

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-7314
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

JOHN FREDERICK PETERMAN,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
CR C091 00233 02

April 26, 1993

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:¹

Appellant was convicted of conspiracy to possess drugs with the intent to distribute them. He appeals contending that there is a fatal variance between the indictment and the proof in that the indictment alleged one conspiracy and the evidence, if it proved anything, proved a number of conspiracies. We affirm.

To succeed Appellant must show that the Government's evidence varied from that alleged in the indictment, and that the variance

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

prejudiced Appellant's substantial rights. United States v. Jackson, 978 F.2d 903, 911 (5th Cir. 1992); United States v. Richerson, 833 F.2d 1147, 1152 (5th Cir. 1987). To determine whether the Government proved a single conspiracy as charged, we examine the following factors: (1) whether a common goal existed; (2) the nature of the scheme; and (3) whether the participants in the various dealings overlapped. Jackson, 978 F.2d at 911; Richerson, 833 F.2d at 1153. A single conspiracy exists if a "key man" is involved in and directs illegal activities, while various combinations of other participants exert individual efforts toward a common goal. Richerson, 833 F.2d at 1154. Our review of the record shows overwhelming evidence of a single conspiracy to purchase marijuana in south Texas and deliver it to Chicago for resale.

Even if there had been a variance, the result would be unchanged unless Appellant's substantial rights were prejudiced. Richerson, 833 F.2d at 1154-55. We determine such prejudice by considering whether the variance (1) caused surprise at trial or (2) left defendant vulnerable to a later prosecution because of a failure to make clear the offense for which he had been tried. Id. at 1155. Appellant does not contend that either is the case here.

In addition, if an indictment alleges a single conspiracy and the Government proves multiple conspiracies and a defendant's involvement in at least one of them, there is no variance affecting that defendant's substantial rights. Jackson, 978 F.2d at 911; Richerson, 833 F.2d at 1155. In this case the Government, at the

very least, proved multiple conspiracies and Appellant's role in one of them.

AFFIRMED.