

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-40529
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

September 28, 2007

UNITED STATES OF AMERICA

Charles R. Fulbruge III
Clerk

Plaintiff-Appellee

v.

RAYMUNDO DE LA CRUZ

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:03-CR-1593-6

Before WIENER, GARZA, and BENAVIDES, Circuit Judges.

PER CURIAM:*

At the conclusion of his jury trial, Defendant-Appellant Raymundo De La Cruz was convicted of one count of conspiring to possess more than 1000 kilograms of marijuana with intent to distribute and one count of possessing more than 100 kilograms of marijuana with intent to distribute. He was sentenced to serve 174 months in prison. De La Cruz appeals his conviction, asserting it is invalid because evidence regarding cocaine was admitted at his trial. As the evidence of De La Cruz's guilt was overwhelming, any error that

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

occurred in connection with the admission of the disputed evidence was harmless. See *United States v. Collins*, 40 F.3d 95, 99 n.11 (5th Cir. 1994); see also *United States v. Smith*, 354 F.3d 390, 396 (5th Cir. 2003). De La Cruz also claims that his indictment was constructively amended. This contention is unavailing, because the record does not show that the jury was “permitted to convict on an alternative basis permitted by the statute but not charged in the indictment.” See *United States v. Daniels*, 252 F.3d 411, 413 (5th Cir. 2001).

The judgment of the district court is

AFFIRMED.