UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 93-7765

(Summary Calendar)

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RAMIRO CARDONA ELIZONDO,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(93-CR-121-1)

(July 5, 1994)

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

PER CURIAM:[*]

Defendant Ramiro Cardona Elizondo was tried before a jury and convicted of conspiring to possess marijuana with intent to distribute, in violation of 21 U.S.C. §§ 841(a)(1) and 846 (1988). Elizondo now appeals that conviction, arguing that the evidence is insufficient to support the jury's verdict.[1] We affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

[1] In his brief, Elizondo refers to the fact that the district court did not submit a written charge to the jury.

"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."[2] *United States v. Pruneda-Gonzalez*, 953 F.2d 190, 193 (5th Cir.), *cert. denied*, 112 S. Ct. 2952, 119 L. Ed. 2d 575 (1992). "It is not necessary that the evidence exclude every rational hypothesis of innocence or be wholly inconsistent with every conclusion except guilt, provided a reasonable trier of fact could find the evidence establishes guilt beyond a reasonable doubt." *Id.* "We accept all credibility choices that tend to support the jury's verdict." *United States v. Anderson*, 933 F.2d 1261, 1274 (5th Cir. 1991).

After examining the record, we conclude that the evidence is more than sufficient to uphold Elizondo's conviction. Co-conspirator Gonzalo Serrato, Sr. testified that Elizondo owned the load of marijuana that was smuggled into the United States and was going to pay the other co-conspirators for helping him transport

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However, he has failed to brief this separate allegation. Thus, Elizondo has waived any claim of error resulting from the district court's exercise of its discretion in this matter. *See* Fed. R. App. P. 28(a); *Edmond v. Collins*, 8 F.3d 290, 292 n.5.

[2] In order to prove that Elizondo conspired to possess marijuana with intent to distribute it, the government must prove beyond a reasonable doubt that (1) there was a conspiracy to possess marijuana with intent to distribute, (2) Elizondo knew about the conspiracy, and (3) Elizondo voluntarily joined the conspiracy. *See United States v. Hernandez-Palacios*, 838 F.2d 1346, 1348 (5th Cir. 1988). "No evidence of overt conduct is required. A conspiracy agreement may be tacit, and the trier of fact may infer agreement from circumstantial evidence." *Id.* (footnotes omitted).

the marijuana through the Border Patrol checkpoints. Serrato also testified that he thought that he was working for Elizondo. Gonzalo Serrato, Jr., another co-conspirator, testified that Elizondo was supposed to pay a Border Patrol agent for allowing the marijuana to pass through the border checkpoint because it was Elizondo's load. Additionally, both Serratos testified that they met with Elizondo shortly before the shipment in order to make the necessary arrangements and that Elizondo was in charge of the operation. "[A] conviction may be based even on the uncorroborated testimony of a [co-conspirator] . . . , provided that the testimony is not incredible or otherwise insubstantial on its face." *United States v. Osum*, 943 F.2d 1394, 1405 (5th Cir. 1991). Because the testimony was not unbelievable on its face, the evidence adequately supports the jury's decision to convict Elizondo. *Id.*

For the foregoing reasons, we AFFIRM the judgment of the district court.