

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20104
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WILMA H. SHIPMAN,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CR-H-92-298-7

- - - - -
(November 16, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:*

Wilma H. Shipman argues that the district court erred in basing her offense level on the amount of drugs she actually possessed rather than the amount that she thought she was carrying. Shipman asserts that the district court's action was an incorrect application of the sentencing guidelines and requires reversal. United States v. Mejia-Orosco, 867 F.2d 216, 218 (5th Cir.), cert. denied, 492 U.S. 924 (1989).

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Shipman's argument is that § 1B1.3 of the sentencing guidelines holds a defendant responsible only for acts that are reasonably foreseeable by the accused. This view is erroneous.

Section 1B1.3 includes two primary grounds on which to hold a defendant accountable for conduct by others: Subsection (a)(1)(B) for jointly undertaking criminal activity and Subsection (a)(1)(A) for "all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant." Subsection (a)(1)(B) includes a "reasonable foreseeability" limitation. Subsection (a)(1)(A) does not. Furthermore, Subsections (a)(1)(A) and (a)(1)(B) are separate and independent grounds for imposing sentencing accountability.

United States v. Carreon, 11 F.3d 1225, 1237 (5th Cir. 1994) (footnotes omitted). Under the commentary to the guidelines, an individual hired to off-load a ship containing marijuana will be held accountable for the entire shipment without regard to the number of bales he personally unloaded or the issue of reasonable foreseeability. Id. at 1237 n.60. In this case, Shipman admittedly rented a truck for the purpose of transporting marijuana. She knew that the truck was loaded with marijuana, and although she may have believed that it was 200 pounds of marijuana, she is accountable under the guidelines for the actual amount in her possession.

AFFIRMED.