

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7024
(Summary Calendar)

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

GUADALUPE SERRATA-RIVERA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
CR B 92 195 (02)

September 9, 1993

Before KING, HIGGINBOTHAM and BARKSDALE, Circuit Judges.

PER CURIAM:*

Guadalupe Serrata-Rivera was convicted by a jury of conspiracy to import, importation, conspiracy to possess with intent to distribute, and possession with intent to distribute over 100 kilograms of marijuana. He now appeals on the ground that the evidence was insufficient to support his convictions. We affirm.

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

I.

On July 14, 1992, Serrata, his two brothers, and a cousin were arrested by United States Border Patrol Agents within yards of the Rio Grande River. The evidence adduced at his trial sets forth the following course of events: Border Patrol agents responded to signals from a sensor device indicating that there was foot traffic on a road from the Rio Grande River that is commonly used for drug trafficking. The agents, using night vision goggles and binoculars, observed six individuals approaching from the direction of the river. The individuals were transporting three bundles that were bound by a rope wrapped around the individuals' hands.

As the agents observed the individuals, a police car, with its lights and siren operational, passed on a nearby road, and the six individuals immediately dropped the bundles and ran into an adjoining cotton field. The agents pursued them, shining their "real bright" flash lights into the field. The agents followed the path of the trampled cotton and apprehended four of the individuals, including Guadalupe Serrata. The agents noted that Serrata and the others appeared to have rope marks on the palms of their hands and that their clothing was wet.

The agents then backtracked down the path traveled by the men as they fled and discovered two bundles of marijuana in the cotton field and another bundle on the other side of the road. The bundles were packaged inside heavy-duty trash bags and consisted of bricks of marijuana wrapped in cellophane covered

with grease. There was evidence that some grease was present on the outside of the garbage bags, but it was located in the areas where the bags had been ripped, probably in the course of being transported by the agents. The bundles contained a total of 311 pounds of marijuana.

After being apprehended, the four suspects were returned to the Border Patrol station for processing. The suspects were advised of their Miranda¹ rights in Spanish and indicated that they understood their rights. They declined to make a statement at that time.

The four individuals were turned over to the DEA the following morning and were again advised of their Miranda rights in Spanish. Serrata then advised the agents that he had been paid \$200 by an individual in Mexico to cross the river and to deliver the marijuana into the U.S. Serrata's cohorts gave the same explanation for their presence in the field.

Serrata and the others were charged in a four-count indictment with conspiring to import marijuana in violation of 21 U.S.C. §§ 963, 952(a) and 960(b)(2), importing marijuana in violation of 21 U.S.C. §§ 952(a) and 960(b)(2), conspiring to possess with intent to distribute marijuana in violation of 21 U.S.C. §§ 846, 841(a)(1), and (b)(1)(B), and possessing with intent to distribute marijuana in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B). At trial, Serrata and the others

¹ Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

presented a defense of mistaken identity. They admitted to swimming across the river, but stated that they did so to find work and not to import marijuana. They also admitted making the earlier statements, but asserted that they made up the story because they were scared.

Serrata was found guilty on all counts. He was sentenced to serve four concurrent sixty-month sentences, a four-year term of supervised release, and ordered to pay a \$200 special assessment. Serrata now appeals his conviction.

II.

On appeal, Serrata argues that there was insufficient evidence to support the convictions. Specifically, Serrata argues that the bags of marijuana recovered by the agents were covered with grease and that there was no evidence of the presence of grease on his hands or clothes. Serrata also argues that the officers were not able to clearly identify his features and, therefore, could not positively identify him.

In reviewing an insufficiency of evidence claim, this Court must determine whether a rational trier of fact could have found that the Government proved each of the substantial elements of the offense beyond a reasonable doubt. United States v. Rojas-Martinez, 968 F.2d 415, 420 (5th Cir.), cert. denied, ___ U.S. ___, 113 S.Ct. 828 (1992) and cert. denied, ___ U.S. ___, 113 S.Ct. 995 (1993). This Court "must examine the evidence and all reasonable inferences that may be drawn from it in the light most favorable to the jury verdict." United States v. Ojebode, 957

F.2d 1218, 1223 (5th Cir. 1992), cert. denied, ___ U.S. ___, 113 S.Ct. 1291 (1993) (internal quotation and citation omitted).

Although the evidence against Serrata is mostly circumstantial, we conclude that a rational jury could have found him guilty beyond a reasonable doubt.

Serrata was found guilty of possession of marijuana with intent to distribute, importation of marijuana, and conspiracy to commit these two offenses. "To prove possession of a controlled substance with intent to distribute, the government must show beyond a reasonable doubt that [the] defendant (1) possessed the illegal substance (2) knowingly (3) with intent to distribute it." United States v. Ramirez, 963 F.2d 693, 701 (5th Cir.), cert. denied, ___ U.S. ___, 113 S.Ct. 388 (1992) (citation omitted). An intent to distribute may be inferred if there is a large quantity of drugs involved in a transaction. Ojebode, 957 F.2d at 1223. Importation requires proof that the defendant played a role in bringing a controlled substance from a foreign country into the United States. Rojas-Martinez, 968 F.2d at 420.

In order to prove a conspiracy, the Government need not prove a formal agreement, but must show that "two or more persons in some way or manner, positively or tacitly, came to a mutual understanding to try to accomplish a common and unlawful plan." Rojas-Martinez, 968 F.2d at 421 (internal quotation and citation omitted). The elements of conspiracy may be proved by circumstantial evidence alone. Id. Thus, a conspiracy may be

inferred from concert of action, such as a group of individuals simultaneously transporting marijuana across the border. Id.

Here, the evidence presented at trial showed that Border Patrol agents observed six men crossing the Rio Grande river into the United States carrying large bundles. When the agents saw the individuals drop their loads and run into a nearby field, the agents followed the men and apprehended four individuals, including Serrata. He was hiding near the river and near the bundles, which turned out to contain a large quantity of marijuana bound together by rope. Moreover, he was wet and had rope marks on his hands. Although he later recanted, he admitted at the time that he and the others had been hired to carry the marijuana across the river and deliver it to a waiting truck. Based on this evidence, a rational jury could have convicted Serrata of the charged offenses beyond a reasonable doubt.

Serrata's argument that the evidence was insufficient because of the absence of grease on the individuals' hands and clothing is without merit. The fact that the individuals were not covered with grease is of little relevance based on the testimony of the agent that contact with the grease could be avoided if one used the rope securing the bundles to transport the contraband. The evidence reflected that the men were transporting the bundles by wrapping the ropes around their hands. Further, the evidence reflected that the grease spilled onto the outer bags after the bags had been handled by the agents.

Serrata's argument that the evidence was insufficient because the agents could not discern his facial features is also meritless. Although the agents could not discern the individual features of the individuals carrying the bundles, the testimony reflected that the agents were able to locate the individuals in the cotton field within minutes of their attempted escape because they left a path as they fled through the field. Their clothing was wet, reflecting that the group had been recently in the river, and there were rope marks on their hands. There was no evidence that any other individuals were in the vicinity. Moreover, an agent testified that, although he could not have initially identified Serrata's facial features, he was positive that Serrata was one of the individuals in the group that he had arrested in the field.

Viewing the evidence in the light most favorable to the jury verdict, a rational jury could have found that the Government proved the substantial elements of the charged offenses beyond a reasonable doubt. The evidence reflected that Serrata and other individuals acted in concert to transport a large quantity of marijuana across the border into the United States for distribution, and that Serrata was aware that he was transporting marijuana for that purpose.

III.

For the foregoing reasons, we AFFIRM Serrata's conviction.