

UNITED STATES COURT OF APPEALS

Filed 8/21/96

TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JESUS PASQUALE,

Defendant - Appellant.

No. 95-2108
(D.C. No. CR-94-395)
(District of New Mexico)

ORDER AND JUDGMENT*

Before **TACHA**, Circuit Judge, **REAVLEY**,** Senior Circuit Judge, and **LUCERO**, Circuit Judge.

Convicted of possession with intent to distribute more than five kilograms of cocaine and conspiracy, see 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), 846, Jesus Pasquale argues that insufficient evidence supports his conviction. We disagree and affirm.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

** Honorable Thomas M. Reavley, Senior Circuit Judge of the United States Court of Appeals for the Fifth Circuit, sitting by designation.

Reviewing a claim that a criminal conviction is not supported by sufficient evidence, we “determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” United States v. McKneely, 69 F.3d 1067, 1072 (10th Cir. 1995). We view the evidence in the light most favorable to the government and “accept the jury’s resolution of conflicting evidence and assessment of witness credibility.” Id.

Pasquale argues that there was no evidence that he ever possessed the cocaine at issue here. He further argues that the testimony of his co-conspirator, Glembotski, was insufficient to prove Pasquale’s involvement in the crime. Pasquale appears to concede that Glembotski’s testimony, if credited, establishes his guilt, and asks us to find that his testimony lacked credibility. This we cannot do. The assessment of witness credibility is a jury function. Id. In any event, we have reviewed the record and conclude that the government presented sufficient evidence for a rational jury to find, beyond a reasonable doubt, that Pasquale and Glembotski possessed and conspired to transport ten kilograms of cocaine from California to New York for distribution.

AFFIRMED.

ENTERED FOR THE COURT

Carlos F. Lucero
Circuit Judge