

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-5257  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROBERT GONZALEZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Texas  
(6:92cr30-3)

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(November 3, 1993)

Before POLITZ, Chief Judge, KING and WIENER, Circuit Judges.

PER CURIAM:\*

Robert Gonzalez appeals his conviction for conspiracy to distribute marihuana, 21 U.S.C. § 846, and possession with intent to distribute marihuana, 21 U.S.C. § 841(a)(1) and (b)(1)(B). Finding no error, we affirm.

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\*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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

### Background

On June 4, 1992, FBI agents followed a tractor-trailer from Alice, Texas to Canton, Texas after receiving a tip that the tractor-trailer was carrying approximately 1000 pounds of marihuana. The tractor-trailer pulled into the Wal-Mart Shopping Center parking lot in Canton. The driver and passenger of the tractor-trailer left the vehicle and were greeted by two other males, codefendants Gilbert Ayala and Jose Galindo, who had been waiting in a parked automobile. The individuals traded vehicles; Ayala and Galindo then drove from the parking lot in the tractor-trailer, while the original driver and passenger of the tractor-trailer drove in another direction in the automobile. FBI agents followed the tractor-trailer to a mobile home where they observed that the doors to the tractor and trailer were open. The agents observed activity behind the trailer; it appeared that it was being unloaded. The agents saw Robert Gonzalez, Richard Gonzalez (no relation), and Victor Garza working at the mobile home. The tractor later pulled away from the trailer and headed back toward Canton. The FBI agents conducted a protective sweep of the mobile home, noting a number of large bundles in plain view which were tightly wrapped in cellophane, a common packaging method for transporting narcotics. After obtaining a search warrant the agents conducted a search of the mobile home and found 32 bundles of marihuana weighing 643 pounds. Gonzalez's fingerprints were lifted from the wrappers of two bundles of marihuana.

Gonzalez was charged with conspiracy to distribute marihuana

in violation of 21 U.S.C. § 846, and possession with intent to distribute marihuana in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B). Gonzalez pleaded not guilty. At trial Galindo testified that he discussed with Gonzalez and the others that the shipment of marihuana would be arriving that day. Galindo also testified that Gonzalez helped unload the marihuana from the trailer when it arrived. The jury found Gonzalez guilty as charged and the court sentenced him to 60 months imprisonment and four years supervised release. Gonzalez did not move for acquittal at the conclusion of the government's case, nor did he move for acquittal at the close of the evidence. He timely appealed.

#### Analysis

Gonzalez challenges the sufficiency of the evidence supporting his conviction. Because he failed to move for a judgment of acquittal either at the close of the government's case or following the close of his own case, we must restrict our review to whether there was a "manifest miscarriage of justice. Such a miscarriage would exist 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."<sup>1</sup>

Gonzalez argues that there was insufficient evidence to show he knew the bales contained marihuana or that he knowingly participated in the conspiracy. His argument fails to persuade.

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<sup>1</sup> **United States v. Galvan**, 949 F.2d 777, 783 (5th Cir. 1991) (citations omitted).

In light of the evidence that Galindo discussed the shipment of marihuana with Gonzalez, that Gonzalez helped unload the marihuana from the trailer into the mobile home, and that Gonzalez's fingerprints were found on two bales of marihuana, there has been no manifest miscarriage of justice herein.

The convictions are AFFIRMED.