IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-7367

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CARLOS GUILLERMO AVILA-VASQUEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(CR-B-92-252-01)

(November 9, 1994)

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:[*]

Carlos Avila-Vasquez appeals from his conviction for conspiracy and possession of cocaine with intent to distribute. He argues first that the district court should have granted his motion for a psychological evaluation, but adduces no evidence apart from his bare assertions. Because nothing in the record discloses any aberrant behavior, history of mental illness, or inability to

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

communicate with his attorney or the judge, the district court did not abuse its discretion by denying the motion.

Next, Avila-Vasquez argues that the district court should have suppressed evidence seized from the warehouse because it was the product of an illegal search. Because he abandoned this claim at trial, we review for plain error. The search warrants for the warehouse authorized the officers to open the containers inside the warehouse. United States v. Ross, 456 U.S. 798, 820-21 (1982). Evidence from drug dog sniffs and police surveillance had established probable cause. There was no plain error.

Avila-Vasquez argues that the district court should have excluded various photographs. Because a witness authenticated the photographs as fair and accurate pictures of the vehicles and the surveillance area, they were admissible.

Avila-Vasquez complains that the district court should have provided written translations of the indictment and presentencing report. Nothing in the record shows that he asked for written translations. He had an interpreter and fully understood and answered the court's sentencing inquiries. Therefore, the district court did not commit plain error.

Avila-Vasquez argues that the district court erred in admitting hearsay testimony. Agent Silva made one reference to how other DEA agents mentioned that certain crates had arrived at the warehouse. This hearsay was harmless, however, because it was tangential to Silva's personal discovery of crates of cocaine in

the warehouse. Even without the one hearsay statement, the evidence that drugs were at the warehouse was overwhelming.

Finally, Avila-Vasquez claims that the district court should have reduced his sentence under U.S.S.G. § 3B1.2 because he was a minor participant in the conspiracy. He argues that he was not the ringleader, but that alone does not make one a minor participant. He also argues that he had no way of knowing that there were drugs in the sealed crates, but admits that he found it suspicious that he was to receive $2000 for helping to move crates. Finally, Avila-Vasquez recruited two co-defendants to participate in the crime. He was no minor participant. (He also says that the district court erred in enhancing his sentence by two levels under U.S.S.G. § 3B1.1(c), but it did not do so.) AFFIRMED.