

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-8641  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROBERTO BARRIOS-MARQUEZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. P-93-CR-044-01

- - - - -  
(November 15, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:\*

Marquez appeals his conviction, arguing that the Government's trial evidence that he possessed 86 pounds of cocaine was insufficient to convict him of possession of more than 5 kilograms without proof of proper weight conversion. The parties stipulated at trial that the substance seized from appellant was "about" 86 pounds of cocaine. The Government did not offer any evidence of weight conversion from pounds to kilograms.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

The elements of a violation of 21 U.S.C. § 841(a) are (1) knowing, (2) possession, (3) with intent to distribute. United States v. Munoz, 957 F.2d 171, 174 (5th Cir.), cert. denied, 113 S. Ct. 332 (1992). The quantity of drugs attributable to a defendant is a sentencing issue, necessary only to calculate a base offense level, rather than an element of the offense. United States v. Smith, 13 F.3d 860, 864 (5th Cir.), cert. denied, 114 S.Ct. 2151 (1994). Because the quantity of drugs alleged in the indictment is not an element of the alleged offense, Marquez' argument fails. See Smith, 13 F.3d at 864.

AFFIRMED.