FILED

NOT FOR PUBLICATION

FEB 24 2012

MOLLY C. DWYER, CLERK U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JESUS RAUL-CRUZ,

Defendant - Appellant.

No. 11-30002

D.C. No. 1:09-cr-00248-EJL

MEMORANDUM*

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

VICTOR COPADO,

Defendant - Appellant.

No. 11-30037

D.C. No. 1:09-cr-00248-EJL

Appeals from the United States District Court for the District of Idaho Edward J. Lodge, District Judge, Presiding

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Submitted February 21, 2012**

Before: FERNANDEZ, McKEOWN, and BYBEE, Circuit Judges.

In these related appeals, Jesus Raul-Cruz and Victor Copado appeal from the respective 87-month and 100-month sentences imposed following their guilty-plea convictions for conspiracy to distribute cocaine and marijuana, in violation of 21 U.S.C. §§ 841(a)(1) and 846. We have jurisdiction under 28 U.S.C. § 1291. In No. 11-30002, we dismiss in light of a valid appeal waiver. In No. 11-30037, we affirm.

In No. 11-30002, Raul-Cruz's valid appeal waiver bars this appeal challenging the district court's imposition of a sentencing enhancement for possession of a firearm. *See United States v. Joyce*, 357 F.3d 921, 922 (9th Cir. 2004). We decline to consider Raul-Cruz's contention, raised for the first time in his reply brief, that he is entitled to an exception to the waiver. *See United States v. Rearden*, 349 F.3d 608, 614 n.2 (9th Cir. 2003).

In No. 11-30037, Copado contends that the district court erred by imposing a two-level enhancement under U.S.S.G. § 2D1.1(b)(1) for possession of a firearm.

This contention fails because the district court adequately found that the possession

The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

of firearms by co-conspirators was reasonably foreseeable to Copado, see United

States v. Benford, 574 F.3d 1228, 1234 (9th Cir. 2009), and this finding was not

clearly erroneous in light of the nature of the conspiracy and the ample evidence of

firearm possession. See United States v. Garcia, 909 F.2d 1346, 1349-50 (9th Cir.

1990).

No. 11-30002: DISMISSED.

No. 11-30037: AFFIRMED.

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