

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

March 5, 2008

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No. 06-41685  
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Charles R. Fulbruge III  
Clerk

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

HUMBERTO GARCIA

Defendant - Appellant

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 5:05-CR-1659-1  
\_\_\_\_\_

Before REAVLEY, SMITH, and DENNIS, Circuit Judges.

PER CURIAM:\*

Defendant-appellant Humberto Garcia appeals his conviction for conspiracy to possess with intent to distribute in excess of one thousand kilograms of marijuana, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 846, and aiding and abetting possession with intent to distribute in excess of one hundred kilograms of marijuana, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B), and 18 U.S.C. § 2. Garcia contends that the district court's admission of tape recorded statements discussing his participation in the

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

marijuana conspiracy violated his rights under the Sixth Amendment's Confrontation Clause. For the following reasons, we affirm his conviction.

1. We review the district court's evidentiary rulings for abuse of discretion, *United States v. Cheramie*, 51 F.3d 538, 540 (5th Cir. 1995), and alleged violations of the Confrontation Clause *de novo*, *United States v. Delgado*, 401 F.3d 290, 299 (5th Cir. 2005).
2. Oscar Palacios's statements were properly admitted to provide context for the statements of other co-conspirators, as opposed to for the truth of matter asserted in the statements. And "because the Confrontation Clause does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted," there was also no Sixth Amendment violation. *United States v. Acosta*, 475 F.3d 677, 683 (5th Cir. 2007). Furthermore, because Palacios was available to both parties to testify, there is not a Confrontation Clause problem.

AFFIRMED.