

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-7483
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CORANDO IBOEL MARTINEZ-GARCIA,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CR-M-91-329-03
- - - - -

March 16, 1993

Before KING, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Corando Iboel Martinez-Garcia contends that the evidence was insufficient to support his conviction. In deciding the sufficiency of the evidence, the Court determines whether, viewing the evidence and the inferences that may be drawn from it in the light most favorable to the verdict, a rational jury could have found the essential elements of the offense beyond a reasonable doubt. Glasser v. United States, 315 U.S. 60, 80, 62 S.Ct. 457, 86 L.Ed. 680 (1942); United States v. Pruneda-

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Gonzalez, 953 F.2d 190, 193 (5th Cir.), cert. denied, 112 S.Ct 2952 (1992).

To establish that Martinez-Garcia was guilty of a drug conspiracy, the Government had to prove that he had an agreement with intent to distribute, that he had knowledge of the agreement, and that he voluntarily participated in the conspiracy. United States v. Sanchez, 961 F.2d 1169, 1174 (5th Cir.), cert. denied, 113 S.Ct. 330 (1992). An agreement may be inferred from concert of action, participation from a "collocation of circumstances" and knowledge from "surrounding circumstances." United States v. Espinoza-Seanez, 862 F.2d 526, 537 (5th Cir. 1988) (citations omitted). "Mere presence at the scene and close association with those involved are insufficient factors alone; nevertheless, they are relevant factors for the jury." Sanchez, 961 F.2d at 1174 (emphasis in original).

To prove that Martinez-Garcia aided and abetted the commission of the possession offense, the Government had to prove that (1) Martinez-Garcia associated with a criminal venture, (2) participated in the venture, and (3) sought by action to make the venture succeed. United States v. Medina, 887 F.2d 528, 532 (5th Cir. 1989). To prove possession of a controlled substance with intent to distribute, the Government must prove beyond a reasonable doubt the defendant's possession of the illegal substance, knowledge, and intent to distribute. United States v. Freeze, 707 F.2d 132, 135 (5th Cir. 1983).

The evidence amply supports Martinez-Garcia's convictions. Border Patrol agents witnessed him carrying a bundle which he

dropped upon being apprehended and which was later found to contain marijuana. Additionally, Zambrano's testimony established that Zambrano had an agreement to possess the bundle of marijuana that he carried, knowledge of the agreement, and that he voluntarily participated in a conspiracy to cross marijuana from Mexico to the United States. Given the organized fashion in which Martinez-Garcia led the procession along the trail, the jury was entitled to infer that Zambrano's knowledge of the conspiracy was shared by Martinez-Garcia. Moreover, even though Martinez-Garcia was not present when Zambrano and Lugo-Quiroga made the arrangements, "[a] conviction will not be reversed for lack of evidence that the defendant was acquainted with or knew all of the coconspirators, or lack of evidence that he knew each detail of the conspiracy, or because he became a member of the conspiracy after its inception, or played only a minor role in the overall scheme." United States v. Garcia, 917 F.2d 1370, 1376 (5th Cir. 1990) (citation omitted).

The judgment is AFFIRMED.