

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-41532
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROBERT MARTIN,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:98-CR-12-2

January 10, 2000

Before JONES, DUHÉ, and STEWART, Circuit Judges.

PER CURIAM:¹

Robert Martin appeals his convictions for cocaine conspiracy and for possession with the intent to distribute cocaine. He argues that the evidence was insufficient to convict him of either count. Because Martin presented no evidence after moving for judgment of acquittal although his codefendant, Willie Ray Mayfield, testified on his own behalf, this court is limited to a review of the Government's case-in-chief in determining the issues on appeal. See United States v. Casilla, 20 F.3d 600, 605-06 (5th

¹ 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

Cir. 1994); United States v. Elam, 678 F.2d 1234, 1247-48 (5th Cir. 1982).

From our review of this evidence, we conclude that a reasonable juror would find beyond a reasonable doubt that Martin conspired to possess with the intent to distribute cocaine. See United States v. Ramirez, 963 F.2d 693, 702 (5th Cir. 1992). In light of the Pinkerton² instruction and in light of the sufficient evidence on the conspiracy count, the evidence is sufficient on the substantive possession count of conviction. See United States v. Sacerio, 952 F.2d 860, 866 (5th Cir. 1992).

AFFIRMED.

² Pinkerton v. United States, 328 U.S. 640 (1946).