UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-8610

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

ELSA CAVAZOS and PEDRO OSUNA, JR.,

Defendants-Appellants.

Appeals from the United States District Court
for the Western District of Texas
(W-92-CR-68-2)

(February 11, 1994)

Before CHIEF JUDGE POLITZ, GARWOOD, and DUHÉ, Circuit Judges.

DUHÉ, Circuit Judge:[1]

Elsa Cavazos and Pedro Osuna were convicted of possession with intent to distribute more than fifty kilograms of marijuana, and conspiracy to commit the same offense. Cavazos appeals contending that the evidence is insufficient to convict her, and that the stop of her vehicle was pretextual. Osuna appeals contending only that the stop was pretextual. We find no error and affirm.

To convict of conspiracy, the Government was required to prove beyond a reasonable doubt that a conspiracy existed, that it was

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

known to the defendant, and that the defendant voluntarily joined in it. United States v. Mollier, 853 F.2d 1169, 1172 (5th Cir. 1988). Circumstantial evidence is sufficient. United States v. Lewis, 902 F.2d 1176, 1181 (5th Cir. 1990). While mere presence at the scene of a crime, or association with those in control of illegal drugs, are insufficient alone to support a conviction for conspiracy, these facts are relevant factors for consideration by the jury. United States v. Simmons, 918 F.2d 476, 484 (5th Cir. 1990).

Cavazos maintains that she was unaware that the marijuana was in her automobile until it was found by the police. Her position is supported by the testimony of her codefendant, Osuna, the driver of Cavazos' automobile in which Cavazos was a passenger. Cavazos argues that since she did not know that the marijuana was in the vehicle she could not have voluntarily joined in a conspiracy to possess and distribute it.

We will not review the evidence in detail here but we find it sufficient. The record establishes that Cavazos owned the car; was reluctant to open the window of her vehicle when approached by Trooper Kennedy; that the luggage containing marijuana was in plain view in the back seat of this two door Pontiac Firebird automobile; Trooper Kennedy immediately detected the odor of marijuana when Cavazos partially opened the window; over 160 pounds of marijuana were in the car; Cavazos had either been the driver of her vehicle or a passenger in it during its entire trip from Corpus Christi thus it would be inconceivable that she could not detect the odor;

conflicting accounts were given of their trip prior to the stop;[2] Cavazos was very nervous when Trooper Kennedy asked to search the vehicle; and, most telling of all, in order to make the trip, Cavazos made a hasty departure from Mission, Texas, not packing any of her own clothes, although she intended to be away several days, and not making any arrangements to be away from her job as library assistant at the local high school. These facts are sufficient to support the jury's verdict, which we must view in the most favorable light, that she knew of the conspiracy and participated in it.

To support Cavazos' conviction for possession with intent to distribute, the Government must prove that she knowingly possessed marijuana with the intent to distribute it. United States v. Diaz-Carreon, 915 F.2d 951, 953, rehg denied en banc, 919 F.2d 735 (5th Cir. 1990). Possession may be actual or constructive and may be joint among codefendants. United States v. Vergara, 687 F.2d 57, 61 (5th Cir. 1982). "Ownership, dominion, or control over the contraband, or over the vehicle in which it was concealed, constitutes constructive possession." United States v. Shabazz, 993 F.2d 431, 441 (5th Cir. 1993). Intent to distribute may be inferred from the possession of a large quantity of drugs. United States v. Martinez-Mercado, 888 F.2d 1484, 1491 (5th Cir. 1989).

Again viewing the evidence in the light most favorable to the

[2] Osuna told Trooper Kennedy that they had spent the weekend in San Antonio and were on their way to the Dallas-Fort Worth area. Cavazos told him that they came from Mission, Texas, had made a brief stop in Corpus Christi, and were on their way to Dallas to see her mother.

verdict, we find it sufficient. Cavazos owned and occupied the vehicle in which the drugs were found. That fact together with the other circumstantial evidence noted above is sufficient to support the jury's finding of constructive possession. The circumstantial evidence in this case is quite similar to that which was found adequate in Shabazz, 993 F.2d 431, where we looked to evidence that Appellants gave inconsistent accounts of their stay prior to their arrest, and were nervous and became anxious as the officers searched the side of the vehicle where the drugs were found.

Cavazos looks to United States v. Pierre, 932 F.2d 377 (5th Cir. 1991)[3] for support. She argues that the general rule that knowing possession can be inferred from the defendant's control over the vehicle in which the drug is contained if there exists other circumstantial evidence that is suspicious in nature or demonstrates guilty knowledge applies only where drugs are secreted in the vehicle itself, but does not apply where drugs are in luggage in the vehicle. Her reliance is misplaced. In this case marijuana was found in the suitcases in the back seat and trunk of the car but it was also found hidden under the "decklid" of the trunk of this hatch-back type vehicle. Therefore, even under the analysis repeated by Judge Rubin in Pierre, panel opinion, which was taken from U.S. v. Anchondo-Sandoval, 910 F.2d 1234, 1236 (5th Cir. 1990), the vehicle control inference applies. Additionally, in the present case, the officer unquestionably detected the odor

[3] This opinion was vacated by the granting of rehearing en banc. U.S. Pierre, 943 F.2d 6 (5th Cir. 1991).

of marijuana inside the vehicle.

Finally, Cavazos and Osuna contend that the stop of the vehicle was a pretext. These contentions are without merit. The vehicle was observed exceeding the speed limit and changing lanes without signaling. "[S]o long as police do no more than they are objectively authorized and legally permitted to do, their motives in doing so are irrelevant and hence not subject to inquiry." United States v. Causey, 834 F.2d 1179, 1184 (5th Cir. 1987). These officers had cause to stop the vehicle because of its rapid and reckless operation.

AFFIRMED.