5th Cir. 1986), cert. denied, 481 U.S. 1022 (1987).

15. He argues that as to the November 24 seizure of cocaine from the black Ford Taurus, the evidence showed only that he was driving the Taurus prior to Drain. He contends that there was no evidence that he owned the car, put anything in the car, or knew that cocaine was concealed in the car. As to the December 15 seizure, he argues that the only evidence that he possessed cocaine was the testimony of Duventre, uncorroborated by surveillance. He contends that other than Duventre's testimony, the evidence showed only that he helped load the buckets onto the truck and carried the cardboard box to the trunk, but that there was no evidence that he knew that the buckets contained cocaine.

Our task is to determine whether a reasonable trier of fact could have found that the evidence established guilt beyond a reasonable doubt. This Court considers the evidence in the light most favorable to the verdict, including all reasonable inferences that can be drawn from the evidence. United States v. Bermea, 30 F.3d 1539, 1556 (5th Cir. 1994), cert. denied, 115 S. Ct. 1113 (1995).

To prove that Castillo-Candelo committed the crime of conspiracy to possess with intent to distribute cocaine under 21 U.S.C. § 846, the Government had to prove that 1) a conspiracy to possess narcotics with intent to distribute existed, 2) Castillo-Candelo knew of the conspiracy, and 3) Castillo-Candelo voluntarily participated in the conspiracy.

A conviction for possession of drugs with intent to distribute requires the Government to prove that the defendant knowingly

possessed contraband with the intent to distribute. Quiroz-Hernandez, No. 94-60023, slip. p. 3047. The Government may prove actual or constructive possession by direct or circumstantial evidence. Id. To show constructive possession, mere proximity to the drugs is not enough; the Government must show that the defendant controlled or had the power to control, the vehicle or the drugs. Id. Knowledge of the presence of drugs may ordinarily be inferred from the exercise of control over the vehicle, unless the drugs are in a hidden compartment, in which case this court may also require additional circumstantial evidence to demonstrate guilty knowledge. United States v. Shabazz, 993 F.2d 431, 441 (5th Cir. 1993).

Duventre's testimony that on December 15, Castillo-Candelo brought the nine kilogram-packages of cocaine to Alicano's house, dumped them on the floor, assisted Alicano in placing them in the tar buckets, and took possession of the cardboard box with the money, is sufficient to demonstrate that Castillo-Candelo knowingly participated in the conspiracy and possessed the cocaine with intent to distribute. Castillo-Candelo's possession of such a large quantity of drugs and money made it reasonable for the jury to conclude that he knew of the object of the conspiracy, because drug traffickers are unlikely to entrust the possession of those items to someone who is not part of the conspiracy. See United States v. Morris, 46 F.3d 410, 421-22 (5th Cir. 1995) (citing Gallo, 927 F.2d at 821). Duventre's testimony is sufficient evidence and does not require independent corroboration because it

is not incredible on its face. See United States v. Gadison, 8 F.3d 186, 190 (5th Cir. 1993).

Castillo-Candelo attempts to distinguish between the evidence of his possession on December 15 and November 24.[4] Duventre's testimony places Castillo-Candelo in actual possession of the nine kilograms of cocaine on December 15. However, the only direct evidence connecting Castillo-Candelo with the cocaine found in the black Taurus on November 24 is the fact that he gassed up and delivered that vehicle to Alicano's apartment immediately before Drain got in the Taurus and drove it away. Law enforcement officers then stopped Drain and discovered four kilograms of cocaine in the vehicle.

Duventre's testimony regarding Castillo-Candelo's participation in the conspiracy on December 15 was sufficient for the jury to infer that he was also aware that the black Taurus contained cocaine. Further, constructive possession of the cocaine in the black Taurus on November 24 can also be shown through Castillo-Candelo's status as a co-conspirator, because co-conspirators are liable for the substantive offenses committed by the other members of the conspiracy when a proper jury instruction is given. Gallo, 927 F.2d at 822; Crain, 33 F.3d at 486 and n.7. Here, the district court instructed the jury that if it found the

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[4] Under the language of the indictment, Count 2 charged Castillo and Alicano with possession with intent to distribute five kilograms or more on or about November 9 to December 15. The government was therefore probably not required to prove that Castillo-Candelo possessed cocaine on November 24 as long as it proved that he possessed the nine kilograms of cocaine on December 15.

defendant guilty of the conspiracy in Count One, it could find him guilty of Count Two even if he did not participate in any of the acts which constituted the offense in Count Two. Therefore, the jury could find that Castillo-Candelo possessed the cocaine on November 24 through the possession of Michael Drain. The evidence that established his knowing and voluntary participation in the conspiracy would also support a conclusion that he aided and abetted Alicano as charged in Count 2. See Gallo, 927 F.2d at 822. The evidence was sufficient to support Castillo-Candelo's convictions on both counts of the indictment.

C. Sentencing

1. Possession of a Weapon

Castillo-Candelo argues that the district court erred in increasing his offense level by two points for possession of a firearm during the commission of a drug offense pursuant to U.S.S.G. § 2D1.1(b)(1). He contends that he was not in actual possession of a firearm, that he did not have any knowledge of the firearm in Alicano's house, and that Alicano's possession of the firearm was not within the scope of their agreement and was not foreseeable to him. He further argues that the fact that the receipt to the firearm found in Alicano's house was found in the glove compartment of the red Nissan Sentra which he was driving is not sufficient because there was no evidence he owned the Sentra or knew the receipt was there. He also argues that there was no showing that the gun was associated with the offense.

The probation officer recommended the two-point increase under § 2D.1(b)(1) for possession of a weapon because a .38 caliber gun was found in a search of Alicano's residence, and the receipt for the weapon was found in the vehicle operated by Castillo-Candelo, along with Castillo-Candelo's personal papers. The probation officer concluded that the possession of the gun by Alicano was therefore reasonably foreseeable to Castillo-Candelo.

Section 2D1.1(b)(1) provides for a two-point upward adjustment in the offense level in a drug crime if a dangerous weapon was possessed. Application Note 3 states that the adjustment "should be applied if the weapon was present, unless it is clearly improbable that the weapon was connected with the offense." § 2D1.1, comment (n.3); United States v. Mitchell, 31 F.3d 271, 277 (5th Cir.), cert. denied, 115 S. Ct. 455 (1994). The district court's finding is reviewed for clear error. United States v. Fierro, 38 F.3d 761, 774 (5th Cir. 1994), cert. denied, ___ S. Ct. ___, No. 94-8076, 1995 WL 79138 (U.S. Mar. 20, 1995). The Government may satisfy its burden of proving the connection between the weapon and the offense by showing that the weapon was found in the same location where the transaction occurred. Mitchell, 31 F.3d at 278. The firearm was found in Alicano's residence at 15007 Forest Lodge, the location of the transaction where the money and drugs were exchanged. Castillo-Candelo did not challenge the connection between the offense and the firearm in the district court. Therefore, this issue is reviewed for plain error. See Mitchell, 31 F.3d at 278. Castillo-Candelo does not dispute that

the weapon was found at the site of the offense, and he does not contend that it is "clearly improbable" that the weapon was connected with the offense, which is the standard for not applying the enhancement once it is established that the weapon was present. See United States v. Ortiz-Granados, 12 F.3d 39, 41 and n.3 (5th Cir. 1994). Therefore, Castillo-Candelo has not shown plain error.

Castillo-Candelo also argues that he did not possess the weapon and that Alicano's possession was not reasonably foreseeable to him. This court has held that one co-conspirator may receive the increase under § 2D1.1(b)(1) if another co-conspirator possessed a firearm so long as the use of the weapon was reasonably foreseeable. United States v. Aguilera-Zapata, 901 F.2d 1209, 1215 (5th Cir. 1990). Ordinarily, reasonable foreseeability can be inferred "if the government demonstrates that another participant knowingly possessed the weapon while he and the defendant committed the offense by jointly engaging in concerted criminal activity involving a quantity of narcotics sufficient to support an inference of intent to distribute." Id. at 1215-16. In United States v. Mergerson, 4 F.3d 337, 349-50 (5th Cir. 1993), cert. denied, 114 S. Ct. 1310 (1994), in a very similar factual situation involving a loaded gun present at the codefendant's apartment, this court held that the district court's finding that the codefendant's use of the weapon was reasonably foreseeable was not clearly erroneous. Based on Mergerson, the district court's finding that Alicano's possession of the firearm was reasonably foreseeable to Castillo-Candelo was not clearly erroneous.

2. Acceptance of responsibility

Castillo-Candelo argues that the district court erred by refusing to reduce his offense level by two points for acceptance of responsibility under U.S.S.G. § 3E1.1. He contends that he gave a full and complete statement of his participation to the probation officer, that this statement clearly demonstrated his acceptance of responsibility, and that the district court denied the reduction because he went to trial.

The probation officer recommended against the downward adjustment for acceptance of responsibility, stating that Castillo-Candelo had not exhibited an affirmative acceptance of responsibility for his criminal conduct. The probation officer also noted that this case went to trial and that there were no pre-trial statements by Castillo-Candelo that would warrant the adjustment. In making this recommendation, the probation officer had the benefit of a written statement made by Castillo-Candelo for consideration for acceptance of responsibility. In this statement, Castillo-Candelo asserted that he worked for Alicano only as a sort of errand boy, that he suspected that Alicano was involved in something illegal, but that he did not have actual knowledge of what he was doing. Castillo-Candelo disavowed that he was a knowing member of the conspiracy. Id.

Castillo-Candelo argued that he went to trial only to preserve his objection to the search because the Government would not let him enter a conditional plea, that he did not put on a false defense and perjure himself at trial, and that he gave a full and

complete statement of his role in the offense. The district court declined to award the downward adjustment, finding that his statement amounted to saying that he was innocent and did not show that he accepted responsibility.

Based on Castillo-Candelo's statement, which the district court aptly characterized as a statement of innocence, the district court did not clearly err in denying the downward adjustment for acceptance of responsibility. There is no indication in the district court's reasons for denying the adjustment that it was based on Castillo-Candelo's decision to go to trial.

3. Role in the offense

Castillo-Candelo argues that the district court erred in failing to grant him a reduction in his offense level for his mitigating role in the offense as a minor or minimal participant under U.S.S.G. § 3B1.2(a) or (b). He contends that he was working as a courier for Alicano and that his statement to the probation officer indicated his lack of knowledge of the scope of the conspiracy. He further contends that the court did not base its finding on any reliable information but just speculated that he was more involved than he had admitted in his statement.

The probation officer recommended no downward adjustment for a mitigating role. Castillo-Candelo objected, arguing that he was only Alicano's "go-fer." He argued at the sentencing hearing that his role was inferior to that of Alicano and Duventre. He requested the four-level adjustment or the two-level adjustment.

The district court overruled the objection, stating that he was not just a mule, that he was transporting drugs and money, had mustard and fabric softener in the trunk of the car to hide the smell, and assisted Alicano, the boss of the deal.

Section 3B1.2(b) provides for a reduction of two levels in the base offense level for minor participants. A "minor participant" is defined as one who is "less culpable than most other participants, but whose role could not be described as minimal." § 3B1.2, comment. (n.3). A four-level reduction is provided for minimal participants, defined as a defendant who is "plainly among the least culpable of those involved in the conduct of a group." § 3B1.2(a), comment. (n.1). This court has noted that because most offenses are committed by participants of roughly equal culpability, "it is intended that [the adjustment] will be used infrequently." Mitchell, 31 F.3d at 278-79. A district court's finding on this sentencing factor is reviewed under the clearly erroneous standard.

A district court should not award the minor participation adjustment simply because a defendant's participation is somewhat less than the other participants. The defendant's participation must be enough less so that his actions could be considered at best "peripheral to the advancement of the illicit activity." United States v. Thomas, 932 F.2d 1085, 1092 (5th Cir.), cert. denied, 502 U.S. 895, 962, 1038 (1991 & 1992). A role as a go-between does not warrant a finding of minor participation. Id.

Based on the testimony of Duventre that Castillo-Candelo delivered the cocaine to Alicano's house and that Alicano gave him the money box, the district court's finding that Castillo-Candelo had "heavy involvement," and did not deserve the adjustment is not clearly erroneous. Contrary to Castillo-Candelo's assertion, the district court's finding was based on the evidence at trial, which showed that he was more involved than he admitted in his statement.

AFFIRMED.