

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-7050
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

EDMUNDO LUIS CHAVEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(CR 92 183 1)

(October 21, 1993)

Before DAVIS, JONES and DUHÉ, Circuit Judges:

PER CURIAM:¹

Edmundo Luis Chavez challenges his conviction on a single count of possession with intent to distribute more than 100 grams of heroin. We affirm.

I.

In July 1992, DEA Agent Palacios set up a drug deal with Gustavo Cantu² during a phone conversation. The next day, Palacios

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

² Cantu was also a defendant in the case. He pleaded guilty and testified at Chavez' trial.

met with Cantu at a Wal-Mart parking lot in Cherryland, Texas. During the parking lot meeting, Cantu told Palacios that he had 22 ounces of heroin to sell. Chavez, who accompanied Cantu, was three to four feet away during this conversation. Palacios then entered Cantu's truck while Chavez remained outside near the hood of the truck. Cantu gave a sample of heroin to Palacios. After exiting the truck, Palacios and Cantu negotiated a price of \$3500 an ounce. When Palacios attempted to complete the sale at the Wal-Mart parking lot, Chavez suggested that the transactions occur at Chavez's apartment parking lot where it would be safer. The group agreed to meet later at Chavez' apartment complex.

That afternoon Agent Palacios, accompanied by a police officer, met Chavez and Cantu at Chavez' apartment parking lot. Chavez entered Palacios' truck and retrieved bags from each of his boots containing approximately 615 grams of heroin. Chavez exited the truck and Palacios signalled a surveillance team; Chavez and Cantu were arrested. At trial, Cantu testified that when he first met Chavez in Mexico they discussed dealing heroin and Chavez said he could get heroin for Cantu. Cantu testified that he got the sample of heroin he gave to Agent Palacios from Chavez.

Chavez and Cantu referred to heroin as "chiva." "Chiva," "black tar," and "pedazo" are street names for heroin. In Spanish, heroin is "heroin" or "chiva."

DEA Agent Combs, who interviewed Chavez after his arrest, testified that Chavez told her that he knew he was dealing in

"black tar." Chavez indicated to her that he knew it was a controlled substance.

Chavez testified that he was dealing "chiva," that he knew it was an illegal drug, and that he was getting paid to do the deal. However, Chavez claimed he did not know "chiva" was heroin or that "chiva" was a "controlled substance."

Chavez filed a timely pro se notice of appeal. The notice of appeal contained a checklist on which appellant could indicate whether he was appealing his "conviction only," "conviction and sentence," "sentence only," or "other." Chavez checked that he was appealing his "sentence only."

Chavez also filed a motion for appointment of court-appointed counsel and an application to proceed in forma pauperis. On that application, Chavez stated the issue he intended to present on appeal: "I feel that they give me a long time in jail."

The district court denied Chavez' application to proceed in forma pauperis and for a court-appointed attorney and ordered Chavez' trial counsel to represent him on appeal. Chavez' counsel filed a brief which addresses only the issue of sufficiency of the evidence to support his conviction.

II.

The government argues that Chavez appealed his sentence only and the sufficiency of the evidence to support his conviction is not properly before this court. The government admits however that it "suffers no prejudice" from the irregularity.

Rule 3(c) of the Federal Rules of Appellate Procedure provides

that "[t]he notice of appeal . . . shall designate the judgment, order or part thereof appealed from An appeal shall not be dismissed for informality of form or title of the notice of appeal."

Improper order designations of notices of appeal are liberally construed. **United States v. Ramirez**, 932 F.2d 374, 375 (5th Cir. 1991). This Court will exercise its appellate jurisdiction despite an improper judgment or order designation "where it is clear that the appealing party intended to appeal the entire case." **Trust Co. Bank v. U.S. Gypsum Co.**, 950 F.2d 1144, 1148 (5th Cir. 1992). "[F]ailure to properly designate the order appealed from is not a jurisdictional defect, and may be cured by an indication of intent in the briefs or otherwise." **Turnbull v. United States**, 929 F.2d 173, 177 (5th Cir. 1991) (citation omitted).

Although Chavez checked "sentence only" on the notice of appeal, the sufficiency of the evidence to support his conviction was preserved in the district court and was briefed on appeal by both the appellant and appellee. The government addresses the issue of sufficiency in its brief and concedes that it is not prejudiced. The sufficiency issue is properly before this court.

III.

Chavez argues that the government produced insufficient evidence to convict him. Chavez argues that the government failed to prove that Chavez had knowledge that what he possessed was a controlled substance.

Chavez moved for acquittal at the close of the government's

case and at the close of all the evidence. In reviewing a sufficiency challenge, this court must determine whether any 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. Bell**, 678 F.2d 547, 549 (5th Cir. 1982) (en banc), **affirmed**, 462 U.S. 356, 103 S.Ct. 2398, 76 L.Ed.2d 638 (1983). All facts and credibility choices must be viewed in the light most favorable to the verdict.

Chavez was convicted under 21 U.S.C. § 841(a)(1). Section 841 requires the government to prove that Chavez (1) possessed an illegal substance, (2) knowingly, and (3) with intent to distribute. **United States v. Shabazz**, 993 F.2d 431, 441 (5th Cir. 1993).

The testimony and other evidence support Chavez' conviction for the knowing possession with intent to distribute a controlled substance. He obtained heroin from his brother-in-law in Mexico. He referred to heroin as "chiva," its commonly used street name. He gave samples to Cantu who later transferred them to DEA agents. He arranged the sale of over 600 grams of heroin to undercover DEA agents, even suggesting his own apartment parking lot as a safer location than the Wal-Mart parking lot. Chavez had the drugs in his boots, he entered the agents' truck, retrieved the packages containing heroin from his boots, and handed them to the agents.

A reasonable jury could determine that Chavez knew he was in possession of heroin. The evidence is sufficient to support Chavez' conviction.

AFFIRMED.