

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

November 4, 2013

Lyle W. Cayce
Clerk

No. 13-30186
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

KENNETH A. GORDON, JR.,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 5:11-CR-219-1

Before KING, DAVIS, and ELROD, Circuit Judges.

PER CURIAM:*

Kenneth A. Gordon, Jr., appeals his conviction for conspiracy to commit wire fraud and wire fraud stemming from his role in a scheme to defraud an insurance company by staging a theft of heavy equipment and submitting a false claim for the loss. He challenges the sufficiency of the evidence supporting the conviction, noting his testimony that he did not commit the offenses and arguing that the Government's chief witness, co-conspirator Don

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

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Newton, was not credible. Because he failed to renew his motion for a judgment of acquittal at the close of all of the evidence, we review for a manifest miscarriage of justice. *See United States v. Rodriguez-Martinez*, 480 F.3d 303, 307 (5th Cir. 2007).

The verdict shows that the jury believed Newton's testimony over Gordon's. This credibility finding "was within the sole province of the jury as the fact finder," and we "will not second guess . . . its choice of which witness[] to believe." *United States v. Zuniga*, 18 F.3d 1254, 1260 (5th Cir. 1994). Contrary to Gordon's assertion, the evidence that he sold a piece of the equipment after filing the insurance claim was admissible, as it indicated his knowledge of the offenses, his plan, and his motive. *See* FED. R. EVID. 404(b). We find no manifest miscarriage of justice in his conviction. *See Rodriguez-Martinez*, 480 F.3d at 307.

AFFIRMED.