

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-7364
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHARLES RAY MOORE,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CR-L-91-264
- - - - -

March 19, 1993

Before KING, DAVIS, and SMITH, Circuit Judges.

PER CURIAM:*

Moore argues that the Government produced insufficient evidence of the knowledge element essential for his convictions for possession with intent to distribute and importation of marijuana. He asserts that he was "duped" into driving the car which was found to contain 86.5 pounds of marijuana. Moore moved for a judgment of acquittal based on insufficiency of evidence at the conclusion of the presentation of the Government's evidence, but failed to renew this motion at the conclusion of the

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

presentation of his defense. Consequently, this Court's review is not under the usual standard of review for claims of insufficiency of evidence, but rather under a much stricter standard. See United States v. Ruiz, 860 F.2d 615, 617 (5th Cir. 1988). The review of Moore's claim is limited to the determination of whether there was a manifest miscarriage of justice. Such a miscarriage exists only if the record is devoid of evidence pointing to guilt. See id.

Moore contested only the element of knowledge, which was required for each offense of conviction. In cases involving hidden compartments, reliance may not be placed solely on the defendant's control of the vehicle. United States v. Gibson, 963 F.2d 708, 710 (5th Cir. 1992). In such instances, possession can be inferred only if knowledge is indicated by additional factors, such a circumstances evidencing a consciousness of guilt on the part of the defendant. Id. at 710-11. Circumstantial factors evidencing a consciousness of guilt include an implausible explanation for one's travels, conflicting statements, and nervousness when questioned. Id.; see also United States v. Greenwood, 974 F.2d 1449, 1456 (5th Cir. 1992).

Moore's explanation of his travels is implausible at best. Moore acknowledged that he knew that his employer, Rosa, was involved in drug trafficking. Moore was to be paid \$200 to drive a car with an approximated value of only \$400. He agreed to drive the car to Monterrey for Maria and Delio, yet they accompanied him on the trip to Monterrey.

The INS agent testified that Moore was extremely nervous at

the checkpoint. The agent also testified that Moore was in a "panic state" when he saw the narcotics dog. Although Moore contends that he visited Monterrey, Nuevo Laredo, Guadalajara, and San Juan, he told the INS officer he had been vacationing in Mexico City. Finally, Moore asserts that he was "set up" by Maria and Delio, yet when he was confronted with the news that contraband was found in the car, he never mentioned Maria and Delio.

A review of the record demonstrates that Moore had knowing possession of the marijuana. Thus, there was sufficient evidence to support his convictions. The judgment of the district court is AFFIRMED.