

United States Court of Appeals for the Fifth Circuit

No. 25-40049
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

August 11, 2026

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

OMAR TIJERINA,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:24-CR-39-1

Before HAYNES, GRAVES, and RAMIREZ, *Circuit Judges*.

PER CURIAM:*

After a jury found Omar Tijerina guilty of possession with intent to distribute and conspiracy to possess with intent to distribute cocaine, the district court sentenced him at the top of a guidelines range that was based on a drug quantity calculation of over three kilograms of cocaine. Tijerina now contends, and the Government agrees, that the drug quantity calculation

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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was plainly erroneous because it included two kilograms of cocaine not supported by the record.

We independently review this unpreserved issue for plain error, *see United States v. Aparicio*, 963 F.3d 470, 473 (5th Cir. 2020), notwithstanding the Government's concession, *see United States v. Hope*, 545 F.3d 293, 295 (5th Cir. 2008). Based on the parties' arguments and the record as a whole, we are persuaded that the district court clearly and obviously erred by including those two additional kilograms of cocaine in the drug quantity calculation. *See Puckett v. United States*, 556 U.S. 129, 135 (2009); *United States v. Betancourt*, 422 F.3d 240, 246 (5th Cir. 2005). The error affected Tijerina's substantial rights, *see Molina-Martinez v. United States*, 578 U.S. 189, 200-01 (2016), and we exercise our discretion to correct it, *see Rosales-Mireles v. United States*, 585 U.S. 129, 145 (2018). Because the sentence must be vacated on this basis, we do not address Tijerina's additional argument regarding another component of the drug quantity calculation. *See United States v. Akpan*, 407 F.3d 360, 377 n.62 (5th Cir. 2005).

Based on the foregoing, we VACATE Tijerina's sentence and REMAND for resentencing.