

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

PEDRO ZAMORA,

Defendant.  
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OPINION AND ORDER

05-CR-0039-C-02

Defendant Pedro Zamora was convicted after trial of one count of conspiring to possess and distribute cocaine and crack cocaine and one count of maintaining a place for manufacturing and distributing cocaine base. He has moved for a new trial pursuant to Fed. R. Crim. P. 33 and for judgment of acquittal under Rule 29. In support of his motion for a new trial, defendant contends that the court acted improperly in limiting his cross examination of government witnesses Spring Lasieur Acosta and Candace Radermacher in violation of his constitutional rights under the Sixth Amendment. In support of his motion for a judgment of acquittal, he contends that the evidence adduced at trial does not support the jury's finding that he was guilty of maintaining a place for manufacturing and distributing drugs.

I conclude that defendant cannot prevail on either motion. His opportunity for cross examination was not restricted improperly and the evidence was sufficient to support the jury's finding that he was guilty of maintaining a drug house.

1. Motion for new trial

As defendant points out, the government's witnesses against him were primarily alleged co-conspirators who had something to gain in return for their testimony. Spring Acosta and Candace Radermacher were two of the witnesses who testified about defendant's drug distributing activities for the Latin Kings. Both had been convicted and sentenced for their acts in furtherance of the conspiracy. On cross examination, defendant's counsel wanted to ask both about allegedly inconsistent statements they had made when questioned by law enforcement officers. Counsel wanted to ask Acosta about the inconsistent responses she had given at three different times when questioned about an arson that had taken place at the Crone residence. The government objected and I sustained the objection.

The fire at the Crone residence was not relevant to the charges against defendant. Neither defendant nor Acosta was implicated in the fire. Despite the lack of relevancy, defendant's counsel wanted to put into the record evidence that when first questioned about the fire, Acosta told law enforcement officers that Donald Fairbanks had told her that a Latin King "shorty" had set the fire; ten days later, she told law enforcement that Donald

Fairbanks had told her that John Basswood had set the fire. (At this point, there was no contradiction in Acosta's statements; John Basswood was a Latin King "shorty," that is, an underage teen who associated with the gang.) However, about ten months after giving the information about the shorty, Acosta told law enforcement that she knew within four days of the fire that Whitney Miller had set the fire at Candace Radermacher's direction.

When it came to cross examining Candace Radermacher, defendant's counsel wanted to bring out the fact that when Radermacher was first questioned about the fire, she told law enforcement that she did not know anything about it. When questioned again, she admitted that Miller had told her she had set the fire, but at this time, she denied having directed Miller to do it. Finally, in January 2005, she said that Miller had suggested that the two of them set the Crone residence on fire and she added that she had not thought that Miller would actually go through with the plan. The government objected to questioning that would bring out these varying statements about Miller and about Radermacher's own involvement in the Crone fire and I sustained the objection.

Although defendant's counsel was barred from going into these particular inconsistencies in Acosta's and Radermacher's previous statements, she (and the counsel representing defendant's three co-conspirators) had considerable latitude to explore the inconsistencies between their previous statements and their trial testimony and to establish their motives for testifying favorably to the government. For example, defendant's counsel

questioned both women at length about their plea agreements with the government and their expectation of sentence reductions in return for their testimony at trial. She questioned Acosta about having given a false name when involved in a traffic stop and about omitting any mention of defendant when she told the grand jury the names of persons who gave drugs to the “shorties” to sell, although she testified at trial that defendant was one of those persons. In addition, she brought out Acosta’s anger at defendant for not looking after her when her husband was sent to prison and for not paying her any rent while he and his co-conspirators were staying at her house and she was making numerous trips to pick up drugs.

Defendant’s counsel questioned Radermacher vigorously about the inconsistencies between her trial testimony and earlier statements to law enforcement, such as testifying at trial that defendant was one of the people who lined up the “nation’s dope” and went out to acquire it, although she had never mentioned him to law enforcement in either connection before trial. Having had those opportunities to impeach the credibility of both witnesses, defendant cannot prevail on his claim that he was denied his Sixth Amendment right to a fair trial. It was not an abridgement of defendant’s rights to cut off his counsel’s questioning of inconsistencies in statements made by these two witnesses before trial on a matter that was not at issue in the trial. It was not relevant to know who started the fire at the Crone residence and therefore not relevant to know which version of the stories given to law enforcement was correct.

## 2. Motion for judgment of acquittal

To prevail on a motion for judgment of acquittal, a convicted defendant must show that no reasonable jury could have found him guilty. In deciding such a motion, a court must view the evidence in the light most favorable to the government and may not substitute its own credibility determinations for those of the jury.

In this case, the jury found defendant guilty of maintaining a drug house. He contends that no reasonable jury could have come to that conclusion, given the paucity of evidence on the point. In fact, the evidence was sufficient to support the jury's verdict. Both Yvonne Dennis and Sasha Dennis testified that defendant spent overnights at Yvonne Dennis's residence (the alleged drug house) during the period from April 2002 to October 2002, that he sold crack from the house to customers, that he directed Sasha Dennis to sell crack for him when he was not available and that he paid no rent for his use of the house but provided crack to both Yvonne and Sasha. Candace Radermacher testified that defendant cooked and packaged crack at the Dennis house, along with her husband and others. Rebecca Corbine testified that defendant was selling crack from the Dennis residence and that she delivered cocaine and crack to him there.

Defendant argues that the government must prove that he exercised some dominion and control over the premises before "maintenance" is shown, but the law in this circuit does not support his argument. In United States v. Gardner, 238 F.3d 878 (7th Cir. 2001), the

defendant was found guilty of conspiracy to maintain a drug house when he visited a mere seven or eight times but sold crack out of the house on five of those occasions. The court found that he knew of the conspiracy because he actually sold crack out of the house and asked one of the other conspirators for permission to do so. He had a mutual interest with the other conspirators in the success of the house and, by selling crack there, he helped insure that crack was available there when customers wanted it. Id. at 880.

Defendant was on the Dennis premises many times. He cooked crack, packaged it and sold it from the premises on a number of different occasions. He directed the activities of Sasha Dennis. He obtained powder and crack cocaine and delivered it to the Dennis residence. His actions demonstrate a mutual interest with the Radermachers and others who used the Dennis residence and his obtaining drugs for the house and selling drugs from the house helped insure that crack was available when customers wanted it. He was present on the premises on many occasions over an extended period of time and appears to have made the house his drug headquarters when he was on the Lac Courte Oreilles reservation.

Even if the jury erred in finding defendant guilty of maintaining a drug house by focusing simply on his individual actions, it had sufficient evidence to find him guilty of aiding and abetting the crack selling of Candace and John Radermacher and Donald Fairbanks, through the delivery of drugs, the cooking and packaging of crack and his own

sales from the house, which helped keep the Dennis house a reliable destination for crack purchases.

ORDER

IT IS ORDERED that defendant Pedro Zamora's motions for a new trial and for a judgment of acquittal are DENIED.

Entered this 6th day of April, 2006.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge