UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-1312
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

FRANCISCO FAVELA ROMERO, JOSE LOUIS PECINA,
MARIA SOTO GONZALEZ,

Defendants-Appellants.

Appeal from the United States District Court
for the Northern District of Texas
CR4 91 94 E

May 12, 1993

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:[1]

Appellants were convicted of various drug and weapons offenses and appeal. We find no error and affirm their convictions and sentences.

Appellant Romero complains of the admission into evidence of audio tapes, mostly in Spanish, of certain telephone and in-person conversations and the English transcripts thereof. He argues that portions of the tapes are inaudible or unintelligible and that the

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[1] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

transcripts are in English and were not made by a certified translator. For these reasons, he contends the tapes and the transcripts should not have been admitted into evidence.

We review for abuse of discretion. United States v. Ruppel, 666 F.2d 261, 272 (5th Cir. Unit A), cert. denied, 458 U.S. 1107 (1982). Our independent review of the tapes shows that all, except Government's exhibits 14 and 18, are in the main, understandable. Poor quality and partial unintelligibility do not render recordings inadmissible; the question is whether the recording as a whole is trustworthy. United States v. Stone, 960 F.2d 426, 436 (5th Cir. 1992). The Government fully complied with Federal Rule of Evidence 901 in establishing the trustworthiness of the tapes and transcripts by, among other evidence, the testimony of the agent who made the tapes and who is fluent in Spanish. R. 5, 26-32, 38-49, 58-63, 71-79. Additionally, the district court itself questioned this witness specifically to ascertain the reliability of the tapes and transcripts. R. 5, 40-44. The agent specifically testified that the tapes and transcripts are accurate. R. 5, 28-29, 41, 47-48, 58-59, 71-72. We know of no authority which requires use of a certified translator to establish trustworthiness. Nor does Romero point to any specific area of a tape or a transcript he considers untrustworthy. Inaudible portions and poor quality go only to the credibility of the evidence. United States v. Nixon, 777 F.2d 958, 973 (5th Cir. 1985); United States v. Vega, 860 F.2d 779, 790-91 (7th Cir. 1988).

"[W]hen a defendant challenges the Government's translation of

a foreign-language conversation for the jury, but fails to offer his own translation, the district court is under no obligation to pass on the transcripts accuracy." United States v. Stone, 960 F.2d at 437. Here, the district court went well beyond the Stone requirement.

Appellant Pecina argues that the evidence is insufficient to support his conviction of using a firearm during and in relation to a drug trafficking crime. We review to determine whether any reasonable trier of fact could have found that the evidence presented established guilt beyond a reasonable doubt. United States v. Martinez, 975 F.2d 159, 160-61 (5th Cir. 1992), cert. denied, 113 S.Ct. 1346 (1993). We consider the evidence in the light most favorable to the Government and draw all reasonable inferences and credibility choices in support of the verdict. United States v. Ivy, 973 F.2d 1184, 1188 (5th Cir. 1992), cert. denied, 1993 WL 58534 (1993). Items of evidence which might be inconclusive if considered separately may, upon being considered in the aggregate, constitute conclusive proof of guilt. See United States v. Lechuga, 888 F.2d 1472, 1476 (5th Cir. 1989).

Pecina does not deny that the pistol found in his bedroom belonged to him. He argues, however, that the Government did not prove that he used it during and in relation to a drug trafficking crime. We have held that what is required is simply that the firearm be available to provide protection in connection with drug trafficking. United States v. Pineda-Ortuno, 952 F.2d 98, 103 (5th Cir.), cert. denied, 112 S.Ct. 1990 (1992). The weapon was found

in Pecina's home which was a storage and distribution center for large amounts of cocaine. It was within five to seven feet of the location of the largest quantity of cocaine in the room which he obviously occupied as his bedroom. He declared to the agents that all drugs in the house belonged to him. Considering the large amount of cocaine in the house, there was a strong incentive for Appellant to have the pistol in his bedroom to protect his drugs. Because the evidence shows that, "the gun was strategically located at the place where the contraband was kept so as to be quickly available," we find the evidence more than sufficient. United States v. Pineda-Ortuno, 952 F.2d at 103.

Appellant Gonzalez challenges her sentence arguing that she was entitled to a four level reduction in her offense level because her role in the offense was minimal. Alternatively, she argues that she should have received a two or three level reduction because she was less culpable. She claims that she was only a messenger for and companion to Romero. We examine for clear error. United States v. Walker, 960 F.2d 409, 417 (5th Cir.), cert. denied, 113 S.Ct. 443 (1992). "A factual finding is not clearly erroneous as long as it is plausible in light of the record read as a whole." United States v. Sanders, 942 F.2d 894, 897 (5th Cir. 1991).

We first note that Note 2 of the Commentary to Guidelines § 3B1.2 provides that it is to be "used infrequently" and that it "would be appropriate . . . where an individual was recruited as a courier for a single smuggling transaction involving a small amount

of drugs." That is clearly inapplicable here where Gonzalez was involved in a conspiracy to distribute large quantities of nearly pure wholesale quality cocaine. The district court's finding that she was not a minimal participant is plausible. See United States v. Mora-Estrada, 867 F.2d 213, 216 (5th Cir. 1989).

Appellant cannot show that she was substantially less culpable than the other participants because she was involved from almost the very beginning of the DEA's investigation. She told the undercover agent that whenever Romero could not meet him to complete a transaction she would handle it. She drew the map to her home to allow the agents to make future purchases there and delivered it to the agent. During the meeting at which the parties negotiated for the 8-kilogram purchase, Gonzalez told the agent that she had been involved in drug activity for several years. She participated in the transaction in which she and Romero delivered 4 kilograms of cocaine to the undercover agents. The district court's finding that she was not less culpable is not clearly erroneous. See United States v. Mueller, 902 F.2d 336, 345-46 (5th Cir. 1990).[2]

AFFIRMED.

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[2] Having found that the district court properly denied credit for a lesser role in the offense Gonzalez's alternative argument is moot because her sentences are authorized by the Guidelines for her present offense level. She is not entitled to a downward adjustment. Appellant concedes this issue.