IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-2423
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

FLAVIO CORNEJO PUIG-MIR,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(CR-H-91-163-01)

(November 17, 1993)

Before GARWOOD, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:[*]

Flavio Cornejo Puig-Mir ("Cornejo") appeals his conviction of, and sentence for, conspiracy to commit money laundering, in violation of 18 U.S.C. § 371, and aiding and abetting money laundering, in violation of 18 U.S.C. §§ 2 and 1956(a)(1)(A). Finding no error, we affirm.

---

[*] Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

I.

United States Customs Service Agents Lucio Aguilar and Enrique Castro conducted an undercover money laundering investigation known as "Operation Scorpion" in February 1990, assisted by Al Arizola, a special agent with the Immigration & Naturalization Service, and a confidential informant, Jay Zaden, who was paid $54,000 to assist. In February 1990, Aguilar and Zaden flew to Miami, Florida, to meet with Cornejo. During the course of the meeting, Zaden explained that he could receive money in Houston and funnel it into bank accounts in South America. Cornejo responded that he had two good contacts, one in Quito, Ecuador, and one in Cali, Colombia, that could use the service. Cornejo showed Zaden a bank statement containing a balance of approximately seven billion sucres[1] (over $100,000,000).

Cornejo engaged in a series of conversations with Zaden, arranging a cash transaction in New York City. Zaden and Cornejo flew to New York; Aguilar and Arizola also went there for a test exchange of $500,000. The delivery was supposed to take place on May 1, 1990, but did not happen until May 4. The customs agents then transferred the money by wire to bank accounts specified by Cornejo.

On May 10, 1990, a second delivery of approximately $500,000 was made in New York; this money also was wired to specified bank accounts. A third delivery of $500,000 was made in New York on May 20, 1990. On August 16, 1990, $500,000 was transferred in

[1] A sucre is the basic monetary unit of Ecuador.

Houston.

Cornejo and several codefendants were indicted and charged with one count of conspiracy to commit money laundering and two counts of aiding and abetting money laundering. Cornejo was convicted on all three counts. The district court sentenced him to sixty months' imprisonment on count one and 151 months on each of counts two and three.

II.

A.

Cornejo argues that the district court reversibly erred in dismissing a venireman sua sponte. Cynthia Weiss was questioned by the district court about her ability to be impartial. Her son had been convicted of trafficking cocaine, and she did not feel that he received fair treatment by the prosecutors or law enforcement personnel. The court asked Weiss whether she could put her son's conviction out of her mind and base her decision solely upon the evidence. Weiss responded that she was not sure that she could.

Defense counsel attempted to rehabilitate Weiss, but the district court excused her for cause. Cornejo's counsel objected "for the record" but did not state any specific ground.

On appeal, Cornejo argues that the court did not have cause to excuse Weiss and that he was injured by this action because it allowed the prosecution an additional peremptory challenge. Cornejo does not question the impartiality of the jury.

Assuming arguendo that the district court did err,[2] the error does not warrant reversal of Cornejo's conviction. In United States v. Prati, 861 F.2d 82, 87 (5th Cir. 1988), we held that "although the improper removal of the venire member may have altered the ultimate composition of the panel, this is not a ground for reversing the defendant's convictions." This conclusion was based upon the reasoning that "peremptory challenges are a means to the end of achieving an impartial jury and `are not of constitutional dimension.'" Id. (footnote omitted). Absent a challenge to the jury's impartiality and an assertion that his rights were prejudiced, Cornejo cannot prevail on this issue.

B.

Cornejo argues that the district court erred in admitting tape-recorded conversations between himself and Zaden. Cornejo contends that the tapes and the transcripts thereof were improperly admitted because the government had not laid the proper predicate for the introduction of a tape recording.

At trial, Cornejo objected to the evidence for failure to lay the proper predicate. Cornejo's counsel explained that his objection was that "we have not been shown under what authority they had to tape record these conversations." Cornejo did not

[2] Although we assume arguendo that the district court wrongly excused Weiss for cause, we do not suggest that the court actually committed such an error. A district court has broad discretion in conducting voir dire. Even if an objection is made at the time, a district court's determination of actual bias on the part of a juror "`is reviewed for manifest abuse of discretion.'" United States v. Bryant, 991 F.2d 171, 174 (5th Cir. 1993) (citation omitted).

specifically object to any failure to show that the tape recordings were accurate. Without such an objection, we review only for plain error. See United States v. Greenwood, 974 F.2d 1449, 1462 (5th Cir. 1992), cert. denied, 113 S. Ct. 2354 (1993).

In United States v. Stone, 960 F.2d 426, 436 (5th Cir. 1992), we held that "the trial judge retains broad discretion to independently determine that the recording accuracy reproduces the auditory experience." We noted that a proper predicate "generally requires the government to demonstrate (1) the competency of the operator, (2) the fidelity of the recording equipment, (3) the absence of material deletions, additions, or alterations, and (4) the identification of the relevant speakers." Id. We noted that "the list is not meant to command `formalistic adherence' at the expense of the district court's discretion." Id.

In this case, as in Stone, a party to the conversations, Zaden, testified that the recordings and the English language transcripts were accurate and that there were no changes, additions, or deletions. Given this testimony and that the accuracy was not challenged, the district court did not err in the exercise of its discretion. See id.

C.

Cornejo contends that the district court improperly limited his cross-examination of government witness Jay Zaden. The court would not allow Cornejo's counsel to go into specific areas of Zaden's past, including his name before it was changed to Zaden in

1985. The court ordered the government to present the matter in camera, with the presentation to include Zaden's affidavit, his tax returns, and related Customs Service files. The court received the information, except for the tax returns, then placed this information under seal, with the contents to be opened only by an article III judge because of danger to the witness. This information is contained, under seal, in the record on appeal.

The district court revealed some information related to Zaden's criminal activities and activities as a paid informant for the Customs Service. In United States v. Sanchez, 988 F.2d 1384, 1391 (5th Cir. 1993), cert. denied, 62 U.S.L.W. 3250 (U.S. Oct. 4, 1993), we held that we "review[] the district court's grant or denial of a request to disclose an informant's identity for abuse of discretion." Sanchez set out a three-part test: "The Court examines (1) the informant's degree of involvement in the crime, (2) the helpfulness of the disclosure to the defense, and (3) the Government's interest in nondisclosure." Id. Our review of the information provided under seal indicates to us that the district court did not err in withholding certain information.

D.

Finally, Cornejo asserts that he should have been given the reduction under U.S.S.G. § 5K2.0 that provides for downward departure for exceptional circumstances. He asserts that because there was an ambiguity as to whether he was entrapped into the first money laundering transaction, the district court should have

given him a downward departure.

Cornejo has not alleged, nor is there any indication in the record, that a violation of law has occurred by the district court's imposition of a sentence under the guidelines. Cornejo's assertion that the district court could have departed downward does not impose an obligation on this court to examine the district court's motives for not departing or choosing a lesser sentence. Unless there is a violation of the law, a sentence resulting from the proper application of the guidelines must be upheld. United States v. Velasquez, 868 F.2d 714, 715 (5th Cir. 1989); United States v. Buenrostro, 868 F.2d 135, 139 (5th Cir. 1989), cert. denied, 495 U.S. 923 (1990).

AFFIRMED.