

FILED

April 3, 2003

Charles R. Fulbruge III
Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-41115
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RAFAEL GRACIA GUERRERO,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(B-00-CR-514-1-S)

Before BARKSDALE, DeMOSS, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Rafael Gracia Guerrero appeals his conviction, following a jury trial, for bank robbery. 18 U.S.C. § 2113(a) & (d) (taking money with force, violence or intimidation from a bank). In contending the district court erred in denying his motion for a judgment of acquittal, Guerrero claims insufficient evidence proving his identity as one of the bank robbers. There was evidence: Guerrero was a major contributor of DNA to a ski mask found at the bank; he participated in robberies with similar *modus*

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

operandi; and his behavior upon being stopped for a traffic violation indicated a guilty conscience. Viewed in the light most favorable to the government, a rational jury could have found, beyond a reasonable doubt, that Guerrero was one of the bank robbers. *E.g.*, **United States v. Edwards**, 303 F.3d 606, 635 (5th Cir. 2002), *cert. denied*, ___ S.Ct. ___, 71 U.S.L.W. 3430 (24 Feb. 2003).

Guerrero also contends the district court erred by admitting claimed hearsay testimony discrediting his alibi. Even if the testimony were hearsay, given the evidence of Guerrero's guilt, the admission constituted harmless error. *E.g.*, **Edwards**, 303 F.3d at 623.

AFFIRMED