

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-9018
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ARMANDO ACOSTA,
a/k/a Mandy,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:91-CR245-T

- - - - -
August 18, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Armando "Mandy" Acosta appeals his conviction for conspiracy to possess with intent to distribute cocaine. Acosta contends that the Government failed to prove that he committed an overt act in connection with the conspiracy. In this Circuit, however, there is no need to prove an overt act in this type of conspiracy. United States v. Ayala, 887 F.2d 62, 67 (5th Cir. 1989).

Acosta also contends that the evidence was insufficient

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

because it was based solely on the unreliable testimony of his alleged co-conspirator. When evaluating the sufficiency of the evidence, this Court must consider the evidence in the light most favorable to the verdict and determine whether a rational jury could have found the essential elements of the offense beyond a reasonable doubt, giving the Government the benefit of all reasonable inferences and credibility choices. Glasser v. United States, 315 U.S. 60, 80, 62 S. Ct. 457, 86 L. Ed. 680 (1942).

"The uncorroborated testimony of an accomplice or co-conspirator will support a conviction, provided that this testimony is not incredible or otherwise insubstantial on its face." United States v. Singer, 970 F.2d 1414, 1419 (5th Cir. 1992). This rule applies even when the accomplice or coconspirator testified pursuant to a plea agreement with the Government. United States v. Osum, 943 F.2d 1394, 1405 (5th Cir. 1991). "[T]estimony generally should not be declared incredible as a matter of law unless it asserts facts that the witness physically could not have observed or events that could not have occurred under the laws of nature." Id. The testimony of the co-conspirator was not incredible or insubstantial on its face and was corroborated by other evidence. "The jury is the ultimate arbiter of the credibility of a witness" and was entitled to believe or disbelieve the co-conspirator's testimony. United States v. Lindell, 881 F.2d 1313, 1322 (5th Cir. 1989), cert. denied, 493 U.S. 1087, and cert. denied, 496 U.S. 926 (1990).

AFFIRMED.