

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 93-7220

(Summary Calendar)

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DIDIER ISAAC HERNANDEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(CR-G-90-16)

(October 27, 1993)

Before SMITH, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Didier Isaac Hernandez contends on appeal that insufficient evidence supported his convictions for the following offenses: (1) conspiracy to possess with intent to distribute cocaine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), 846 (1988) ("Count I"); (2) aiding and abetting the attempt to possess with intent to distribute cocaine, in violation of 18 U.S.C. § 2 (1988) and 21 U.S.C. §§ 841(a)(1), (b)(1)(A), 846 ("Count II"); and (3) aiding and abetting the importation of cocaine into the United States, in violation of 18 U.S.C. § 2 and 21 U.S.C. §§ 952(a)(1), 960(b)(1),

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

963 (1988) ("Count III").¹ The evidence showed that Hernandez was present during the controlled delivery of cocaine;² that when arrested, Hernandez possessed a beeper which facilitated the delivery of cocaine;³ that Hernandez helped retrieve the car which was to take the cocaine away and helped open the car's trunk; and that the delivery involved 18 kilograms of cocaine.⁴ Because a reasonable jury, based on this evidence, could have concluded beyond a reasonable doubt that Hernandez knew of and voluntarily participated in the drug trafficking conspiracy,⁵ we hold that sufficient evidence

¹ "In deciding the sufficiency of the evidence, we determine whether, viewing the evidence and the inferences that may be drawn from it in the light most favorable to the verdict, a rational jury could have found the essential elements of the offenses beyond a reasonable doubt." *United States v. Pruneda-Gonzalez*, 953 F.2d 190, 193 (5th Cir.), *cert. denied*, ___ U.S. ___, 112 S. Ct. 2952, 119 L. Ed. 2d 575 (1992). To prove that a defendant conspired to possess with intent to distribute cocaine, the government must prove that (1) there was a conspiracy to distribute and possess cocaine; (2) the defendant knew about the conspiracy; and (3) the defendant voluntarily joined in the conspiracy. *See United States v. Hernandez-Palacios*, 838 F.2d 1346, 1348 (5th Cir. 1988). To prove that a defendant aided and abetted in the importation of cocaine, as well as in the attempt to possess with intent to distribute cocaine, the government must prove that the defendant became associated with, knowingly participated in, and in some way acted to further the importation, possession, and distribution of cocaine. *See United States v. Pena*, 949 F.2d 751, 755 (5th Cir. 1991); *United States v. Chavez*, 947 F.2d 742, 745-46 (5th Cir. 1991).

² Although "mere presence at the crime scene is insufficient to support an inference of participation in the conspiracy . . . [a] jury may consider presence and association, along with other evidence, in finding conspiratorial activity by the defendant." *Chavez*, 947 F.2d at 745.

³ The beeper's number matched the number law enforcement officials called when establishing the controlled delivery of cocaine.

⁴ Although Hernandez asserts that he did not know that the duffel bag which law enforcement officials placed in the car's trunk contained cocaine, a jury could have inferred from the large quantity of drugs involved that those involved in the conspiracy would not allow anyone unassociated with the conspiracy to be present during the delivery. *See Chavez*, 947 F.2d at 745.

⁵ Hernandez does not dispute the existence of a conspiracy to possess with intent to distribute cocaine between his fellow co-defendants.

supported his convictions on all counts of the indictment.⁶ Accordingly, the district court's judgment is AFFIRMED.

⁶ Hernandez challenges his two aiding and abetting convictions solely on the basis of his alleged lack of knowledge of the drug trafficking venture. We conclude that the same evidence which was sufficient to convict Hernandez of conspiring to possess with intent to distribute cocaine, was also sufficient for a reasonable jury to conclude that Hernandez knew of the drug venture. *See Chavez*, 947 F.2d at 746 (stating that the evidence sufficient to convict a defendant of conspiring to possess with intent to distribute cocaine will "[t]ypically . . . support both a conspiracy and aiding and abetting conviction." (attribution omitted)).