

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2019

ROGELIO VILLARREAL-ESTEBIS,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

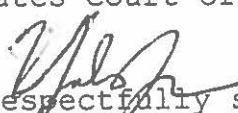
PETITION FOR WRIT OF CERTIORARI

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Court of Appeals for the Fifth Circuit

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Petitioner, **ROGELIO VILLARREAL-ESTEBIS**, pursuant to Rule 39 and 18 U.S.C. § 3006A(d)(6), asks leave to file the accompanying Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit without prepayment of costs and to proceed in forma pauperis. Petitioner was represented by counsel appointed under the Criminal Justice Act, 18 U.S.C. § 3006A (b) and (c), on appeal to the United States Court of Appeals for the Fifth Circuit.

Date:
January 23, 2020.

Respectfully submitted,

/s/ Yolanda Jarmon
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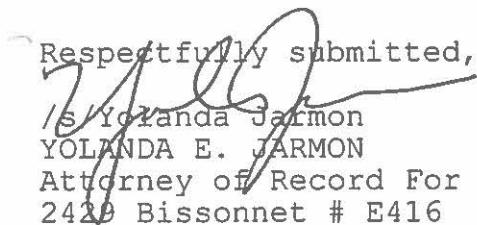
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QUESTIONS PRESENTED

I. On Appeal ROGELIO VILLARREAL-ESTEBIS argued that his rights under the Sixth Amendment to present a complete defense were violated when the district court refused to admit a docket sheet and indictment showing a previous owner of the vehicle at issue, a Dodge Journey, had entered a plea of guilty to a drug trafficking crime two months after Estebis was stopped and a controlled substance was found in a hidden compartment of the same vehicle. The excluded evidence was relevant to the crux of Villarreal-Estebis's trial defense. His defense was that he had no previous knowledge before the "stop" that there were drugs housed in a hidden compartment of the Dodge Journey. Villarreal Estebis's defense was that the drugs must have been placed in that hidden compartment before he purchased the vehicle and therefore he would not have known of the drugs in the vehicle when he was eventually stopped and searched.

The Fifth Circuit held that the district court acted within its Rule 403 discretion in excluding the evidence relating to the criminal conviction of the third party; the probative value of the evidence was outweighed by the potential for jury confusion, given the timing of the incidents and the intervening ownership of the vehicle; thus there was no constitutional error, plain or otherwise.

In light of the foregoing, the question presented is as follows:

Whether the Fifth Circuit's decision to affirm the trial court's refusal to admit the evidence was contrary to, or involved an unreasonable application of, clearly established federal law and infringed on Villarreal Estebis's rights to present a complete defense under the Sixth Amendment.

PARTIES TO THE PROCEEDINGS

All parties to the proceedings are named in the caption of the case before the Court.

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This Court should grant certiorari to determine whether ROGELIO VILLARREAL-ESTEBIS'S rights under the Sixth Amendment to present a complete defense were violated when the district court refused to admit a docket sheet and indictment showing a previous owner of the vehicle at issue had entered a plea of guilty to a drug trafficking crime two months after Estebis was stopped. The excluded evidence was relevant to the crux of Villarreal-Estebis's trial defense. His defense was that he had no previous knowledge before the "stop" that there were drugs housed in a hidden compartment of the Dodge Journey at issue. Villarreal Estebis's defense was that the drugs must have been placed in that hidden compartment before he purchased the vehicle and therefore he would not have known of the drugs in the vehicle when he was eventually stopped and searched. Because the proper application of the Sixth Amendment and Federal Rule of Evidence 403 are of exceptional importance to the administration of justice in federal criminal cases, this Court should decide this question and, and upon review, should reverse

the judgment of the Fifth Circuit.

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Appendix and Attachments

**Appendix A: Original Judgment and Sentence of the District Court,
United States v. Rogelio Villarreal-Estebis, Cr. No. 7:18:CR:00316-
1 (S.D. Tex. November 9, 2018).**

**Appendix B: Opinion of the Court of Appeals in United States v.
Rogelio Villarreal-Estebis, Nos. 18-41038, 782 Fed. Appx. 329 2019
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PRAYER

The petitioner, ROGELIO VILLARREAL-ESTEBIS, respectfully prays that a writ of certiorari be granted to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit issued on **October 25, 2019**.

OPINIONS BELOW

The original judgment United States v. ROGELIO VILLARREAL-ESTEBIS, Cr. No. 7:18:CR:316-001 (S.D. Tex. November 9, 2018) is attached as **(Exhibit A)**. On October 25, 2019, the United States Court of Appeals for the Fifth Circuit entered its judgment and opinion affirming Villarreal Estebis's convictions. United States v. Rogelio Villarreal-Estebis, Nos. 18-41038, 782 Fed. Appx. 329, 2019 WL 5541285, 2019 U.S. App. LEXIS 32106, at *331 (5th Cir. October 25, 2019) (affirmed) **(Exhibit B)**.

On appeal, Villarreal-Estebis argued that the trial court abused its discretion when it refused to admit an indictment and docket sheet. Villarreal-Estebis sought to introduce the indictment and docket sheet for the purpose of showing that the previous owner of the Dodge Journey at issue in the case was in fact a drug dealer. (ROA.880). Villarreal's trial defense was that the previous owner of the Dodge, Carlos Rodriguez-Montemayer, was a drug trafficker and that the excluded evidence explained the non-factory compartment on the vehicle and the drugs that were found in

the vehicle on January 30, 2018, when Villarreal-Estebis was driving the vehicle. (ROA. 882). Defense counsel argued that somehow the agents did not find the drugs in the Dodge when he crossed into the United States on January 27, 2018 driving the vehicle. (ROA. 878).

The Fifth Circuit held that the district court acted within its Rule 403 discretion in excluding the evidence relating to the criminal conviction of the third party; the probative value of the evidence was outweighed by the potential for jury confusion, given the timing of the incidents and the intervening ownership of the vehicle. United States v. Rogelio Villarreal-Estebis, 782 Fed. Appx. 329 at 331.

No petition for rehearing was filed.

JURISDICTION

On October 25, 2019, the United States Court of Appeals for the Fifth Circuit entered its judgment and opinion affirming the judgment of conviction and sentence in this case. This petition is filed within ninety days after entry of the judgment. See. Sup. Ct. R. 13.1 and 13.3. Jurisdiction of the Court is invoked under Section 1254(1), Title 28, United States Code.

FEDERAL STATUTES INVOLVED

Federal Rule of Evidence 403:

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

U.S. Const. Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

STATEMENT OF THE CASE

A. Course of Proceedings And Facts

January 27, 2018

On January 27, 2018, Rogelio Villarreal-Estebis, a United States citizen with a passport, applied for admission into the United States at the Pharr, Texas, Port of Entry. (ROA.435, 826-827). Villarreal-Estebis was driving a white 2015 Dodge Journey

(Hereinafter referred to as "the Dodge") bearing Texas license plates. There were two passengers in the Dodge, Manuel Villarreal-Estebis, Rogelio Villarreal-Estebis's brother and nephew, a minor child, age 7. (ROA. 826-827). When questioned Villarreal-Estebis provided his passport and told the Border Agents that he had attended a funeral in Mexico and was traveling to a barbecue with his family members. (ROA.851). Villarreal-Estebis also provided a negative declaration that he had no contraband. (ROA.454).

Custom and Border Patrol, (Hereinafter "CBP"), Officer Emmanuel Gonzalez observed that the vehicle's undercarriage had been tampered with. It appeared as though the exhaust heat shield had been lowered and flattened which made it almost touch the exhaust piper instead of curving. Villarreal-Estebis told Agent Gonzalez that he owned the Dodge and that he had purchased the vehicle two months prior. (ROA.432)

Officer Emmanuel Gonzales referred Villarreal-Estebis to a secondary for a more intense examination. During a seven-point inspection of the load vehicle, officers observed signs of tampering. (ROA.450-451). However, a Z-portal scan of the vehicle showed that there was no contraband in the vehicle. (ROA.474-475). Villarreal-Estebis and the two passengers were released. (ROA.416). The CBP agents created a CBP Land Border Crossing Record based on the discovery of the tampered undercarriage.

(ROA.540-541,814)

January 30, 2018

On January 30, 2018, at approximately 9:00 p.m., Villarreal-Estebis applied for admission at the Pharr, Texas Port of Entry while driving the load vehicle. The passengers were identified as Villarreal-Estebis's two minor children, 11 and 7 years old. (ROA.830). Villarreal-Estebis provided a negative declaration. However, CBP Officer Christopher Wharram discovered that the vehicle had a CBP Land Border Crossing Record. Villarreal-Estebis was referred to secondary for more intense examination. (ROA.540-541).

At secondary Villarreal-Estebis again provided a negative declaration. Villarreal-Estebis told the agents that he had travelled to Mexico to visit his mother. A Z-portal scan of the vehicle revealed an anomaly in the center hump of the load vehicle.

In addition, a narcotic detection canine conducted free air search of the load vehicle which resulted in an alter to the odor of narcotics emitting from the rear undercarriage. (ROA.647). During physical inspection, officer discovered 15 packages of cocaine wrapped in cellophane with a gross weight of 16.82 kilograms concealed in a non-factory compartment underneath the center console of the load vehicle. (ROA.658).

That same day, HIS, Special Agents Bradley Gains and Nicolas

Stott read Villarreal-Estebis his Miranda rights. (ROA.805,808). Villarreal-Estebis claimed ownership of the vehicle. He told the agents that he was travelling to his residence in Pharr, Texas. He also stated that he had previously travelled to his mother's residence in Reynosa, Tamaulipas, Mexico. Villarreal-Estebis stated that he had taken his children to get a haircut and that they had also eaten tacos. Villarreal-Estebis stated that he had purchased the Dodge in November of 2017 and paid \$6,000 for the vehicle. (ROA.841-842). Villarreal-Estebis stated that only he and his wife operated the vehicle. (ROA.850).

Villarreal-Estebis recalled taking the Dodge to a mechanic shop because the starting system was not working. (ROA.824). Villarreal-Estebis stated that on January 27, 2018, the Dodge was scanned at the port of entry. He also stated that he did not know how drugs got into the Dodge. (ROA.839). Because Villarreal-Estebis, was the driver of the Dodge at the time the narcotics were discovered in the non-factory compartment, he was held criminally responsible. (ROA.20-22).

Consequently, on February 27, 2018, a Four-Count Indictment was filed against Rogelio Villarreal-Estebis in this case. In Count One, Villarreal-Estebis was charged with conspiracy to import 5 kilograms or more of a mixture containing a detectible amount of cocaine, a schedule II control substance into the United States

from the United Mexican States in violation of 21 U.S.C. §§ 963, 952(a), 960(a)(1) and (b)(1)(A) on January 30, 2018. (ROA.20).

In Count Two, Villarreal-Estebis was charged with intentionally and knowingly conspiring to import 5 kilograms or more, approximately 16 kilograms of a mixture containing a detectable amount of cocaine, a schedule II control substance into the United States from the United Mexican States in violation of 21 U.S.C. §§ 952(a), 960(a)(1) and (b)(1), and 18 U.S.C. § 2, on January 30, 2018. (ROA.20-21).

In Count Three, Villarreal-Estebis was charged with conspiracy to possess with intent to distribute a controlled substance namely 5 kilograms or more of a mixture containing a detectable amount of cocaine, a schedule II control substance into the United States from the United Mexican States in violation of 21 U.S.C. §§ 846, 841(a)(1) and (b)(1) on January 30, 2018. (ROA.21).

In Count Four, Villarreal-Estebis was charged possession with intent to distribute a controlled substance. The controlled substance involved 5 kilograms or more, approximately 16 kilograms of a mixture containing a detectable amount of cocaine, a schedule II control substance into the United States from the United Mexican States in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1), and 18 U.S.C. § 2 on January 30, 2018. (ROA. 21-22).

The Trial

After a five-day jury trial before the Honorable Micaela Alvarez in the Southern District of Texas, Villarreal-Estebis, was found guilty on all counts on August 10, 2018. (ROA.76-77). At trial the government argued that Villarreal-Estebis was the driver of the Dodge and smuggled the cocaine into the United States. (ROA.415-417, 637).

Villarreal-Estebis's defense was that he had no knowledge of the drugs found in the vehicle on January 30, 2018. The crux of Villarreal-Estebis's defense was that the drugs were in the Dodge before he purchased it. (ROA.880, 920-924). Villarreal-Estebis testified that he had no knowledge that narcotics were in a hidden compartment in the vehicle. (ROA.839, 846). Therefore, he could not have knowingly or intentionally committed any of the charged offenses. (ROA.920-924.)

Villarreal-Estebis sought to introduce evidence that one of the previous owners of the Dodge, Carlos Rodriguez-Montemayer, was a drug dealer and had been convicted of drug trafficking. (ROA.875-876, 879-882). The evidence he sought to introduce consisted of an indictment in Cause Number 5:18-cr-00254-1 demonstrating that on April 10, 2018 Carlos Rodriguez-Montemayer was charged with drug trafficking offences alleged to have occurred on or about March 12, 2018, and a docket sheet, showing that Carlos Rodriguez-Montemayer entered a plea of guilty to those charges,

conspiracy to import 500 grams or more of cocaine, and the substantive offense of importing 500 grams of cocaine. (ROA.880,1089-1098). Ultimately, the trial court refused to allow the docket sheet and indictment to be admitted, even with a limiting instruction. (ROA.887).

The Sentence

The 2016 Guidelines were used in this case. (ROA.1109). A presentence investigation report was prepared on September 12, 2018. A revised presentence investigation report was prepared on October 11, 2018. (ROA.1103). The PSI set the Base Offense Level at a level 32. Two additional points were calculated pursuant to U.S.S.G. § 3B1.4 for allegedly using two minor children to avoid detection. Therefore, the Total Offense Level was set at 34. (ROA.1110).

Villarreal-Estebis had no prior criminal history, therefore the Criminal History Category was set at a level I. (ROA.110-111). With a criminal history score at level I and a Total Offense Level of 34, the guidelines range resulted in 151-188 months imprisonment. The guideline term of supervised release resulted in five years U.S.S.G. § 5D1.2(a)(1) and (b).

At sentencing and in written objections, Villarreal-Estebis, argued for a two-level mitigating role adjustment pursuant to U.S.S.G. § 3B1.2(b). (ROA.952-958). He argued that his role in

the offense was limited to that of a mere courier of narcotics. (ROA.1099). The sentencing court overruled the objection. (ROA.958). He also objected to the two-level increase assessed under U.S.S.G. § 3B1.4, arguing that he did not use his minor children to commit the offense, or avoid detection or apprehension for the offense. (ROA.954-960). Villarreal-Estebis argued that he always took his minor children to Mexico with him to visit their grandmother. (ROA.1100). The objection was denied. (ROA.960). Villarreal-Estebis also requested a downward departure pursuant to the 18 U.S.C. § 3553 factors and U.S.S.G. § 5H1.6. (ROA.952,1100-1101). No downward departure was granted.

Villarreal-Estebis was sentenced to a sentence within the guidelines range, 155-month term of imprisonment as to each count to be served concurrently with each other. (ROA.115,967). He was sentenced to a five-year term of supervised release as to each count to be served concurrently with each other. (ROA.116,967). A special assessment fee of \$100 was imposed as to each count for a total of \$400.00. (ROA.117-118,967). Villarreal-Estebis objected that the sentence was greater than necessary to comply with 18 U.S.C. §3553(a). (ROA.967).

BASIS OF FEDERAL JURISDICTION IN THE
UNITED STATES DISTRICT COURT

This case was brought as a federal criminal prosecution involving conspiracies to import and possess with intent to distribute Schedule II control substances and importing and possession of Schedule II control substances in violation of 21 U.S.C. §§ 846, 841(a)(1), (b)(1), 952(a), 960(a)(1,) 960(b)(1) (A) 963, and 18 U.S.C. § 2. The district court therefore had jurisdiction pursuant to 18 U.S.C. § 3231.

REASON FOR GRANTING THE WRIT

This Court should grant certiorari to determine whether ROGELIO VILLARREAL-ESTEBIS'S rights under the Sixth Amendment to present a complete defense were violated when the district court refused to admit a docket sheet and indictment showing a previous owner of the vehicle at issue had entered a plea of guilty to a drug trafficking crime two months after Estebis was stopped. The excluded evidence was relevant to the crux of Villarreal-Estebis's trial defense. His defense was that he had no previous knowledge before the "stop" that there were drugs housed in a hidden compartment of the Dodge Journey at issue. Villarreal Estebis's defense was that the drugs must have been placed in that hidden compartment before he purchased the vehicle and therefore he would not have known of the drugs in the vehicle when he was eventually stopped and searched. Because the proper application of the Sixth Amendment and Federal Rule of Evidence 403 are of exceptional importance to the administration of justice in federal criminal cases, this Court should decide this question and, and upon review, should reverse the judgment of the Fifth Circuit.

Villarreal-Estebis sought to introduce evidence that one of the previous owners of the Dodge, Carlos Rodriguez-Montemayer, was a drug dealer and had been convicted of drug trafficking. (ROA.875-876, 879-882). The evidence he sought to introduce consisted of an indictment in Cause Number 5:18-cr-00254-1 demonstrating that on April 10, 2018 Carlos Rodriguez-Montemayer was charged with drug trafficking offences alleged to have occurred on or about March 12, 2018, and a docket sheet, showing that Carlos Rodriguez-Montemayer entered a plea of guilty to those charges, conspiracy to import 500 grams or more of cocaine, and the substantive offense of importing 500 grams of cocaine. (ROA.880,1089-1098).

In this case, the following exchange occurred at trial:

DEFENSE: Judge, I've got some evidence to offer in this trial, but I believe we need to discuss it outside the presence of the jury before I -

COURT: Let me have you at the bench-

DEFENSE: --I don't want to argue-

COURT: --for just a moment - - let me have you at the bench for just a moment to see where that puts us.

DEFENSE: A certified copy so public records under Rule 902 which is the exception self-authenticating public records-

COURT: Okay.

DEFENSE: That can be offered.

COURT: Okay. And you offer them for what purpose?

DEFENSE: To show that one other—that one of the owners of the vehicle has a drug history.

COURT: Well, so are you saying that the Indictment is evidence of guilt or is it—

DEFENSE: Well, Judge, he's pled guilty, there's the docket sheet as well.

COURT: And in connection with this vehicle

DEFENSE: No, Your Honor

COURT: Okay. And so how is this relevant to— (ROA.875)

DEFENSE: Well, it—

COURT: -- this case?

DEFENSE: -- shows that the prior owner of this vehicle had - is engaging in narcotics trafficking. And that basically is one of our defenses in this case. (ROA.876).

Defense counsel argued that the docket sheet and the

indictment related to the previous owner of the Dodge, Carlos Rodriguez-Montemayer, in Cause Number 5:18-cr-00254-1, were relevant under Federal Rule of Evidence 401. He went on to argue that Villarreal-Estebis's trial defense was that the previous owner of the Dodge, Carlos Rodriguez-Montemayer, was a drug trafficker and that explained the non-factory compartment on the vehicle and the drugs that were found in the vehicle on January 30, 2018, when Villarreal-Estebis was driving the vehicle. (ROA. 882). Defense counsel argued that somehow the agents did not find the drugs in the Dodge when he crossed into the United States on January 27, 2018 driving the vehicle. (ROA. 878). Defense counsel explained that the indictment and docket sheet were being introduced for the purpose of showing that the previous owner of the Dodge was in fact a drug dealer. (ROA.880).

The government argued that the indictment and docket sheet related to Carlos Rodriguez-Montemayer were not relevant because persons other than Rodriguez-Montemayer may have had possession of the Dodge at some point. (ROA.881).

Ultimately, the trial court refused to allow the docket sheet and indictment to be admitted, even with a limiting instruction. When rendering its decision, the trial court stated:

The Court has considered how, Mr. Alvarez, how your offer as to the Indictment and the docket sheet in Case Number 5:18-254 pertaining to a defendant identified as Carlos Rodriguez

Montemayer, who at least by name is also referenced in the title to the document in the case, and while I understand the argument that you make; however, regarding the relevance, the Court believes that the evidence is too speculative in this case for a couple of reasons, actually three reasons. (ROA.886).

One is that there is no evidence in the case that this individual, even, if it is the same individual and I'll assume that it is, but that this is the individual from whom this Defendant purchased the vehicle because the title, in fact reflects an owner previous to this Defendant owner, in between this Defendant and the individual identified as Carlos Rodriguez Montemayer. (ROA.886). Also, the proffered evidence in the case that Carlos Rodriguez Montemayer was convicted -apprehended and indicted and convicted some time after the events in this case. In particular, the Indictment lists a date of March 12, 2018, the events in this case occurred in late May of -excuse me, late January of 2018, so this already had occurred after the events in this case. (ROA.886-887).

And then although in this case itself there is no evidence, I'll grant you this, but it is also I think likely to lead to the Government requesting to reopen because there-it is well known to the Court, and I think to the attorney themselves, that in the drug trafficking business the vehicles are often sort of traded around, titles are not necessarily always in the proper person's name and there's just too much movement of vehicles in the business.

So the court believes that even if there some slight probative value, that the evidence should be excluded under the 403 because I do think it would-there's a high likelihood that the jury would be confused on the issues and it would mislead the jury. So the offer is -I guess the request to admit is denied. They are excluded. (ROA.887).

It is noteworthy to point out that the trial court ruled that the Indictment and the docket sheet would mislead and confuse the

jury when the government had not lodged these specific objections to the admission of the excluded evidence.

In this case, the Fifth Circuit erroneously held that the district court acted within its Rule 403 discretion in excluding the evidence relating to the criminal conviction of the third party, Carlos Rodriguez Montemayer. In doing so, it stated that "the probative value of the evidence was outweighed by the potential for jury confusion, given the timing of the incidents and the intervening ownership of the vehicle." United States v. Villarreal-Estebis, 782 F. App'x 329, 331 (5th Cir. 2019).

In this case, the Fifth Circuit misapplied Federal Rule of Evidence 403 and ignored Villarreal-Estebis's right to present a complete defense. Federal Rule of Evidence 403 states:

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

This Court has established that the right to present a complete defense under the Sixth Amendment and the Fourteenth Amendment is an essential attribute of the adversary system. Taylor v. Illinois, 484 U.S. 400, 408 (1988); Chambers v. Mississippi, 410 U.S. 284, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973). "Few rights are more fundamental than that of an accused to present witnesses in his own defense. Taylor v. 484 U.S. at 408 (1988).

"[T]his right is an essential attribute of the adversary system itself." This Court has held that due process requires that a criminal defendant be allowed to present evidence relevant to the defendant's claimed defense. Id.

"Whether rooted directly in the Due Process Clause or the Sixth Amendment or in the Compulsory Process or Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense." To that end the Constitution prohibits the exclusion of defense evidence under rules that serve no legitimate purpose or are disproportionate to the ends that they are asserted to promote. Holmes v. South Carolina, 547 U.S. 319, 326, 126 S. Ct. 1727, 1731, 164 L. Ed. 2d 503 (2006). The rule serves to overturn arbitrary rules that exclude important defense evidence but do not serve any legitimate interest. A specific application of this principle is found in rules regulating the admission of evidence proffered by criminal defendants to show that someone else committed the crime with which they are charged. Id. at 327.

In Chambers, the defendant was not permitted to cross examine the alibi of a witness who the defendant claimed was actually responsible for the crime based upon an antiquated "voucher rule." This rule required the party offering a witness to vouch for the credibility of that witness and prohibited the offering party from

impeaching the witness but, according to the Supreme Court, served no discernable purpose. Likewise, the defendant was not permitted to introduce evidence supporting his defense and challenging the alibi of the allegedly responsible party from several other witnesses because of the application of Mississippi's hearsay rule. In both instances, the defendant was denied the opportunity to present his primary defense: that someone else was responsible for the crime. Id. at 298-303.

As in Chambers v. Mississippi, 410 U.S. 284, 93 S.Ct. 1038, 35 L. Ed. 2d 297 (1973). Villarreal-Estebis was denied his right to present evidence of his innocence. In this case, Villarreal-Estebis sought to introduce evidence critical to his defense that he had no knowledge of the narcotics found in the Dodge. (ROA.875-843,886-888). Villarreal-Estebis's trial defense also hinged on the theory that the narcotics found in the Dodge on January 30, 2018 were in the vehicle before he purchased it in November of 2017. (ROA.880).

Federal Rule of Evidence 401 states that "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. United States v. Taglione, 546 F.2d 194, 201 n.8 (5th Cir. 1977).

While Rule 403 is federal law, the rule is not without limits. The general standards of the Sixth Amendment right to present a

complete defense are well settled and were ignored in the Fifth Circuit's analysis of this case. See Taylor 484 U.A. at 408; Chambers, 410 U.S. at 283-303. When rendering its decision, the Fifth Circuit did not address the constitutional issues involved here, but merely concluded that the trial court did not abuse its discretion under Rule 403. The Fifth Circuit specifically stated that the district court acted within its Rule 403 discretion in excluding the evidence relating to the criminal conviction of the third party; the probative value of the evidence was outweighed by the potential for jury confusion, given the timing of the incidents and the intervening ownership of the vehicle. United States v. Villarreal-Estebis, 782 F. App'x 329, 331 (5th Cir. 2019).

Additionally, the Fifth Circuits analysis is lacking because the Fifth Circuit's opinion did not discuss its rationale for concluding that the timing of the incidents and intervening ownership of the vehicle outweighed the probative value of the evidence. Moreover, the Fifth Circuit did not discuss or outline its reasoning for concluding that the evidence would have confused the jury and that a limiting instruction would not have cured any potential for jury confusion.

Furthermore, the Fifth Circuit's decision here is at odds with its prior precedent. The Fifth Circuit has held that where drugs are concealed, additional evidence of "a consciousness of guilt" is

required to prove that the defendant acted with knowledge United States v. Gonzalez-Lira, 936 F.2d 184, 192 (5th Cir. 1991). Therefore, under the analysis applied in Gonzalez-Lira, it necessarily follows that in cases like Villarreal-Estebis's here, Defendants are placed in a position that additional evidence is needed to disprove the prosecutions' assertion of a guilty conscious on the part of the defendant.

In Gonzalez-Lira, 936 F.2d at 186, Gonzalez-Lira appealed his conviction for possession of marijuana with intent to distribute it. He argued that the trial judge erred in admitting certain evidence. At trial, the prosecutor sought to introduce evidence that two years earlier, an individual named Moreno attempted to cross the border at the same inspection point in a tractor-trailer rig owned by Gonzalez. Moreno was stopped, and a search of the truck revealed some 2,000 pounds of marijuana. Moreno was convicted of possession with intent to distribute, but Gonzalez was not charged, and no evidence was ever developed to show that Gonzalez knew what Moreno was going to do with his truck. Gonzalez was allowed to retrieve his truck from the authorities. Gonzalez later sold it and used a portion of the proceeds to purchase another truck, the truck at issue in Gonzalez-Lira. Id. at 186-187.

The careful] trial judge initially granted the defense's motion in limine to forbid any mention of this other truck. At

trial, however, the judge allowed the Government to introduce, over the defendant's objection, the testimony of an investigating police officer relating to the other truck that had been sold and the prior smuggling attempt by Moreno. Id. at 186-187.

The district court in Gonzalez-Lira found that the evidence that Gonzalez had owned a tractor-trailer rig which had been used in a prior smuggling attempt by Moreno was relevant to several issues in the case. As the trial judge pointed out in his ruling admitting the evidence, that evidence tended to show at least four things: 1) the thoroughness of the Government's investigation, 2) the defendant's awareness that tractor-trailer rigs are used to smuggle large quantities of marijuana across the border, 3) the defendant's awareness that his own tractor-trailer rig had been used to smuggle marijuana across the border at the Falfurrias checkpoint, and 4) the source of the funds used to purchase the tractor involved in this case. Id. at 191.

In rendering its decision in Gonzalez-Lira, the Fifth Circuit reasoned, that '[g]iven that this evidence was relevant to so many issues, the only question was whether it should nonetheless have been withheld from the jury. The Fifth Circuit emphasized that [A]s a general matter, all relevant evidence is admissible. Fed.R.Evid. 402. The court recognized that relevancy has its limits because the rules of evidence provide that even if it is relevant, evidence may

be excluded if it is cumulative of other evidence, will confuse or mislead the jury, or presents a danger of unfair prejudice to the defendant. Fed.R.Evid. 403. Id. at 191.

In Gonzalez-Lira, Gonzalez, the defendant, contended that the evidence relating to the prior smuggling attempt was prejudicial, and therefore should have been excluded. In support of his contention he pointed out the danger that the jury may have convicted him for a crime he did not commit. While the Fifth Circuit agreed that there may have been some danger of unfair prejudice to Gonzalez, it was nevertheless persuaded that that danger was greatly reduced by two factors. First, defense counsel was entitled to -- and did -- cross-examine the investigating officer, bringing out the fact that there was never any evidence developed against Gonzalez with respect to the prior smuggling attempt. Such an admission by the Government's own witness undoubtedly reduced the chance that the jury would convict Gonzalez for the prior smuggling attempt.

Second, the trial judge explicitly instructed the jury that they were to use the evidence only for the limited purposes of deciding how thoroughly the Government had investigated the crime and what Gonzalez' state of mind was when he was stopped at the border. It held these limiting instructions were entirely proper. The Court went on to say that [c]ombined with the defense's ability

to bring out the truth on cross-examination, the court was confident that the introduction of the evidence relating to the prior smuggling attempt would not lead the jury to convict Gonzalez for that prior crime. Id.

In Gonzalez-Lira, the Fifth Circuit held that Gonzalez had not shown a clear abuse of discretion by the district court. It held the probative value of evidence was substantial. The court held the evidence tended to show, quite strongly, not only that the Government had engaged in a thorough investigation, but also that Gonzalez knew that marijuana was smuggled across the border in tractor-trailer rigs, and indeed that it had been smuggled in his own tractor-trailer. The evidence thus allowed the jury to infer that Gonzalez knew what was in the trailer when he attempted to bring it across the border. The Fifth Circuit stated that "[w]hile the evidence regarding the prior smuggling certainly carried some risk of prejudice -- it may have linked Gonzalez to criminal activity of which he was innocent -- that danger was sufficiently reduced by the trial judge's limiting instruction to the jury, and the defense counsel's cross-examination of the investigating officer." Id. at 191-192.

However, here, in Villarreal-Estebis's case, the Fifth Circuit fails to give an analysis as to how it reached its conclusion that "the probative value of the evidence was outweighed by the

potential for jury confusion, given the timing of the incidents and the intervening ownership of the vehicle in Villarreal-Estebis's case." See 782 F. App'x 329, 331 (5th Cir. 2019). Fifth Circuit did not address the Sixth Amendment constitutional issues involved here, but merely concluded that the trial court did not abuse its discretion under Rule 403.

In the instant case, Rogelio Villarreal-Estebis contends as the government did in Gonzalez-Lira, that the evidence he sought to introduce, the Docket sheet and Indictment, were relevant to the case, particularly the crux of his defense. The probative value of the evidence was relevant in that it tended to show that someone else convicted of a drug trafficking crime had previously owned the car. Villarreal-Estebis's trial defense was that the previous owner of the Dodge, Carlos Rodriguez-Montemayer, was a drug trafficker and that explained the non-factory compartment on the vehicle and the drugs that were found in the vehicle on January 30, 2018, when Villarreal-Estebis was driving the vehicle. The excluded evidence would have allowed the jury to infer that Villarreal-Estebis had no knowledge of the secret compartment or the drugs in the Dodge on January 30, 2017. Any danger of confusing jurors could have been sufficiently reduced by a limiting instruction and the Government's cross-examination of witnesses.

This Court should grant certiorari in this case in order to

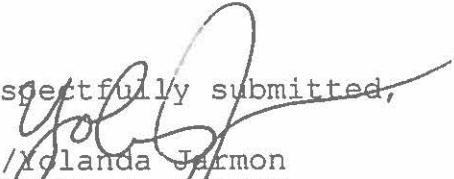
determine whether excluding this evidence left Villarreal-Estebis unable to fully present his defense as guaranteed by the Sixth Amendment of the Constitution. Because the proper application of the Sixth Amendment and Federal Rule of Evidence 403 is of exceptional importance to the administration of justice in federal criminal cases, this Court should grant certiorari in this case to decide this question and, and upon review, should reverse the judgment of the Fifth Circuit

CONCLUSION

For the foregoing reasons, petitioner **ROGELIO VILLARREAL-ESTEBIS** respectfully prays that this Court grant certiorari, to review the judgment of the Fifth Circuit in this case.

Date: January 23, 2020.

Respectfully submitted,


/s/ Yolanda Jarmon
YOLANDA E. JARMON
Attorney of Record for Petitioner
2429 Bissonnet # E416
Houston, Texas 77005
Telephone: (713) 635-8338
Fax: (713) 635-8498

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2019

ROGELIO VILLARREAL-ESTEBIS,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

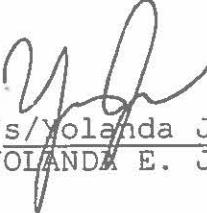
On Petition for Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

CERTIFICATE OF SERVICE

YOLANDA E. JARMON, is not a member of the Bar of this Court but was appointed under the Criminal Justice Act 18 U.S.C. § 3006 A(b) and (c), on appeal to the United States Court of Appeals for the Fifth Circuit, certifies that, pursuant to Rule 29.5, On **January 23, 2020**, she served the preceding Petition for Writ of Certiorari and the accompanying Motion for Leave to Proceed in Forma Pauperis on counsel for the Respondent by enclosing a copy of these documents in an envelope, first-class postage prepaid, **Certified Mail No. 7015 1520 0003 4739 3053**, return receipt requested, and depositing the envelope in the United States Postal Service located at 1919 La Branch St. Houston, TX 77002 and further certifies that all parties required to be served have been served and copies addressed to:

The Honorable Noel J. Francisco
Solicitor General of the United States

Room 5614, Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001


/s/Yolanda Jarmon
YOLANDA E. JARMON

APPENDIX

ENTERED

November 13, 2018

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
Southern District of Texas
Holding Session in McAllenUNITED STATES OF AMERICA
v.
ROGELIO VILLARREAL-ESTEBIS

JUDGMENT IN A CRIMINAL CASE

CASE NUMBER: 7:18CR00316-001
USM NUMBER: 35778-479 See Additional Aliases.Oscar Alvarez
Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) _____

pleaded nolo contendere to count(s) _____
which was accepted by the court.

was found guilty on count(s) 1, 2, 3 and 4 on August 10, 2018.
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. § 963, 952(a), 960(a)(1) and 960(b)(1)	Conspiracy to import 5 kilograms or more of cocaine.	01/30/2018	1

See Additional Counts of Conviction.

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) _____

Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

October 24, 2018

Date of Imposition of Judgment



Signature of Judge

MICAEALA ALVAREZ
UNITED STATES DISTRICT JUDGE
Name and Title of Judge

November 9, 2018

Date

*Appendix
Exhibit A*

ds | 4486863
PAB

DEFENDANT: ROGELIO VILLARREAL-ESTEBIS
CASE NUMBER: 7:18CR00316-001

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. § 952(a), 960(a)(1), 960(b)(1) and 18 U.S.C. § 2	Importing 5 kilograms or more, that is, approximately 16 kilograms of cocaine.	01/30/2018	2
21 U.S.C. § 846, 841(a)(1) and 841(b)(1)(A)	Conspiracy to possess, with intent to distribute, 5 kilograms or more of cocaine.	01/30/2018	3
21 U.S.C. § 841(a)(1), 841(b)(1)(A) and 18 U.S.C. § 2	Possession, with intent to distribute, 5 kilograms or more, that is, approximately 16 kilograms of cocaine.	01/30/2018	4

See Additional Counts of Conviction.

DEFENDANT: ROGELIO VILLARREAL-ESTEBIS
CASE NUMBER: 7:18CR00316-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 155 months, as to each of Counts 1, 2, 3 and 4, said imprisonment terms to run concurrently with each other.

See Additional Imprisonment Terms.

The court makes the following recommendations to the Bureau of Prisons:

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____.

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____.

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: ROGELIO VILLARREAL-ESTEBIS
CASE NUMBER: 7:18CR00316-001

SUPERVISED RELEASE

Upon release from imprisonment you will be on supervised release for a term of: 5 years _____
as to each of Counts 1, 2, 3 and 4, said Supervised Release Terms to run concurrently with each other.

See Additional Supervised Release Terms.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (check if applicable)
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. (check if applicable)
5. You must cooperate in the collection of DNA as directed by the probation officer. (check if applicable)
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. (check if applicable)
7. You must participate in an approved program for domestic violence. (check if applicable)

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

See Special Conditions of Supervision.

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment, you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

DEFENDANT: ROGELIO VILLARREAL-ESTEBIS
CASE NUMBER: 7:18CR00316-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$400.00		

See Additional Terms for Criminal Monetary Penalties.

The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal payees must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>

See Additional Restitution Payees.

TOTALS	<u>\$0.00</u>	<u>\$0.00</u>
---------------	---------------	---------------

Restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution.

the interest requirement for the fine restitution is modified as follows:

Based on the Government's motion, the Court finds that reasonable efforts to collect the special assessment are not likely to be effective. Therefore, the assessment is hereby remitted.

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: ROGELIO VILLARREAL-ESTEBIS
CASE NUMBER: 7:18CR00316-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A Lump sum payment of \$400.00 due immediately, balance due
 not later than _____, or
 in accordance with C, D, E, or F below; or

B Payment to begin immediately (may be combined with C, D, or F below); or

C Payment in equal _____ installments of _____ over a period of _____, to commence _____ days after the date of this judgment; or

D Payment in equal _____ installments of _____ over a period of _____, to commence _____ days after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within _____ days after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F Special instructions regarding the payment of criminal monetary penalties:

Payable to: Clerk, U.S. District Court
Attn: Finance
P.O. Box 5059
McAllen, TX 78502

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Case Number

Defendant and Co-Defendant Names
(including defendant number)

Total Amount

Joint and Several
Amount

Corresponding Payee,
if appropriate

See Additional Defendants and Co-Defendants Held Joint and Several.
 The defendant shall pay the cost of prosecution.
 The defendant shall pay the following court cost(s):
 The defendant shall forfeit the defendant's interest in the following property to the United States:
 See Additional Forfeited Property.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

United States v. Villarreal-Estebis

United States Court of Appeals for the Fifth Circuit

October 25, 2019, Filed

No. 18-41038 Summary Calendar

Reporter

782 Fed. Appx. 329 *; 2019 U.S. App. LEXIS 32106 **; 2019 WL 5541285

compartment, clear error, de novo, circumstances, enhancement, guidelines, concealed, detection, two-level, import, minors, guilt

UNITED STATES OF AMERICA,
Plaintiff-Appellee v. ROGELIO
VILLARREAL-ESTEBIS, Defendant-
Appellant

**Notice: PLEASE REFER TO FEDERAL
RULES OF APPELLATE PROCEDURE
RULE 32.1 GOVERNING THE
CITATION TO UNPUBLISHED
OPINIONS.**

Prior History: [**1] Appeal from the United States District Court for the Southern District of Texas. USDC No. 7:18-CR-316-1.

Case Summary

Overview

HOLDINGS: [1]-The evidence was sufficient to convict defendant of possession with intent to distribute cocaine based on defendant's knowledge of the hidden compartment in his vehicle where the cocaine was found because the government presented circumstantial evidence that defendant's story — that the drugs were concealed in the vehicle before he purchased it and were missed in an X-ray scan before the cocaine was discovered — was implausible, and defendant was nervous when he was referred for additional inspections at the port of entry and he made inconsistent statements as to the car's purchase; [2]-Defendant was not entitled to a mitigating role sentencing adjustment because there was substantial evidence that he understood the scope of the

Core Terms

district court, cocaine, convictions, conspiracy, quotation, sentence, asserts, drugs, marks, circumstantial evidence, distribute cocaine, hidden

Exhibit B

Yolanda Jarmon

conspiracy, had sufficiently substantial responsibility and discretion in his criminal actions, and stood to benefit in some way from his acts.

HN2[] Intent to Distribute, Elements

When illegal drugs are concealed in a hidden compartment, the government must present circumstantial evidence, beyond mere control of a vehicle, that is suspicious in nature or demonstrates guilty knowledge.

Outcome

Decision affirmed.

Criminal Law &
Procedure > Appeals > Standards of
Review > De Novo Review

Criminal Law &
Procedure > ... > Standards of
Review > Abuse of
Discretion > Evidence

LexisNexis® Headnotes

Criminal Law &
Procedure > Appeals > Standards of
Review

HN1[] Appeals, Standards of Review

Where defendant did not renew his motion for a judgment of acquittal at the close of all the evidence, appellate courts review his claim to determine whether there was a manifest miscarriage of justice.

HN3[] Standards of Review, De Novo Review

Appellate courts review alleged violations of the *Sixth Amendment* right to present a complete defense de novo, subject to review for harmless error, whereas a challenge to a district court's ruling on the admissibility of evidence is reviewed for abuse of discretion.

Criminal Law &
Procedure > ... > Appeals > Standard
s of Review > Clear Error Review

Criminal Law &
Procedure > ... > Possession > Intent
to Distribute > Elements

Evidence > Types of
Evidence > Circumstantial Evidence

Criminal Law &
Procedure > ... > Appeals > Standard
s of Review > De Novo Review

Criminal Law &
Procedure > Sentencing > Sentencin
g Guidelines

HN4[] Standards of Review, Clear Error Review

Whether defendant used his children to avoid detection within the meaning of U.S. Sentencing Guidelines Manual § 3B1.4 requires a legal conclusion that is reviewed de novo; findings of fact made in support of that determination are reviewed for clear error. To trigger the enhancement, a defendant must take some affirmative action to involve the minor in the offense; mere presence is insufficient.

For **ROGELIO VILLARREAL-ESTEBIS**,
Defendant - Appellant: Yolanda Evette Jarmon, Esq., Law Office of Yolanda Jarmon, Houston, TX.

Judges: Before WIENER, HAYNES, and COSTA, Circuit Judges.

Opinion

Criminal Law & Procedure > ... > Appeals > Standards of Review > Clear Error Review

Criminal Law & Procedure > ... > Sentencing Guidelines > Adjustments & Enhancements > Mitigating Role

HN5[] Standards of Review, Clear Error Review

The question whether a defendant is subject to a mitigating-role adjustment is a factual finding reviewed for clear error.

Counsel: For UNITED STATES OF AMERICA, Plaintiff - Appellee: Andrew R. Gould, Assistant U.S. Attorney, Carmen Castillo Mitchell, Assistant U.S. Attorney, U.S. Attorney's Office, Southern District of Texas, Houston, TX.

[*330] PER CURIAM:

A jury found Defendant-Appellant **Rogelio Villarreal-*Estebis*** guilty of conspiracy to import cocaine, importation of cocaine, conspiracy to possess with intent to distribute cocaine, and possession with intent to distribute cocaine. The district court sentenced him within the advisory guidelines range to concurrent 155-month sentences, to be followed by a five-year term of supervised release. On appeal, **Villarreal-*Estebis*** challenges both his convictions and the guidelines calculations. He first asserts that the evidence is insufficient to support his convictions because the Government failed to prove that he knew about the hidden compartment in his vehicle where the cocaine was found and that

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**.

he [**2] knew of and participated in an agreement to violate the drug laws. HN1[¶] Villarreal-Estebis did not renew his motion for a judgment of acquittal at the close of all the evidence, so we review his claim to determine "whether there was a manifest miscarriage of justice." United States v. Delgado, 256 F.3d 264, 274 (5th Cir. 2001) (internal quotation marks and citation omitted).

HN2[¶] When illegal drugs are concealed in a hidden compartment, the Government must present circumstantial evidence, beyond mere control of a vehicle, that is suspicious in nature or demonstrates guilty knowledge. See United States v. Gil-Cruz, 808 F.3d 274, 277 (5th Cir. 2015). At trial, the Government presented ample circumstantial evidence that Villarreal-Estebis's story — that the drugs were concealed in the vehicle before he purchased it and were missed in an X-ray scan three days before the cocaine was discovered — is implausible. See United States v. Lopez-Monzon, 850 F.3d 202, 208 (5th Cir. 2017). In addition, Villarreal-Estebis's nervousness when he was referred for additional inspections at the port of entry, along with his inconsistent statements referring to the purchase of the Dodge Journey in which the cocaine was found, further indicate his guilt. See id. at 207, 209. The record thus is not "devoid of evidence pointing to guilt," and the evidence is not so tenuous that we should overturn the conviction. [**3] See United States v. McIntosh, 280

F.3d 479, 483 (5th Cir. 2002) (internal quotation marks and citation omitted).

Villarreal-Estebis further asserts that the trial court's refusal to permit him to introduce evidence that a prior owner of the Dodge Journey was convicted of a drug offense, which occurred after the events giving rise to Villarreal-Estebis's convictions, deprived him of his right to present a defense. HN3[¶] We review alleged violations of the Sixth Amendment right to present a complete defense *de novo*, subject to review for harmless error, whereas a challenge to a district court's ruling on the admissibility of evidence is reviewed for abuse of discretion. United States v. Skelton, 514 F.3d 433, 438 (5th Cir. 2008); United States v. DeLeon, 170 F.3d 494, 497 (5th Cir. 1999). The Government asserts, however, that we should review for [*331] plain error because Villarreal-Estebis did not object on this ground. Here, the district court acted within its Rule 403 discretion in excluding the evidence relating to the criminal conviction of the third party; the probative value of the evidence was outweighed by the potential for jury confusion, given the timing of the incidents and the intervening ownership of the vehicle. See United States v. Reed, 908 F.3d 102, 113 n.33 (5th Cir. 2018), cert. denied, 139 S. Ct. 2655, 204 L. Ed. 2d 285 (2019), and cert. denied, 139 S. Ct. 2658, 204 L. Ed. 2d 285 (2019); United States v. Ramos, 537 F.3d 439, 455 (5th Cir. 2008). There, thus was no

constitutional error, plain or otherwise.

With respect to his sentence, Villarreal-Estebis contends that [**4] the district court erred by imposing a two-level enhancement under U.S.S.G. § 3B1.4 for using minors to assist in avoiding detection of the offense. HN4[¹] Whether Villarreal-Estebis used his children to avoid detection within the meaning of § 3B1.4 requires a legal conclusion that is reviewed *de novo*; findings of fact made in support of that determination are reviewed for clear error. United States v. Mata, 624 F.3d 170, 175 (5th Cir. 2010). "To trigger the enhancement, a defendant must take *some affirmative action* to involve the minor in the offense"; mere presence is insufficient. United States v. Powell, 732 F.3d 361, 380 (5th Cir. 2013) (internal quotation marks and citation omitted). The evidence presented at trial established that Villarreal-Estebis knew that he would be transporting drugs, and that he could have arranged for all of his children to stay in the United States rather than taking two of those minors with him. Villarreal-Estebis left his house knowing that he was going to commit the subject offenses, so "the act of bringing the [children] along instead of leaving [them] behind is an affirmative act that involves the minor in the offense." Mata, 624 F.3d at 176.

Finally, Villarreal-Estebis claims that the district court should have granted a two-level downward adjustment under U.S.S.G. § 3B1.2 because he was merely a courier and was clearly

less [**5] culpable than the average participant. HN5[¹] The question whether a defendant is subject to a mitigating-role adjustment is a factual finding reviewed for clear error. United States v. Torres-Hernandez, 843 F.3d 203, 207 (5th Cir. 2016). The instant record supports a plausible inference that Villarreal-Estebis understood the scope of the conspiracy, had sufficiently substantial responsibility and discretion in his criminal actions, and stood to benefit in some way from his acts. § 3B1.2, comment. (n.3(C)). Under these circumstances, the district court did not clearly err in denying such an adjustment. See United States v. Bello-Sanchez, 872 F.3d 260, 264-65 (5th Cir. 2017); Torres-Hernandez, 843 F.3d at 209-10; United States v. Villanueva, 408 F.3d 193, 204 (5th Cir. 2005).

The judgment of the district court is AFFIRMED.

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