

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :
 :
 vs. : CRIMINAL NO. 06-115-2
 :
 ROBERT CARPIO- SANCHEZ :

MEMORANDUM

Juan R. Sánchez, J.

April 19, 2007

Defendant Roberto Carpio-Sanchez¹ asks this Court to set aside a guilty verdict on one count of conspiracy to distribute more than 200 kilograms of cocaine and one count of possession with intent to distribute more than 200 kilograms of cocaine, and aiding and abetting. Carpio-Sanchez argues no reasonable jury could find he knew the substantive purpose of the illegal activity. Weighing the relevant factors, I find the government presented sufficient circumstantial evidence to fulfill the knowledge requirement for conspiracy and aiding and abetting.

FACTS

In December 2005, Defendant Roberto Carpio-Sanchez leased a warehouse in Allentown, Pennsylvania for \$2,400 per month. To secure the lease he wrote a personal check for \$4,800. Shortly thereafter, co-defendants Jose Antonio Aguirre-DeLeon and Santiago Salinas-Cortez agreed to fly from Mexico to Newark, New Jersey, to facilitate the shipment of drugs from Mexico to the Allentown, Pennsylvania area. Robert Salazar, an unindicted co-conspirator,

¹ The Court notes the correct spelling of Mr. Carpio-Sanchez's first name is Roberto.

made arrangements for Aguirre-DeLeon and Salinas-Cortez to meet a large tour bus containing the drugs in Allentown. The drugs would be hidden in a secret compartment under the bus. Salazar planed to drive the bus to Allentown, but asked Aguirre-DeLeon to deliver the drugs to the customer because Salazar would be tired from the drive and because his traveling companion did not know the true purpose of the delivery.² That month Defendant Isael Sanchez-Mercedes, Carpio-Sanchez's uncle, communicated to his drug dealer in New York he was expecting a shipment of drugs.³

On February 5, 2006, Aguirre-DeLeon and Salinas-Cortez flew to Newark, New Jersey where they met Sanchez-Mercedes who drove them to the Ramada Inn in Allentown. The morning of February 6, 2006, Sanchez-Mercedes and Carpio-Sanchez drove Aguirre-DeLeon and Salinas-Cortez along the route they would take to the warehouse in the bus the next day. All four men went to the warehouse, where they checked to see if the doorway was high enough for the bus to get inside. Realizing the bus was not expected until later in the evening, Aguirre-DeLeon told Carpio-Sanchez he was in the market for a used truck and wanted to visit a dealership. The four men then spent approximately twenty minutes looking at trucks before driving to the outskirts of New York for dinner. After dinner they went to the Super 8 motel in Allentown to meet the tour bus. Once they determined the tour bus had not arrived, the defendants returned to the Ramada Inn.

²Salazar would tell his companion the bus was being used to transport Mexican workers in the Allentown area who were returning to Mexico.

³ Isael Sanchez-Mercedes had regular drug dealings with this same dealer from December 2005 until February 7, 2006.

The next morning, Carpio-Sanchez drove Aguirre-DeLeon and Salinas-Cortez to meet the tour bus in his Ford Explorer. After meeting Salazar, Aguirre-DeLeon asked Salazar to move the tour bus closer to the warehouse because the Super 8 was too far away from the warehouse. Carpio-Sanchez then followed the tour bus to the Red Roof Inn, where Salazar handed Aguirre-DeLeon the keys. Although Carpio-Sanchez said they could not take the tour bus to the warehouse because Sanchez-Mercedes was fixing the electricity, he agreed to drive Aguirre-DeLeon to the warehouse to review the route.

When they realized the electricity in the warehouse was still not working, Carpio-Sanchez, Aguirre-DeLeon, and Salinas-Cortez met Sanchez-Mercedes at the Old Country Buffet. After eating lunch, Carpio-Sanchez drove Aguirre-DeLeon to purchase a screwdriver and gloves, tools he needed to unscrew the bolts of the secret compartment on the bus. Carpio-Sanchez then drove Aguirre-DeLeon and Salinas-Cortez to pick up the tour bus. On the way back to the warehouse, Aguirre-DeLeon followed Carpio-Sanchez in the bus.

When they arrived at the warehouse, Aguirre-DeLeon backed the bus into the warehouse where Sanchez-Mercedes had already parked a white van. After the bus was parked, the warehouse doors were closed and defendants began moving approximately 238 kilograms of cocaine into the white van. During this time, Carpio-Sanchez remained outside performing what appeared to be counter-surveillance. Officers observed Carpio-Sanchez driving slowly as if observing the cars around the warehouse and, at one point, driving backward and pulling up next to one of the surveillance officers' cars. The Defendant then began continuously circling the block. At approximately 3:15 p.m., Sanchez-Mercedes drove the white van out of the warehouse, spoke with Carpio-Sanchez, and then drove away. Carpio-Sanchez then backed his

Explorer into the warehouse, where Aguirre-DeLeon was under the bus attempting to reattach the secret compartment.

In the meantime, a state trooper pulled Sanchez-Mercedes over for a traffic violation and eventually asked for consent to search the van. Sanchez-Mercedes agreed, but asked if the search could take place at the state police barracks rather than on the street. At 4:00 p.m. Sanchez-Mercedes signed the consent to search form, and then followed the state trooper back to the police barracks. Once he realized he was going to be arrested, Sanchez-Mercedes called either Carpio-Sanchez or another family member to tell them he was in trouble and to ask for forgiveness. During the search of the white van, the officers discovered numerous personal effects belonging to Carpio-Sanchez in addition to the cocaine. The van was registered in Carpio-Sanchez's name.

Shortly after Sanchez-Mercedes signed the consent to search form, Carpio-Sanchez told Aguirre-DeLeon in a loud voice there was a problem and they needed to leave immediately. Aguirre-DeLeon was still working on the secret compartment. At 4:03 p.m., the Explorer lurched out of the warehouse and then stopped abruptly so Aguirre-DeLeon could run back in to get his personal belongings. When Aguirre-DeLeon returned to the Explorer, Carpio-Sanchez sped away before the door to the car was even closed. Not far from the warehouse, Carpio-Sanchez was stopped by law enforcement for speeding through a stop sign.

After his arrest, Carpio-Sanchez stated he understood he was helping two Mexican men who were unfamiliar with the area find cars to resell for a profit. He said he rented the warehouse to start a side business, and was not even sure his uncle had a key. At the time of his arrest, the Carpio-Sanchez was working at Pepsi where he made approximately \$40,000 per year.

At trial, Sanchez-Mercedes said Carpio-Sanchez had no knowledge of the drugs and that he instructed Aguirre-DeLeon not to discuss the drug transaction in front of Carpio-Sanchez. He also testified he asked Carpio-Sanchez to rent the warehouse because he was unable to get a lease due to bad credit. Sanchez-Mercedes said he needed the warehouse to store and rebuild equipment. At the time of the arrest, the warehouse had no lights and the boilers had no gas.

Instructing the jury on the substantive law, the Court was clear that “the government must prove beyond a reasonable doubt that [Carpio-Sanchez] conspired to possess or possessed with the intent to distribute some type of controlled substance.” (Trial Tr. 4.60, 4.67) The jury returned a verdict of guilty on one count of conspiracy to distribute more than 200 kilograms of cocaine and one count of possession with intent to distribute more than 200 kilograms of cocaine, and aiding and abetting.

DISCUSSION

On a motion for judgment of acquittal, the question for the Court “is whether, after viewing the evidence in the light most favorable to the prosecutor, 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 (1979). Indeed, “[o]nly when the record contains no evidence, regardless of how it is weighted, from which the jury could find guilt beyond a reasonable doubt, may an appellate court overturn the verdict.” *United States v. McNeill*, 887 F.2d 448, 450 (3d Cir. 1990). Therefore, “[c]ourts must be ever vigilant . . . not to usurp the role of the jury by weighing credibility and assigning weight to the evidence, or by substituting its judgment for that of the jury.” *United States v. Brodie*, 403 F.3d 123, 133 (3d Cir. 2005).

To prove conspiracy, the government must show there was “an agreement, either explicit or implicit, to commit an unlawful act, combined with intent to commit an unlawful act,

combined with intent to commit the underlying offense.” *Id.* at 134. The alleged conspirators must share a “unity of purpose,” the intent to achieve a common goal, and an agreement to work together towards that goal. *United States v. Cartwright*, 359 F.3d 281, 286 (3d Cir. 2004). This requires a conspirator have knowledge of the specific objective of the conspiracy. *Id.* at 286-87; *United States v. Idowu*, 157 F.3d 265, 266-67 (3d Cir. 1998); *United States v. Thomas*, 114 F.3d 403, 405 (3d Cir. 1997). While the elements of the offense must be proved beyond a reasonable doubt, the government may prove them entirely by circumstantial evidence. *Brodie*, 403 F.3d at 134. “To sustain a conspiracy conviction, the ‘contention that the evidence also permits a less sinister conclusion is immaterial . . . [T]he evidence need not be inconsistent with every conclusion save that of guilt.’” *Id.* (quoting *United States v. Smith*, 294 F.3d 473, 478 (3d Cir. 2003)).

Taking the evidence in the light most favorable to the Government, Carpio-Sanchez argues it is legally insufficient to prove he conspired to possess and distribute a controlled substance. He contends the record lacks evidence of any conversations discussing the transportation or sale of drugs in his presence. No drugs were ever found in the Ford Explorer he was driving or on his person. The record also lacks evidence he was ever inside the tour bus or the white van, where the drugs and money were hidden. Without evidence he knew the purpose of the conspiracy and intentionally facilitated its objective, Carpio-Sanchez argues the jury's verdict must be overturned. *See Cartwright*, 359 F.3d at 288 (overturning conspiracy conviction where the government showed the defendant helped facilitate an illicit transaction, but did not prove the defendant knew the specific nature of the transaction).

At trial, the government presented evidence Carpio-Sanchez's participation in the conspiracy began when he first rented the warehouse, more than a month before the transfer of

drugs took place. To secure the lease, Carpio-Sanchez wrote a personal check for \$4,800 for two months rent, more than his salary at Pepsi would allow. The warehouse was rented at virtually the same time Aguirre-DeLeon and Salinas-Cortez agreed to fly from Mexico to the Allentown area to meet the tour bus, and immediately before Sanchez-Mercedez told his dealer in New York he was expecting a shipment of drugs.

Carpio-Sanchez then spent two days escorting Salinas-Cortez and Aguirre-DeLeon around the Allentown area, including driving them along the route the tour bus would take to the warehouse. While the tour bus was in the warehouse, Caripio-Sanchez's actions suggested he was acting as a look out for his uncle. After Sanchez-Mercedes drove off in the van containing the cocaine, Carpio-Sanchez spent 45 minutes in the warehouse with Aguirre-DeLeon and Salinas-Cortez while Aguirre-DeLeon reassembled the secret compartment under the bus. Within moments of Sanchez-Mercedes placing a phone call to Carpio-Sanchez or a family member apologizing for his impending arrest, Carpio-Sanchez started yelling that there was a problem and fled the warehouse with the two co-conspirators.

Carpio-Sanchez's relies on the Third Circuit's decisions in *Cartwright*, *Idowu*, and *Thomas* to support his argument. These cases are distinguishable from the case at hand. In those cases, each "defendant participated in a single isolated incident related to the conspiracy, and had no prior relationship to the co-conspirators." *United States v. Aldea*, 174 Fed. Appx. 52, 89 (3d Cir. 2006); accord *United States v. Murray*, 196 Fed. Appx. 145, 147 (3d Cir. 2006). The Third Circuit overturned those convictions because the defendants' mere presence during the illegal transactions could not support an inference the defendants knew the objectives of the underlying conspiracies. See *Cartwright*, 359 F.3d at 288 (reversing a conviction where an armed defendant functioned as a lookout for conspirators and had a messaging device similar to

the others arrested); *Idowu* 157 F.3d at 268 (reversing a conviction where the defendant carried a bag with money during an undercover sale of drugs to a co-defendant); *Thomas*, 114 F.3d at 406 (reversing a conviction where the defendant went to a hotel to pick up a bag that contained cocaine; there was no evidence the defendant had any prior relationship with the alleged co-conspirators).

In *Aldea*, Marilyn Rojas argued there was insufficient evidence for the jury to find she was knowingly involved in the drug conspiracy. 174 Fed. Appx. at 59. There, the Third Circuit found Rojas' ongoing relationship with at least four members of the conspiracy and multiple instances of participation in the conspiracy provided enough evidence for a reasonable jury to find Rojas knew the purpose of the conspiracy was to distribute drugs. *Id.* More specifically, evidence was presented that Rojas traveled to New York with her co-defendants to receive a delivery of 20 kilograms of cocaine at the direction of Mario Rojas, her sibling and co-defendant. *Id.* At one point, Rojas falsely posed as a co-defendant's girlfriend to rent a house other members of the conspiracy later used to store and distribute cocaine. *Id.* At one point, Rojas went with Naydia and Mario Rojas, her co-defendants and siblings, to purchase women's workout clothes which her mother later modified to conceal money. *Id.*

In the present case, the defendant performed multiple acts in furtherance of the conspiracy over a period of time. Carpio-Sanchez's close familial relationship with Sanchez-Mercedes and his ongoing interactions with Aguirre-DeLeon and Salinas-Cortes, suggest he knew the underlying purpose of the conspiracy was to distribute drugs.⁴ Taking all of the

⁴ In *Brodie*, the Court held a rational jury could legitimately consider the familial relationship between the defendants in drawing inferences about the defendant's knowledge and intent. 403 F.3d at 151.

evidence in the light most favorable to the government, I find there was sufficient evidence for a reasonable jury to conclude Carpio-Sanchez was aware the object of the conspiracy was to distribute a controlled substance.

Carpio-Sanchez also argues the evidence was insufficient to prove the substantive charge and its aiding and abetting component. “A conviction on such a charge ‘requires that another committed the substantive offense and that the one charged with aiding and abetting knew of the substantive-offense commission and acted with the intent to facilitate it.’” *Cartwright*, 359 F.3d at 287 (quoting *United States v. Salmon*, 944 F.2d 1106, 1113 (3d Cir. 1991)). Because the knowledge requirement in aiding and abetting cases is the same as for conspiracy, *id.*, I find there was sufficient evidence for a reasonable jury to find Carpio-Sanchez guilty of the aiding and abetting charge.

An appropriate order follows.

