

September 14, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-51097
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

RUBEN MEDINA

Defendant - Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. P-03-CR-05-ALL

Before KING, Chief Judge, and BARKSDALE and DeMOSS, Circuit
Judges.

PER CURIAM:*

Ruben Medina was convicted of conspiracy to possess with
intent to distribute, and possession with intent to distribute,
50 kilograms or more of marijuana, in violation of 21 U.S.C.
§§ 841(a)(1) and 846. He argues that the district court
committed reversible error when it refused his request for a jury
instruction on withdrawal from the conspiracy.

Viewing the evidence in the light most favorable to Medina,
we conclude that there was a sufficient evidentiary foundation

* 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this opinion should not be published and is not precedent except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.

for a jury instruction on withdrawal. United States v. Dixon, 185 F.3d 393, 402 (5th Cir. 1999). Specifically, Medina's testimony and the testimony of Marcos Medina constituted sufficient evidence that Medina committed affirmative acts inconsistent with the object of the conspiracy and that he communicated those acts in a manner reasonably calculated to reach the conspirators. United States v. Puig-Infante, 19 F.3d 929, 945 (5th Cir. 1994).

Because the record sufficiently supports the defensive theory of withdrawal from the conspiracy to entitle Medina to a jury instruction on withdrawal, we VACATE his conspiracy conviction and REMAND this matter for further proceedings. United States v. John, 309 F.3d 298, 304 (5th Cir. 2002).

VACATED and REMANDED.