

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7742

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

RANEE SOLIS,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(93-CR-105-1)

(January 25, 1995)

Before KING, JOLLY and DeMOSS, Circuit Judges.

PER CURIAM:*

A Texas jury convicted Ranee Solis of one count of conspiracy to possess with intent to distribute over 100 kilograms of marijuana in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B) and 846. Solis appeals to this court, contending: (1) there was insufficient evidence to support her conviction; (2) she was deprived of a fair trial because she was not given

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

the opportunity to expose and prove actual bias on the part of a juror; and (3) she was deprived of the right to an impartial trial because of improper questioning by the district court judge. Finding these arguments to be without merit, we affirm the judgment of the district court.

I. FACTUAL AND PROCEDURAL BACKGROUND

In April 1993, James Parker, an investigator with the Cameron County, Texas, District Attorney's Office, received a tip from Manuel Montemayor that Montemayor had been solicited by a man named Ernesto Cavasos to drive a semi-truck full of marijuana from South Texas to Chicago. Montemayor told Parker that Cavasos and a man named "Jorge" had given him \$500 to rent a "stash house" in which to store and package the drugs prior to shipment to Chicago. Montemayor claims that Jorge promised him a total of \$200,000 dollars for transporting the marijuana, which Montemayor agreed to split with Cavasos.

Montemayor rented a house in which he used to lived and informed Cavasos and Jorge of its location. Montemayor was informed that a family of illegal aliens would move into the house temporarily in order to make it appear that a family lived there. In June, Cavasos told Montemayor that the drugs were ready to be transported.

On June 22, 1993, Montemayor went to the house to speak to an individual named "Joe," whom he understood to be a middleman in charge of packaging and loading the drugs onto Montemayor's

semi-truck. When Montemayor arrived at the stash house, he saw Solis, who met him in the yard and informed him that Joe was not there.

On June 26, 1993, the police set up surveillance on the stash house after Montemayor informed them that he would be bringing the semi-truck to the house that day. The police videotaped various activities from a surveillance van which had been set up in the driveway of the home located across the street.¹ The following describes the events which appear on the videotape: At around 1:30 p.m., Joe and Solis left the stash house in a white pickup truck. Approximately one hour later, Joe and Solis returned. Solis immediately left again in the pickup truck, this time returning at approximately 4:00 p.m. Solis entered the house carrying a paper bag containing rectangular objects which the officer believed to be plastic wrap.

At approximately 4:30 p.m., Montemayor arrived with the semi-truck. Joe exited the house to greet Montemayor. The semi-truck became stuck in the mud. Solis conversed briefly with Montemayor. Montemayor walked to the house across the street and borrowed a shovel. Montemayor and Joe then dug the semi-truck out of the mud and backed it up parallel with the side of the house. Montemayor and Joe then entered the house and Solis remained on the front porch, looking down the highway. Joe and Montemayor left the scene in Joe's white pickup truck.

¹ Ironically, the home was owned by the brother and sister-in-law of Montemayor, who knew that Montemayor had agreed to assist the police.

Solis and three males remained at the home, on the front porch. The three men were observed by the officers to be sweaty and covered with a green, grassy substance. Solis paced back and forth on the front porch for a while and then momentarily entered the rear of the semi-truck. Joe returned in his white pickup truck, and Solis went to greet him. Solis and Joe then proceeded to unload several sheets of plywood from the pickup truck and carry them toward the rear of the house. Activity was observed at the rear of the house. Solis could be seen writing something on a notepad.

At approximately 6:15 p.m., a blue Pontiac occupied by two men arrived, parked at the rear of the house, and left approximately 30 minutes later. Shortly thereafter, Joe left in a white pickup truck and Solis left in a maroon and gray Montecarlo. The three men remained at the home.

At approximately 7:30 p.m., the surveillance officers left the scene in order regroup with other officers in preparation for the execution of a search warrant. At approximately 8:00 p.m., the search warrant was executed. One male, Carlos Hugo Cervantes, was apprehended within the home. Montemayor was apprehended outside the home. The third male fled into the bushes near the home and was never apprehended. Thirty minutes later, Solis drove up to the home in her Montecarlo and was arrested.

Cervantes testified that he was smuggled across the Mexican border by a "coyote" who offered him work. Once inside the

United States, the coyote made a telephone call, and instructed Cervantes to wait for a ride. Solis arrived and drove Cervantes to the stash house. Another man at the stash house informed Cervantes that he would be paid \$2,000 for assisting in the repackaging and loading of the marijuana. Cervantes further testified that Solis brought the workers food, clothing and flashlights, and that Solis was present when the men packaged and weighed the marijuana.

Several of the officers who executed the search warrant testified that they could immediately discern the odor of marijuana upon entering the home. They also testified that all of the doors to the rooms in the house were open. The search of the home uncovered the following: in the rear bedroom, 59 bundles of marijuana, a large electronic scale, a note pad with a list of numbers and weights, and plastic packaging material; in the front bedroom, an old mattress, and several trash bags and collapsed cardboard boxes with marijuana residue on them; in the living room, a couch, a recliner, and several machetes and lanterns; in the kitchen, a .38 caliber semi-automatic pistol. Another .9mm semi-automatic weapon was found just outside the home near the bushes. Nineteen additional bundles of marijuana were found in the semi-truck.²

A Texas grand jury indicted Solis on two counts: (1) conspiracy to possess with intent to distribute over 100

² The total weight of the marihuana found in the home and in the semi-truck was 2,127 pounds.

kilograms of marijuana in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B), and 846; and (2) possession with intent to distribute over 100 kilograms of marijuana in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B), and 18 U.S.C. § 2. A jury found Solis guilty of count one (conspiracy), but not guilty of count two (possession). Solis filed a timely appeal to this court, asserting: (1) there was insufficient evidence to support a conviction on count one because the government did not prove beyond a reasonable doubt that Solis knew about the conspiracy and voluntarily participated in it; (2) she was deprived of a fair trial due to the bias of one juror; and (3) she was deprived of a fair trial because the trial judge prejudiced the jury by exhibiting bias in favor of the prosecution. We now proceed to address each of these arguments in turn.

II. STANDARD OF REVIEW

The scope of our review of the sufficiency of the evidence after conviction by a jury is narrow. We must affirm if a reasonable trier of fact could have found that the evidence established guilt beyond a reasonable doubt. United States v. Mergerson, 4 F.3d 337, 341 (5th Cir. 1993), cert. denied, 114 S. Ct. 1310 (1994). We must consider the evidence, and all reasonable inferences that can be drawn therefrom, in the light most favorable to the government. United States v. Pigrum, 922 F.2d 249, 253 (5th Cir.), cert. denied, 500 U.S. 936 (1991). The evidence need not exclude every reasonable hypothesis of

innocence or be wholly inconsistent with every conclusion except that of guilt, and the jury is free to choose among reasonable constructions of the evidence. Id. at 254.

We review a district court's refusal to order a mistrial only for an abuse of discretion. United States v. Phillips, 664 F.2d 971, 998 (5th Cir. 1981), cert. denied, 457 U.S. 1136 (1982). Thus, whether a defendant received a fair trial by an impartial jury is normally a question to which an appellate court will defer to the discretion of the district court. United States v. Collins, 972 F.2d 1385, 1404 (5th Cir. 1992), cert. denied, 113 S. Ct. 1812 (1993).

In reviewing the propriety of a district court's questioning of witnesses, we review only for an abuse of discretion. United States v. Williams, 809 F.2d 1072, 1087 (5th Cir.), cert. denied, 484 U.S. 896 (1987). In making this assessment, we must consider the record as a whole, not just the portions highlighted by the defendant. United States v. Carpenter, 776 F.2d 1291, 1294 (5th Cir. 1985).

III. ANALYSIS

A. Sufficiency of the Evidence

Solis argues that her conviction should be reversed because the government failed to prove, beyond a reasonable doubt, that Solis knew about conspiracy and voluntarily participated in it. In order to prove conspiracy to possess narcotics with intent to distribute, the government must prove that: (1) an agreement

among two or more persons to possess an illegal drug with the intent to distribute the drug; (2) the defendant knew of the conspiracy; and (3) the defendant voluntarily joined the conspiracy. United States v. Fierro, 38 F.3d 761, 768 (5th Cir. 1994); Mergerson, 4 F.3d at 341. Each element of a conspiracy may be inferred from circumstantial evidence. United States v. Jensen, 1994 U.S. App. LEXIS 35554, at *19 (5th Cir. Dec. 20, 1994); United States v. Casilla, 20 F.3d 600, 603 (5th Cir. 1994). "Once the government has produced evidence of a conspiracy, only 'slight' evidence is needed to connect an individual to that conspiracy." Casilla, 20 F.3d at 603 (quoting United States v. Duncan, 919 F.2d 981, 991 (5th Cir. 1990), cert. denied, 500 U.S. 926 (1991)). Furthermore, knowledge of and voluntary participation in a conspiracy may be inferred from a "collection of circumstances." Fierro, 38 F.3d at 768; United States v. Robles-Pantoja, 887 F.2d 1250, 1254 (5th Cir. 1989).

The question before us is whether, taking the evidence in the light most favorable to the government, a rational jury could have found that Solis knew about and voluntarily participated in a conspiracy to possess marijuana with an intent to distribute. The evidence adduced at trial was largely undisputed. Viewed in the light most favorable to the government, it establishes that Solis was present at the stash house every day for six days preceding the raid. There was evidence of marijuana residue in each of the two bedrooms. A strong odor of marijuana was apparent to Cervantes and all of the officers who conducted the

raid. Cervantes testified that Solis saw the men packaging and weighing marijuana. The surveillance officers testified that the men working at the stash house appeared, when viewed through binoculars, to be sweaty and covered in a grassy substance. Solis assisted these men by buying food, lanterns, and clothing for them. Solis helped Joe unload plywood which Montemayor testified was to be used to erect a false wall inside the semi-truck to hide the marijuana. Solis picked up Cervantes near the border and drove him to the stash house, where he was put to work packaging and weighing marijuana. These facts are sufficient to permit a rational jury to infer, beyond a reasonable doubt, that Solis knew about and voluntarily participated in a conspiracy to possess marijuana with an intent to distribute. We therefore find Solis' sufficiency of the evidence argument to be without merit.

B. Juror Misconduct

Solis contends that she is entitled to a new trial because the district court failed to order a mistrial during jury deliberation. Specifically, Solis claims that one of the jurors falsely contended, during voir dire, that she would be able to assess the credibility of two government witnesses, with whom she was acquainted prior to trial, without regard to her personal opinions of those witnesses. She also contends that the district court's investigation of this possible bias was inadequate, resulting in a denial of a fair trial.

During the jury's deliberations, two unidentified female jurors informed the court that a fellow juror, Nelda Sanchez, was letting her out-of-court familiarity with two government witnesses to influence her credibility assessments. During voir dire, Sanchez admitted that she was an "acquaintance" of Dina Montemayor in high school and Manuel Montemayor was a boyfriend of Sanchez's sister. After the jurors' concerns were brought to the court's attention, the court informed the two jurors that Sanchez's personal acquaintance did not necessarily render her unable to serve as a juror and instructed the jurors to proceed with their deliberations. The court disclosed the juror's concerns to both parties and denied Solis' motion for a mistrial.

After the jury returned its verdict, the court held a hearing to determine whether her familiarity with the government witnesses affected her verdict. Sanchez stated that her relationship with the government witnesses was one of acquaintance only and that she based her verdict on her belief that the testimony of the witnesses was truthful, without regard to her antecedent relationship with those witnesses. Sanchez told the court that "[w]hatever I saw on the video, that is what I believe."

There is a strong presumption that a juror is impartial and the defendant bears the burden of establishing otherwise. United States v. Collins, 972 F.2d 1385, 1403 (5th Cir. 1992), cert. denied, 113 S. Ct. 1812 (1993). A trial court is entitled to credit a juror's denial of bias. Id. at 1404 n.38; United States

v. Robbins, 500 F.2d 650, 653 (5th Cir. 1974). In this case, the district court apparently credited Sanchez's contention that her verdict was based upon the evidence presented at trial rather than her personal acquaintance with the witnesses. Solis has proffered no evidence to indicate that this credibility assessment was an abuse of discretion and has not overcome the strong presumption of juror impartiality. Accordingly, her claim that Sanchez's personal knowledge rendered her trial fundamentally unfair must fail.

C. Questioning of Witnesses by the Court

Solis' final argument is that she was deprived of a fair trial and of the effective assistance of counsel because the trial court "took over the questioning" of the witnesses in a partisan manner and became an advocate for the government. "A trial judge must exhibit neutrality in his language and his in the conduct of a trial before a jury. He should avoid any possibility of prejudicing the jury through his criticism of or hostility toward defense counsel." United States v. Candelaria-Gonzalez, 547 F.2d 291, 297 (5th Cir. 1977). "To constitute constitutional error, however, the trial court's actions, viewed as a whole, must amount to intervention which could have led the jury to a predisposition of guilt by improperly confusing the functions of judge and prosecutor." United States v. Davis, 752 F.2d 963, 974 (5th Cir. 1985).

Solis points to numerous instances during the three-day trial in which the trial judge asked questions of either government or defense witnesses. Our question, therefore, is whether these passages, taken in context of the trial as a whole, strayed from neutrality in such a manner as to render Solis' trial constitutionally unfair. United States v. Weeks, 919 F.2d 248, 252 (5th Cir. 1991), cert. denied, 499 U.S. 954 (1991) (citing United States v. Williams, 809 F.2d 1072, 1087 (5th Cir.), cert. denied, 484 U.S. 896 (1987)). We think not.

A trial judge may question witnesses for the purpose of clarifying issues or ambiguities for the jury. United States v. Samples, 897 F.2d 193, 197 (5th Cir. 1990); Moore v. United States, 598 F.2d 439, 442 (5th Cir. 1979). In this case, the record reveals that the trial judge interrupted the questioning of counsel for the government more times than defense counsel. The record also indicates that the questions posed by the trial judge were both logical and neutral, designed to clarify ambiguous testimony. In addition, the trial judge informed the jurors at the beginning of the trial that:

I do not have an opinion about this case. . . .
Certainly I can ask questions. But, you see, that's your promise [sic] and although maybe I can under the law invade it, I do not want to do that. So, if I do anything during the course of the trial that leads you to believe that I have an opinion about the case, please disregard it. Hey, that's your thing, not mine.

When I ask a question don't give it any more or less importance than anybody else asking. So remember, I do not have an opinion about this case

At the end of the presentation of evidence, the trial court repeated this statement. Viewed as a whole, we think that the

trial judge's questioning did not overstep the bounds of acceptable judicial conduct. Accordingly, Solis' claim that the trial court's questioning rendered her trial constitutionally infirm is without merit.

IV. CONCLUSION

For the foregoing reasons, the judgment of the district court is AFFIRMED.