IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-30406

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CASAR MARIO CORDOBA,
aka Jose Velez,

Defendant-Appellant.

Appeals from the United States District Court
for the Eastern District of Louisiana
(CR-93-380-M)

(September 25, 1995)

Before HIGGINBOTHAM, DUHÉ, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:[*]

Casar Cordoba appeals his convictions and sentence for conspiracy to possess with intent to distribute in excess of five kilograms of cocaine and for reentry into the United States by a deported alien without consent of the Attorney General. We affirm.

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Cordoba first argues that he was arrested without probable cause and therefore that the trial court should have suppressed evidence found in a search of his person incident to arrest. No explicit findings of fact accompanied the district court's summary denial of Cordoba's motion to suppress. We therefore review the district court's denial de novo. United States v. Cardenas, 9 F.3d 1139 (5th Cir. 1993) (stating that appellate courts review the facts found in conjunction with a suppression motion under the clearly erroneous standard, but the conclusions of law de novo), cert. denied, 114 S. Ct. 2150 (5th Cir. 1993). We affirm. At the time the police arrested Cordoba, they knew that a confidential informant had arranged a delivery of cocaine to certain persons in a hotel. They knew that Cordoba had arrived at the hotel at the appointed time in a Camaro with co-indictee Michilena, and Cordoba had gotten out of the car to watch the area while Michilena had entered the hotel. They knew that Michilena had then emerged from the hotel carrying a bag, and that Cordoba had fled when agents identifying themselves as law enforcement officials approached him. They knew that while fleeing, Cordoba had discarded certain items which suggested ownership of the Camaro. They knew that two hours later, Cordoba was hiding in a nearby outdoor shed. Basing our decision on the totality of the circumstances, we agree that probable cause existed to arrest Cordoba.

Cordoba objects to the trial court's admission of evidence of a prior plea of guilty for possession of cocaine. Cordoba

argues that the admission of this evidence violated Fed. R. Evid. 404(b) and the constitutional requirement that guilty pleas be knowing and voluntary. See Boykin v. Alabama, 395 U.S. 238, 243-44 (1969). To support the latter argument, Cordoba points out that the record of the entry of the guilty plea does not show that a Spanish-English interpreter was made available to him. Reviewing the trial court's Rule 404(b) decision under a heightened abuse of discretion standard and its constitutional ruling de novo, we affirm. Cordoba's prior act of cocaine possession was admissible as probative on the issues of knowledge of the drug transaction and intent to commit the conspiracy offense, United States v. Gadison, 8 F.3d 186, 192 (5th Cir. 1993), and the trial court minimized any possible prejudice by giving a cautionary instruction. Regarding the need for an interpreter, the record reflects that Cordoba possessed a working knowledge of English. Cordoba booked a hotel room for three nights with a hotel clerk who spoke no Spanish, and during his flight he had a conversation in English with a resident of the neighborhood adjacent to the hotel. Given that Cordoba was represented by counsel at the guilty plea proceeding and made no request for an interpreter, we find no constitutional error.

Cordoba argues that the district court erred in denying his motion to sever his drug and immigration charges. We do not address the propriety of the district court's ruling because we find that Cordoba has not shown that any misjoinder prejudiced his trial. We will not reverse a district court's denial of a

motion to sever absent clear prejudice to the defendant. United States v. Holloway, 1 F.3d 307, 310 (5th Cir. 1993). Had the district court granted the motion to sever, the jury at the drug conspiracy trial would nevertheless have learned of the prior drug conviction, although not the subsequent deportation, and the jury at the immigration violation trial would have known that Cordoba had been deported previously for committing some criminal offense. Any prejudice from the additional information available at the trial was minimal. Furthermore, the two crimes are quite distinct in their elements of proof, suggesting that the jury did not consider evidence of one offense in deciding guilt or innocence on the other. Given also the district court's cautionary instruction to the jury regarding its use of the prior drug conviction, we find no clear prejudice to Cordoba from the denial of severance.

Cordoba appeals the district court's refusal to ask potential jurors certain voir dire questions regarding their ability to be fair an impartial to previously deported aliens. Applying an abuse of discretion standard, we affirm. "The trial judge's failure to ask the requested question is not an abuse of discretion if his overall examination, coupled with his charge to the jury, affords a party the protection sought." United States v. Williams, 573 F.2d 284, 287 (5th Cir. 1978). The trial judge asked the prospective jurors if the fact that the defendants were foreigners and not English-speaking would affect their ability to be fair and impartial. These questions afforded Cordoba the

protection of a jury admonished to be fair and impartial, and we find no abuse of discretion.

Cordoba argues that the prosecution's evidence was insufficient to support his conviction on the drug charge. We review the record to ascertain if a reasonable trier of fact could find that the evidence establishes guilt 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). Viewing the evidence in the light most favorable to the verdict, United States v. Restrepo, 994 F.2d 173, 182 (5th Cir. 1993), we affirm. A reasonable jury could have found all of the facts stated above in the discussion of the motion to suppress. It could have found that the Camaro contained a large, empty speaker box capable of holding ten kilograms of cocaine, and that Cordoba was carrying on his person a business card bearing the telephone numbers that the confidential informant was instructed to call in order to arrange the drug transaction. It could have found that a search of Cordoba's hotel room revealed Michilena's passport and an electronic scale capable of weighing to the nearest gram. From these facts, a reasonable jury could have "infer[ed] a conspiracy from circumstantial evidence and [could have relied] upon presence and association, along with other evidence." United States v. Fierro, 38 F.3d 761, 768 (5th Cir. 1994), cert. denied, 115 S. Ct. 1431 (1995). In particular, a reasonable jury could have inferred that Cordoba intended to participate in an agreement to distribute drugs. See United States v. Ojebode, 957

F.2d 1218, 1223 (5th Cir. 1992), cert. denied, 113 S. Ct. 1291 (1993); United States v. Lechuga, 888 F.2d 1472, 1476-77 (5th Cir. 1989).

Finally, Cordoba argues that the trial court erred by considering his prior conviction during sentencing. In making this argument, Cordoba reasserts his claim that the prior guilty plea was invalid because no record reflects that he had an interpreter. For the reasons stated above, we reject this claim.

AFFIRMED.