

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 92-2878  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

ROGERIO MARTINEZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
(CR-H-92-0024-3)

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(November 4, 1993)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

PER CURIAM:<sup>1</sup>

Martinez challenges the sufficiency of the evidence supporting his conviction on money laundering charges. We affirm.

I.

A jury convicted Rogerio Martinez of laundering monetary instruments (counts two through four), of conspiring to launder monetary instruments (count fourteen), of structuring currency transactions for the purpose of evading reporting requirements

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<sup>1</sup> 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

(counts five through thirteen), and of conspiring to structure currency transactions for the purpose of evading reporting requirements (count fifteen).<sup>2</sup> The district court sentenced Martinez to thirty months imprisonment on each count, to be served concurrently. The court also imposed a three-year term of supervised release and a \$700 special assessment.

## II.

Martinez challenges the sufficiency of the evidence to convict him of counts two through four (money laundering) and count fourteen (conspiring to money launder). At the close of the government's evidence, Martinez's motion for judgment of acquittal was denied. Martinez, however, did not renew his motion at the close of all the evidence and therefore waived any objection to the denial of his motion. Fed.R.Crim.P. 29; **United States v. Daniel**, 957 F.2d 162, 164 (5th Cir. 1992). Because of this waiver, we will reverse only if the record is "devoid of evidence pointing to guilt" or if "the evidence on a key element of the offense was so tenuous that a conviction would be shocking." **United States v. Ruiz**, 860 F.2d 615, 617 (5th Cir. 1988) (internal quotation omitted). In making this decision, we consider the evidence in the light most favorable to the government, giving the government the benefit of all reasonable inferences and credibility choices. **Id.**

At trial, it was established that Martinez handled the purchase of two commercial lots and a residence for Juan Videa, a

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<sup>2</sup> The jury found Martinez "not guilty" on count one -- laundering monetary instruments.

co-defendant, and that Martinez prepared Videa's income statements for 1989. It also was established that Videa earned money helping a group of Colombian cocaine smugglers.

In 1990, Martinez helped Videa purchase two commercial lots (the Durham property) for \$55,000. Videa gave Martinez \$20,000 cash for earnest money, but Martinez was experiencing financial difficulties and used the \$20,000 to pay his own bills. Eventually, however, Martinez took money from other accounts, paid the earnest money to the owners of the Durham property, and closed the sale on August 13, 1990. Martinez later purchased cashier's checks for \$7,000 and \$27,673.80 with cash supplied by Videa and paid the balance due on the property.

Martinez also represented Videa in the purchase of the Lilleux residence. The contract specified a purchase price of \$160,000, with \$100,000 cash to be paid at closing, and with the remaining \$60,000 due thereafter. Before the closing date, Martinez tendered a cashier's check for \$30,000, and on the closing date, he tendered a second cashier's check for \$68,410.68. Several days later, he tendered a cashier's check for \$33,000, and two months later, paid the balance with a cashier's check for \$27,000. Martinez purchased all of these checks with currency supplied by Videa.

After signing the contract for the Lilleux residence, but prior to the closing, Martinez visited several of his bookkeeping clients. On successive Fridays in September 1990, Martinez approached Arturo Arredondo Jiminez and offered him cash in exchange for Jiminez's endorsed paychecks. After Jiminez endorsed

a check, Martinez would retrieve cash from his vehicle. Martinez cashed five of Jiminez's checks, totalling about \$4000. In the same manner, Martinez cashed three checks for Lucio Aguirre, totalling \$21,000. When Aguirre asked the purpose of the transactions, Martinez told him that he had too much money to take to a bank.

Also in September 1990, Martinez asked Tomas Guevara Mendoza, a restaurant owner, to write him a check in exchange for \$5000 cash. Martinez made the same request of other restaurant owners and clients, approaching Jesus Guzman for \$5000 and Alvarro Arreguin for \$4000. Martinez also approached Martin Jiminez, the owner of a meat market, and asked him to write checks in exchange for \$5200 and \$3000 cash. Again, when asked the purpose of the transactions, Martinez replied that he had too much money to take to a bank.

On July 26, 1990, Martinez's wife's commercial account at Fidelity National Bank, number 1433, had a balance of \$4707.13. Four days later, Martinez deposited \$4600 in currency and a cashier's check for \$4500 into the account. The same day, he also deposited \$4300 in currency and a cashier's check for \$4100. Both cashier's checks were purchased by Martinez at other banks with currency supplied by Videa. On the same day, Martinez deposited \$2500 cash in his insurance account at Savings of America Bank, drew a check for the same amount, and deposited it in account 1433.

On August 2, 1990, Martinez deposited two cashier's checks for \$4400 and \$4300, as well as \$4000 in currency in account 1433.

Again, Martinez used currency supplied by Videa to purchase the cashier's checks. Martinez continued to make currency deposits, depositing \$3600 on August 3, \$3000 and \$3440 on August 6, and \$4000 on August 7.

On September 17, 1990, Martinez deposited \$3300 in currency in account 1433, along with the Mendozo and Guzman checks and \$4000 in currency. Two days later, he deposited the Arreguin check and \$4000 in currency. The same day, he and his wife opened an escrow account, number 5252, with \$7,000 in currency. The next day, Martinez deposited the meat market check and \$4800 in currency in this account.

On September 21, 1990, Martinez deposited \$4000 in currency and a \$4,000 cashier's check (purchased with cash) into both the 1433 and 5252 accounts. He continued to make deposits in this manner until October 1, when the Lilleux property closed. At the closing, he tendered cashier's checks purchased with checks drawn on accounts 1433 and 5252.

At trial, Martinez denied knowing that the cash supplied by Videa was derived from unlawful drug sales or any illegal activity, testifying instead that Videa had told him that it was part of an inheritance. Martinez, however, did admit that he was aware of the reporting requirements for the cash, but claimed that he thought it was the title company's responsibility to file the forms when the real estate sale was completed.

Martinez admitted that the income statements that he prepared for Videa showed losses and that he had made the deposits as

detailed by the banking records. Martinez maintained that he approached his former clients in order to make extra money. The clients, however, testified that they simply were doing Martinez a favor.

### III.

On appeal, Martinez advances two principal arguments. First, he contends that the government failed to prove that he knew that the currency supplied by Videa represented drug proceeds. Second, he argues that the government failed to prove that he conspired with Videa to disguise the ownership of the funds.

"To prove money laundering, the Government must show that the defendant 1) conducted or attempted to conduct a financial transaction, 2) which the defendant knew involved the proceeds of unlawful activity, 3) with the intent to promote or further unlawful activity." **United States v. Ramirez**, 954 F.2d 1035, 1039 (5th Cir.), **cert. denied**, \_\_\_ U.S. \_\_\_, 112 S.Ct. 3010, 120 L.Ed.2d 884 (1992).

To prove aiding and abetting,

the Government must prove (1) that the defendant associated with the criminal venture, (2) participated in the venture, and (3) sought by action to make the venture succeed. The defendant must share the principal's criminal intent and engage in some affirmative conduct designed to aid the venture.

**United States v. Gallo**, 927 F.2d 815, 822 (5th Cir. 1991) (citation omitted).

To establish a conspiracy, the government must "prove beyond a reasonable doubt that two or more persons agreed to commit a crime and that at least one of them committed an overt act in

furtherance of that agreement." **United States v. Tansley**, 986 F.2d 880, 885 (5th Cir. 1993). The jury may infer the existence of an agreement from a defendant's concert of action with others. **See United States v. Magee**, 821 F.2d 234, 239 (5th Cir. 1987). "Circumstances altogether inconclusive, if separately considered, may, by their number and joint operation, especially when corroborated by moral coincidences, be sufficient to constitute conclusive proof." **United States v. Roberts**, 913 F.2d 211, 218 (5th Cir. 1990) (citation and internal quotation marks omitted), **cert. denied sub nom. Preston v. United States**, \_\_\_ U.S. \_\_\_, 111 S.Ct. 2264, 114 L.Ed.2d 716 (1991). The elements of conspiracy "may be inferred from the `development and collocation of circumstances.'" **Gallo**, 927 F.2d at 820 (citations omitted).

The evidence demonstrates that Martinez received over \$200,000 in currency from Videa, while Videa's income statements reported losses. The evidence also shows that Martinez disguised the source of his deposits by using checks written and endorsed by third persons, and that he deposited less than \$10,000 per visit, thereby avoiding reporting requirements.

The record therefore is not devoid of evidence that Martinez knew that Videa's cash was from "some form of unlawful activity." 18 U.S.C. § 1956(a)(1). In addition, given the "collocation of circumstances," the record is not devoid of evidence that Videa and Martinez agreed to launder Videa's cash. For these reasons, the judgment of the district court is affirmed.

AFFIRMED.