

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

January 24, 2008

Charles R. Fulbruge III
Clerk

No. 07-10334
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

EFRAIN RIOS

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 6:06-CR-27-5

Before HIGGINBOTHAM, STEWART, and OWEN, Circuit Judges.

PER CURIAM:*

Efrain Rios appeals his conviction by a jury of conspiracy to distribute and possess with the intent to distribute more than five kilograms of cocaine. Rios argues that the evidence was insufficient to prove that the conspiracy involved an amount of cocaine in excess of five kilograms. Because Rios failed to move for a judgment of acquittal, his sufficiency challenge is reviewed only for a manifest miscarriage of justice. *United States v. Avants*, 367 F.3d 433, 449 (5th Cir.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

2004). Such a miscarriage of justice occurs when the record is “devoid of evidence of guilt or the evidence [is] so tenuous that a conviction is shocking.” *Id.*

Rios argues that Ana Laura Silva’s testimony did not establish an amount of cocaine attributable to the conspiracy. Although he acknowledges that Silva’s testimony confirmed that she delivered between five and seven kilograms of cocaine, Rios contends that her testimony is opinion testimony and that she has no basis for such an opinion. Silva testified that she carried the drugs on her person on numerous occasions, and she further testified that she transported cocaine in one kilogram amounts. Her testimony did not amount to inadmissible opinion testimony. Rather, she was providing a factual answer to a question as to how much cocaine she had carried on her body. The record is not devoid of evidence as to the amount of cocaine attributable to the conspiracy, and, as such, Rios’s conviction does not constitute a manifest miscarriage of justice.

Accordingly, the judgment of the district court is AFFIRMED.