

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

UNITED STATES OF AMERICA

PLAINTIFF

v.

CRIMINAL ACTION NO. 3:98CR-67-S

LUIS SALGADO
WILFREDO JAMBU

DEFENDANTS

MEMORANDUM OPINION

This matter is before the Court on the Motions for Judgment of Acquittal and Motions for New Trial filed by the Defendants, Luis Salgado and Wilfredo Jambu. As the motions of Salgado and Jambu incorporate the issues raised in each of the motions, we will consider all four motions at the same time. For the reasons below, all four motions will be denied by separate order.

Salgado and Jambu, along with co-conspirators Francisco Portuondo-Gonzalez and Daniel Rosalez, were charged in a two count indictment alleging conspiracy to possess with intent to distribute cocaine, in violation of 21 U.S.C. § 846, and possession with intent to distribute cocaine, in violation of 21 U.S.C. § 841. At the conclusion of a four day trial, the jury returned a verdict of guilty with respect to each defendant on both counts of the indictment. Pursuant to Rules 29 and 33 of the Federal Rules of Criminal Procedure, Salgado and Jambu now move for a judgment of acquittal, or in the alternative, for a new trial.

DISCUSSION

Salgado and Jambu raise the following issues in their motions: the evidence was insufficient to support a conviction, hearsay statements by co-conspirators were improperly admitted, and an allegation of juror misconduct. None of these issues hold any merit.

When evaluating a claim of insufficient evidence, the Court must consider the evidence in the light most favorable to the United States, and the Court must sustain the conviction if “*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1970). An examination of the evidence presented in this case shows sufficient evidence to sustain the conviction.

The United States presented the testimony of Daniel Rosalez, who testified that Portuondo-Gonzalez's cocaine source came from Florida. Rosalez also testified that it was routine for Portuondo-Gonzalez and Edwardo Garcia to drive to Florida to purchase the cocaine and for Portuondo-Gonzalez to fly back while Garcia would transport the cocaine by car back to Louisville. However, in this case, while purchasing cocaine in Florida, Portuondo-Gonzalez was informed that his house had been burglarized, which prompted both Portuondo-Gonzalez and Garcia to fly back leaving Garcia's car in Florida. Rosalez further testified that he overheard a conversation between Portuondo-Gonzalez and Garcia in which reference was made to Salgado as "Wecho" and that he could be trusted to transport the cocaine from Florida to Kentucky. In corroboration of this testimony, Salgado did indeed arrive in Kentucky shortly after Portuondo-Gonzalez and Garcia came back from Florida. Salgado's statement, introduced at trial, claims that he drove from Florida to Louisville to visit his cousin. However, upon arriving in Louisville, the only place he visited was Portuondo-Gonzalez' residence. Salgado stated that although he drove all the way from Florida to Louisville in a car, he could not remember the make or model of the car nor from whom he got the car. The United States also introduced phone records of calls made from both Jambu's and Portuondo-Gonzalez' residence to Salgado's cell phone while Salgado was driving from Florida to Kentucky. Additionally, Rosalez testified that he heard Jambu tell Portuondo-Gonzalez that he had brought him his cocaine on the night of the arrest.

Other evidence was also introduced, including but not limited to, that a narcotic canine alerted to the trunk area of the Mustang found in the parking lot of Jambu's apartment complex

which was driven by Salgado from Florida to Louisville. Evidence at trial showed that Salgado and Portuondo-Gonzalez switched cars upon Salgado's arrival in Louisville. Salgado proceeded directly to Portuondo-Gonzalez' residence while Portuondo-Gonzalez attempted to offload the cocaine from the Mustang. Evidence also showed Portuondo-Gonzalez and Jambu returned together to Portuondo-Gonzalez' residence later in the afternoon.

Prior to the sale of cocaine which was scheduled to occur at 9:00 p.m. on May 1, 1998, Jambu took the women and children from Portuondo-Gonzalez' residence to his apartment, clearing the way for the sale to occur. Jambu carried Salgado's cell phone with him and after receiving a call from Portuondo-Gonzalez, he returned to Gonzalez' residence with five of the seven kilograms of cocaine offered for the sale by Portuondo-Gonzalez and Rosalez. After delivering the cocaine, Jambu left Salgado's cell phone at Portuondo-Gonzalez' residence and returned to his apartment to await the call of Portuondo-Gonzalez indicating the sale had occurred. However, when Salgado and Portuondo-Gonzalez failed to check in with Jambu, phone calls were made from Jambu's apartment to Salgado's cell phone.

The Defendants make much of the fact that part of Rosalez's testimony was contradicted by police surveillance videotape. Specifically, Rosalez testified that when Jambu came to deliver the cocaine, Portuondo-Gonzalez was standing in the kitchen. However, the police videotape shows that Portuondo-Gonzalez remained outside the house at that time. Although this is an apparent contradiction in Rosalez's testimony, it only goes to where exactly Portuondo-Gonzalez was at the time, not to the fact that Jambu delivered the five kilograms of cocaine. Much of the rest of Rosalez's testimony was corroborated by other evidence, and viewing all of the evidence in the light most favorable to the government, the evidence presented is sufficient such that a rational trier of fact could have found the defendants guilty beyond a reasonable doubt.

The Defendants also challenge hearsay testimony by Rosalez. The Court admitted this hearsay testimony at trial under the co-conspirator exception in Fed. R. Evid. 801(d)(2)(E).

Defendants assert the testimony in question concerned only “idle chatter” and was not in furtherance of the conspiracy as required by Rule 801(d)(2)(E). This Court disagrees. The statement that Salgado was driving the car to Kentucky with the cocaine advanced the conspiracy, as Portuondo-Gonzalez was assuring Garcia that Salgado could be trusted.

Defendants also allege juror misconduct in this case. According to Defendants’ assertion, one of the jurors in this case failed to disclose that her husband and son were law enforcement officers. However, Defendants admit that the specific question of whether any of the potential jurors had any relatives in law enforcement was not asked. Defendants were given ample opportunity by this Court to request any additional questions to be asked of the potential jurors during voir dire, and did not request that they be asked whether any of their relatives were members of law enforcement. Therefore, no failure to disclose occurred.

CONCLUSION

The evidence in this case was sufficient to sustain Defendants’ convictions. The hearsay evidence was properly admitted under the co-conspirator exception, and no evidence of juror misconduct has been presented to this Court. Therefore, Defendants’ Motions for New Trial and for Judgment of Acquittal will be denied.

IT IS SO ORDERED this _____ day of _____, 1999.

CHARLES R. SIMPSON III, CHIEF JUDGE
UNITED STATES DISTRICT COURT

cc: Counsel of Record

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ORDER

For the reasons set forth in the memorandum opinion entered this date and the court being otherwise sufficiently advised, **IT IS HEREBY ORDERED AND ADJUDGED** that the Motions of the Defendants for Judgment of Acquittal and for a New Trial are **DENIED**.

IT IS SO ORDERED this _____ day of _____, 1999.

CHARLES R. SIMPSON III, CHIEF JUDGE
UNITED STATES DISTRICT COURT

cc: Counsel of Record