

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 15-11036
Non-Argument Calendar

D.C. Docket No. 4:14-cr-00017-HLM-WEJ-2

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LUCIO CONTRERAS,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Georgia

(November 19, 2015)

Before TJOFLAT, WILSON and ROSENBAUM , Circuit Judges.

PER CURIAM:

Lucio Contreras appeals his drug trafficking convictions involving methamphetamine¹ raising one issue: whether the District Court abused its discretion in excusing a juror for cause based on the juror's one-word affirmative response to a question about whether methamphetamine should be legalized, even though the prospective juror later affirmed his ability to be fair and impartial.

The constitutional standard for whether a prospective juror can be impartial is whether he can set his personal opinions aside and render a verdict based solely on the evidence presented in court. *United States v. Simmons*, 961 F.2d 183, 184 (11th Cir. 1992). “In particular, when reviewing juror impartiality, this court has focused on whether (1) the juror may be affected by matters not in evidence, and (2) the juror may presume guilt rather than innocence.” *United States v. Dickerson*, 248 F.3d 1036, 1045 (11th Cir. 2001) (quotation omitted). A potential juror is unfit to serve when his “expressions of ability to abide by the evidence presented in the court were at most qualified.” *United States v. Martin*, 749 F.2d 1514, 1518 (11th Cir. 1985); *but cf. United States v. Rhodes*, 177 F.3d 963, 965-66 (11th Cir. 1999) (determining a juror to be fit to serve despite concerns about her capacity to evaluate the truthfulness of a witness-relative, when she “demonstrated that those [prior] notions would not prevent her from deciding the case solely

¹ Contreras was convicted of conspiring to possess with the intent to distribute at least five grams of actual methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), and the substantive possession offense, 21 U.S.C. §§ 841(a)(1).

based on the evidence presented in the court” and could ensure that any bias was left outside the courtroom).

As the Supreme Court noted in *Patton v. Yount*, the process of determining, at *voir dire*, whether a particular venireperson is biased essentially involves an analysis of the individual’s credibility and, therefore, his or her demeanor. 467 U. S. 1025, 1038, 104 S. Ct. 2885, 2892, 81 L. Ed. 2d 847 (1984). Because it is not always clear from the record that a prospective juror is unmistakably biased, we must give deference to the District Court’s determination that the juror will be unable to faithfully apply the law because the court had the opportunity to see and hear the juror. *Brown*, 441 F.3d at 1357. There are few aspects of a jury trial where we are less inclined to reverse the court’s exercise of discretion than in ruling on challenges for cause in empaneling of a jury. *United States v. Tegzes*, 715 F.2d 505, 509 (11th Cir. 1983).

We find no abuse of discretion here. The juror’s response to the prosecutor’s *voir dire* questions indicated that the juror’s ability to impartially serve as a juror was questionable.

AFFIRMED.