IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2135
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MANUEL SOLIZ CANO,

Defendant-Appellant.

- - - - - - - - - -

Appeal from the United States District Court
for the Southern District of Texas
USDC No. CR-H-92-185-1

- - - - - - - - - -

(January 6, 1994)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:[*]

Manuel Soliz Cano was convicted by a jury on one count of possession of a firearm by a convicted felon. Cano's entrapment defense was rejected by the jury. On appeal, Cano contends that he established entrapment as a matter of law.

To establish a successful entrapment defense, the defendant must make a prima facie showing that government conduct created a substantial risk that an offense would be committed by a person other than one ready to commit it. The burden then shifts to the

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Government to prove beyond a reasonable doubt that the defendant was disposed to commit the criminal act prior to first being approached by government agents. On appeal, the standard of review is whether, when viewing the evidence in the light most favorable to the Government, a reasonable jury could find, beyond a reasonable doubt, that the defendant was predisposed to commit the offense. United States v. Hudson, 982 F.2d 160, 162 (5th Cir.), cert. denied, 114 S. Ct. 100 (1993). Entrapment as a matter of law is established only where the Government fails to discharge its burden of proving predisposition. United States v. Arditti, 955 F.2d 331, 342 (5th Cir.), cert. denied, 113 S. Ct. 597 (1992).

Assuming that Cano made a prima facie showing, Cano's active, enthusiastic participation was sufficient to allow the jury to find predisposition beyond a reasonable doubt. See United States v. Mora, 994 F.2d 1129, 1137 (5th Cir.), cert. denied, 62 U.S.L.W. 3320 (U.S. Nov. 1, 1993) (No. 93-6210); Hudson, 982 F.2d at 162. Cano testified that Albert Medina simply requested that he keep the firearm overnight, and Cano readily agreed to the request. Cano did not voice any objection or reservation regarding Medina's request, although he knew that he could not legally possess the firearm. In addition, Cano told Officer Zavalla that he had fired the firearm, although, at trial, he denied actually firing it. Given the above, a reasonable jury could conclude that Cano was an active, enthusiastic participant, and therefore, predisposed to commit

the offense. As Cano was not entrapped as a matter of law, his conviction is AFFIRMED.