IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-4117
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

RONNIE LAFLEUR,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
(92 CR 60010 (1))

(October 18, 1993)

Before SMITH, BARKSDALE, and DeMOSS, Circuit Judges.

PER CURIAM:[*]

Ronnie LaFleur appeals his conviction of possession with intent to distribute cocaine and use of a firearm during a drug trafficking offense, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B) and 18 U.S.C. § 924(c)(1). Finding no error, we affirm.

I.

[*] Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

The government called several police officers and the two men that were arrested with LaFleur. Lieutenant Dwayne Fontenot, a narcotics investigator for the Evangeline Parish Sheriff's Office, testified that he was wearing street clothes and on patrol in an unmarked police vehicle on April 19, 1991, when he noticed a white car and a blue car parked next to each other near an intersection. Fontenot explained that he recognized one of the cars from a description provided to the sheriff's office and that he saw an "exchange go down" between the occupants of the two cars.

Fontenot watched the two vehicles drive off in separate directions and followed the white vehicle, driven by a man subsequently identified as LaFleur. According to Fontenot, LaFleur's car was driving at a normal speed but ran off the side of the road several times. Fontenot decided to stop the car to "see if they had problems."

At about the time Fontenot turned on his red police lights, LaFleur's car drove onto a small gravel road, and the occupants "started throwing stuff out of the window." At this time it was still daylight, and LaFleur's car was driving very slowly. Fontenot testified that all three occupants of the vehicle were throwing objects out of the window, including "a canister-looking deal," "some type of little container," and "something that looked like pieces of rock or something."

Fontenot stopped the car, removed LaFleur, Ray Wilson, and Herbert Durgin from the vehicle, and called for back-up assistance. LaFleur gave Fontenot permission to search the vehicle, which was

his rental car. A narcotics-detecting dog alerted to the vehicle, and police discovered several rock-like substances that appeared to be cocaine scattered through the front passenger side and back of the car. Fontenot also found a .45 automatic handgun, clips, bullets, and almost $500 in cash in the vehicle. About $100 was recovered from LaFleur. The narcotics-testing dog discovered marihuana near the car and crack about forty yards away. Fontenot testified that the narcotics-detecting dog alerted to the money obtained from the car and from LaFleur. According to Fontenot, the gun was in the console of the driver's side of the gearshift, and the bullets were under the driver's seat. An evidence technician and two dog handlers confirmed Fontenot's testimony.

Ray Wilson, who had been dismissed from the case based upon an affidavit executed by LaFleur, testified that at the time LaFleur's car was parked next to the blue car near the intersection, LaFleur was having a conversation with the occupant of the other vehicle and that the discussion had nothing to do with drugs. After they drove off, according to Wilson, Herbert Durgin stated that the driver of the car following them was Fontenot and that the car either was, or looked like, a police car. LaFleur asserted that the occupant of the car had been watching them.

Wilson stated that all the crack that was thrown out of LaFleur's car came from the rear of the vehicle where Durgin was sitting. Wilson explained that he threw a small bag of marihuana out of his window and that Durgin either passed some of the crack up to the front, or it spilled from his hands into the front

passenger section, and that all three men were throwing the crack out of his window. On cross-examination, Wilson admitted that it was possible that LaFleur had not participated in throwing the crack out of the car window. The government recalled Fontenot, who stated that Wilson had told him that all three men were throwing objects from the car. Wilson testified that he "assumed" the crack belonged to Durgin.

Durgin, who had been convicted of a drug offense arising out of this incident and on state drug charges, agreed to testify against LaFleur under the condition that the government would consider dropping two other counts in exchange for his testimony. Durgin testified that the crack belonged to LaFleur and that all three men had participated in throwing the drugs out the window of the car.

LaFleur testified that Fontenot drove "right on my bumper" at the time that Durgin identified Fontenot and told LaFleur to take a right onto the gravel road. LaFleur stated that he realized that the car was a police vehicle when Fontenot turned on his siren and lights.

According to LaFleur, after Fontenot activated his siren and lights, Durgin handed Wilson a container and told him to throw it out the window for him. LaFleur testified that Wilson threw the container out of the window and that Durgin also threw objects from the car. LaFleur denied that he threw anything out the window of the car or that Durgin or Wilson handed him any objects. He also denied that he knew that there were any drugs in his car until

Durgin passed the container to Wilson. LaFleur "assume[d]" that the drugs belonged to Durgin because he handed them to Wilson.

II.

A jury verdict must be sustained if there is substantial evidence, taking the view most favorable to the government, to support it. Glasser v. United States, 315 U.S. 60, 80 (1942); United States v. Lechuga, 888 F.2d 1472, 1476 (5th Cir. 1989). The jury is the final authority on the credibility of witnesses. United States v. Lerma, 657 F.2d 786, 789 (5th Cir. 1981), cert. denied, 455 U.S. 921 (1982). We accept all credibility choices that tend to support the verdict. United States v. Anderson, 933 F.2d 1261, 1274 (5th Cir. 1991). Evidence is sufficient to uphold a verdict if a reasonable trier of fact could have found all the necessary elements of the crime beyond a reasonable doubt. Lechuga, 888 F.2d at 1476.

A.

LaFleur argues that the government failed to provide sufficient evidence to prove beyond a reasonable doubt that he either possessed cocaine or intended to distribute cocaine. To prove possession with intent to distribute cocaine in violation of 21 U.S.C. § 841(a), the government must show (1) knowing, (2) possession, (3) with intent to distribute. United States v. Munoz, 957 F.2d 171, 174 (5th Cir.), cert. denied, 113 S. Ct. 332 (1992). LaFleur does not argue the knowledge prong of the standard.

Both possession and intent to distribute may be proved by circumstantial evidence. United States v. Prieto-Tejas, 779 F.2d 1098, 1101 (5th Cir. 1986). Although individual facts and incidents, standing alone, might be inconclusive, they "`may, by their number and joint operation, especially when corroborated by moral coincidences, be sufficient to constitute conclusive proof.'" Lechuga, 888 F.2d at 1476 (quoting Coggeshall v. United States, (The Slavers, Reindeer), 69 U.S. (2 Wall.) 383, 401 (1865)).

Possession may be actual or constructive. United States v. Onick, 889 F.2d 1425, 1429 (5th Cir. 1989). "`Constructive possession' has been defined as ownership, dominion, or control over the contraband itself, or dominion or control over the premises in which the contraband is concealed." United States v. Smith, 930 F.2d 1081, 1085 (5th Cir. 1991). The government may prove, with circumstantial evidence, that contraband is possessed knowingly. United States v. McKnight, 953 F.2d 898, 901 (5th Cir.), cert. denied, 112 S. Ct. 2975 (1992). Constructive possession need not be exclusive; it may be joint with others. Id. Evidence proving constructive possession must amount to more than mere physical proximity. Id.

In this case, there was sufficient evidence for a reasonable jury to reach a guilty verdict. According to LaFleur, the only evidence that suggested that he possessed the cocaine was provided by Durgin, whose "testimony is extremely suspicious given his plea agreement with the government." Contrary to LaFleur's argument, Durgin's testimony was not per se unreliable because of his plea

agreement with the government. LaFleur questioned Durgin at length about the nature of his agreement with the government and had the opportunity to argue this issue in his closing statement. As the ultimate arbiter of credibility, the jury was entitled to find Durgin persuasive.

LaFleur discounts Fontenot's testimony because the officer failed to identify exactly what LaFleur threw out the window. The only items retrieved from near the car, however, were crack cocaine and marihuana. Because Wilson testified that he threw the marihuana from the car it would not have been unreasonable for the jury to determine that LaFleur threw crack from the car.

Fontenot provided other damaging testimony. He testified that LaFleur's vehicle was driving erratically and that he found crack, a gun, clips, bullets, and a significant amount of cash. Although Wilson's testimony was equivocal, Fontenot testified that Wilson told him, at the time of the arrest, that all three men were throwing objects from the car. Wilson's testimony that he "assumed" the crack belonged to Durgin does not rule out the possibility that the crack belonged to LaFleur, as Durgin asserted on the witness stand. Durgin also testified that all three men were throwing drugs from the car.

Juries are permitted to make reasonable inferences and to use their common sense in weighing evidence. See Lechuga, 888 F.2d at 1476. The jury was entitled to credit the testimony of Fontenot and Durgin and discount LaFleur's version of his role in the offense concerning his knowing possession of the cocaine.

Considering the totality of the evidence, both circumstantial (Fontenot) and direct (Durgin), there was sufficient evidence for a reasonable jury to find beyond a reasonable doubt that LaFleur at least constructively possessed cocaine.

LaFleur also challenges the sufficiency of the government's evidence proving that he intended to distribute cocaine. As discussed above, intent to distribute may be proved by circumstantial evidence. Prieto-Tejas, 779 F.2d at 1101. Intent to distribute may also be inferred exclusively from possession of a large amount of drugs.

LaFleur asserts that the only evidence offered to show that he intended to distribute cocaine was provided by Fontenot. LaFleur attacks Fontenot's statement that he saw an "exchange go down" between the occupants of the white car and the blue car parked at the intersection because there was no development of this testimony, two witnesses testified that nothing beyond a conversation took place between the occupants of the two cars, and Durgin did not testify that a drug transaction occurred while the two cars were next to each other. The jury was entitled to believe Fontenot over the other witnesses concerning the transaction at the intersection.

Even if a drug transaction had not taken place at the intersection, intent to distribute could be inferred from the amount of crack recovered from the car and the side of the road. Prieto-Tejas, 779 F.2d at 1101. Thus, a reasonable jury could find knowing possession with intent to distribute beyond a reasonable

doubt from the facts outlined above.

B.

LaFleur also argues that the government did not prove that he was carrying a firearm during and in relation to a drug trafficking crime pursuant to 18 U.S.C. § 924(c)(1). This argument is entirely derivative and premised on the theory that LaFleur was not guilty of possessing cocaine with the intent to distribute. Because it has been shown that a reasonable jury could have found LaFleur guilty of possessing cocaine with the intent to distribute, this argument must fail.

AFFIRMED.