

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-40531
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ARTURO CRUZ,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. M-95-CR-127-3
- - - - -

August 14, 1998

Before WISDOM, DUHÉ, and DeMOSS, Circuit Judges

PER CURIAM:*

Arturo Cruz appeals his jury conviction of conspiracy to possess with intent to distribute marijuana. He argues that the district court's jury instruction did not adequately advise the jury of the participation element of the offense.

Cruz did not object to the jury charge in the district court. We review this issue for plain error. See United States v. Mitchell, 31 F.3d 271, 276 (5th Cir. 1994). The district court instructed the jury that conspiracy consisted of these elements: 1) an agreement between two parties to commit an

* Under 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except in the limited circumstances set forth in 5TH CIR. R. 47.5.4.

illegal act; 2) knowledge of the unlawful nature of the agreement; and 3) a voluntary joining of the agreement with the intent to further its unlawful purpose. This instruction was sufficient to advise the jury of the participation element of the offense. The district court did not commit plain error. See Mitchell, 31 F.3d at 276; see also United States v. Calverley, 37 F.3d 160, 162-64 (5th Cir. 1994)(en banc)(citing United States v. Olano, 507 U.S. 725, 730-35 (1993)).

The judgment of the district court is AFFIRMED.