

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

United States v. Geovani Hernandez

No. 19-40655, United States Court of Appeals for the Fifth Circuit (October 9, 2020)

SUMMARY

Geovani Hernandez, a police sergeant, was convicted of attempting to aid and abet possession with intent to distribute cocaine after acting as a scout for drug loads. The Fifth Circuit held that the evidence was sufficient under plain error review, as his actions—meeting with a confidential informant, scouting in his patrol car, and accepting payment—constituted a substantial step toward the crime. The court clarified that aiding and abetting does not require proof of actual or constructive possession of the controlled substance. The court declined to consider Hernandez's ineffective assistance of counsel claim on direct appeal, preserving it for collateral review.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Per Curiam; Davis; Stewart; Dennis
JURISDICTION	Federal
DECIDED	October 9, 2020
DOCKET	19-40655
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from conviction for two counts of attempting to aid or abet possession with intent to distribute cocaine.
STANDARD OF REVIEW	For unpreserved sufficiency-of-the-evidence claims, plain error; reversal only for manifest miscarriage of justice.
PRECEDENTIAL VALUE	Unpublished
PARTIES	Geovani Hernandez v. United States of America

TOPICS

- criminal procedure
- appellate procedure
- standard of review
- preservation of error
- evidence

PRACTICE AREAS

- Criminal Law

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support the jury's verdict of guilty for attempting to aid or abet possession with intent to distribute cocaine.
2. Whether trial counsel rendered ineffective assistance by failing to renew the motion for judgment of acquittal.

HOLDINGS

1. The evidence was sufficient; there was no manifest miscarriage of justice. The Government was not required to prove actual or constructive possession of the cocaine.
2. No, the Government is not required to prove actual or constructive possession. Aiding and abetting requires association and participation calculated to bring about the venture's success.
3. The court declines to consider the ineffective assistance claim on direct appeal, without prejudice to collateral review.

KEY QUOTATIONS

"We will reverse only if there is a manifest miscarriage of justice. An unpreserved insufficiency claim must be rejected 'unless the record is devoid of evidence pointing to guilt or if the evidence is so tenuous that a conviction is shocking.'" (at 2)

"Aiding and abetting merely requires that the defendant's association and participation in a venture were calculated to bring about the venture's success." (at 3)

"The Government was not required to prove that Hernandez possessed or attempted to possess the cocaine." (at 3)

FACTUAL BACKGROUND

Hernandez, a sergeant with the City of Progreso Police Department, made an agreement with a confidential informant to act as a scout for vehicles carrying drugs moving through Progreso in exchange for money. He performed scout duties on July 15 and July 31, 2017, using his own vehicle on the first date and his marked patrol car on the second. He drove the route used by undercover vehicles carrying cocaine, while the informant gave the all-clear to the drivers. He accepted payment for his services.

PROCEDURAL HISTORY

Hernandez was convicted by a jury in the United States District Court for the Southern District of Texas and sentenced to 240 months imprisonment and five years supervised release. He appealed.

DISPOSITION

affirmed

CASES CITED

- United States v. Campbell, 775 F.3d 664, 668 (5th Cir. 2014)
- United States v. Delgado, 672 F.3d 320, 331 (5th Cir. 2012) (en banc)
- United States v. Solis, 299 F.3d 420, 446 (5th Cir. 2002)
- United States v. Ramirez-Velasquez, 322 F.3d 868, 880 (5th Cir. 2003)
- United States v. Partida, 385 F.3d 546, 560 (5th Cir. 2004)
- United States v. Cartlidge, 808 F.2d 1064, 1068-69 (5th Cir. 1987)
- United States v. Karl Scott, United States v. Scott, 892 F.3d 791, 799 (5th Cir. 2018)
- United States v. Staggers, 961 F.3d 745, 756 (5th Cir. 2020)
- United States v. Isgar, 739 F.3d 829, 841 (5th Cir. 2014)