

United States Court of Appeals
for the Eighth Circuit

No. 06-2437

United States of America, *
*
Plaintiff - Appellee, *
* Appeal from the United States
v. * District Court for the District
* of South Dakota.
*
Juan Rodriguez, *
* [UNPUBLISHED]
Defendant - Appellant. *

Submitted: October 17, 2006
Filed: December 5, 2006

Before MELLOY, BEAM, and BENTON, Circuit Judges.

PER CURIAM.

Following a jury trial, Defendant Juan Rodriguez was convicted of conspiring to distribute in excess of five kilograms of a mixture or substance containing cocaine in violation of 21 U.S.C. §§ 841(a)(1) and 846. The district court¹ sentenced him to 135 months' imprisonment. His conviction was supported by the testimony of numerous coconspirators. He now argues that his coconspirators were not credible and that their testimony is insufficient to support the conviction. This argument is without merit, and we will not disturb the jury's credibility assessments on appeal.

¹The Honorable Lawrence L. Piersol, United States District Judge for the District of South Dakota.

United States v. Hernandez, 301 F.3d 886, 889 (8th Cir. 2002) (“The court should not assess the credibility of the witnesses or weigh the evidence.”).

Regarding sentencing, Rodriguez challenges the district court’s drug quantity determination as being clearly erroneous. This argument, too, is without merit. The jury found beyond a reasonable doubt that the conspiracy involved over five kilograms of cocaine. The jury’s finding was supported by substantial evidence, including coconspirator testimony that placed the drug quantity at an amount substantially greater than five kilograms. At sentencing, the district court was required to determine a drug quantity under the preponderance of the evidence standard, and the district court adopted the five kilogram quantity found by the jury. “It is axiomatic that a fact proved beyond a reasonable doubt cannot simultaneously be disproved by a preponderance of the evidence.” United States v. Campos, 362 F.3d 1013, 1016 (8th Cir. 2004).

We affirm the judgment of the district court.
