

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2685
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOHN DOE,

Defendant-Appellant.

Appeal from the United States District Court
For the Southern District of Texas
(CR-H-91-183)

(November 30, 1994)

Before POLITZ, Chief Judge, KING and STEWART, Circuit Judges.

POLITZ, Chief Judge:*

John Doe pled guilty to a one-count indictment charging conspiracy to possess with intent to distribute in excess of 5 kilograms of cocaine, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(A), and § 846. Doe appeals the district court's acceptance of his guilty plea and the sentence imposed. Finding no error, we affirm.

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

Background

Doe was introduced to DEA agents as a major arranger of cocaine shipments to the United States and was identified as being involved with Cali cartel shipments and money laundering. Doe and his associate, Mario Jaramillo, and Jaramillo's wife Anna had several negotiations with DEA agents looking to smuggle 6000 kilograms of cocaine through Guatemala. In July 1991 Doe met with Mario Jaramillo, undercover agents, and a confidential informant in Aruba and assured the agents that he could supply any amount of cocaine that they could transport. They reached an agreement that the agents' pilot would make two trips to Guatemala, pick up 500 kilos each time, and transport the load to Houston for delivery to Doe's associates.

Anna Jaramillo was in daily contact with her husband and Doe while they were in Colombia and she was designated as the agents' contact for specifics on the deliveries. In August 1991 the agents contacted Doe and Mario Jaramillo through Anna who, in September 1991, gave the agents a FAX containing the coordinates for three airstrips in Guatemala. Anna advised the agents that the organization wanted them to pick up 6000 kilos from these three strips. Arrangments were made to pick up 500 kilos on the first load and then 900 kilos on each trip thereafter.

Anna Jaramillo subsequently contacted the agents, gave them new coordinates for the landing strip, and advised them that the organization had 7000 kilos of cocaine stockpiled in Colombia ready for transportation. On September 22, 1991 an undercover operative

flew to the airstrip in Guatemala but because of inclement weather conditions could only load and depart with 285 kilos, leaving the balance of the 500 kilos by the airstrip. "Delivery" of the cocaine in Houston was as per instructions from Doe, Mario, and Anna Jaramillo. Doe's arrest followed in Aruba; he was returned to the United States and began cooperating with the government.

Doe entered a plea of guilty and was sentenced to 84 months imprisonment and supervised release for five years. He timely appealed both the acceptance of his guilty plea and the sentence.

Analysis

The record reflects valid entry and acceptance of the guilty plea. Doe maintains that he could not be found guilty of conspiracy because the only actors besides himself were government agents. We disagree. The record reflects the existence of others, including Mario and Anna Jaramillo and the associates in Aruba and Houston. His complaint about the validity of his guilty plea is without merit.

Doe next contends that the court used the wrong quantity of drugs in computing his sentence. This issue was not raised in the district court and is therefore reviewed only for plain error.¹

One participating in a drug conspiracy is accountable for the quantity of drugs attributable to the conspiracy and reasonably foreseeable to him.² The general rule includes the quantity

¹**United States v. Calverley**, _____ F.3d _____ (*en banc*), slip op. 475 (5th Cir., Oct. 20, 1994).

²U.S.S.G. § 1B1.3(a)(1)(B).

negotiated when the transaction is aborted,³ unless the court determines that the defendant did not intend and could not produce the quantity agreed to.⁴

In the case at bar, the full 500 kilos was not transported because of adverse weather conditions, not anything Doe did or failed to do. Indeed the record adequately supports a conspiracy to smuggle far more than the 500 kilos used in the sentencing computation.

The conviction and sentence are AFFIRMED.

³U.S.S.G. § 2D1.1 n.12.

⁴**Id.**