

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-2363
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

ALEXANDER CLAYTON WILLIAMS,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(CR-H-92-282)

(April 18, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:¹

Appellant Williams appeals his conviction under the Resource Conservation and Recovery Act ("RCRA") complaining of the district court's jury charge. We find no error and affirm.

The indictment charged that Appellant shipped drums of hazardous waste to a facility which did not have a permit to store or process hazardous waste. Appellant challenges the court's instruction on the intent element, and on mistake of fact. We

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

review the instructions within the context of the entire trial to determine whether it correctly reflects the issues and the law. United States v. Sellers, 926 F.2d 410, 414 (5th Cir. 1991). The jury instructions required the Government prove Appellant knowingly transported a waste he knew had the potential to be harmful to a site he knew did not have a permit. It did not require proof that Appellant had a specific intent to violate the statute.

Williams contends that the instruction transformed the RCRA into a strict liability offense, and that, because a conviction under the RCRA is a felony, it should require that the Government prove specific intent to violate the statute. Williams concedes that this Court's decision in United States v. Baytank (Houston), Inc., 934 F.2d 599 (5th Cir. 1991), established that a conviction under the RCRA requires that the Government prove only a general intent, but argues that Baytank is distinguishable from the instant case and that this Court should reconsider its holding in Baytank. This panel is bound by Baytank.

As the Court noted in Baytank, the Supreme Court in United States v. International Minerals & Chemical Corp., 402 U.S. 558 (1971), held that "the word 'knowingly' in the statute pertained to knowledge of the facts, and where, as here, dangerous products were involved, anyone who was aware that he was in possession of or dealing with them must be presumed to have been aware of the regulation." Baytank, 934 F.2d at 612; see also Sellers, 926 F.2d at 414-17 (rejecting similar challenge to analogous jury instructions).

The Court in Baytank held that the statute did not require proof that the defendant knew that there was a regulation stating that what he was storing was hazardous under the RCRA. Id. at 613. In Sellers, as well, this Court held that "when a person knowingly possesses an instrumentality which by its nature is potentially dangerous, he is imputed with the knowledge that it may be regulated by public health legislation." Sellers, 926 F.2d at 416.

Williams contends that Baytank is factually distinguishable from the instant case because he is an individual whereas Baytank was a corporate entity, and that he had only minimal contact with the material as opposed to a continued and lengthy contact, and that only a small quantity of waste was involved in the instant matter, as opposed to a vast quantity of waste in Baytank. None of these factors was dispositive in Baytank, however. See Baytank, 934 F.2d at 612-13; see also Sellers, 926 F.2d at 414-17. The instructions provided in the instant case complied with Baytank and Sellers.

Williams next argues that the district court improperly rejected his proposed jury instruction regarding mistakes of fact. He requested the following instruction:

Mistake of fact is a defense for it negates knowledge. When a defendant acts upon a set of facts that he in [sic] believes to be true, though mistaken, and which if true would not be in violation of the law, he would not have the required knowledge to be in violation of the statute.

He contends that he believed that the drums contained material which could be shipped lawfully with the accompanying machine. The

evidence, however, establishes that Williams knew what was in the drums -- three different sources informed Williams that the drums contained sodium, and of the 116 drums, 59 had labels identifying the contents as hazardous waste. The district court instructed the jury that the Government had to prove that Williams knew that the drums contained sodium. The fact that Williams thought that the machine's permit allowed the waste to be shipped along with the machine amounts to a mistake of law which, even if proven by Williams, would not exonerate him. See Baytank, 934 F.2d at 612. As Williams' proposed instruction was not an accurate reflection of the issues and the law, and as the district court did instruct the jury that "knowingly . . . means that the act was done voluntarily and intentionally, not because of ignorance, mistake regarding the facts, or accident," it was not an abuse of discretion for the district court to reject Williams' proposed instruction regarding mistakes of fact. See Sellers, 926 at 414-16.

AFFIRMED.