

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

September 10, 2008

Charles R. Fulbruge III
Clerk

No. 08-20035
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

ANA VILLANUEVA-ALVARADO

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:07-CR-179-2

Before REAVLEY, DAVIS, and ELROD, Circuit Judges.

PER CURIAM:*

Ana Villanueva-Alvarado appeals the sentence imposed following her guilty-plea conviction for conspiracy to transport and harbor undocumented aliens for the purpose of financial gain in violation of 8 U.S.C. § 1324(a)(1)(A) and (B). She argues that the district court clearly erred in enhancing her offense level pursuant to U.S.S.G. § 2L1.1(b)(5)(B) because one of her co-conspirators brandished a weapon during the offense. She argues that she was unaware that

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

any of her co-conspirators possessed a weapon and that it was not foreseeable to her that one of them would brandish a weapon during the offense.

We review the district court's application of the Sentencing Guidelines de novo and its findings of fact for clear error. See *United States v. Cisneros-Gutierrez*, 517 F.3d 751, 764 (5th Cir. 2008); *United States v. Charon*, 442 F.3d 881, 887 (5th Cir.), cert. denied, 127 S. Ct. 260 (2006). Although there was no direct evidence that Villanueva-Alvarado knew one of her co-conspirators possessed and brandished a weapon during the course of the offense, the evidence supported the district court's finding that the brandishing of a weapon by one of her co-conspirators was reasonably foreseeable to her. Accordingly, the district court did not clearly err when it enhanced Villanueva-Alvarado's offense level pursuant to § 2L1.1(b)(5)(B). Moreover, because Villanueva-Alvarado was sentenced within the recommended guidelines range, her sentence is presumptively reasonable. See *Gall v. United States*, 128 S. Ct. 586, 597 (2007); *United States v. Alonzo*, 435 F.3d 551, 554 (5th Cir. 2006). The district court's judgment is AFFIRMED.