UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-4836
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BRYAN K. BREWER and ALISHIA SHANTEE OWENS,

Defendants-Appellants.

Appeals from the United States District Court
for the Eastern District of Texas
(93-CR-10-1)

(May 24, 1994)

Before POLITZ, Chief Judge, JOLLY and DUHÉ, Circuit Judges.

PER CURIAM:[*]

Bryan K. Brewer and Alishia Shantee Owens appeal their jury conviction of possessing more than five kilograms of cocaine with intent to distribute, challenging the sufficiency of the evidence. We affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Shortly after midnight on the morning of August 21, 1992, in Corrigan, Texas, a vehicle driven by Brewer with Owens as a passenger was pulled over for a traffic violation by Texas Department of Public Safety Trooper Larry Pitts. Pitts testified that Brewer and Owens both appeared very nervous and gave conflicting stories about ownership of the Oldsmobile they were in and the length of their intended stay at their reported destination, Ore City, Texas. A local Corrigan officer called as backup corroborated Pitts' impression that Brewer and Owens seemed unduly nervous. At Pitts' request, Brewer consented to a search of the car. The officers discovered several oil-coated[1] packages of cocaine hidden in secret compartments. They also discovered a relatively sophisticated electrical mechanism which opened and gave access to the compartments to persons in the rear of the vehicle. Each compartment contained several packages of cocaine, all totaling 7.9 kilos. At trial, Owens's mother testified that Owens had told her that she was borrowing a car for their trip from Houston to Ore City and, after stopping in Tyler, she was going to leave the car and take a bus back to Houston. Brewer and Owens were convicted by a jury and each received a sentence of imprisonment for 121 months.

On appeal Brewer and Owens contend that insufficient evidence was adduced for a rational jury to find beyond reasonable doubt

[1]According to expert testimony, drug dealers sometimes coat their cargo in motor oil during transport to mask the smell of the drugs and to prevent fingerprinting. Also, drugs frequently are smuyggled in oily ships or heavy machinery.

that they knew the car, which was not registered to either of them, contained cocaine. The elements of the charged offense which had to be proven beyond a reasonable doubt are (1) knowing, (2) possession of cocaine, (3) with an intent to distribute.[2] Brewer and Owens understandably do not question the intent to distribute element. From the quantity involved that element would readily be inferred.[3] They contend, rather, that the government adduced insufficient evidence of knowing possession. Reviewing a sufficiency challenge we may reverse only when, taking all evidence and inferences therefrom in the light most favorable to conviction, we conclude that no rational jury could have found Brewer and Owens guilty beyond a reasonable doubt.[4]

Normally, constructive possession will be presumed where a person is in control of a vehicle containing drugs. Where the drugs are hidden, however, additional evidence of suspicious circumstances indicating knowledge of or a defendant's "consciousness of guilt" is required.[5] Although nervousness alone does not equate to guilty knowledge, it is strongly probative thereof when it coincides with an implausible story or other

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[2]**United States v. Pierre**, 958 F.2d 1304 (5th Cir.) (*en banc*), cert. denied sub nom., **Harris v. United States**, 113 S.Ct. 280 (1992).

[3]**United States v. Hernandez-Palacios**, 838 F.2d 1346 (5th Cir. 1988). In addition, one government expert testified that the quantity and form of cocaine found in the instant case were indicative of distribution.

[4]**United States v. Bell**, 678 F.2d 547 (5th Cir. 1982) (*en banc*), aff'd, 462 U.S. 356 (1983).

[5]**United States v. Diaz-Carreon**, 915 F.2d 951 (5th Cir. 1990).

suspicious circumstances.[6] In addition to evidence of the defendants' more than usual nervousness, the government pointed to the scant likelihood that they would have been loaned a car containing cocaine worth hundreds of thousands of dollars unless they were involved in the drug operation, and to the implausibility of their plan to leave a friend's borrowed car in Tyler and return to Houston by bus. The government's evidence, taken in the light most favorable to the convictions, was such that a rational jury could have inferred knowing possession beyond a reasonable doubt. The evidence sufficiently supports the convictions.

AFFIRMED.

[6] **Diaz-Carreon**.