

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-2326  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

LUIS ALFONSO FIESCO,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
(CR-H-89-411-7)

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(April 26, 1994)

Before GARWOOD, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:\*

Asserting insufficient evidence, Luis Fiesco appeals his conviction of money-laundering, aiding and abetting, and conspiring to possess with intent to distribute cocaine, in violation of 18 U.S.C. §§ 2 and 1956(a)(2) and 21 U.S.C. § 846. Finding the evidence sufficient, we affirm.

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\* Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

I.

Delores Tucker-Erazo ("Tucker-Erazo") testified that she had made her living in the late 1980's by selling cocaine. Her husband, Omar Jairo Erazo ("Erazo"), assisted in her drug-trafficking venture.

Eventually, the Erazos hired Fiesco, whom Erazo introduced to Tucker-Erazo in a nightclub. The Erazos initially paid Fiesco \$800 per week. The Erazos' drug-trafficking operations increased, and before long the Erazos were paying Fiesco \$1,000 per week. Tucker-Erazo supervised Fiesco; his duties included delivering cocaine to customers and taking customers' money to Tucker-Erazo. Fiesco's duty hours were from 8 a.m. to dinner; he would appear at the Erazos' home in the morning and would stay there between errands for his employers.

The success of Tucker-Erazo's enterprise led to changes in the logistics of the enterprise's operations. Initially, Tucker-Erazo kept both cocaine and money in her attic. When she began to realize big profits, she decided to keep the money in a closet in her cousin's house. She began keeping cocaine in a storage shed in her grandmother's back yard. She would retrieve quantities of cocaine when necessary and deliver them to Fiesco, who would deliver them to the ultimate purchasers. Fiesco would return the proceeds to Tucker-Erazo, who would place them in the closet. Eventually, Tucker-Erazo rented a warehouse where she kept the cocaine and an apartment where she kept the money. Fiesco had keys to the apartment and the warehouse.

Erazo once purchased around 425 kilograms of cocaine. Fiesco picked up the cocaine and placed it in the warehouse, to which he had a key.

Fiesco occasionally purchased two- or three-kilogram quantities of cocaine from the Erazos, which he would resell. Fiesco would ask for two or three days in which to pay the Erazos, to which the couple would agree. Tucker-Erazo identified several financial ledgers on which were notations indicating the payment of Fiesco's salary and the amount of money he owed the Erazos for cocaine.

Tucker-Erazo testified about several specific incidents involving Fiesco and cocaine. In March 1989, Erazo directed Fiesco to go to the warehouse and determine exactly how much cocaine the Erazos had on hand. Fiesco responded with an amount. Erazo repeated his directive to count the cocaine in the warehouse. On two other occasions, Fiesco was upset because he had to remove cocaine from the warehouse on rainy days. On one occasion, he took and delivered 50 kilograms of cocaine from the warehouse, then took the proceeds of the sale to Tucker-Erazo.

In March 1989, Erazo delivered between \$600,000 and \$700,000 to Tucker-Erazo. In May or June 1989, Fiesco appeared at the residence of Tucker-Erazo's father, William Tucker. Fiesco gave Erazo a sheet and pillow case, which Erazo gave to Tucker-Erazo. Tucker-Erazo and Tucker counted the money contained in the bedding.

In July 1989, Fiesco appeared at Tucker's residence, where Erazo handed him a box containing three to five kilograms of

cocaine. Erazo wished for Fiesco to deliver the cocaine. In July 1989, again at the Tucker residence, Erazo gave Fiesco a clothing basket containing cocaine; Fiesco returned within the hour.

Tucker-Erazo described the standard operating procedure of the drug-trafficking enterprise. She or Erazo would negotiate with customers. Fiesco would deliver cocaine and return the proceeds. A friend told Tucker-Erazo about a friend in McAllen, Texas, who could change Tucker-Erazo's funds into larger bills. After the bills were changed, the friend would smuggle the funds to Colombia.

Later, Tucker-Erazo smuggled the funds herself. She generally took between \$180,000 and \$230,000 per trip. Tucker-Erazo also smuggled money inside hollowed-out paperback books that she mailed through Federal Express. Tucker-Erazo smuggled money to Colombia because she was afraid to open a large bank account or to make large purchases in the United States. She hoped to use her money to start a business in Colombia and eventually to bring the money back into the United States. According to Tucker-Erazo, moving funds from the United States is part of standard drug-trafficking procedure.

According to Tucker-Erazo, the Erazos considered allowing Fiesco to smuggle funds to Colombia in August 1989. They told Fiesco they were having money laundered and that they might allow him to smuggle it. Fiesco already was planning to travel to Cali, Colombia. A few days before the planned trip, a friend told Erazo that Fiesco had told other people that he was going to take money out of the United States for the Erazos.

Tucker-Erazo decided not to use Fiesco to smuggle the money. Instead, she asked Tucker to take the money. Tucker agreed to do so.

Erazo, Fiesco, and Tucker left for Colombia in August 3, 1989. Tucker carried \$180,000 in proceeds from cocaine deliveries Fiesco had made. Erazo and Fiesco were removed from the flight they had planned to take to Colombia. Erazo phoned Tucker-Erazo, who returned to the airport and purchased new tickets for her husband and Fiesco to fly to Cali.

Fiesco gave Tucker-Erazo a receipt for \$3,100 that was seized from him by police agents. Erazo phoned Tucker-Erazo from Miami and asked for money. Tucker-Erazo wired funds to Fiesco in Erazo's behalf. Tucker-Erazo flew to Colombia on August 20. Tucker had returned home; Erazo and Fiesco remained in Colombia. Tucker-Erazo returned to the United States on September 4; Fiesco returned on August 28 or 29. Once back in the United States, Fiesco collected \$400,000 and \$500,000 for Tucker-Erazo.

Tucker-Erazo denied that she ever had trained Fiesco to launder money and indicated that she was unaware that Fiesco was attempting to smuggle money on August 3, 1989. Fiesco fled the United States after Tucker-Erazo's arrest.

On cross-examination, Tucker-Erazo testified that she had directed Fiesco, through intermediaries, to leave the country after her arrest. She had known that Fiesco was planning to travel to Cali on August 3. Fiesco was the Erazos' employee and had given them notice of his planned trip. Fiesco had a wife, son, and

mother-in-law in Cali. Fiesco told the Erazos that he wished to visit his family and be in Colombia for Erazo's birthday party. Tucker-Erazo assisted Erazo, Tucker, and Fiesco with their baggage and their tickets. She testified that no baggage containing money belonged to Erazo or Tucker; that she never gave Fiesco \$700,000 to launder; and that she and Fiesco had no agreement for him to launder money on August 3.

Tucker testified that he had become involved in his daughter's cocaine-trafficking and money-laundering activities. He had come to know Fiesco. He saw Fiesco almost every time he went to Tucker-Erazo's house. Fiesco did not assist Tucker the first time Tucker smuggled Tucker-Erazo's money to Colombia and was not present when Tucker-Erazo instructed her father before the August 1989 trip to Colombia.

Tucker did not see Fiesco at the airport on August 3 but caught a glimpse of him on the airplane. He did not see Fiesco and Erazo removed from the airplane. He gave the cash to Erazo in Colombia and did not know what Erazo did with it. While in Colombia, he stayed at a "beautiful" home owned by Tucker-Erazo. He saw Fiesco once in Colombia, in a nightclub.

While in Colombia, Tucker-Erazo told Tucker that Fiesco would be delivering money to Tucker. Fiesco took money to Tucker ten to fifteen times thereafter. Fiesco delivered a total of about \$1 million. Tucker never discussed Fiesco's role in Tucker-Erazo's enterprise with Fiesco.

Customs Services Special Agent Mark Fluitt testified that an

agent of the Drug Enforcement Administration ("DEA") had notified him on August 2, 1989, that the Erazos and Tucker would be traveling to Colombia on August 3. The Customs Service had been investigating the Erazos since April 1989.

Fluitt, other federal agents, and Houston Police Department ("HPD") officers were at Houston Intercontinental Airport on August 3. Fluitt saw the Erazos and Tucker on the jetway to the departing airplane and saw Tucker-Erazo leave and return with Fiesco. Shortly thereafter, agents went aboard the airplane and removed Erazo and Fiesco and took them to an area of the airport used by the DEA and the HPD.

Agents also removed three or four suitcases and two boxes from the baggage conveyor belt. One of the boxes was a stereo box on which the name "Victor Serna" was written. Erazo and Fiesco claimed the suitcases but denied ownership of the boxes. Agents searched the suitcases and the boxes, finding \$654,000 in cash inside hollowed-out stereo components in the stereo box. They did not detain Erazo or Fiesco further. Fluitt heard on August 27 that Fiesco had been arrested at John F. Kennedy Airport in New York.

HPD Officer Roy Slay testified that he was stationed at Intercontinental Airport on August 3. Slay had been advised to look for Colombians attempting to fly through Miami to Colombia with several cardboard boxes. Slay saw Fiesco and a woman pull up in front of the airport terminal and unload several cardboard boxes and suitcases from their car. Among the boxes Fiesco unloaded was the stereo box in which agents later found the cash. Slay watched

Fiesco have a discussion with baggage handlers. After that discussion, Fiesco proceeded to the ticket line.

HPD Officer Bill Corley told Slay that a drug-sniffing dog had alerted to some of the boxes and suitcases that Slay had pointed out to him. Slay and another HPD officer boarded the Miami-bound airplane, located Fiesco, and removed him from the airplane. Fiesco carried Erazo's airplane ticket. The officers re-boarded the airplane, located Erazo, and removed him from the airplane. Erazo carried Fiesco's airplane ticket. Fiesco and Erazo denied knowing each other. Both men denied ownership of the stereo box. Slay was present when the box was opened.

Corley testified that a dog under his control alerted to the stereo box and to a suitcase. Corley saw officers unload cash from the stereo box.

## II.

Regarding his conviction of conspiracy to possess with intent to distribute cocaine, Fiesco contends only that Tucker-Erazo and Tucker, as co-conspirators who testified pursuant to plea agreements, lacked credibility and that no other witnesses linked him to cocaine trafficking. Determining the weight and credibility of evidence is a question left to the jury. United States v. Molinar-Apodaca, 889 F.2d 1417, 1423 (5th Cir. 1989).

Moreover, the evidence is sufficient to support Fiesco's drug-conspiracy conviction. A reviewing court will affirm a jury verdict so long as there is evidence sufficient to allow a



reasonable jury to find a defendant guilty beyond a reasonable doubt. The reviewing court will view the evidence and all inferences from the evidence in the light most favorable to the verdict. United States v. Bell, 678 F.2d 547, 549 (5th Cir. Unit B 1982) (en banc), aff'd, 462 U.S. 356 (1983).

To convict a defendant of conspiracy to possess drugs with intent to distribute, a jury must find beyond a reasonable doubt an agreement that entails violation of federal narcotics laws, the defendant's knowledge of the agreement, and his voluntary participation therein. There is no overt-act requirement. United States v. Avala, 887 F.2d 62, 67 (5th Cir. 1989). The jury may rely upon circumstantial evidence, including evidence of presence and association, id., though those factors alone are insufficient to prove conspiracy. United States v. Lechuga, 888 F.2d 1472, 1477 (5th Cir. 1989). The jury may infer guilty knowledge from evidence of flight, United States v. Kalish, 690 F.2d 1144, 1155 (5th Cir. 1982), cert. denied, 459 U.S. 1108 (1983), or from inconsistent or implausible explanations of events, United States v. Arzola-Amaya, 867 F.2d 1504, 1512 (5th Cir.), cert. denied, 493 U.S. 933 (1989).

Viewing the evidence in the light most favorable to the government, there is sufficient evidence to support Fiesco's conspiracy conviction. Tucker-Erazo testified that she controlled a cocaine-trafficking enterprise in which she, Erazo, Tucker, and Fiesco participated. Fiesco delivered cocaine and returned the proceeds to Tucker-Erazo in return for a salary of \$1,000 per week. Tucker testified that he knew Fiesco and that Fiesco delivered

large sums of cash to him. Additionally, according to Tucker-Erazo, Fiesco fled the country on her instructions after her arrest. The testimony indicates that Fiesco knew about the Erazo drug-trafficking operation and voluntarily participated in it.

Fiesco was convicted of aiding and abetting money-laundering by attempting to take money out of the United States with the intent to using it to promote the carrying on of drug trafficking. See 18 U.S.C. § 1956(a)(2)(A). On appeal, Fiesco contends that the government failed to show that he was part of any conspiracy to take money out of the United States. Fiesco's attorney cites legal standards relevant to conspiracy but cites none relevant to money-laundering or aiding and abetting. Fiesco was not convicted of conspiracy to launder money. Construing Fiesco's brief liberally as raising a challenge to the sufficiency of the evidence to support his money-laundering conviction, he fails to present a ground for reversal.

Tucker-Erazo's testimony indicates that the funds she shipped to Colombia were the proceeds of her cocaine trafficking. She testified that she had shipped money to Colombia in order to avoid drawing attention to herself. The evidence is sufficient to sustain Fiesco's conviction of conspiracy as a member of the Tucker-Erazo drug ring. Tucker-Erazo testified that Fiesco knew of the plan to smuggle money on August 3. Slay saw Fiesco unload the box in which the cash was found. Finally, according to Slay, despite the fact that they held each other's airplane tickets, Fiesco and Erazo denied knowing each other and denied ownership of

the stereo box. Under the circumstances, Fiesco's and Erazo's denials were implausible. See Arzola-Amaya, 867 F.2d at 1512.

Fiesco relies in part upon Tucker-Erazo's testimony that she did not allow him to smuggle her drug profits to Colombia and, evidently, on Tucker's testimony that he was unaware whether Fiesco smuggled money for Fiesco. The jury was free to disregard any part of Tucker-Erazo's and Tucker's testimony it found not credible. United States v. Pruneda-Gonzales, 953 F.2d 190, 196 n.9 (5th Cir.), cert. denied, 112 S. Ct. 2952 (1992).

AFFIRMED.