

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-50204  
(Summary Calendar)

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JESUS DANIEL ANCHONDO-ACOSTA,  
JOSE MANUEL RAMIREZ-CARO,  
RAFAEL SOLIS-MELENDZ,

Defendants-Appellants.

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Appeal from the United States District Court  
for the Western District of Texas  
(EP-93-CR-208)

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(October 25, 1994)

Before DUHÉ, WIENER and STEWART, Circuit Judges.

PER CURIAM:\*

Defendant-Appellant Jose Manuel Ramirez-Caro (Ramirez) appeals his jury conviction of conspiracy to possess, and possessing,

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

marijuana with intent to distribute in violation of 21 U.S.C. §§ 846, 841(a)(1). Reduced to its essentials, Ramirez's challenge to his conviction rests on a claim of insufficient evidence grounded entirely in his contention that the government's key witness was not credible. Concluding that Ramirez's position before this court is so lacking in merit as to be frivolous, we dismiss his appeal.

## I

### FACTS AND PROCEEDINGS

Ramirez was charged with conspiring with three others to possess more than 100 kilograms of marijuana with intent to distribute (Count One), and with such possession (Count Two). Ramirez and two of his three co-defendants were tried together and each was convicted on both counts.<sup>1</sup> Ramirez received concurrent prison terms of 70 months and four years of supervised release.

Oscar Wong, a confidential informant (CI) for the Drug Enforcement Administration (DEA), was the chief government witness at the trial. He testified extensively, and undoubtedly his testimony was an indispensable element of the government's case: Without Wong's testimony being credited by the jury, it is arguable that Ramirez would not have been convicted.

## II

### ANALYSIS

Ramirez's sole contention on appeal is that the evidence

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<sup>1</sup>The appeals of the other two convicted co-defendants have been dismissed for lack of prosecution.

against him was "legally and factually insufficient to establish [his] guilt" of the two counts described above. In particular, his argument that the evidence was insufficient rests entirely on the contention that Wong's testimony was not credible. Ramirez attempts to discredit Wong's testimony by the fact that Wong was an "informer witness for pay," and by asserting that Wong's testimony that the agents videotaped a meeting among the conspirators "was not true."

"It is well established that a conspiracy conviction may be based upon the uncorroborated testimony of a co-conspirator, even when that testimony is from one who has made a plea bargain with the government, provided that the testimony is not incredible or otherwise insubstantial on its face." United States v. Gadison, 8 F.3d 186, 190 (5th Cir. 1993). In the instant case, Wong was not a co-conspirator, but he was a confidential informant or cooperating individual who was compensated with money and with leniency for his brother-in-law.

"The test for 'incredibility' of a witness is an extremely stringent one, because an appellate court does not weigh the credibility of witnesses." United States v. Casel, 995 F.2d 1299, 1304 (5th Cir. 1993), vacated in part, 114 S.Ct. 1289 (1994), cert. denied, 114 S.Ct. 472 (1993), 114 S.Ct. 1308 (1994). "[T]estimony generally should not be declared incredible as a matter of law unless it asserts facts that the witness physically could not have observed or events that could not have occurred under the laws of nature." United States v. Osum, 943 F.2d 1394,

1405 (5th Cir. 1991).

Our careful review of the record in this case in light of Ramirez's attacks on the veracity of Wong's testimony and on his credibility satisfies us that none of those contentions have merit. Moreover, the record contains substantial corroborating evidence that supports Wong's testimony and thus supports Ramirez's convictions by the jury. This record evidence includes, inter alia, the DEA agents' testimony of their surveillance, photographs, and a videotape of the meeting referred to above. Perhaps the most significant supporting evidence is the marijuana that the agents seized almost immediately after the conspirators had loaded it into Wong's vehicle at Ramirez's residence.

### III

#### CONCLUSION

We find that Ramirez's appeal is so wholly lacking in merit as to make it legally frivolous. Consequently, his appeal is DISMISSED.