

No.

In the
Supreme Court of the United States

GIDRANO VASQUEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the First Circuit

PETITION FOR A WRIT OF CERTIORARI

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November 5, 2003

QUESTIONS PRESENTED

Conspiracy cases that lack direct evidence of a criminal agreement often contain plenty of evidence from which to infer a conspiratorial intent. Here the only evidence from which the jury inferred intent was the observation of Mr. Vasquez conducting a drug transaction. The question for the Court is:

How much corroborating evidence is necessary to infer conspiratorial intent?

PARTIES TO THE PROCEEDING

Gidrano Vasquez is a resident of the State of Rhode Island. He is now incarcerated.

As this is a criminal proceeding, the United States of America was the prosecuting party.

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Gidrano Vasquez respectfully petitions this Court for a writ of certiorari to review the decision of the United States Court of Appeals for the First Circuit in this case.

REPORT OF OPINION

The First Circuit decided this case pursuant to First Circuit Rule 27(c), providing for summary disposition. The Court's order is reprinted in the appendix hereto.

JURISDICTION

The judgment of the court of appeals was entered on August 8, 2003. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISION

21 U.S.C. § 846. - Attempt and conspiracy

Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

STATEMENT OF THE CASE

The defendant, Gidrano Vasquez, was a drug carrier, a “mule,” in a single cocaine transaction arranged, negotiated, and organized by one Juan Castillo. Initially, the government had no interest in Mr. Vasquez – he just happened to be carrying for Mr. Castillo the moment government agents were present.

According to the agents, an informant entered the Jasm Hair Salon in Providence, Rhode Island, on an assignment to buy drugs from “Raphy.” Raphy placed a phone call, and shortly Mr. Castillo arrived.

Mr. Castillo and the informant – who was wearing a transmitter monitored by the government – stepped out onto the sidewalk, and negotiated a deal, agreeing on price and quantity. Mr. Castillo told the informant that Castillo would go get the drugs, and that the informant should wait at the Jasm for Castillo to come back.

Mr. Castillo got into his car and left with Mr. Vasquez, the defendant here, in the passenger seat. Several hours later, Mr. Castillo returned to the Jasm with Mr. Vasquez still a passenger, and parked behind the informant’s car. During the hiatus, Mr. Castillo spoke with the informant several times by cell phone.

Mr. Castillo got out of his car and returned to the sidewalk in front of the Jasm. At the same time, Mr. Vasquez got out, walked to the informant’s car, and entered. Mr. Vasquez handed the informant a plastic bag containing cocaine, for which he received a sum of marked cash. The transaction lasted about half a minute. The informant and Mr. Vasquez then got out, went to the Jasm, and met Mr. Castillo and Raphy on the sidewalk. There the informant gave Raphy \$100 for the introduction.

A few minutes later, Mr. Castillo got back into his car, again

with Mr. Vasquez in the passenger seat, and drove off. The police followed, shortly stopping Mr. Castillo on the pretext of a motor vehicle violation. They allowed Mr. Vasquez to take care of the car, which he drove back to the Jasm. Upon searching Mr. Castillo following his motor vehicle arrest, the police found the marked bills the informant had given Mr. Vasquez.

The government later arrested Mr. Vasquez on a warrant. After a one-day trial, a jury found Mr. Vasquez guilty of selling cocaine and conspiracy to sell cocaine. He was sentenced to one month greater than the minimum-mandatory 10 years.

REASONS FOR GRANTING THIS PETITION

To be found guilty of conspiracy, the Government must prove the defendant entered into an agreement to do an illegal act. *Iannelli v. United States*, 420 U.S. 770, 777 (1975). The alleged conspirator must not only be aware of the “essential nature of the plan,” *Blumenthal v. United States*, 332 U.S. 539, 557 (1947), but must also share in the criminal intent of the conspiracy. *Nye & Nissen v. United States*, 336 U.S. 613 (1949).

Of course a jury may infer intent from considering the overt acts of a defendant. *Iannelli*, 420 U.S. at 778 n. 10. But there are insufficient facts here to infer a conspiratorial criminal intent beyond a reasonable doubt.

Whether Mr. Vasquez had a conspiratorial intent requires an inquiry into the nature of the human relationship between he and Mr. Castillo. The mere observations of the transaction by government agents and its informant, however, cannot answer the question. The jury had no evidence regarding what occurred inside Mr. Castillo’s car, what words or gestures or meanings were conveyed to Mr. Vasquez by Mr. Castillo, or what arrangement the two men had regarding the sale.

Conspiracy cases that lack direct evidence of a criminal agreement often contain plenty of evidence from which to infer a conspiratorial intent. *See e.g., United States v. Ortega*, 203 F.3d 675 (9th Cir. 2000) (single sale coupled with evidence defendant stockpiled drugs for distribution sufficient evidence of conspiracy); *United States v. Stewart*, 104 F.3d 1377 (D.C. Cir. 1997), *cert. denied*, 117 S.Ct. 1856 (single sale coupled with promise of further supply sufficient evidence of conspiracy).

But when faced with facts providing no corroborating evidence of the defendants’ intent, courts have been more

reluctant to infer it. *See e.g., United States v. Mercer*, 165 F.3d 1331 (11th Cir. 1999) (although informants pinpointed defendant as drug dealer, and defendant involved in three separate sales, informants' knowledge of defendant's activities not sufficient to infer conspiratorial intent); *United States v. Anderson*, 981 F.2d 1560 (10th Cir. 1992) (single delivery of drugs insufficient to infer conspiratorial intent).

This Court should review this case to provide District Courts guidance regarding how much corroborating evidence is necessary to infer conspiratorial intent in drug cases. 21 U.S.C. § 846.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully Submitted,

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November 6, 2003

APPENDIX

**United States Court of Appeals
For the First Circuit**

No. 02-1833

UNITED STATES OF AMERICA,
Appellee,

v.

GIDRANO VASQUEZ,
Defendant, Appellant.

Before
Torruella, Selya, and Lipez, Circuit Judges.

Entered: August 8, 2003

After a thorough review of the record and of the parties' submissions, we affirm. Defendant argues that there was insufficient evidence of his intent to conspire because 1) he only acted as a "mule" or courier, and 2) he may have been acting under duress. Vasquez' claim that he was "just a mule" does nothing but confirm that he is guilty of conspiracy. See United States v. Nelson Rodriguez, 319 F.3d 12, 27-28 (1st Cir. 2003) (elements of conspiracy are existence of conspiracy, defendant's knowledge of conspiracy, and defendant's voluntary participation in the conspiracy). As for the claim of duress, we find no support in the record for the suggestion that Vasquez may have been under duress when he

conspired with his co-defendant to distribute crack cocaine. Vasquez had the burden of production on this issue. See United States v. Amparo, 961 F.2d 288, 291 (1st Cir. 1992). His effort to carry it was meager. Indeed, when taken in the light most favorable to the verdict, it seems clear that “a rational jury could have found the defendant guilty beyond a reasonable doubt.” United States v. Reynoso, ___ F.3d ___, No. 02-1274, 2003 WL 21665026 at *2 (1st Cir. July 17, 2003) (citing United States v. Morillo, 158 F.3d 18, 22 (1st Cir. 1998)).

Affirmed. See 1st Cir. R. 27(c).