

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

---

No. 93-7774  
Summary Calendar

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

ERNEST THOMAS,

Defendant-Appellant.

---

Appeal from the United States District Court  
for the Southern District of Mississippi  
(CR-1:92-62(Br (R)))

---

(November 3, 1994)

Before DUHÉ, WIENER, and STEWART, Circuit Judges.

PER CURIAM:<sup>1</sup>

Appellant, Ernest Thomas, was charged with and convicted of numerous violations in connection with the Buy America Act. He was acquitted by the jury on some counts and upon the jury's inability to reach a verdict on others, the court declared a mistrial. Appellant argues on appeal that the evidence was insufficient to support his conspiracy conviction because the jury did not convict him of any of the substantive charges. Alternatively, he argues

---

<sup>1</sup> 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

that the court should find him guilty of only misdemeanor conspiracy because the jury acquitted him of the underlying felony charges. We view the evidence in the light most favorable to the government to determine whether any rational trier of fact could have found the essential elements of the offenses of conviction beyond a reasonable doubt. United States v. Bell, 678 F.2d 547, 549 (5th Cir. 1982) (en banc), aff'd, 462 U.S. 356 (1983).

It is neither legally or logically inconsistent for a jury to convict a defendant of conspiracy and clear him of the substantive charges. United States v. Foy, 28 F.3d 464, 474-75 (5th Cir. 1994). When this occurs, however, our "judicial skepticism" is engaged and we conduct a "critical analysis of the facts." United States v. Arzola-Amaya, 867 F.2d 1504, 1512 (5th Cir.), cert. denied, 493 U.S. 933 (1989).

A conspiracy conviction under 18 U.S.C. § 371 requires that the government prove beyond a reasonable doubt an agreement between two or more persons to commit a crime against the United States and an overt act committed by at least one of the conspirators in furtherance of the agreement. United States v. Schmick, 904 F.2d 936, 941 (5th Cir. 1990), cert. denied, 498 U.S. 1067 (1991). The government must also prove beyond a reasonable doubt that defendant had knowledge of the conspiracy and voluntarily intended to join it. Id. at 941. The Buy America Act requires, as a general rule, that materials and manufactured goods purchased by the government or its contractors be manufactured in the United States. 41 U.S.C. § 10a, 10b. We have carefully reviewed the evidence adduced at

trial employing the standard of review noted above and find the evidence not only sufficient but overwhelming. We will not undertake to detail the evidence here.

AFFIRMED.