

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-7394  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROSIE WEBB,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Mississippi  
USDC No. 2:93-CR-012-2  
- - - - -  
(March 23, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:\*

Rosie Webb challenges the sufficiency of the evidence to convict her on the conspiracy count. Because Webb failed to move for judgment of acquittal at the close of all of the evidence, this Court must determine only whether there was a manifest miscarriage of justice. United States v. Pierre, 958 F.2d 1304, 1310 (5th Cir.) (en banc), cert. denied, 113 S.Ct. 280 (1992). "Such a miscarriage would exist only if the record is devoid of evidence pointing to guilt, or . . . because the evidence on a

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

key element of the offense was so tenuous that a conviction would be shocking." Id. (internal quotations and citations omitted).

To establish a conspiracy under 18 U.S.C. § 371, the Government must "prove beyond a reasonable doubt that two or more persons agreed to commit a crime and that at least one of them committed an overt act in furtherance of that agreement." United States v. Tansley, 986 F.2d 880, 885 (5th Cir. 1993). The jury may infer the existence of an agreement from a defendant's concert of action with others. United States v. Magee, 821 F.2d 234, 239 (5th Cir. 1987). "Circumstances altogether inconclusive, if separately considered, may, by their number and joint operation, especially when corroborated by moral coincidences, be sufficient to constitute conclusive proof." United States v. Roberts, 913 F.2d 211, 218 (5th Cir. 1990), cert. denied, 111 S.Ct. 2264 (1991) (citation and internal quotations omitted). The elements of conspiracy "may be inferred from the development and collocation of circumstances." United States v. Gallo, 927 F.2d 815, 820 (5th Cir. 1991) (citations and internal quotations omitted). "[W]here the only circumstantial evidence is based on the existence of a family relationship or 'mere knowing' presence, a conspiracy conviction cannot be upheld. However, when inferences drawn from the existence of a family relationship or 'mere knowing presence' are combined with other circumstantial evidence, there may be sufficient evidence to support a conspiracy conviction." United States v. Williams-Hendricks, 805 F.2d 496, 503 (5th Cir. 1986). Although the fact that a defendant has a stake in the outcome of the conspiracy may

be relevant to establish participation, it is not a direct requirement. United States v. Keller, 784 F.2d 1296, 1299 (5th Cir. 1986).

The evidence supports the jury's verdict. Webb admits the existence of an on-going conspiracy and the commission of overt acts by one of the conspirators, but contends that the Government failed to present any evidence that she knowingly participated in the conspiracy or had a stake in its outcome. Trial testimony established that Webb was in possession of a detailed letter of instructions from her son respecting the conspiracy and her knowing and active role in it\*\*; that she acted as a courier in mailing altered money orders to both Mary James and Bobbie Watson; that she signed for, opened, and kept the contents of two Express Mail packages addressed to "Roxie Williams"; and that, during the postal inspectors' search of her house, she asked the Chief of Police whether the inspectors found any money orders. Accordingly, the record is not devoid of evidence from which the jury could have concluded that Webb knew of the conspiracy, and the jury's verdict does not constitute a manifest miscarriage of justice.

Webb also argues that the district court erred by failing to articulate a reason for its upward departure from the guideline range. Webb directs her argument, however, to the original

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\*\* Webb's defense to possession of the letter is that she is unable to read or write. She admitted at trial, however, that her children read to her any letters that she received, although she denied knowledge of the letter of instructions found in her nightstand.

sentence imposed on June 2, 1993. On November 17, 1993, the district court resentenced Webb to 18 months on each count to be served concurrently. She does not challenge this sentence or the reasons articulated for it.

AFFIRMED.