

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2121
(Summary Calendar)

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DANIEL RUNNELS, a/k/a
ROBERT JACKSON,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(CR-H-92-164-ALL)

(February 14, 1994)

Before JOLLY, WIENER and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Defendant-Appellant Daniel Runnels appeals his jury conviction for possession with intent to distribute cocaine in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A), claiming insufficient

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

evidence to support the verdict. As we find the evidence more than sufficient, we affirm.

I

FACTS AND PROCEEDINGS

On the morning of July 7, 1992, police officers Jones and Corley of the Houston Narcotics Division were working an undercover assignment at the Amtrak station. Jones observed Runnels sitting on a bench in the station. There were two bags on the bench, one on each side of Runnels. Earlier that morning, the officers had arrested a man in the lobby of the station for possession of a small amount of narcotics (marijuana and cocaine). After the other man's arrest, Jones noticed that Runnels had become noticeably more observant of his surroundings, "scanning the area" and "bouncing [his knees] up and down." Jones therefore approached Runnels and identified himself as a police officer. Runnels responded in a "shrill" and "shaky" voice that he was waiting for a friend, and would be taking the train to Chicago. Runnels showed Jones his train ticket and identified himself as Robert Jackson.

When informed that Jones was a narcotics officer, Runnels became visibly more shaken. Jones was told by Runnels that the bags on either side of him contained his clothes. The officers asked to look into Runnel's bags. After all parties moved into a luggage area, Runnels advised the officers that he preferred that the officers not look into the bags, but that they be checked by a narcotics detection dog instead. Runnels also stated that the two bags belonged to a James Johnson who was supposed to meet him at

the train station.

The narcotics dog alerted on both of the bags that were not in checked luggage. Jones subsequently opened the bags and found thirteen large bundles, twelve of which were later determined to contain two kilos of cocaine each; the thirteenth contained one kilo. In one of the bags the officers also found a plastic bag containing folded currency, in bundles of approximately \$1000 each, totaling \$12,410. Inside Runnels' pockets, Jones found \$1730, which was folded in the same manner as the money discovered inside the bag. The officers retrieved the bag that Runnels had checked, finding that it contained some clothing, shoes, a cellular telephone, and three or four tote bags. Runnels was then arrested and booked under the name of Robert Jackson for possession of cocaine.

Runnels was charged in a one-count indictment with possession of more than five kilograms of cocaine. A jury found Runnels guilty of the offense, after which the district court sentenced him to 151 months imprisonment, 5 years supervised release, and a \$50 special assessment. Following his conviction, Runnels timely appealed, contesting the sufficiency of the evidence to support the jury verdict.

II

ANALYSIS

Runnels argues that there was insufficient evidence to sustain his conviction for knowingly and intentionally possessing cocaine with the intent to distribute. Relying on Clark v. Procunier,

755 F.2d 394 (5th Cir. 1985), Runnels argues that the evidence, viewed in the light most favorable to the verdict, gives equal or nearly equal circumstantial support to a theory of guilt and a theory of innocence, and that his conviction must therefore be reversed. Id. Runnels bases his argument that the evidence supports an equal finding of guilt or innocence on the following premises: 1) nothing in the bags affirmatively connected Runnels with the cocaine found in the bags; 2) Runnels' fingerprints were not found on the bags; 3) Runnels' sole objection to the officers' looking into the bags was that the bags did not belong to him; 4) Runnels never expressed an ownership interest in the bags; and 5) Runnels provided an alias to the ticket agent because she acted unfriendly. We find these arguments unpersuasive.

We review a conviction that the defendant claims is based on insufficient evidence to determine whether a reasonable juror could find that the evidence establishes the defendant's guilt beyond a reasonable doubt. United States v. Restrepo, 994 F.2d 173, 182 (5th Cir. 1993). "The test is not whether the evidence excludes every reasonable hypothesis of innocence or is wholly inconsistent with every conclusion except that of guilt, but whether a reasonable trier of fact could find that the evidence establishes guilt beyond a reasonable doubt." United States v. Salazar, 958 F.2d 1285, 1294 (5th Cir.), cert. denied, 113 S.Ct. 185 (1992). We also weigh all reasonable inferences derived from the evidence in the light most favorable to the verdict. United States v. Lechuga, 888 F.2d 1472, 1476 (5th Cir. 1989).

"In order to convict a defendant of possession of a contraband with intent to distribute . . . the government must prove beyond reasonable doubt the defendant's possession of the illegal substance, knowledge, and intent to distribute." United States v. Ojebode, 957 F.2d 1218, 1223 (5th Cir. 1992) (citation omitted), cert. denied, 113 S.Ct. 1291 (1993). The elements of guilty knowledge and intent to distribute can be proved by circumstantial evidence. Id. (citation omitted). Contrary to Runnels' contention, the circumstances of this case established his guilt beyond a reasonable doubt.

The testimony offered at trial indicated that Runnels' explanation for his trip to Houston to visit his long-lost friend was not credible. Runnels testified that he decided on a whim to visit his friend, James Johnson, who had moved from Chicago to Houston approximately three years earlier; that Johnson had invited Runnels down to go to a concert; and that Runnels left Chicago with approximately \$1000 in cash, purchased a one-way airline ticket for \$202 cash on the morning of his trip, spent \$200 on two pairs of shoes, a pair of shorts, and a couple of shirts at the Galleria Mall, and purchased a train ticket for \$152 to return to Chicago. Runnels further testified that, although he visited Johnson and that they were friends, he had neither Johnson's home phone number nor his address. He stated that Johnson arranged for his cousin to take Runnels to the train station on the morning of his departure and arrest, but that Johnson was to join Runnels at the station and travel back to Chicago with him. Runnels also stated that he was

asked by Johnson to take his two bags to the station and that he would meet him there after he took care of "something." Although Runnels purchased the train ticket under the name of Robert Jackson, he stated that he did so because the ticket agent was unfriendly, and that he told the officers the same thing because they were strangers. The officers' testimony confirmed that Runnels' misrepresented his identity.

The argument that the bags containing the cocaine belonged to Runnels' friend Johnson is unavailing because Runnels had constructive, if not actual, possession of the bags at the station. Constructive possession is defined as "ownership, dominion, or control over illegal drugs or dominion over the premises where drugs are found." See United States v. Sanchez-Sotelo, 8 F.3d 202, 208 (5th Cir. 1993) (internal citation omitted). The evidence at trial established that Runnels was sitting between the bags that contained the cocaine, and that his elbows were on the bags. Runnels first told the officers that the bags belonged to Johnson, but then stated that they contained his (Runnels') clothing. Although proximity alone is insufficient to establish possession, Runnels' inconsistent statements about the bags, his ultimate reluctance to claim ownership of the luggage, and the giving of a false name to the officers inferentially supports the finding that he had knowledge of drugs in the bags. See United States v. Davis, 993 F.2d 62, 66 (5th Cir. 1993). Additionally, the quantity of cocaine contained in the bags supports the inference that Runnels intended to distribute it. Id. Accordingly, the evidence was

easily sufficient to establish that Runnels possessed cocaine with intent to distribute. His conviction is therefore
AFFIRMED.