UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-7545
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

PEDRO NAVARRO-GARZA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
CR M92 00072 02

April 27, 1993

Before JOLLY, DUHÉ and BARKSDALE, Circuit Judges.

PER CURIAM:[1]

Pedro Navarro-Garza appeals his conviction for conspiracy to possess drugs with intent to distribute, and possession of drugs with intent to distribute, contending that the Government's evidence was insufficient to prove knowledge and participation in the conspiracy, and to prove knowledge and intent on the possession charge. We have carefully studied the record and find the evidence more than sufficient. We affirm.

We consider the evidence in the light most favorable to the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

verdict and determine whether a rational jury could have found the essential elements of the offenses charged beyond reasonable doubt, giving the Government the benefit of all reasonable inferences and credibility choices. Glasser v. United States, 315 U.S. 60, 80 (1942); United States v. Maltos, 985 F.2d 743, 746 (5th Cir. 1992).

Basically Appellant argues that all the Government proved was his presence. But the evidence shows that the Government's evidence went far beyond mere presence.

To prove the conspiracy the Government was required to establish beyond a reasonable doubt the existence of an agreement between Appellant and at least one other person, Appellant's knowledge of the agreement, and his voluntary participation in it. Maltos, 985 F.2d at 746. In addition to his presence, the Government's evidence showed that Appellant was identified by a co-conspirator as the man bringing the drugs for delivery to the purchasers. During the transaction Appellant himself made repeated references to his "source" of the drugs, and his statements and behavior at all times were entirely consistent with the testimony that the transaction could not be concluded because the "source" was unwilling to produce the drugs before receiving payment.

Appellant's reliance on United States v. Blessing, 727 F.2d 353 (5th Cir. 1984), cert. denied, 469 U.S. 1105 (1985) and United States v. Gordon, 712 F.2d 110 (5th Cir. 1983) is misplaced. In Blessing, the defendant was not directly implicated by a co-conspirator. Gordon was a border stop in which all the Government did in fact prove was defendant's presence as operator of the

vehicle in which the drugs were discovered. Here, the Government's proof goes much farther.

To convict Appellant of the possession count, the Government had to prove he knowingly possessed the drug with intent to distribute it. United States v. Gonzalez-Lira, 936 F.2d 184, 192 (5th Cir. 1991). Again the Government's evidence goes beyond mere presence. He was present in the vehicle with the drugs and he warned the others about the approach of the pickup truck containing the arrest team. The jury could reasonable infer from that warning that Appellant knew that the ice chest contained drugs and that he intended to sell the drugs. Additionally, the Government established that Appellant and a co-conspirator left the drug transfer scene and returned with the drugs shortly after the agents threatened to call off the deal. This is additional evidence of intent.

The argument advanced by Appellant about the aborted attempt to record a conversation and the fact that the tape actually made contained no statements by Appellant is frivolous.

AFFIRMED.