

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 95-10827  
Summary Calendar

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United States of America,

Plaintiff-Appellee,

versus

Manuel Orozco Villa,

Defendant, Appellant.

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Appeal from the United States District Court  
for the  
Northern District of Texas  
(3:95-CR-084-D)

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September 20, 1996

Before JOHNSON, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:\*

Manuel Orozco Villa argues that the evidence presented at trial was insufficient to support his conviction for conspiracy to possess with intent to distribute cocaine. Because Villa failed to renew his motion for acquittal at the close of all of the evidence, Villa's claim can be reviewed only to determine whether it was a manifest miscarriage of justice to convict Villa.<sup>1</sup> See United

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\* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

<sup>1</sup> In United States v. Pennington, 20 F.3d 593, 597 n.1 (5th Cir. 1994), the Court questioned whether the miscarriage of justice

States v. Laury, 49 F.3d 145, 151 (5th Cir.), cert. denied, 116 S. Ct. 162 (1995); United States v. Vaquero, 997 F.2d 78, 82 (5th Cir.), cert. denied, 510 U.S. 1016 (1993). "Such a miscarriage of justice would exist only if the record is devoid of evidence pointing to guilt, or . . . because the evidence on a key element of the offense was so tenuous that a conviction would be shocking." United States v. Pierre, 958 F.2d 1304, 1310 (5th Cir.) (en banc) (internal quotations and citations omitted), cert. denied, 506 U.S. 898 (1992). After reviewing the record in this action, the Court finds that the evidence presented at trial was sufficient to support the conviction of Mr. Villa.<sup>2</sup>

The district court did not abuse its discretion in ruling that statements made by Villa's coconspirator were inadmissible. The statements were hearsay and the requirements of the hearsay exception were not met. See FED. R. EVID. 804(b)(3); United States v. Sanchez-Sotelo, 8 F.3d 202, 213 (5th Cir. 1993), cert. denied, 114 S. Ct. 1410 (1994).

The district court did not err in overruling Villa's  

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standard is distinguishable from the sufficiency of the evidence standard. "However, because only the court sitting en banc can reverse precedent," Villa's insufficient evidence claim must be reviewed under the miscarriage of justice standard. United States v. Laury, 49 F.3d 145, 151 n.15. (5th Cir.), cert. denied, 116 S. Ct. 162 (1995).

<sup>2</sup> It should be noted that even if Villa's conviction was reviewed under a sufficiency of the evidence standard, the evidence presented at trial would be sufficient to support Villa's conviction. See United States v. Sanchez, 961 F.2d 1169, 1173 (5th Cir.), cert. denied, 506 U.S. 918 (1992).

objection, based on Batson v. Kentucky, 476 U.S. 79 (1986), to the Government's peremptory challenges of two potential jurors. The Government articulated racially-neutral reasons for the exercise of its peremptory strikes and the district court did not abuse its discretion when it determined that Villa had failed to meet his burden of proving purposeful discrimination. See Puckett v. Elem, 115 S. Ct. 1769, 1770-71 (1995).

AFFIRMED.