

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-20437

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JUAN CARLOS RODRIGUEZ-GAVIRIA and  
JOSE JIMENEZ-HERNANDEZ,

Defendants-Appellants.

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Appeal from the United States District Court  
for the Southern District of Texas  
(CR H 93-285-1)

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November 17, 1995

Before KING, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:\*

Defendants-Appellants Juan Carlos Rodriguez-Gaviria ("Rodriguez") and Jose Jimenez-Hernandez ("Jimenez") were charged along with Mauricio Aristizabal ("Aristizabal") in a superseding indictment with conspiracy to commit money laundering (count one) and with aiding and abetting money laundering (count two) in violation of 18 U.S.C. §§ 2, 1956(a)(1)(A)(i), and 1956(g). 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 Pursuant to that Rule, the court has determined that this opinion should not be published.

jury convicted them on both counts.<sup>1</sup> They were both sentenced to 108 months confinement and ordered to pay \$100 in special assessments; Rodriguez was sentenced to a two-year term of supervised release and Jimenez was sentenced to a three-year term of supervised release. Both men appeal their convictions and sentences. We affirm.

## I. DISCUSSION

### A. Rodriguez

Rodriguez's first argument on appeal is that the district court erred in denying his and Jimenez's motions to suppress evidence that was obtained from their warrantless stop and detention, from the warrantless search of Rodriguez's car, and from the warrantless search of the upstairs rooms of a townhouse located at 12643 Wellington Park in Harris County, Texas. Jimenez adopts these arguments in his appellate brief.

We hold that the district court properly denied Rodriguez's and Jimenez's motions to suppress. In particular, we hold that the stop and detention of Rodriguez and Jimenez was a permissible Terry stop founded upon reasonable suspicion. Further, we hold that the district court's finding that Rodriguez voluntarily consented to a search of his car was not clearly erroneous, especially in light of Rodriguez's spontaneous offers to allow a search and the non-coercive atmosphere of the detention. We also hold that the district court's finding that Ms. Echivarria, the

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<sup>1</sup>Aristizabal entered a guilty plea in this case.

owner of the townhouse, voluntarily consented to a search of the townhouse was not clearly erroneous. Finally, we hold that the warrantless search of the townhouse did not violate the Fourth Amendment. The officers were allowed to rely upon the apparent authority of Ms. Echivarria to consent to a search of the entire premises because Rodriguez disclaimed any authority over the townhouse, the officers verified that the utilities at the townhouse were in Ms. Echivarria's name, and neither Rodriguez nor Jimenez objected when Ms. Echivarria gave her consent in their presence.

Rodriguez next contends that the district court abused its discretion in denying his motion to order the disclosure of the identity of the confidential informant(s) who provided information that illegal activity was being conducted at the Wellington Park address. Jimenez adopts this argument in his appellate brief. We hold that the district court did not abuse its discretion in denying this motion. The district court properly applied our test for determining when such disclosure is required, see United States v. Sanchez, 988 F.2d 1384, 1391 (5th Cir.), cert. denied, 114 S. Ct. 217 (1993), and concluded that the defendants had failed to show that the informant's identity was material, relevant, or helpful to their defense.

Rodriguez also argues that the district court clearly erred in determining the amount of funds involved in the crime charged with respect to relevant conduct for purposes of calculating his sentence. We hold that the district court's finding as to the

amount of funds involved in the crime charged was not clearly erroneous; in this regard, we note that the court based its findings on drug ledgers recovered from Rodriguez's car that bore Rodriguez's fingerprints.

Finally, Rodriguez asserts that the district court clearly erred in refusing to reduce Rodriguez's sentence for acceptance of responsibility. We hold that the district court's refusal to reduce Rodriguez's sentence for acceptance of responsibility was not clearly erroneous and was not without foundation, particularly in light of the fact that Rodriguez conditioned his guilty plea on preserving his rights to suppress evidence and to seek disclosure of the confidential informant. For these reasons, we affirm Rodriguez's conviction and sentence.

**B. Jimenez**

In addition to adopting Rodriguez's first two arguments, Jimenez contends that the district court committed manifest error in admitting over his objection the following testimony from IRS Agent Bob Whalen, who testified as an expert:

Q: As a trained narcotics and money laundering investigator with many years of experience, do you have an opinion as to whether it's possible that a drug organization would allow a person who is not a member to: one, stay in a stash house; two, keep his personal effect [sic] in the room in the stash house where the stash is kept; and three, be present when a delivery of drug proceeds takes place?

A: Yes, Sir, I do have an opinion.

Q: What is your opinion?

A: That **only individuals involved in those activities would be privileged to that type of information.**  
In other words, if you are going to deliver it, if you will, in the way of an example, if you are going to deliver 20 grams of cocaine, **you don't take a witness along with you unless that person is actually involved. You don't let people stay at a location where you have a million dollars unless those people are aware of what's happening there.**

Q: . . . in addition to the other things we mentioned about staying in the stash house, personal effects in a room in a stash house, being present at the delivery of drug proceeds or contraband, what if you threw on top of that being the active person who hands, hands over the drug proceeds or the contraband, in your opinion does that heighten your belief in terms of that person's involvement?

A: Yes, Sir, it does.

Q: And why is that?

A: **With the factors you just listed, that person, in my opinion, had to be involved.**

(emphasis added). We hold that the district court did not commit manifest error in admitting this testimony because the witness was responding to a hypothetical and did not directly comment on Jimenez's state of mind in violation of Fed. R. Evid. 704(b). See United States v. Speer, 30 F.3d 605, 610 (5th Cir. 1994), cert. denied, 115 S. Ct. 768 (1995).

Jimenez also argues that the district court erred in overruling his objections to the prosecutor's attempt to impeach him with his post-arrest, post-Miranda silence, in violation of Doyle v. Ohio, 426 U.S. 610, 618 (1976). We hold that the district court did not err in overruling these objections because the silence to which the prosecutor referred occurred before

Jimenez received his Miranda warnings. Fletcher v. Weir, 455 U.S. 603, 607 (1982).

Jimenez's next argument is that the district court abused its discretion in overruling his objections to the following jury instruction:

If you find, beyond a reasonable doubt, that the money involved in this case was connected to drug trafficking, **you are instructed that such money had a direct effect on interstate commerce.**

(emphasis added). We hold that Jimenez waived any error as to this instruction because his counsel withdrew his objection to the instruction before the jury instructions were put in final form.

Finally, Jimenez argues that the district court committed plain error by giving a jury instruction explaining the meaning of the phrase "financial transaction." This instruction stated:

The term "financial transaction" is a "transaction", as just defined, which involves the movement of funds by wire or other means. **The transfer of funds by one individual to another is a financial transaction.**

(emphasis added). We hold that the district court did not commit plain error by giving this instruction because it only served to define the term "financial transaction". The instruction did not direct a verdict against Jimenez on this element because it did not refer to specific evidence adduced at trial. For these reasons, we affirm Jimenez's conviction and sentence.

## II. CONCLUSION

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