UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-7063
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JORGE ALVAREZ, III,

Defendant-Appellant.

Appeal from the United States District Court
For the Southern District of Texas
(CR-L92-160-02)

(August 30, 1993)

Before POLITZ, Chief Judge, DAVIS and SMITH, Circuit Judges.

POLITZ, Chief Judge:[*]

Jorge Alvarez, III appeals his convictions of conspiracy to possess in excess of 100 kilograms and possession of 141.5 pounds of marihuana with intent to distribute, in violation of 21 U.S.C. §§ 841(a)(1), 846. Finding no error, we affirm.

Background

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

In May 1992 in Laredo, Texas, a confidential informant introduced Manuel Rocha to sergeant Martin Cuellar, Jr., an undercover Texas Department of Public Safety narcotics officer. The two negotiated a purchase of approximately 300 pounds of marihuana, at a price to be determined when Rocha provided Cuellar with a sample. Shortly thereafter, Rocha delivered a sample to Cuellar, offering to sell 100 pounds at $415 per pound. Citing the poor quality, Cuellar refused. Rocha told Cuellar he would attempt to obtain better marihuana from his suppliers. The next day, Rocha delivered another marihuana sample to Cuellar, offering to sell 300 pounds for $120,000. The two agreed and scheduled the delivery at a Laredo apartment complex the next day.

As agreed, Rocha met Cuellar at a gas station. Rocha telephoned his supplier, a man identified as "Wicho," who spoke with Cuellar and agreed to deliver the marihuana at 2 p.m. Cuellar and two other undercover officers met Rocha and Wicho at the apartment complex. After Cuellar satisfied Wicho of his trustworthiness, Wicho agreed to deliver the merchandise and departed with Rocha. Approximately 30 minutes later, Rocha returned in a vehicle registered to Rodolfo Rodriguez and driven by Alvarez. Cuellar asked Alvarez if he and Rocha had brought the full 300 pounds of marihuana. Alvarez replied that he had only half, and he opened the vehicle's trunk to display the contraband. The officers arrested Alvarez and Rocha at that point and seized 141.5 pounds of marihuana, a foam ice chest, and a scale from the vehicle.

The grand jury indicted Alvarez and Rocha for conspiracy to possess 300 pounds of marihuana and possession of 141.5 pounds of marihuana with intent to distribute, in violation of 21 U.S.C. §§ 841(a)(1), 846. In compliance with 21 U.S.C. § 851, the government filed an enhancement information detailing Alvarez's 1988 state court conviction for possession of between five and fifty pounds of marihuana with intent to distribute. The defendants entered "not guilty" pleas, and moved unsuccessfully for judgment of acquittal at the close of the government's evidence. Rocha presented a defense and the court denied renewed motions for judgment of acquittal at the close of evidence. The jury found both defendants guilty on both counts. The trial court sentenced Alvarez to concurrent 120- and 105-month terms of incarceration, eight- and six-year supervised release terms, and $3,000 fines, and the statutory assessments. Alvarez timely appealed.[1]

Analysis

On appeal Alvarez challenges the sufficiency of the evidence supporting each of his convictions. Mindful that weight and credibility assessments lie within the exclusive province of the jury,[2] in considering this claim we must view the evidence and draw all reasonable inferences most favorable to the verdict.[3] If the

[1]Rocha did not appeal his conviction.

[2]**United States v. Garner**, 581 F.2d 481 (5th Cir. 1978).

[3]**Glasser v. United States**, 315 U.S. 60 (1942); **United States v. Pigrum**, 922 F.2d 249 (5th Cir.), cert. denied, 111 S. Ct. 2064 (1991).

evidence so viewed would permit a rational jury to find all elements of the crime proven beyond a reasonable doubt, we must affirm the conviction.[4] The evidence need not exclude all hypotheses of innocence.[5]

In order to convict Alvarez on the conspiracy count, the government had to prove (1) existence of an agreement among two or more people to violate the narcotics laws; (2) his knowledge of the conspiracy; and (3) his voluntary participation therein.[6] The government may establish the elements of a conspiracy by circumstantial evidence.[7] While mere presence at the scene of the offense and close association with those involved will not alone support a conspiracy conviction, the jury may consider those factors as relevant.

Conviction on the possession count required proof that Alvarez knowingly possessed marihuana with intent to distribute. Conceding that the government presented ample evidence of his possession and intent to distribute, Alvarez challenges only its proof as to the requisite *mens rea*. We have held that exercise of dominion or control over a motor vehicle in which a contraband substance is

---

[4] **Jackson v. Virginia**, 443 U.S. 307 (1979).

[5] E.g., **United States v. Heath**, 970 F.2d 1397 (5th Cir. 1992), cert. denied, 113 S. Ct. 1643 (1993).

[6] E.g., **United States v. Rosas-Fuentes**, 970 F.2d 1379 (5th Cir. 1992).

[7] E.g., **United States v. Sanchez**, 961 F.2d 1169, 1174 (5th Cir. 1992) ("An agreement may be inferred from concert of action, participation from a 'collocation of circumstances,' and knowledge from surrounding circumstances.") (citing **United States v. Espinoza-Seanez**, 862 F.2d 526 (5th Cir. 1988)).

concealed permits an inference of knowing possession of the contraband.[8]

The government adduced more than evidence of Alvarez's presence at the crime scene and association with conspirators. Cuellar testified that approximately 30 minutes after Wicho agreed to deliver 300 pounds of marihuana, Alvarez drove to the appointed meeting place with Rocha. When asked whether the two had brought the full amount of marihuana agreed upon, Alvarez indicated that they had brought "only half of it." Cuellar testified that, while Rocha stood by his side, Alvarez opened the vehicle's trunk, revealing the marihuana. From Alvarez's participation in the delivery and statement to Cuellar, the jury was entitled to find that Alvarez knew of and voluntarily participated in a conspiracy to deliver 300 pounds of marihuana. Likewise, it was entitled to conclude that Alvarez knowingly possessed the marihuana in the vehicle. The evidence sufficiently supports Alvarez's convictions.

The convictions are AFFIRMED.

---

[8] **United States v. Romero-Reyna**, 867 F.2d 834 (5th Cir. 1989) (quoting **United States v. Richardson**, 848 F.2d 509, 513 (5th Cir. 1988)).