

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-60285  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EDMUNDO LANDA-FLORES a/k/a  
Edmundo Hernandez a/k/a  
Ednumdo Landa-Flores,

Defendant-Appellant.

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Appeal from the United States District Court for the  
Southern District of Texas  
(CR 93 211 1)

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( March 20, 1995 )

Before GARWOOD, HIGGINBOTHAM and DAVIS, Circuit Judges.\*

GARWOOD, Circuit Judge:

Defendant-appellant Edmundo Landa-Flores (Landa) appeals his conviction on three counts of importing, conspiracy to import, and possession with intent to distribute marihuana. We affirm

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

### **Facts and Proceedings Below**

On the night of November 18, 1993, four United States Border Patrol agents were conducting "still watch" operations on the Rio Grande River near Laredo, Texas. Such operations involve the extended observation of a single, specific landing point and trail along the river. On this particular watch, agents Darren Matthews (Matthews) and Roel Luna (Luna) were positioned near the river landing site, while agents Larry Arthurs (Arthurs) and Rudy Gutierrez (Gutierrez) took up positions about a mile further up, along a trail leading from the landing northward. The particular landing site under surveillance was known to be one frequently used by narcotics traffickers; although illegal aliens often crossed the river at other landings, they did not use this particular landing itself as a crossing point.<sup>1</sup> From the time they set up positions around 6:00 p.m., the agents saw no one on the United States' side of the river, where they were stationed.

Around 7:30 p.m., Luna, using binoculars, spotted a person in a tree across the river on the Mexican side who appeared to be scouting the river. Immediately thereafter, a raft appeared on the Mexican side of the river opposite the landing site. Luna and Matthews saw several people loading bundles onto the raft and then get in the raft and cross to the United States' side. The raft dropped off the bundles and four individuals and then returned to

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<sup>1</sup> Landing sites are located along the river at approximately one-mile intervals. The agents testified that, although illegal aliens could swim across the river at any point, regardless of whether it had a demarcated landing, most chose to cross at a landing point.

the Mexican side, where it picked up more bundles and four or five more individuals and deposited them at the landing. Luna and Matthews radioed Arthurs and Gutierrez, telling them that a raft carrying several bundles had just landed.

About half an hour later, Arthurs and Gutierrez, wearing night vision goggles, saw two people walking along the trail. They appeared to be scouting the area and were not carrying anything. Arthurs and Gutierrez waited until the scouts passed by them. Walking some distance behind the scouts was a scattered group of eight to ten people, each carrying a bundle. As these individuals approached, Arthurs and Gutierrez stood up and identified themselves as Border Patrol agents. All the individuals who had been carrying bundles dropped the bundles and ran back down the trail towards the river; the two scouts ran in the opposite direction, further up the trail. After a brief chase, Arthurs decided not to pursue the individuals who were running back towards the river. He returned to secure the bundles and radioed Matthews and Luna to alert them that the individuals had run back down the trail.

Twenty minutes later, Matthews and Luna heard people running along the trail toward the landing point. Landa was the first person to come into the agents' view. They testified that he appeared to be leading the group, which consisted of five people, and was yelling back over his shoulder at them to "Hurry up!" in Spanish. Matthews knocked Landa to the ground, and Luna held him while Matthews apprehended two other members of the group. While Luna was guarding Landa, Landa kept insisting that he and the

others were just looking for work and asked one of the others, "Isn't it true that we're looking for work?" The agents arrested Landa and the other individuals.

When Landa was first processed he gave a false name; the agents later learned his real name, and Landa admitted to it. He told agents that he had crossed the river near the landing point at about 4:00 p.m. that afternoon, intending to look for work in the United States, but had gotten lost. The 10 bundles that had been dropped along the trail, each weighing between 30 and 35 pounds, were later found to contain a total of 364.75 pounds of marihuana.

Landa and the 2 individuals who were arrested with him were indicted on December 7, 1993 on 5 counts: conspiracy to import over 100 kilograms of marihuana into the United States, in violation of 21 U.S.C. §§ 952(a), 960(b), 963 (count one); conspiracy to possess with intent to distribute over 100 kilograms of marihuana, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B), 846 (count two); importation of over 100 kilograms of marihuana, in violation of 18 U.S.C. § 2 and 21 U.S.C. §§ 952(a), 960(b)(2) (count three); possession with intent to distribute over 100 kilograms of marihuana, in violation of 18 U.S.C. § 2 and 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B) (count four), and; illegal entry into the United States, in violation of 8 U.S.C. § 1325 (count five).

A jury trial was held on January 20, 1994. All four Border Patrol agents testified on behalf of the government. Landa's only witness was his wife. She testified that Landa had left their home in Neuvo Laredo at 9:00 or 10:00 a.m. on the morning of November 18, 1993, telling her that he was going to Laredo to look for work

so that the family could help pay for his father's medical bills. Landa had a sister who lived in Laredo, Texas, and his wife testified that Landa told her to send some of his clothes to his sister later; he took no clothes with him when he left the house that morning.

The jury found Landa guilty on counts one, three, four, and five.<sup>2</sup> The district court sentenced him to sixty-five months imprisonment on each of the three drug counts and six months imprisonment on the illegal entry count, with all sentences to run concurrently. The district court also imposed a term of four years supervised release on all counts, a fifty dollar special assessment on each of the drug counts, and a ten dollar special assessment on the illegal entry count. Landa timely appealed to this Court.

#### **Discussion**

In this appeal, Landa challenges only the sufficiency of the evidence to support his conviction on the three drug counts; he does not contest his conviction on the illegal entry count. "In deciding the sufficiency of the evidence, we determine whether, viewing the evidence and the inferences that may be drawn from it in the light most favorable to the verdict, a rational jury could have found the essential elements of the offenses beyond a reasonable doubt." *United States v. Pruneda-Gonzalez*, 953 F.2d 190, 193 (5th Cir.), *cert. denied*, 112 S.Ct. 2952 (1992). The evidence need not exclude every rational hypothesis except guilt as long as it satisfies the reasonable doubt standard. *Id.* Whether

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<sup>2</sup> Count two was dismissed on the government's motion after the close of the evidence.

the evidence is direct or circumstantial, the test is the same. *United States v. Gonzalez*, 719 F.2d 1516, 1521 (11th Cir. 1983), *cert. denied*, 104 S.Ct. 1312 (1984).

To establish a conspiracy to import marihuana into the United States, as charged in count one, "the government must prove that the [defendant] agreed to import narcotics into the United States and knowingly and voluntarily participated in the agreement." *United States v. Obregon*, 893 F.2d 1307, 1311 (11th Cir.), *cert. denied*, 110 S.Ct. 1833 (1990). An agreement may be proved by circumstantial evidence. *Id.* Knowledge can be shown "by demonstrating the conspirator knew of the essential purpose of the conspiracy," although he may not have known all the details. *Id.* To prove that Landa was guilty of the crime of importation of marihuana into the United States, as alleged in count three, the government must show "that the defendant knowingly played a role in bringing marijuana from a foreign country into the United States." *United States v. Diaz-Carreon*, 915 F.2d 951, 953 (5th Cir. 1990). The crime of possession of marihuana with intent to distribute, charged in count four, requires proof that the defendant knowingly possessed marihuana with intent to distribute it. *Id.* Again, circumstantial evidence can be sufficient to prove intent, *United States v. Mitchell*, 876 F.2d 1178, 1181 (5th Cir. 1989); more particularly, "[i]ntent to distribute a controlled substance may generally be inferred solely from possession of a large amount of the substance." *United States v. Prieto-Tejas*, 779 F.2d 1098, 1101 (5th Cir. 1986).

Landa contends that the government's evidence shows no more

than his mere presence in an area where narcotics were discovered, which is insufficient to support a conviction on either the conspiracy or the substantive drug offenses. See *United States v. Sacerio*, 952 F.2d 860, 863 (5th Cir. 1992). On the other hand, "[a] jury may find knowledgeable, voluntary participation from [the defendant's] presence when the presence is such that it would be unreasonable for anyone other than a knowledgeable participant to be present." *United States v. Cruz-Valdez*, 773 F.2d 1541, 1546 (11th Cir. 1985) (en banc), cert. denied, 106 S.Ct. 1272 (1986). Having reviewed the record, we find that the government's evidence, while chiefly circumstantial, was more than sufficient to support the jury's verdicts on all the drug counts.

The undisputed evidence showed that, on the night of November 18, 1993, a group of approximately ten individuals were smuggling bundles of marihuana from Mexico to the United States. This evidence was sufficient to support a verdict on each of the three drug charges against any individual who was part of that group. The only evidentiary issue, therefore, was whether Landa was one of the people involved in the smuggling operation. The agents' testimony demonstrated that the landing and trail under surveillance were used chiefly for drug smuggling, and not by aliens seeking to immigrate to the United States. There was no one else on the American side of the river until the raft and its passengers landed. About ten people got off the raft and were observed walking up the trail towards Arthurs and Gutierrez's position, carrying bundles; half an hour later, Arthurs and Gutierrez saw a group of approximately the same size, all carrying

bundles, one mile further up the same trail. When Arthurs and Gutierrez attempted to stop the group, everyone dropped their bundles and ran back down the trail toward the river. About twenty minutes later, Luna and Matthews saw five people running hard down the trail toward the landing site. Landa was in the lead of this group and was yelling to the others to hurry up. This evidence is more than sufficient to support the jury's conclusion that Landa was a knowing participant in the smuggling operation that night.

**Conclusion**

For these reasons, the judgment is

AFFIRMED.