

January 22, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-50340 c/w
No. 03-50406
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

HENRY SIDNEY WALCZAK,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. EP-02-CR-1164-ALL-EP
- - - - -

Before JOLLY, SMITH, and WIENER, Circuit Judges.

PER CURIAM:*

Henry Sidney Walczak appeals his convictions, following a jury trial, of importation of marijuana and possession of marijuana with intent to distribute, in violation of 21 U.S.C. §§ 952 and 841(a). The district court sentenced Walczak to concurrent 37-month prison terms and three-year supervised-release terms.

Walczak contends the trial evidence was insufficient to support the knowledge element of the convictions, in that the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

100.2 pounds of marijuana found by U.S. Customs Inspectors had been concealed in various hidden compartments within the truck he had allegedly bought only a week earlier in Mexico. The evidence was not insufficient to support an inference that Walczak knew that the marijuana was hidden in his truck. See United States v. Villarreal, 324 F.3d 319, 322 (5th Cir. 2000); United States v. Jones, 185 F.3d 459, 464 (5th Cir. 1999). Although Walczak did not appear to be especially nervous when initially stopped and questioned by Customs officials at the Ysleta port of entry, he subsequently provided inconsistent statements to investigating inspectors and agents. For instance, Walczak initially told inspectors that he had bought his truck three weeks earlier from an El Paso dealership, but, after the dismantling of his truck began, he told a Customs Special Agent that he had bought the truck only a week earlier from a man in a bar in Juarez, whom he could identify only by the man's first name. Moreover, the jury was authorized to determine that Walczak's general disavowal of knowledge of the marijuana was implausible, because Walczak's story offered no reasonable time or opportunity for the allegedly unknown smugglers to retrieve the marijuana from his truck within the United States. See Villarreal, 324 F.3d at 324. The evidence was sufficient to support the knowledge element of Walczak's convictions.

Walczak's convictions are AFFIRMED.