

October 20, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 05-40935  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JONATHAN PINEDA-DIAZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
(2:04-CR-708-4)  
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Before SMITH, WIENER, and OWEN, Circuit Judges.

PER CURIAM:\*

Defendant-Appellant Jonathan Pineda-Diaz appeals his jury trial conviction for possession with intent to distribute marijuana and conspiracy to possess marijuana thusly. He contends that reversible error resulted when the government, while cross-examining him, referred to out-of-court statements of a co-conspirator who was not present to testify. Pineda objected to the line of questioning, and the district court sustained his objection.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Assuming without deciding that the questioning was improper, we conclude that "the evidence as a whole before the jury was sufficiently convincing of guilt as to overcome any error committed by the government during its cross-examination." See United States v. Smith-Bowman, 76 F.3d 634, 636-37 (5th Cir. 1996); United States v. Pepper, 51 F.3d 469, 472 (5th Cir. 1995). Accordingly, any error resulting from the prosecutor's cross-examination was harmless. Pineda's conviction and sentence are AFFIRMED.