

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 08-13023

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT JANUARY 6, 2010 JOHN P. LEY ACTING CLERK
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D. C. Docket No. 05-00057-CR-2-HLM-4

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARCO ANTONIO CORDERO,
SAMMY DUQUE,
JUAN DUQUE,
DANIEL VILLENAS-REYES,
a.k.a. Oscar,
a.k.a. Daniel Martinez,
a.k.a. Oscar Hernandez-Ruiz,
SHANE ROSSER,
a.k.a. Hawk,

Defendants-Appellants.

Appeals from the United States District Court
for the Northern District of Georgia

(January 6, 2010)

Before BLACK, WILSON and COX, Circuit Judges.

PER CURIAM:

Marco Antonio Cordero, Sammy Duque, Juan Duque, Daniel Villenas-Reyes, and Shane Rosser appeal, on several grounds, their multi-count trial convictions and sentences. We have read the briefs, reviewed the record, and had the benefit of oral argument. We find no merit to the issues raised by the appellants, with the exception of one issue raised by Sammy Duque. We find that there was not a sufficient evidentiary basis to support the trial court's finding that Sammy Duque was responsible for more than fifteen kilograms of methamphetamine. Furthermore, the court failed to make factual findings on Duque's relevant conduct and whether the conduct of his co-conspirators was reasonably foreseeable to him for purposes of analysis under U.S.S.G. § 1B1.3(a). The Government, having had an opportunity to present evidence on the drug quantity attributable to Sammy Duque (both individually and as a part of the conspiracy) should not be afforded another opportunity to present evidence relevant to the drug quantity finding. *See United States v. Canty*, 570 F.3d 1251, 1257 (11th Cir. 2009). Accordingly, we vacate Sammy Duque's sentence on the issue of the trial court's drug-quantity calculation and remand for further findings.

AFFIRMED IN PART, AND VACATED AND REMANDED IN PART.