

FILED

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ISIDRO BENITEZ-CASTILLO,

Defendant-Appellant.

No. 16-30112

D.C. No.

3:14-cr-05159-BHS-5

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Benjamin H. Settle, District Judge, Presiding

Submitted October 3, 2017**
Seattle, Washington

Before: LIPEZ,*** WARDLAW, and OWENS, Circuit Judges.

Isidro Benitez-Castillo appeals his conviction for conspiracy to distribute a controlled substance in violation of 21 U.S.C. § 841(a)(1). We affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Kermit V. Lipez, United States Circuit Judge for the First Circuit, sitting by designation.

1. The district court did not abuse its discretion in overruling Benitez-Castillo's hearsay objection to Officer Jensen's statement that he received information from Daniel Reyes about a meeting with Benitez-Castillo. Officer Jensen's fleeting statement was not hearsay because it provided necessary background and context for the initiation of his investigation, and therefore its probative value was independent of its veracity. *United States v. Echeverry*, 759 F.2d 1451, 1457 (9th Cir. 1985).

2. The district court properly denied Benitez-Castillo's motion for acquittal under Federal Rule of Criminal Procedure 29 because sufficient evidence supported Benitez-Castillo's conviction. The jury found Reyes' testimony credible, and we must "respect the exclusive province of the fact finder to determine the credibility of witnesses." *United States v. Archdale*, 229 F.3d 861, 867 (9th Cir. 2000) (citation omitted). Reyes' testimony about Benitez-Castillo orchestrating a methamphetamine transaction was concrete, internally consistent, and uncontradicted. Along with the hundreds of contacts and attempted contacts between Benitez-Castillo and co-conspirators, the evidence, viewed in the light most favorable to the government, was sufficient for any rational trier of fact to find the essential elements of a conspiracy to distribute controlled substances. *See United States v. Mincoff*, 574 F.3d 1186, 1192 (9th Cir. 2009) ("Express agreement

is not required; rather, agreement may be inferred from conduct.”) (citation omitted); *United States v. Lennick*, 18 F.3d 814, 818–19 (9th Cir. 1994) (describing elements of conspiracy to distribute controlled substances). Benitez-Castillo’s conviction is neither plainly erroneous nor a manifest miscarriage of justice.

AFFIRMED.