UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-8314
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

ROGELIO NEVAREZ-BURCIAGA,

Defendant-Appellant,

Appeal from the United States District Court
for the Western District of Texas
(EP-91-CR-303-H)

(January 22, 1993)

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:[1]

Appellant was convicted of conspiring to possess drugs with intent to distribute. He challenges his conviction contending that the evidence was insufficient and that the district court erred in admitting hearsay evidence. We find no reversible error and affirm.

When examining challenges to the sufficiency of evidence, we review the evidence in the light most favorable to the verdict. United States v. Nixon, 816 F.2d 1022, 1029 (5th Cir. 1987), cert.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

denied, 484 U.S. 1026 (1988). If there is substantial evidence to support the verdict, it will be affirmed. United States v. Brooks, 786 F.2d 638, 639 (5th Cir.), cert. denied, 479 U.S. 855 (1986). We must determine whether any rational trier of fact could have found the essential elements of the crime beyond reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319 (1979).

To prove conspiracy the government was required to prove beyond a reasonable doubt that a conspiracy existed, that Appellant knew of it, and voluntarily became part of it. United States v. Featherson, 949 F.2d 770, 774 (5th Cir. 1991), cert. denied, 112 S.Ct. 1771 (1992).

Appellant argues that the evidence is insufficient because there was no direct evidence that he was part of the negotiations concerning the drugs and because he was not present when the drugs were delivered. It is true he was not present during the negotiations with the government agents or at delivery. However, there is overwhelming evidence of his involvement. He hovered near the co-conspirators at every critical juncture of the transaction; the sampling, the negotiations, and the delivery; and he communicated by telephone or in person with the co-conspirators before, during, and after these critical stages of the proceedings with increasing activity. The jury was entitled to view these facts as a regularly recurring pattern "pointing with compelling force" to appellant's guilt. United States v. Sanchez, 508 F.2d 388, 393 (5th Cir.), cert. denied, 423 U.S. 827 (1975).

During the direct examination of a government witness, he

testified that the source of a sample of the drug tendered to the undercover agents was the Appellant. Appellant objected on hearsay grounds and his objection was overruled. We cannot agree with the government that this was not error because the statement was not offered for the truth of the matter asserted. The government was, at that point in the trial, attempting to establish that appellant was the source of the drugs. The statement squarely asserts that he was the source of the sample of drugs tendered and it was, therefore, hearsay. Its admission was error. It was, however, in our view, harmless error. Fed. R. Crim. P. 52(a). The evidence against Appellant was so overwhelming and this particular statement was largely cumulative to other evidence of the same criminal activity that it did not affect the substantial rights of appellant. United States v. Bernal, 814 F.2d 175, 184-85 (5th Cir. 1987). This evidence does not place the jury's verdict in grave doubt and, therefore, does not require reversal. United States v. Moree, 897 F.2d 1329, 1333 (5th Cir. 1990).

AFFIRMED.