

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-7487
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WALLACE FRANK THOMAS, JR.,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CR-C92-27-01

- - - - -
March 19, 1993

Before KING, DAVIS, and SMITH, Circuit Judges.

PER CURIAM:*

Thomas challenges the sufficiency of the evidence supporting his conviction. "The standard of review in challenges to the sufficiency of the evidence is whether, taken in the light most favorable to the government, any rational trier of fact could have found the essential elements of the offense charged beyond a reasonable doubt." United States v. Molina-Iquado, 894 F.2d 1452, 1457 (5th Cir.), cert. denied, 111 S.Ct. 95 (1990).

A conviction for possession of marihuana with intent to

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

distribute requires proof that the defendant had knowing possession of the illegal substance with intent to distribute it. United States v. Diaz-Carreon, 915 F.2d 951, 953 (5th Cir. 1990). Possession of a controlled substance may be either actual or constructive. United States v. Morales, 854 F.2d 65, 67 (5th Cir. 1988). Constructive possession may be established by a showing of dominion, control, or ownership over the vehicle in which the contraband was concealed; however, because the marihuana was hidden, merely linking Thompson to the trailer is not sufficient to prove that he knew the vehicle contained the controlled substance. United States v. Greenwood, 974 F.2d 1449, 1456 (5th Cir. 1992), petition for cert. filed (Feb. 1, 1993) (No.92-7513). There must be additional evidence to prove the element of knowledge. Id. The necessary intent and knowledge can be proved by circumstantial evidence. United States v. Ojebode, 957 F.2d 1218, 1223 (5th Cir. 1992), cert. denied, 61 U.S.L.W. 3582 (U.S. Feb. 22, 1993) (No. 92-6472).

The circumstantial evidence supports Thomas's conviction. Three employees of McManus Produce Company testified that they loaded broccoli into a number of trailers on December 31, 1991. Two employees testified that the trailers were empty before the broccoli was loaded. A third employee involved in the loading testified that he did not see any duffel bags being loaded into a trailer and that he would have been able to detect the bags among the produce. Furthermore, the manager of the shop which installed the tires on January 2, testified that installation took 30 minutes at most and did not involve entering the trailer.

The mechanic who replaced the spring on Thomas's trailer also testified that there was no need to go inside the trailer to perform his work. That job took about an hour.

From this testimony, the jury could reasonably infer that the marihuana was placed in the trailer after Thomas took possession of the truck and that the marihuana was not placed in the trailer while the repairs were being conducted. Further, Thomas displayed extreme nervousness when questioned by the federal agents, and he gave inconsistent statements regarding the locks on his trailer. See Greenwood, 974 F.2d at 1456. The jury had the opportunity to judge Thomas's credibility and could reasonably have rejected his story that he was unaware that marijuana had been placed in his trailer. Thus, the evidence was sufficient to allow the jury to find guilt beyond a reasonable doubt.

The conviction is AFFIRMED.