

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 96-20121  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JAMES V. MORRISON,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
(CR-H-95-178-2)

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October 23, 1996  
Before KING, DAVIS, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

James V. Morrison argues that the district court erred in determining the drug quantity attributable to him under the sentencing guidelines. He also argues for the first time on appeal that the district court committed plain error in determining that he had the burden of proving that he did not have the intent or was not reasonably capable of delivering at

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\* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

least five kilograms but less than fifteen kilograms of cocaine to the confidential informant.

We have reviewed the applicable sentencing guidelines and have determined that the district court did not commit plain error in determining that Morrison had the burden of proving that he did not intend or did not have the capacity to deliver at least five kilograms of cocaine. See United States v. Calverley, 37 F.3d 160, 162-64, (5th Cir. 1994) (en banc), cert. denied, 115 S. Ct. 1266 (1995); U.S.S.G. § 2D1.1, comment. (n. 12).

We have further reviewed the record, including the presentence report and the transcript of the sentencing hearing, and find that the district court's determination that Morrison was accountable for at least five kilograms of cocaine was not clearly erroneous. United States v. Bermea, 30 F.3d 1539, 1575 (5th Cir. 1994), cert. denied, 115 S. Ct. 1113, 1825 (1995).

Morrison also argues that the district court erred in increasing his offense level for obstruction of justice. The record supports the district court's determination that Morrison provided materially false testimony at the sentencing hearing. Thus, the district court did not clearly err in applying the upward adjustment to Morrison's offense level. See United States v. Laury, 985 F.2d 1293, 1308 (5th Cir. 1993); U.S.S.G. § 3C1.1.

AFFIRMED.