

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

94-8151

UNITED STATES OF AMERICA

Plaintiff-Appellee,

versus

GEORGE W. HIGH

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

BRIEF OF APPELLANT

WILLIAM A. MORRISON
Georgia State Bar Number 525186
Jones, Morrison & Womack, P.C.
1250 Peachtree Center Tower
230 Peachtree Street
Atlanta, Georgia 30303
(404) 658-1670

Attorney for George W. High

This Is A Criminal Case Which Is Entitled To Preference
Under F.R.A.P. 45(b) And Under Category (a) Of Appendix One Of
The Rules Of The Eleventh Circuit

CERTIFICATE OF INTERESTED PERSONS

1. Michael Abbott (Attorney for Virginia High)
2. Tony Axaam (Attorney for Robert Ward)
3. The Honorable John Daugherty (Magistrate Judge)
4. Alex Gracia (Co-Defendant)
5. George High (Appellant-Defendant)
6. Virginia High' (Co-Defendant)
7. William A. Morrison (Attorney for George High)
8. H. Allen Moye (Attorney for United States)
9. Steven Rosen (Attorney for Alex Gracia)
10. The Honorable Robert Vinning (United States District Court
Judge)
11. Robert Ward (Co-Defendant)

STATEMENT REGARDING ORAL ARGUMENT

George High desires oral argument and suggests that it would be helpful to this Court's resolution of the factual and legal issues presented on appeal.

TABLE OF CONTENTS

	<u>Page No.</u>
Certificate of Interested Persons	1
Statement Regarding Oral Argument	2
Table Of Contents	3
Table of Authorities	4
Statement of Jurisdiction	5
Statement of Issues	6
Statement of the Case	7
(i) Course of Proceedings and Disposition in Court Below	7
(ii) Statement of Facts	8
(iii) Standard of Review	11
Summary of the Argument	12
Argument and Citation of Authority	13
Summary	18
Certificate of Service	19

TABLE OF AUTHORITIES

<u>Cases</u>	Page No.
<u>U. S. vs. Freyre-Lazaro</u> , 3 F.3d 1496 (11th Cir. 1993)	13
<u>U. S. vs. Khoury</u> , 901 F.2d 948, 962 (11th Cir. 1990)	13
<u>U. S. vs. Kopituk</u> , 690 F.2d 1289, 1323 (11th Cir. 1982)	13
<u>U.S. vs. Lignarolo</u> , 770 F.2d 971, 978, N.9 (11th Cir. 1985)	13
<u>U. S. vs Orozco-Prada</u> , 732 F.2d 1076 (2nd Cir. 1984)	14, 16

STATEMENT OF JURISDICTION

The Eleventh Circuit Court of Appeals has jurisdiction to consider this case pursuant to Title 28 U. S. C. § 1291 and Rule 4 of the Federal Rules of Appellate Procedure.

STATEMENT OF THE ISSUES

COULD A REASONABLE JUROR FIND THE DEFENDANT GEORGE W. HIGH
GUILTY BEYOND A REASONABLE DOUBT?

STATEMENT OF THE CASE

(i) Course of Proceedings and Disposition in Court Below.

On December 10, 1992, a Grand Jury sitting in the Northern District of Georgia, Atlanta, Division, returned a superseding indictment naming George W. High in six-counts of a multi-count, multi-defendant indictment. (R1-89)

On October 13, 1993, the jury returned a verdict of not guilty as to count fifteen of the indictment. The Jury returned verdicts of guilty as to counts 1, 3, 9, 13 and 14. (RI-348)

On October 15, 1993, George W. High filed a Motion for Judgment of Acquittal notwithstanding the verdict. (R1-353)

On January 25, 1994, an Order of Judgment and Commitment was Entered as to George W. High sentencing him to ninety-seven months confinement.

A timely notice of appeal was filed on February 3, 1994. (R1-401)

On November 17, 1994, the District Court granted George W. High's motion for a new trial as to count 14 of the indictment. (Not listed on docket)

(ii) Statement of Facts

Viewed in the light most favorable to the government, the facts in this case showed that Alex Gracia served as the focal point for a rather extensive cocaine distribution organization in Atlanta, Georgia. Alex Gracia, and others, would obtain their cocaine in Miami, Florida from Juan Hernandez, Julio Cruz, Willie Bain, and others. (R8-134-145; 157-158) The cocaine was transported from Miami, Florida to Atlanta at the direction of Alex Garcia. When the cocaine arrived in Atlanta, it would be distributed by an assortment of individuals, thirteen of whom testified at trial. ¹

The testimony of the individuals referred to above clearly showed the presence of a large scale cocaine distribution organization originating in Miami and elsewhere travelling to Atlanta with a tentacle reaching into Tennessee through an individual named Ronnie Woods. The government's evidence clearly showed that substantial sums of cash were generated by the organization and ultimately spent by Alex Garcia, David Wallace, Joel Peavy and Sims Jinks.

The government's evidence showed that George W. High was a convicted felon and that he was found in possession of a firearm. (RI091, 105) George High conceded these facts in his opening statement. . (R8-32)

¹ Keith Bass (R8-114); Kelvin King (R8-56); Joe Harper (R6106); Andre Dallas (R6-118); Winfred Jordan (R2-165); Donald Williams (R7-33); Roy McCollum (R10-24); Anna Mae Grazette (R11-29); Antonio Moses (R12-3); Larry Strong (R12-102); Sims Jinks (R12-157); Joel Peavy (RI3-91); David Wallace (RI4-44); Ladarious Patrick (RI4-222).

The government's evidence showed that the following pieces of real estate were purchased by various individuals (non of whom was Georgia High) on behalf of several of the conspirators. These properties are dealt with separately below.

4070 Cascade Road

This property was purchased by Virginia High, using 33 checks drawn on 6 separate banks. (R6-10-26) The closing attorney was Robert Burroughs. The money for this purchase came from Alex Gracia. The property was not placed in George High's names nor was George High at the actual closing. (R6-12)

426 Payton Road

This property was purchased by Virginia High on June 19, 1990 using 5 cashiers checks totalling \$36,300.00. George W. High was not present at the closing. (R6-40-48) The money for this purchase came from Sims Jinks. (R12-177-181)

5648 Hunters Chase

This property was purchased with money provided by Anna Mae Grazette and it was placed in Ms. Grazette's name. (R6-117-118, R1029-53). Virginia High represented Ms. Grazette at the closing. George High was not present.

2151 Peachtree Street, Unit 905

This piece of property was purchased in the name of Virginia High. George High was present at the closing but he did not take any part in the transaction. (R6-149). As in the previous cases, the money for this particular transaction came from drug proceeds.

3776 Panola Road

This piece of property was acquired by Sims Jinks on/or about June 22, 1989. (R6-123-134) George High represented Sims Jinks at this transaction. The jury acquitted George High of this transaction.

4775 Riversound Drive

This piece of property was purchased in the name of Virginia High. During part of the transaction, it became necessary for Virginia High to payoff a prior lien holder. Virginia High and George High went to the lienholder's office and presented a series of checks and cash to the lienholder. George High was present and when an issue arose as to a personal check, he produced approximately \$34,000.00 in cash which was taken by the lienholder in partial satisfaction of the lien. (R13-69-75)

The following propositions demonstrate a lack of evidence against George High. First, none of the cooperating co-defendants/ co-conspirators gave any evidence even suggesting that they had informed George High that they were drug dealers. None of the drug dealers admitted to any conversations with George High which one could infer that they were drug dealers. The evidence did not establish that George High had actual or constructive knowledge of the source of the funds that are in question. The only evidence, in the record, that would connect George High to any drug transaction had to be inferred from the large amounts of cash involved and his structuring activities.

(iii) Standard of Review

Whether or not there was sufficient evidence to find the defendant guilty beyond a reasonable doubt is a question that is decided denovo by this Court.

SUMMARY OF THE ARGUMENT

The government's evidence was insufficient to convict George High of conspiracy to possess and distribute cocaine or to participate in a money laundering conspiracy. At best, the evidence showed that George High participated in structuring financial transactions under the law prior to Ratzlaff.

ARGUMENT AND CITATION OF AUTHORITY

I.

COULD THE JURY HAVE FOUND THE ESSENTIAL ELEMENTS OF THE CONSPIRACY BEYOND A REASONABLE DOUBT?

In attacking a conviction based upon a challenge to the sufficiency of the evidence, the Court must review the evidence in a light most favorable to the government and all reasonable inferences and credibility choices must be made in favor of the jury verdict. Additionally, there must be substantial evidence to support the verdict. U. S. vs. FreyreLazaro 3 F.3d 1496, 1502 (11th Cir. 1993).

In order to uphold a conviction based upon a conspiracy charge, the government must show, beyond a reasonable doubt, that:

- 1) a conspiracy existed;
- 2) the Defendant knew of the conspiracy; and
- 3) the Defendant voluntarily joined the conspiracy. U.S. vs. Lignarolo.770 F.2d 971, 978, n.9 (11th Cir. 1985).

The Defendant's participation in the conspiracy does not have to be proved by direct evidence. The trier of fact may infer a common plan and purpose from a "development and collocation of circumstances." U. S. vs. Khou y, 901 F.2d 948, 962 (11th Cir. 1990) at FreyreLazaro, supra, 1502. The Defendant's participation in the conspiracy may also be implied from his or her acts in furtherance of the purpose of the conspiracy. U. S. vs. Kopituk, 690 F.2d 1289, 1323 (11th Cir. 1982), at Lignarolo, supra., at 978. Finally, persons who "wash" drug

proceeds can be deemed integral to the overall conspiracy to possess and distribute drugs if their participation meets the aforementioned requirements. See U. S. vs. Orozco-Prada, 732 F.2d 1076, (2nd Cir. 1984)

Before we begin an analysis of the insufficiency of the evidence against George High, let us review a comment made by the District Court at Georgia High's sentencing that catches the spirit of George High's argument before this Court. At sentencing, the issue of whether or not George High should be assessed a 2 level increase based upon a special skill was argued. The District Court in commenting on Mr. High's participation in the alleged conspiracy stated as follows:

I think in this case, if I remember the evidence correctly, while *you* may assume or infer that Mr. High used some special skill, I think the boss in this thing and the one using the special skill was Mrs. High, according to the evidence.

Now, *you* may infer that Mr. High being there and all of that might lead to the inference that he ran the ballgame. I don't think he did. I think Mrs. High did it. And he may have had the skill to do it, and in reality may have done it. But I don't believe the evidence, I don't believe the evidence would support enhancing the guideline range here on Mr. High. (R20-7)

George High's position on appeal is that the government did not present sufficient evidence from which a trier of fact could conclude that he knew of the conspiracy² and voluntarily joined it.

²This applies to the conspiracy to possess and distribute cocaine alleged in Count One and the conspiracy to launder drug money alleged in Count Thirteen. The District Court admitted erroneous charge on structing illinates that from consideration.

George High's position is that, at best, he was merely present during the commission of a crime and that the jury found him guilty based mostly on the fact that he was married to Co-Defendant, Virginia High. Of course, their marital relationship is not sufficient to establish George High's guilt.

In an effort to convict Alex Gracia, the government called numerous Co-Conspirators who testified that they knew Alex Gracia and that they either transported drugs to him or for him. Out of those witnesses, Kevin Bass, Willie Bain, Juan Hernandez, Kelvin King, Joe Harper, Andre Dallas, Winfred Jordan, Donald Williams, Roy McCollum, Antonio Moses, and Larry Strong, did not mention George High's participation in the conspiracy. In fact, most of them admitted that they did not even know the Defendant. The remaining Co-Conspirators, Sims Jinks, Joel Peevy, David Wallace and Ladarious Patrick all testified that they knew George High but that they dealt with Virginia High. The exception would have been Sims Jinks' purchase of the property located at Panola Road, the account upon which George High was acquitted.

George High's participation in the other transactions alleged to have been part of the conspiracy were minimal. Again, George High's position can best be summarized by the questions and answers propounded by the government to David Wallace. In the following colloquy, the government is asking the questions and David Wallace is giving the answers.

Q. Mr. Wallace, before I move forward, let me back up a little bit and pick up some things I omitted. After you met George and Virginia High, did you introduce anyone to George or Virginia High?

A. Yes, I did.

Q. Who did you introduce George or Virginia High?

A. Joel Peevy, AI, and Winfred Jordan.

Q. The AI, are you referring to Mr. Gracia?

A. Yes.

Q. Now, did you spend much time with George and Virginia High in the time you were dealing with the a Riversound property?

A. Yes, with Virginia.

Q. Did you have an opportunity to observe the two of them together?

A. Yes and no. Yes, when I went to the office I always seen Virginia and George. But when I dealt, I always dealt with Virginia. (R14-102)
(Emphasis added)

In order to sustain a conviction of George High, the government must show beyond a reasonable doubt, that there is a substantial link between the activities of George High and the drug conspiracy. Orozco-Prada, supra at 1081. In Orozco-Prada, the Defendant Eduardo Orozco headed an organization that laundered over \$150,000,000.00 in cash. Large cash deposits would be run through a corporation known as Criex and deposited into accounts maintained by Eduardo OrozcoPrada. Eduardo Orozco-Prada argued that the government presented insufficient evidence to convict him. In sustaining Orozco-Prada' s conviction, this Court noted that Orozco-Prada had made statements to an undercover agent that he was aware that the money deposited into' the Criex's account was drug proceeds. The evidence also showed that

Eduardo Orozco-Prada paid rather substantial commissions to others who would help him launder the drug proceeds. This Court held that those two facts were sufficient to show that Orozco-Prada was a member of the conspiracy. In this case, there is absolutely no evidence that George High made any statements, either direct or inferential that could lead to the conclusion that he was aware that the financial transactions in which he participated involved drug proceeds.

In contrast to George High's alleged participation in the conspiracy, there is the conduct of Antonio Moses. (R123-33).

Antonio Moses was an accountant who participated in the cooking of powder cocaine into crack cocaine. He met with Defendant Alex Gracia- and others to help set up a legitimate business, the real purpose of which was to launder drug proceeds. Antonio Moses testified that he had specific conversations with a person by the name of Greg Taylor who told him (Moses) that he had a drug dealer who needed to launder the proceeds. Moses then went on to meet with those individuals. C' (R12-23-25)

Antonio Moses' conduct is of the nature and quality from which a jury could reasonably conclude that he was a willing member of a conspiracy to possess and distribute drugs. The evidence against George High. in this regard is woefully inadequate and in fact none existed. George High's presence at the Riversound transaction is not sufficient to create the inference that he had joined the conspiracy.

SUMMARY

George High's conviction ought to be reversed based upon insufficiency of the evidence. The government was unable to show that he was aware of the conspiracy or that he willfully joined it.

Respectfully submitted,

WILLIAM A. MORRISON
Georgia Bar No. 525186
Attorney for George High

JONES, MORRISON & WOMACK, P.C.
1250 Peachtree Center Tower
230 Peachtree Street, N.W.
Atlanta, Georgia 30303

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that I have this date served a copy of the within and foregoing upon the following party by depositing same in the United States mail with adequate postage thereon and addressed to:

H. Allen Moye
Assistant United States Attorney
400 United States Courthouse
75 Spring Street, S. W.
Atlanta, Georgia 30303

This the 23 day of February, 1995

WILLIAM A. MORRISON
Georgia Bar . No. 525186
Attorney for George High