

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-9586
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

MIGUEL MORALES-MORALES,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CR 92 462 K)

September 10, 1993

Before DAVIS, JONES and DUHÉ, Circuit Judges.

PER CURIAM:¹

In this appeal, Miguel Morales-Morales (Morales) challenges his conviction for conspiracy to distribute and distribution of cocaine. We affirm.

I.

Confidential informant Sonny Adair, together with DEA Special Agent Wade Barnes, acting undercover, purchased one ounce of cocaine from Morales's co-defendants Alberto Ruiz-Primelles

¹Local 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

(Ruiz) and Dianne Genna. One week later, Barnes and Adair purchased two ounces of cocaine from Ruiz. During the second transaction, Barnes and Adair initiated negotiations for the delivery of six additional ounces of cocaine. Approximately ten days thereafter, Adair telephoned Genna and requested the six ounces. After additional phone calls between Adair, Genna, and Ruiz, arrangements were made for a meeting that evening in a New Orleans supermarket parking lot. At the meeting, Ruiz, while in the car driven by Barnes, whistled twice and an individual referred to as "Larry", (who was later identified as Morales), walked to the car and handed Ruiz a brown paper bag. The bag was later determined to contain almost six ounces of cocaine. Ruiz gave the bag to Adair, and Barnes gave Ruiz \$5,500. Ruiz and Morales were then arrested.

II.

A.

Morales contends first that the district court erred in denying his motion for judgment of acquittal because the evidence was insufficient to support his convictions. In reviewing a challenge to the sufficiency of the evidence, we review the evidence in the light most favorable to the verdict. **United States v. Leed**, 981 F.2d 202, 205 (5th Cir. 1993), **cert. denied**, 61 U.S.L.W. 3834 (U.S., Jun. 14, 1993) (No. 92-8287). The conviction will be affirmed if a rational trier-of-fact could have found that the evidence established the essential elements of the offense beyond a reasonable doubt. **Id.** It is not

necessary that the evidence exclude every reasonable hypothesis of innocence. **Id.**

Morales's specific contentions concerning the insufficiency of the evidence are that: 1) the only evidence that he and Ruiz ever discussed "anything at all" was the testimony of DEA Special Agent Charles Holmes; 2) Adair had a grudge against Morales which injected bias into his testimony, thus undermining its credibility; and, 3) the testimony concerning Morales's possession of the brown paper bag (containing the six ounces of cocaine) in the parking lot was not credible. We consider each argument below.

The government produced substantial evidence that Ruiz and Morales were working together in the distribution of cocaine. DEA agent Holmes testified that he was involved in the investigation of Morales on the day of the arrest, July 30, 1992. Agent Holmes saw Ruiz and Morales talking together shortly before the arrest. Ruiz then walked towards a blue Plymouth Champion which was parked in front of a brown sedan. When Morales and Ruiz finished their conversation, Ruiz drove off in the blue car and Holmes noticed that the brown car was no longer parked in front of the Carrollton house. Holmes then drove to the buy location and observed Morales drive the brown sedan into the buy location area.

Adair testified that Morales and Ruiz lived in the Carrollton house, and that he frequently purchased cocaine from both men at that location.

DEA Special Agent James Sewell testified that, on the day of the arrest, he received a radio transmission that a brown car was following Ruiz to the buy location. He observed the brown car pull into the buy location and park approximately 30 yards from the undercover car which contained Barnes and Adair. Sewell testified that he observed Ruiz enter the undercover car. Barnes was wearing a recording device and Sewell had audio surveillance of the undercover car. He heard Ruiz whistle twice. Sewell then observed Morales exit the brown car with a paper bag in his right hand, walk to the undercover car, and lean into it briefly. At the same time he heard Adair saying "[h]i, Larry." Morales then left, got back into the brown car and started to drive away, at which time the prearranged arrest signal was given and he was arrested.

Agent Barnes corroborated this testimony. In court, Sewell positively identified Morales as the individual carrying the brown paper bag to the undercover car on the day of the arrest. Sewell further testified that he had a clear view of Morales walking to the undercover car.

The facts surrounding the cocaine purchase itself strongly point toward a conspiracy between Ruiz and Morales: Morales knew the buy location; he knew Ruiz; he responded to the whistle signal; he was in possession of the agreed-upon amount (six ounces) of cocaine; and he voluntarily transferred the cocaine to Ruiz in the undercover car. Morales's insufficiency argument is meritless.

Morales's argument that the evidence was insufficient to support his distribution conviction is also unavailing. As the above discussion indicates, the evidence was compelling that Morales knowingly assisted in the distribution of cocaine. The jury obviously found the testimony of Sewell, Barnes and Adair to be credible and this Court will not disturb that finding. **See United States v. Razo-Leora**, 961 F.2d 1140, (5th Cir. 1992). The district court properly denied Morales's motion for judgment of acquittal.

B.

Morales also contends that the district court abused its discretion by denying him an opportunity to discuss examples of "reasonable doubt" during closing argument. He cites no legal authority in support of his contention. The argument is unpersuasive.

A district court has wide discretion to control the scope of closing argument. **United States v. Taylor**, 680 F.2d 378, 380 (5th Cir. 1982). "Attempts to explain the term 'reasonable doubt' do not usually result in making it any clearer to the minds of the jury" **Holland v. United States**, 348 U.S. 121, 140, 75 S.Ct. 127, 99 L.Ed. 150 (1954). During closing argument, Morales's counsel stated to the jury that the Government had failed to shoulder its burden of proof beyond a "reasonable doubt". When she commenced a discussion concerning the meaning of the term "reasonable doubt", the district court instructed her to refrain "from arguing the law to the jury."

She requested permission to "give examples." Her request was refused because examples were an alternative method of defining a legal term. Morales's counsel was not prohibited from arguing that a "reasonable doubt" existed, but was merely prohibited from offering specific examples of "reasonable doubt." The district court did not abuse its discretion in declining to allow counsel to give examples of reasonable doubt. **See United States v. Glass**, 846 F.2d 386, 387 (7th Cir., 1988).

AFFIRMED.