

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 93-8193

Summary Calendar

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RAMIRO HERRERA-RODRIGUEZ,

Defendant-Appellant.

---

Appeal from the United States District Court  
for the Western District of Texas  
(EP 92 CR 427)

---

September 30, 1993

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:\*

I.

A jury convicted Ramio Herrera-Rodriguez of one count of conspiracy to import over 50 kilograms of marijuana, one count of conspiracy to possess with intent to distribute over 50 kilograms of marijuana, and one count of possession with intent to distribute

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

over 50 kilograms of marijuana. The sole issue on appeal is sufficiency of the evidence.

## II.

Herrera argues that the circumstantial evidence used to convict him was insubstantial because no evidence linked him to the marijuana and no witness could identify him as a participant in a drug smuggling operation.

However, the jury verdict must be sustained if there is substantial evidence to support it. In determining whether there is substantial evidence, we must take the view most favorable to the government. Glasser v. United States, 315 U.S. 60 (1942).

Though individual facts and incidents standing alone might be inconclusive as to guilt, they may, by their number and joint operation, especially when corroborated by moral coincidences, constitute conclusive proof. United States v. Lechuga, 888 F.2d 1472, 1476 (5th Cir. 1989).

## III.

A violation of 21 U.S.C. § 841(a) requires proof of knowing possession of marijuana with intent to distribute. United States v. Lindell, 881 F.2d 1313, 1322 (5th Cir. 1989), cert. denied, 493 U.S. 1087 and 496 U.S. 926 (1990).

A border patrol agent testified that he spotted Herrera through an infrared camera in a group carrying bundles of marijuana across the border from Mexico to the United States. The agent had an unobstructed view of Herrera at a time when there was little activity along the border.

The agent observed a man wearing an oversized jacket giving orders to the others. At the time of his arrest, Herrera was wearing an oversized jacket. The fact that Herrera's pants were damp at the time of his arrest does not mean that he could not have been one of the men who crossed the river carrying the bundles of marijuana. It was certainly possible for his pants to be damp three hours after crossing the river.

In the context of this case the nervous and evasive behavior of Herrera and the other individuals carrying the bundles was sufficient for a reasonable jury to infer that Herrera knew that they contained marijuana. Juries can infer an intent to distribute marijuana from the possession of a large amount of the drug. United States v. Prieto-Tejas, 779 F.2d 1098, 1101 (5th Cir. 1986). The agents seized 219.5 pounds of marijuana. A reasonable jury could infer that Herrera possessed and intended to distribute the drug.

#### IV.

A conviction for violation of 21 U.S.C. §§ 952(a) and 960(a)(1), requires proof that Herrera knowingly played a role in bringing marijuana from a foreign country into the United States. United States v. Lara-Velasquez, 919 F.2d 946, 950 (5th Cir. 1990). The jury found that Herrera knowingly possessed marijuana with the intent to distribute. The jury could infer that Herrera, by joining with this group of six men knowingly brought the drugs into the United States.

#### V.

A violation of 21 U.S.C. § 846 requires proof of an agreement between two or more people to violate narcotics laws, Herrera's knowledge of and intent to join the conspiracy, and participation in the conspiracy. United States v. Munoz, 957 F.2d 171, 174 (5th Cir.), cert. denied, 113 S.Ct. 332 (1992).

The government need not prove a formal agreement, and can use circumstantial evidence.

Looking at the evidence in the light favorable to the government, Herrera lead the other six smugglers, and scouted ahead for them. The five men carrying the bundles of marijuana piled them in one location and left together. Herrera and another man stayed with the marijuana until a car stopped near them, and then ran away together. A reasonable jury could find a conspiracy on these facts.

AFFIRMED.