IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

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No. 92-8312

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CAROLYN LEE WILSON,

Defendant-Appellant.

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Appeal from the United States District Court for the Western District of Texas

(P 92-CR-14-1)

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(February 22, 1993)

Before JOHNSON, GARWOOD and JONES, Circuit Judges.[*]

PER CURIAM:

Defendant-appellant Carolyn Lee Wilson (Wilson) was convicted on her guilty plea of one count of possession with intent to distribute cocaine base in violation of 21 U.S.C. § 841(a)(1). The plea reserved her right to appeal the district court's previous ruling denying her motion to suppress the cocaine that was found in

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

a package in her suitcase, as well as the statements she made on that occasion, pursuant to Fed. R. Crim. P. 11(a)(2). Wilson now appeals, challenging the district court's ruling on the motion to suppress. We affirm.

Wilson raises two contentions on appeal. First, she asserts that when the Border Patrol agent squeezed her suitcase, which was then in the open overhead luggage bin inside the bus on which Wilson was a passenger, this constituted an illegal search. Under the evidence, the district court was not clearly erroneous in concluding that this minimally intrusive touching of the exterior of the suitcase in the open common baggage area of the interior of the bus did not constitute a search within the meaning of the Fourth Amendment. *United States v. Viera*, 644 F.2d 509, 510-11 (5th Cir.), *cert. denied*, 102 S.Ct. 332 (1981); *United States v. Muniz-Melchor*, 894 F.2d 1430, 1435 (5th Cir.), *cert. denied*, 110 S.Ct. 1957 (1992). *See also, e.g., United States v. Hahn*, 849 F.2d 932, 934 (5th Cir. 1988).

Wilson's second contention is that the district court erred in finding her consent to opening the package was knowing and voluntary. We conclude that the district court's determination in this respect was not clearly erroneous. *See United States v. Gonzalez-Basulto*, 898 F.2d 1011 (5th Cir. 1990). We also note that viewing the evidence most favorably to the district court's ruling, Wilson was not in custody at the time of the consent under the standards articulated in *United States v. Bengivenga*, 845 F.2d 593 at 596-99 (5th Cir. 1988). And, we reject her contention that her

knowledge that drugs were in the package precludes a finding of voluntary consent under the circumstances. *See Florida v. Bostik*, 111 S.Ct. 2382 at 2388 (1991).

Wilson's contentions on appeal demonstrate no reversible error in the district court's denial of her motion to suppress. Accordingly, her conviction and sentence are

AFFIRMED.