

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

v.

No. 97-4722

GILDARDO CORTEZ, JR.,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of North Carolina, at Charlotte.
Richard L. Voorhees, District Judge.
(CR-96-63-V)

Submitted: October 20, 1998

Decided: April 21, 1999

Before WILKINS, HAMILTON, and LUTTIG, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Randolph Marshall Lee, Charlotte, North Carolina, for Appellant.
Mark T. Calloway, United States Attorney, H. Thomas Church, Assis-
tant United States Attorney, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See
Local Rule 36(c).

OPINION

PER CURIAM:

Gildardo Cortez, Jr., was convicted by a jury of conspiracy to possess marijuana with intent to distribute, in violation of 21 U.S.C. § 846 (1994). On appeal, Cortez contends that the district court improperly admitted evidence under Fed. R. Crim. P. 404(b), of his marijuana dealings with two co-conspirators which occurred before the charged conspiracy. Finding no reversible error, we affirm Cortez' conviction.

Assuming, without deciding, that the admission of the evidence of the co-conspirators' prior involvement with Cortez was error, any error was harmless. After a thorough review of the record before the court, "we . . . can say `with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error.'" United States v. Ince, 21 F.3d 576, 583 (4th Cir. 1994) (quoting Kotteakos v. United States, 328 U.S. 750, 765 (1946)). In addition, although Cortez then challenges the evidence on the grounds that it was circumstantial and turned on the credibility of witnesses, we may not weigh the evidence or review the credibility of the witnesses. See United States v. Wilson, 118 F.3d 228, 234 (4th Cir. 1997).

Accordingly, we affirm Cortez' conviction. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED