

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10357
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARK EDWARD BROCK,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:93-CR-26

- - - - -
(November 16, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:*

Mark Edward Brock pleaded guilty to one count of possession with intent to distribute and distribution of 400 grams of cocaine. The presentence investigation report (PSR) computed Brock's base offense level based on 5 to 15 kilograms of cocaine rather than 400 grams. At sentencing, the Government presented the testimony of Bill Redden, a member of the Amarillo Police Department and part of the Panhandle Regional Narcotics Trafficking Task Force to support this amount of cocaine.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Brock argues that the district court erred in basing his offense level computation on the testimony of Officer Redden because Redden's information had come from confidential informants and coconspirators, inherently unreliable sources. Factual findings of the district court made in applying the sentencing guidelines are reviewed under a clearly erroneous standard. See United States v. Morales-Vasquez, 919 F.2d 258, 263 (5th Cir. 1990). To prevail in the claim that the district court was clearly erroneous, a defendant must demonstrate that the version of the events relied on by the district court was "`materially untrue, inaccurate[,] or unreliable.'" United States v. Kinder, 946 F.2d 362, 366 (5th Cir. 1991), cert. denied, 112 S. Ct. 2290 (1992). The district court's factual finding on the quantity of drugs will be clearly erroneous only if this Court is "left with the definite and firm conviction that a mistake has been committed." United States v. Mitchell, 964 F.2d 454, 457-58 (5th Cir. 1992) (internal quotation and citation omitted).

Brock correctly argues that mere inclusion in the PSR does not transmute unreliable information into reliable evidence. United States v. Elwood, 999 F.2d 814, 817-18 (5th Cir. 1993). Brock's argument would have merit had Officer Redden done no more than parrot the self-serving statements of a codefendant. This, however, is not the case. Redden testified that he was one of the primary investigators on Brock's case. Redden testified that the information he received came from eight or nine cooperating individuals, not from a single source. Redden testified that the

cooperating individuals told him that shipments of cocaine were made by Brock through the use of Federal Express. Redden testified that the Federal Express bills corroborated this information. Additionally, two of the Federal Express packages were seized and contained approximately 1000 grams of cocaine. United States v. Young, 981 F.2d 180, 186 n.9 (5th Cir. 1992), cert. denied, 113 S. Ct. 2454 (1993), says that the information supplied by a confidential informant is reliable if it is corroborated by other informants, physical evidence, and a lengthy police investigation. All three of those factors are present in this case. The evidence given by Redden related to the quantity of drugs relevant to Brock's offense level computation was reliable, and the district court was not clearly erroneous in basing its factual finding on that evidence.

AFFIRMED.