

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-20239  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSÉ COMPEAN HEMPEL,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. CR-H-93-193-5  
- - - - -

June 28, 1995

Before JONES, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

A district court's determination that a defendant played an aggravating role is a factual finding subject to the "clearly erroneous" standard of review. United States v. Alvarado, 898 F.2d 987, 993 (5th Cir. 1990).

Section § 3B1.1(c) requires a two-level increase in a defendant's offense level if the defendant was a manager or supervisor in the criminal activity. Id.

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

Confronted with an objection to the findings in the PSR, the Government must establish the factual predicate "by a preponderance of relevant and sufficiently reliable evidence." United States v. Elwood, 999 F.2d 814, 817 (5th Cir. 1993). The district court may consider any information which has "sufficient indicia of reliability." U.S.S.G. § 6A1.3, p.s., comment. "[A] presentence report generally bears sufficient indicia of reliability to be considered as evidence by the trial judge in making the factual determinations required by the guidelines." Elwood, 999 F.2d at 817 (internal quotation and footnote citation omitted). The burden is on the defendant to demonstrate that the information relied on at sentencing is materially untrue. United States v. Santiago, 993 F.2d 504, 506-07 (5th Cir. 1993).

The probation officer based the PSR on information obtained from eleven witnesses cooperating with the FBI in an investigation of the Barboza family, who operated a large-scale cocaine and marijuana distribution in the Houston, Texas, area. The record established that Hempel had a significant degree of participation in planning or organizing the conspiracy's criminal activity and that he facilitated the large-scale transactions. Hempel does not demonstrate that the information relied on at sentencing was materially untrue. See id.

Hempel's argument that the district court erred by increasing his base offense level because the conspiracy did not involve five or more people is without merit. Section 3B1.1(c) does not require criminal activity involving five or more participants, as does § 3B1.1(a) & (b).

AFFIRMED.