

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-7486
(Summary Calendar)

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BENNIE FRANK HENSLEY, JR.,

Defendant-Appellant.

Appeal from the United States District Court
For the Southern District of Texas

(CR-C-92-5-(01))

(January 8, 1993)

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:*

Defendant-Appellant Benjamin Frank Hensley, Jr. was convicted by a jury for possession with intent to distribute marihuana in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B). On appeal, Hensley complains that the evidence was insufficient to support his

*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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

conviction. Disagreeing, and finding no reversible error, we affirm.

I

FACTS AND PROCEEDINGS

While driving a tractor-trailer truck, Hensley was stopped by a Border Patrol agent at the Border Patrol Checkpoint at Falfurrias, Texas. In response to the agent's question about the truck's cargo, Hensley produced two bills of lading reflecting that the truck was carrying frozen goods. The agent testified that Hensley appeared very nervous during the encounter; that his hands were visibly trembling; that he refused to make eye contact; but that he granted the agent permission to inspect the trailer.

The agent further testified that at the secondary inspection area he noticed evidence of tampering with the seal on the trailer; and that he was able to remove the seal with his fingers instead of having to follow the usual practice of cutting it. Once inside the trailer, the agent stated, he noticed that the load had apparently been shifted, and upon further inspection discovered U-Haul packing boxes under the load. The agent said that he removed one of the boxes from the trailer so that a trained dog could "sniff" it. When the dog alerted positively, testified the agent, he opened the box and discovered that it contained marihuana. After Hensley was placed under arrest, he informed the agent that he had a pistol in the cargo box of the rig.

The agent also testified that he was told by the driver of a car at the checkpoint that he owned the truck. After a secondary

inspection of the car proved negative, however, the car and driver were allowed to proceed.

Hensley was charged with possession with intent to distribute marihuana and possession of a weapon during a drug-trafficking crime, in violation of 18 U.S.C. § 924(c)(1) and 21 U.S.C. §§ 841(a)(1) and (b)(1)(B). At the trial, Hensley testified that he did not have any involvement or knowledge regarding the marihuana. He explained that he made several stops during the haul, and that the marihuana could have been loaded without his knowledge at any of several locations.

The tractor-trailer was leased by Elite Trucking to Stallion Trucking Company, a concern owned by Hensley and his partner, Cary Scoggins. Hensley's wife testified that after Hensley was arrested, Scoggins called her collect and told her that "Ben had had nothing to do with what happened, that it was all his (Scoggins') fault, but he was not going to turn himself in because he was not going to jail." Scoggins did not appear as a witness at the trial.

A trucking broker testified that Elite asked him to locate a load with a final destination in the Southeastern United States for Stallion to haul. The last pick-up that Hensley made before reaching the checkpoint was at Value Frozen Foods. The crew leader for Value testified that there were no U-Haul boxes inside the trailer before it was loaded and that the trailer was constantly in his view while it was being loaded. He further testified that he put a seal on the trailer in such a manner that it could not have

been removed using nothing but bare fingers.

Hensley called the broker and told him that the refrigeration unit was not working properly and that he had taken it to be repaired. According to Hensley, he took the truck to a local repair shop where the refrigeration unit was recharged with freon. Hensley testified that around noon, after the unit was recharged, he went to a restaurant where he waited, with the trailer, until about 5:00 p.m. to make certain that the unit was working properly.

After his arrest, Hensley was questioned by a DEA agent who testified at trial that he was told by Hensley that he was driving the truck for Cary Scoggins; and that he had driven a U-Haul truck from his home in Virginia to the Rio Grande Valley to transport his motorcycle, which he intended to sell in the Valley. The DEA agent was also told by Hensley that he had purchased the pistol from a trucker in the Rio Grande Valley. The agent later learned that Hensley had rented the U-Haul in Alabama. The government also produced a witness who stated that he had sold the pistol to Cary Scoggins in Georgia. At trial, Hensley admitted that he lied about the manner in which he had acquired the pistol, but that he had lied because he believed that transporting a weapon across state lines was a crime.

The jury found Hensley guilty on the marihuana count and not guilty on the firearms count. Hensley timely appealed his conviction on the drug charge.

II

ANALYSIS

To prove possession of a controlled substance with intent to distribute, the government must show beyond a reasonable doubt that the defendant knowingly possessed the illegal substance with intent to distribute it. United States v. Ramirez, 963 F.2d 693, 701 (5th Cir.), cert. denied, 113 S.Ct. 388 (1992). Intent to distribute may generally be inferred solely from the possession of a large amount of a controlled substance. United States v. Pineda-Ortuno, 952 F.2d 98, 102 (5th Cir.), cert. denied, 112 S.Ct. 1990 (1992). The standard of review for challenges to the sufficiency of the evidence is whether, after viewing all of the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements beyond a reasonable doubt. Id.

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

As noted above, the border patrol agent testified that Hensley was noticeably nervous at the checkpoint, and that he made

inconsistent statements about the rental of the U-Haul and his acquisition of the pistol. In addition, the marihuana was stored in boxes from U-Haul, the same company from which Hensley rented the truck. Finally, Hensley's story that he waited five or six hours at a restaurant to make sure that the refrigeration unit was working is implausible given that he was already behind schedule as a result of the refrigeration malfunction.

The government argues that continuous possession of a vehicle in which contraband is secreted may support a finding of guilty knowledge (citing United States v. McDonald, 905 F.2d 871, 874 (5th Cir.), cert. denied, 111 S.Ct. 566 (1990)). Hensley contends, however, that he did not maintain continuous supervision of the truck. At trial, he testified that the marihuana could have been loaded into the rig at any one of several stops he made along his route. He emphasizes that no marihuana or marihuana residue was found on his person, that his fingerprints were not found on the marihuana packages, and that he operated the truck pursuant to the direction of Scoggins.

In deciding the sufficiency of the evidence, however, the evidence need not exclude every rational hypothesis of innocence or be wholly inconsistent with every conclusion except guilt. It suffices that a reasonable trier of fact could find that the evidence establishes guilt beyond a reasonable doubt. United States v. Pruneda-Gonzalez, 953 F.2d 190, 193 (5th Cir.), cert. denied, 112 S.Ct. 2952 (1992).

Even assuming that Hensley did not have uninterrupted control

over the truck, the evidence adduced at trial was sufficient to support his conviction. In reviewing challenges to the sufficiency of the evidence, all inferences and credibility determinations must be resolved in favor of the jury's verdict. Pineda-Ortuno, 952 F.2d at 102. The Value Frozen Foods employee testified that the U-Haul boxes were not in the trailer at the time the seal was affixed and that the seal could not have been removed in the manner described by the government agent. The person who repaired the refrigeration unit testified that placing freon in the unit did not require entry into the trailer. The jury found this and all other testimony convincing enough to find Hensley guilty. Additionally, the jury was entitled to discredit Hensley's wife's testimony that Scoggins had confessed his culpability to her.

Hensley contends that a comparison of his case and United States v. Moreno-Hinojosa, 804 F.2d 845 (5th Cir. 1986), demonstrates the "flawed nature" of the government's case against him. In Moreno-Hinojosa, we held that the evidence was insufficient to convict the defendant of possession with intent to distribute because the defendant was merely riding as a passenger in a truck found to contain marihuana. There, we found that the evidence failed to show that the defendant actually controlled the truck or the marihuana, or had the power to control either. Id. at 847. Hensley contends that the evidence against him is weaker than that which we deemed insufficient in Moreno-Hinojosa. We disagree.

Unlike in Moreno-Hinojosa, Hensley alone was driving the truck and he alone had exclusive control or power of control over the

truck at all times. Thus, his assertion that his case is analogous to Moreno-Hinojosa is meritless.

In cases of sufficiency of the evidence, neither the jury nor the reviewing court is required to examine each circumstance in isolation. United States v. Duncan, 919 F.2d 981, 990 (5th Cir. 1990), cert. denied, 111 S.Ct. 2036 (1991). Viewed in total context and in the light most favorable to the verdict, the evidence here is more than sufficient to support Hensley's conviction for possession of marihuana with intent to distribute. The judgment of the district court is, therefore,
AFFIRMED.