

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-60413  
(Summary Calendar)

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FERNANDO ALVAREZ,

Defendant-Appellant.

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Appeal from the United States District Court  
For the Southern District of Texas  
(CR-B-93-132-11)

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(May 23, 1995)

Before DUHÉ, WIENER, and STEWART, Circuit Judges.

PER CURIAM:\*

In this direct criminal appeal of his conviction by a district court jury for conspiracy to possess with intent to distribute a quantity exceeding 100 kilos (868 pounds) of marijuana, in

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

violation of 21 U.S.C. §§ 846, 841(a)(1), and (b)(1)(B), Defendant-Appellant Fernando Alvarez asserts that the evidence against him was insufficient to support his conviction. Having reviewed the record and studied briefs of counsel, we are satisfied that the evidence adduced indeed was sufficient to support the jury's verdict of guilty, and therefore affirm.

## I

### FACTS AND PROCEEDINGS

The jury heard the following evidence at trial. FBI Agent Raul Carballido testified that he was involved in a two-year undercover investigation of Fidel Valencia, a major drug trafficker in the Brownsville, Texas, area, whose organization specialized in transporting marijuana; that Valencia sought the services of three confidential informants (C.I.s) to transport 1,500 pounds of marijuana to Boston (the Boston Load) and 864 pounds of marijuana to Chicago (the Illinois Load); that closed circuit television cameras installed in a house used by the confidential informants for meetings with the dealers captured Valencia on videotape; that Alvarez was Valencia's "stash house coordinator," i.e., the person in charge of storing the marijuana; and that even though there was no evidence to suggest that Alvarez was involved in the Boston Load, there was evidence indicating that he was responsible for storing the Illinois Load.

Carballido further testified that on February 18, 1993, he was engaged in surveillance near Fresno, Texas; that Valencia met there with the C.I.s, who were driving a "load van," to be used to

transport the Illinois Load; that Valencia and the agents proceeded to Alvarez's house; that Alvarez's pickup truck was parked next to the house; that the van left the house and pulled into a lot across the street near a mobile home and a shed; that an unidentified male got out of the van, opened the shed, and loaded bales from the shed into the van (later determined to be ten cellophane-wrapped bales of marijuana weighing 636 pounds); that after the van was loaded, which had taken two or three minutes, it was driven to Alvarez's house; that the next day Valencia, riding in a different car, and the van met at Alvarez's house; that Alvarez's pickup was parked next to the house; that sometime later the van left the house, but instead of going to the shed, turned onto the highway; and that the agents lost contact with the van, which proceeded to a predetermined meeting with the C.I.s, who found that the van contained even more marijuana bales, similar but not identical to those recovered the previous day.

Carballido also testified that on October 5, 1993, agents searched Alvarez's house, the shed, a mobile home (occupied by a tenant), and a tractor trailer (owned by Alvarez) on Alvarez's property; that three ounces of marijuana were found in Alvarez's house, 3.7 ounces of marijuana were found in Alvarez's shed, and six pounds of marijuana were found in Alvarez's trailer; and that in the shed agents also found "many wrappings similar to those used to bundle marijuana, and also a scale." Carballido further testified that agents seized several pieces of paper containing names and numbers from Alvarez's house, and that those papers

appeared to be drug ledgers. FBI Agent Cortez testified that he participated in the October 1993 search of Alvarez's house, and that he recovered the drug ledgers from Alvarez's bedroom.

One of the C.I.s testified that Valencia was the owner of the marijuana, and that Valencia had asked the C.I. and his brother to transport it to Chicago. The C.I. also testified that he was in the "load van" on February 18th; that the van followed Valencia to Alvarez's house; that Alvarez escorted him, Valencia, and Valencia's bodyguard, Jesus Villalobos, to a small room in the back of Alvarez's house, where "Alvarez was telling Valencia the package is going to be real good because they have like 60 pounds in each package"; and that someone took the van and loaded it with the marijuana. According to the C.I., when the van was returned to Alvarez's house, Alvarez gave the keys to the C.I. When the C.I. got in the van, he could see the marijuana in "big blocks." The C.I. further testified that he went back to Alvarez's house the next day with Valencia where Alvarez told him, "the marijuana was good, things like that"; that an unidentified man took the van and loaded it with marijuana; and that the C.I. went to a "trailer house" with the unidentified man and loaded "another two packages of marijuana." In the courtroom the C.I. identified Alvarez and the photographs taken of the marijuana.

Alvarez moved for judgment of acquittal at the close of the government's case-in-chief, and at the close of all of the evidence. After those motions were denied, the jury found Alvarez guilty of conspiracy to possess with intent to distribute in excess

of 100 kilos of marijuana. The district court sentenced Alvarez to a term of imprisonment of five years, a four-year term of supervised release, and a special assessment of \$50; and this appeal followed.

## II

### ANALYSIS

Alvarez asserts that the evidence was insufficient to convict him because the government "failed to establish that [he] knew of a conspiracy to possess with intent to distribute marijuana, and that [he] knowingly became part of such conspiracy." The scope of review of the sufficiency of the evidence after conviction by a jury is narrow. We must affirm if a reasonable trier of fact could have found that the evidence established guilt beyond a reasonable doubt. United States v. Mergerson, 4 F.3d 337, 341 (5th Cir. 1993), cert. denied, 114 S. Ct. 1310 (1994). We consider the evidence, and all reasonable inferences that can be drawn therefrom, in the light most favorable to the government. United States v. Pigrum, 992 F.2d 249, 253 (5th Cir.), cert. denied, 500 U.S. 936 (1991). In evaluating the sufficiency of the evidence, it

is not necessary that the evidence exclude every reasonable hypothesis of innocence or be wholly inconsistent with every conclusion except that of guilt, provided a reasonable trier of fact could find that the evidence establishes guilt beyond a reasonable doubt. A jury is free to choose among reasonable constructions of the evidence.

United States v. Bell, 678 F.2d 547, 549 (5th Cir. 1982) (en banc), aff'd, 462 U.S. 356 (1983) (footnote omitted).

To prove conspiracy to possess marijuana with intent to distribute, the government must prove that (1) an agreement existed among two or more persons to possess an illegal drug with the intent to distribute the drug; (2) the defendant knew of the conspiracy; and (3) the defendant voluntarily joined the conspiracy. United States v. Casilla, 20 F.3d 600, 603 (5th Cir.), cert. denied, 115 S. Ct. 240 (1994). "Each element" of a conspiracy "may be inferred from circumstantial evidence." Id. "Once the government has produced evidence of a conspiracy, only 'slight' evidence is needed to connect an individual to that conspiracy." Id. Knowledge of and voluntary participation in a conspiracy may be inferred from a collection of circumstances. United States v. Fierro, 38 F.2d 761, 768 (5th Cir. 1994), cert. denied, 115 S. Ct. 1388 (1995). As the Supreme Court recently made explicit, "in order to establish a violation of 21 U.S.C. § 846, the government need not prove the commission of any overt acts in furtherance of the conspiracy." United States v. Shabani, 115 S. Ct. 382, 385 (1994).

Alvarez argues that his only involvement with co-defendant Fidel Valencia was their joint business of raising and fighting roosters; that evidence showed that another man with a full beard and a mustache (who looked like Alvarez) was present at the surveillance location; and that not once did the government record Alvarez on the videos or tapes made of the other co-defendants. According to Alvarez, the government produced no evidence that there was any agreement between Alvarez and any other person to violate narcotics laws.

This simply does not square with the record. Construing this testimony in the light most favorable to the government, ample evidence supports the jury's conclusion that there was an agreement to possess marijuana with intent to distribute it, that Alvarez knew of the agreement, and that he voluntarily participated in the scheme.

AFFIRMED.