

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7098
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MANUEL MEDOR GARCIA, JR.,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CR L-92-219-1
- - - - -
(January 5, 1994)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Manuel Medor Garcia, Jr., contends that his convictions for possession with intent to distribute cocaine should be reversed because he was entrapped. "Where the Government has induced an individual to break the law and the defense of entrapment is at issue, . . . the prosecution must prove beyond reasonable doubt that the defendant was disposed to commit the criminal act prior to first being approached by Government agents." Jacobson v.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

United States, ___ U.S. ___, 112 S. Ct. 1535, 1540, 118 L. Ed. 2d 174 (1992). Because the jury was charged on the issue of entrapment, and rejected the defense, the standard of review is the same as that which applies to the sufficiency of the evidence. United States v. Mora, 994 F.2d 1129, 1136 (5th Cir.), cert. denied, 114 S. Ct. 417 (1993). Accordingly, the Court must determine "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).

There was substantial evidence that Garcia was predisposed to commit the crime. Garcia made numerous statements which revealed knowledge of the drug business, was given opportunities to withdraw from the transactions, and maintained frequent contact over a period of several weeks with the undercover officer with whom he was negotiating. "[A] defendant's enthusiasm for the crime can satisfy the predisposition requirement." Id. at 162. "Generally speaking, a defendant's testimony cannot by itself establish entrapment as a matter of law because, absent unusual circumstances, the jury is almost always entitled to disbelieve that testimony." Mora, 994 F.2d at 1137. The jury could reasonably have disbelieved Garcia's testimony.

Garcia contends that his trial counsel rendered ineffective assistance. As a general rule, this Court does not resolve claims of ineffective assistance of counsel on direct appeal

unless the claim has been raised before the district court because no opportunity existed to develop the record on the merits of the allegation. United States v. Higdon, 832 F.2d 312, 313-14 (5th Cir. 1987), cert. denied, 484 U.S. 1075 (1988) (citations omitted). The Court has resolved ineffective assistance of counsel claims on direct appeal "only in rare cases where the record allow[s] [this Court] to evaluate fairly the merits of the claim." Id. at 314. The record in the instant case does not permit such an evaluation.

AFFIRMED.