

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-5744

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RUBEN GOMEZ,

Defendant-Appellant.

Appeal from the United States District Court for the
Western District of Texas
(SA-89-CR-57-18)

(February 10, 1994)

Before JOHNSON, GARWOOD, and JOLLY, Circuit Judges.

PER CURIAM:*

The defendant appeals his convictions for drug trafficking conspiracies. Finding no reversible error, we affirm.

I

Beginning in 1987, Ruben Gomez worked for Mario Salinas, the head of a large-scale drug conspiracy. Although his relationship with Salinas began when Salinas purchased the cattle feed lot that Gomez worked on in California, Gomez soon became involved in

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

assisting Salinas in drug trafficking activities. The government recorded several of Gomez's phone conversations in which he spoke of processing a substance until it "flaked real nice," another person's test of a substance with chlorine¹ and "rocks," the "white" color of the substance, and the sale of the substance on a "per ounce" basis. Gomez also deposited large amounts of cash and took trips with other conspirators to various of Salinas's facilities.

II

At his separate trial, the jury found Gomez guilty of conspiracy to import cocaine and marijuana and conspiracy to distribute cocaine and marijuana. On appeal, Gomez first argues that the evidence submitted at trial is insufficient to support his convictions. Our review of the evidence, especially the phone conversations, leaves no doubt that a rational juror could have found Gomez guilty beyond a reasonable doubt. United States v. Pofahl, 990 F.2d 1456, 1467 (5th Cir.), cert. denied, ___ U.S. ___, 114 S.Ct. 560, 126 L.Ed.2d 460 (1993).

Gomez next argues that the district court's rejection of his proposed verdict form, which asked if each conspiracy existed, if Gomez was a member of the conspiracy, and what object of the conspiracy Gomez intended, prejudiced him. The district court instructed the jury to consider only Gomez's individual actions in

¹A government witness explained at trial that chlorine is often used to field test the purity of cocaine.

determining whether he was a member of either of the conspiracies. We hold the jury instructions properly stated the law and that any chance of prejudice was negated by Gomez's separate trial from the other conspirators. United States v. Casto, 889 F.2d 562, 566 (5th Cir. 1989), cert. denied, 493 U.S. 1092, 110 S.Ct. 1164, 107 L.Ed.2d 1067 (1990); Pofahl, 990 F.2d at 1467.

Finally, Gomez contends that the government's closing arguments deprived him of a fair trial by demeaning his counsel and referring to evidence outside the record. We hold that the government's characterization of Gomez's counsel's argument as "legal camouflage" was a proper rebuttal comment in that it merely pointed out weaknesses in Gomez's case. United States v. Strmel, 744 F.2d 1086, 1089-90 (5th Cir. 1984). We further hold that the government's response in closing arguments to Gomez's counsel's implication that the government only played a few of the available phone conversations was not prejudicial. In this case, the evidence of Gomez's guilt is overwhelming: the taped phone conversations, testimony that Gomez was Salinas's man in California, and Gomez's trips to various other facilities used by Salinas for drug trafficking. In the light of the weight of this evidence against Gomez and the district judge's cautionary instruction that the jury should only consider the evidence admitted in the case, we hold that Gomez's substantial rights were not prejudiced by the government's remarks. United States v. Murrah, 888 F.2d 24, 27-28 (5th Cir. 1989).

III

For the reasons stated above, Gomez's convictions are

A F F I R M E D.