

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-8510
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PLACIDO CAMERO-OTERO,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. P-92-CR-48(01)
- - - - -

June 24, 1993

Before POLITZ, Chief Judge, WIENER, and DeMOSS, Circuit Judges.

PER CURIAM:*

Placido Camero-Otero complains of the sufficiency of the evidence supporting his bench-trial conviction of knowingly and intentionally possessing with intent to distribute more than 100 kilograms of marihuana.

This Court must determine whether "the evidence is sufficient to justify the trial judge, as trier of the facts, in concluding beyond a reasonable doubt that the defendant was guilty." United States v. Jennings, 726 F.2d 189, 190 (5th Cir. 1984). It is the function of the trial court, not the reviewing

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

court, to weigh the evidence, determine the credibility of the witnesses, and find the facts. Id.

In order to sustain a conviction for the crime of possession of marihuana with intent to distribute, the Government must prove three elements: (1) knowing (2) possession of marihuana (3) with intent to distribute it. United States v. Diaz-Carreon, 915 F.2d 951, 953 (5th Cir. 1990); see 21 U.S.C. § 841(a)(1). Possession may be actual or constructive, may be joint among several defendants, and may be proved by circumstantial evidence. United States v. Vergara, 687 F.2d 57, 61 (5th Cir. 1982). Constructive possession is ownership, dominion, or control over the contraband itself, or dominion or control over the premises or the vehicle in which the contraband was concealed. United States v. Posner, 868 F.2d 720, 722-23 (5th Cir. 1989). Constructive possession is also the ability to reduce an object to actual possession. Id. at 723.

Generally, knowing possession may be inferred from the control over the contraband along with other circumstantial evidence that is suspicious in nature or demonstrates guilty knowledge. United States v. Martinez-Mercado, 888 F.2d 1484, 1491 (5th Cir. 1989). Specifically, intent to distribute may be inferred from the possession of a large quantity of narcotics. See United States v. Kaufman, 858 F.2d 994, 1000 (5th Cir. 1988) (defendant had almost ten pounds of marihuana, a quantity not for personal consumption). A "less-than-credible explanation" for a defendant's actions may also form "part of the overall circumstantial evidence from which possession and knowledge may

be inferred." Diaz-Carreón, 915 F.2d at 955 (internal quotations and citation omitted). Perhaps the strongest evidence of a criminal defendant's guilty knowledge is inconsistent statements to federal agents. Id. at 954-955.

In this case, federal agents found the defendant near fifteen bundles of marihuana in a secluded area in South Texas very early one morning; after being apprehended, the defendant led the agents to the marihuana; the amount of marihuana found was a quantity not for personal consumption; the defendant admitted at least once that he and three other men had brought the marihuana on horseback from Mexico; the defendant made inconsistent statements to federal agents; and the defendant's statement that he believed the marihuana was hay amounted to a "less-than-credible" explanation. Based on the totality of the circumstances, sufficient evidence supports the conviction.

AFFIRMED.