

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-7767
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SHANN HARDY,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. CR-J92-67(L)

- - - - -
August 17, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

The standard of review on a motion for judgment of acquittal is whether "viewing the evidence and the inferences therefrom in the light most favorable to the government, a reasonable trier of fact could find that the evidence establishes guilt beyond a reasonable doubt." United States v. Raborn, 872 F.2d 589, 594 (5th Cir. 1989).

The evidence need not exclude every conclusion except that of innocence or be wholly inconsistent with every conclusion

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

except that of guilt. United States v. Fuller, 974 F.2d 1474, 1477 (5th Cir. 1992), petition for cert. filed, (U.S. May 21, 1993). This Court views direct and circumstantial evidence adduced at trial, as well as all inferences reasonably drawn from it, in the light most favorable to the verdict. United States v. Sanchez, 961 F.2d 1169, 1173 (5th Cir.), cert. denied, 113 S. Ct. 330 (1992). The jury is the final arbiter of the weight of the evidence and of the credibility of the witnesses. United States v. Barksdale-Contreras, 972 F.2d 111, 114 (5th Cir. 1992), cert. denied, 113 S. Ct. 1060 (1993). Even the uncorroborated testimony of a co-conspirator can be sufficient to support the verdict. United States v. Greenwood, 974 F.2d 1449, 1457 (5th Cir. 1992), cert. denied, 113 S. Ct. 2354 (1993).

To establish guilt of a drug conspiracy, the Government must prove that the defendant entered into an agreement with intent to distribute drugs, that each conspirator had knowledge of the agreement, and that the conspirators voluntarily participated in the conspiracy. See Sanchez, 961 F.2d at 1174. An agreement may be inferred from concert of action, participation from a "collocation of circumstances" and knowledge from "surrounding circumstances." Id. (internal quotation and citation omitted). Mere presence at the scene and close association with those involved are insufficient factors alone, but they are relevant factors for the jury to consider. Id.

To prove possession of a controlled substance with intent to distribute, the Government must prove the defendant's knowing possession of the illegal substance and the intent to distribute.

United States v. Alvarado, 898 F.2d 987, 992 (5th Cir. 1990).

The necessary knowledge and intent can be proved by circumstantial evidence. United States v. Mitchell, 876 F.2d 1178, 1181 (5th Cir. 1989). In addition, possession of a larger quantity of cocaine than an ordinary user would possess for personal consumption can support the finding that a defendant intended to distribute the drug. United States v. Pineda-Ortuno, 952 F.2d 98, 102 (5th Cir.), cert. denied, 112 S. Ct. 1990 (1992).

After viewing the evidence and its inferences in the light most favorable to the Government, a reasonable trier of fact could have found that the evidence established Shann Hardy's guilt beyond a reasonable doubt. See Raborn, 872 F.2d at 594.

AFFIRMED.