

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2664

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANTONIO CRESPO FIGUEROA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(CR H 93 115 1)

(October 4, 1994)

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:¹

Defendant Antonio Crespo Figueroa appeals the district court's denial of his motion to suppress. He also challenges the sufficiency of the evidence supporting his convictions. Because the district court properly found that the police's investigatory stop was based on a reasonable suspicion, and because appellant's

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

conviction is supported by the evidence, we affirm.

I.

On March 18, 1993, appellant checked a black and a grey bag with a skycap at Houston Intercontinental Airport. Two plain clothes Houston police officers observed that he checked the bags to LaGuardia Airport in New York City and that he wrote on the black bag's luggage tags the name "Jonathan Smith" with no address other than "NY, LaGuardia." As appellant was completing his tags, one of the officers noticed that one of the suitcases smelled strongly of perfume or fabric softener.

One of the officers followed the two bags while the other followed appellant to his gate. Appellant turned to see if he was being followed three or four times, and he turned around two or three more times as he sat at the gate. At the announcement for early boarding, he pushed past two or three others waiting to board. Meanwhile, in the baggage area, the officer who had followed the bags found that the perfume smell came from the black bag. Although a narcotic detection canine he called for did not alert to either of appellant's bags, he still suspected appellant and went to the gate to meet the other officer.

The two officers then asked the airline ticket agent if they could speak to appellant. Appellant deplaned, and after talking with the officers he gave them permission to search his grey bag but denied owning the black bag or having any key to it. The officers then opened the black bag and found two packages of cocaine. Later, they found the black bag's key in appellant's coat

pocket.

Appellant was indicted on one count of conspiracy to possess with intent to distribute more than five kilograms of cocaine and one count of aiding and abetting the possession with intent to distribute more than five kilograms of cocaine. A jury found him guilty on both counts. The district court sentenced him to 120 months of imprisonment and five years of supervised release.

II.

Police may not make an investigatory stop without reasonable suspicion. See United States v. Zukas, 843 F.2d 179, 181 (5th Cir. 1988), cert. denied, 490 U.S. 1019 (1989). Such a stop must be supported by "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." Terry v. Ohio, 392 U.S. 1, 21 (1968). Appellant contends that when the officers had him deplane and questioned him, they lacked a reasonable suspicion of any wrongdoing. During that questioning, he told the officers that the black bag was not his. Consequently, he argues, the trial court's finding that he abandoned the black bag was erroneous and the officers' search of it was unconstitutional.

Yet the district court reasonably found that by the time the officers questioned appellant, they had seen enough to give rise to a reasonable suspicion. They knew that he had arrived at the airport just before his flight's scheduled departure and had checked his luggage with a skycap, which according to the officers' testimony is typical of drug traffickers who wish to distance

themselves from their contraband and begin traveling as soon as possible. He was traveling from Houston, which according to the officers' testimony is a drug source city, to New York, a drug demand city. His luggage was large, new, and locked, which as the officers testified is typical of many drug couriers. The black suitcase had a strong odor of perfume, which raised a reasonable suspicion that it might be intended to mask another scent. His baggage tag contained suspiciously incomplete information. Appellant continually cast troubled glances behind him to see if he was being followed, acted nervous in the waiting area, and jumped to the front of the line to board the plane. The narcotic detection canine may have failed to detect a drug scent behind the thick perfume, but that does not dispel the reasonable suspicion raised by these other factors. Accordingly, we hold that the district court did not err in denying appellant's motion to suppress.

III.

To sustain the convictions, we must find that "any reasonable trier of fact could have found that the evidence established guilt beyond a reasonable doubt." U.S. v. Garza, 990 F.2d 171, 173-74 (5th Cir.) (internal quotations marks deleted), cert. denied, 114 S. Ct. 332 (1993). Under this standard, reasonable inferences drawn from the evidence are viewed in the light most favorable to the jury verdict. Id. at 174. Appellant argues that the government has not produced enough evidence to persuade reasonable factfinders that he knew that his black bag contained cocaine, a

necessary element of his crime. See U.S. v. Romero-Reyna, 867 F.2d 834, 836 (5th Cir. 1989) ("To establish the offence of possession of a controlled substance with intent to distribute, the government must prove the knowing possession of the contraband with intent to distribute.") (emphasis added), cert. denied, 494 U.S. 1077 (1990). We disagree.

"[P]roof that possession of contraband is knowing will usually depend on inference and circumstantial evidence." Id. at 836 (internal quotations marks deleted). Here, the jury had before it ample circumstantial evidence from which it could reasonably infer that appellant knew he possessed cocaine in his black bag. He was traveling without identification under a false name and did not reveal his address on his luggage tags. He could produce no identification for the police. He denied that he had the black bag's key, which the police later found on him. He had a large amount of cash and two one-way tickets to New York for travel on the same day, luxuries that reasonable factfinders might conclude were derived from the high profits of illicit drug trade. His continual nervousness could be viewed as evidence of knowledge of guilt. On the other hand, it is true that because no fingerprints could be lifted from the drugs or drug wrappings, there is no direct evidence that appellant handled them, and as appellant suggests the jury could have inferred that the masking scent of perfume tricked him as well as the drug-sniffing dog into thinking that no drugs were in his bag. Yet this comes far short of compelling the conclusion that he did not know about the cocaine in

his bag. Having weighed all of the evidence, the jury drew the opposite and reasonable inference that he knew that his black bag contained cocaine. Accordingly, the convictions are supported by the evidence.

AFFIRMED.