

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

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No. 93-5589  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

FRANK HOLLIS,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Louisiana

(93-CR-50049-01)

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(June 29, 1994)

Before GARWOOD, SMITH and DeMOSS, Circuit Judges.

PER CURIAM:\*

BACKGROUND

On May 18, 1992, a confidential informant, cooperating with law-enforcement authorities, went to 5810 Attaway Street in Shreveport, Louisiana, and made a \$100 purchase of crack cocaine from Ethel Hollis. Although Ethel's husband, Frank Hollis, was not

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

present during this transaction, he was in the house later that day when a search warrant was executed, and one of the bills that had been used to purchase the crack cocaine was seized from his person. In the Attaway residence, officers seized quantities of cocaine base, cocaine, and marijuana, along with firearms and a large amount of cash. At trial, Ethel Hollis testified that she and her husband had engaged in drug trafficking.

A jury found Frank Hollis guilty of possession with intent to distribute 5 grams or more of cocaine base (count 1); 21 U.S.C. § 841(a)(1); possession with intent to distribute cocaine (count 2); 21 U.S.C. § 841(a)(1); possession with intent to distribute marijuana (count 3); 21 U.S.C. § 841(a)(1); carrying firearms during and in relation to a drug trafficking crime (count 4); 18 U.S.C. § 924(c)(1); possession of firearms by a convicted felon (count 5); 18 U.S.C. § 922(g)(1). The district court sentenced Hollis to concurrent 120-month terms of imprisonment on counts one, two, three, and five, and to 60 months on count four to run consecutively to the sentence imposed on the other counts. The court also sentenced Hollis to a total of eight years of supervised release and a \$250 special assessment.

#### OPINION

Hollis argues that the district court erred in permitting the Government to introduce details of an earlier drug offense that resulted in a state court conviction.

Prior to trial, the court conducted a hearing on the admissibility of the other crimes evidence. The Government

presented evidence that, on July 19, 1991, Hollis sold crack cocaine to an undercover officer from a house on Clanton Street. Hollis removed the crack cocaine that he sold to the officer from a matchbox. A subsequent search of the Clanton Street residence uncovered a .38 revolver and traces of suspected cocaine residue. The Government also presented evidence that a matchbox containing crack cocaine was found during the 1992 search of the Attaway house. The court overruled defense counsel's objections to the admission of this extrinsic evidence, determining that the evidence was admissible under Rule 404(b) of the Federal Rules of Evidence.

This Court reviews a district court's decision to admit evidence under Rule 404(b) under an abuse-of-discretion standard. United States v. Carrillo, 981 F.2d 772, 774 (5th Cir. 1993). "Nevertheless, . . . [this Court's] review of evidentiary rulings in criminal trials is necessarily heightened." Id. (internal quotations and citation omitted).

Rule 404(b) states in relevant part that "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Carrillo, 981 F.2d at 774.

Whether extrinsic evidence is admissible under Rule 404(b) is governed by application of the two-part test set out in United States v. Beechum, 582 F.2d 898, 911 (5th Cir. 1978) (en banc),

cert. denied, 440 U.S. 920 (1979). Carillo, 981 F.2d at 774. "First, it must be determined that the extrinsic offense evidence is relevant to an issue other than the defendant's character. Second, the evidence must possess probative value that is not substantially outweighed by its undue prejudice and must meet the other requirements of [Fed. R. Evid.] 403." Id. (internal quotations, citations, and footnote omitted).

Hollis does not argue that the evidence surrounding his earlier conviction is relevant only to the issue of character; rather he contends that probative value of this evidence is outweighed by the risk of unfair prejudice. He complains that the "[j]ury was invited to punish Appellant for his July 1991 conduct" based on the close temporal proximity between his state-court conviction and his arrest on the instant federal charges and on the jury's knowledge that he had received probation for that conviction.

Although the evidence surrounding Hollis's 1991 drug conviction was undoubtedly prejudicial, it was not a critical part of the Government's case and did not occupy a large part of the trial. Also, the court's charge adequately limited the jury's consideration of this extrinsic evidence. In addition, there was strong evidence connecting Hollis to the charged offenses. Under these circumstances, the district court did not abuse its discretion in admitting the Rule 404(b) evidence. See United States v. Moya, 951 F.2d 59, 62 (5th Cir. 1992).

Hollis contends that the evidence was insufficient to support his drug convictions.<sup>1</sup> He argues that, because many other people had access to the Attaway residence, the evidence on constructive possession is too speculative to support those convictions.

Usually, in assessing a challenge to the sufficiency of the evidence, this Court considers "whether, viewing the evidence presented and all inferences reasonably drawn therefrom in the light most favorable to the government, any rational trier of fact properly could have found each element of the crime beyond a reasonable doubt." United States v. Robles-Pantoja, 887 F.2d 1250, 1254 (5th Cir. 1989) (internal quotation and citation omitted). However, although Hollis moved for a judgment of acquittal at the close of the Government's case in chief, he failed to renew his motion for a judgment of acquittal at the close of all evidence.

Consequently, this Court's review is limited to determining whether the district court committed plain error or whether there was a manifest miscarriage of justice. Such a miscarriage would exist only if the record is devoid of evidence pointing to guilt, or ... because the evidence on a key element of the offense was so tenuous that a conviction would be shocking.

United States v. Pierre, 958 F.2d 1304, 1310 (5th Cir.) (en banc), (quotations and citations omitted), cert. denied, 113 S.Ct. 280 (1992).

To prove the possession with intent to distribute charges against Hollis, the Government must prove knowing possession of the

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<sup>1</sup>Although Hollis states in the argument summary portion of his brief that he is challenging the sufficiency of the evidence on all counts, he fails to present an argument with respect to the firearm counts.

illegal substances with intent to distribute. United States v. Cardenas, 9 F.3d 1139, 1158 (5th Cir. 1993), cert. denied, 62 U.S.L.W. 3793 ((U.S. May 31, 1994). These elements may be proven by circumstantial evidence alone. Id. Possession may be joint among several defendants and may be actual or constructive. Id. "In general, a person has constructive possession if he knowingly has ownership, dominion, or control over the contraband itself or over the premises in which the contraband is located." United States v. McKnight, 953 F.2d 898, 901 (5th Cir.), cert. denied, 112 S.Ct. 2975 (1992). Constructive possession is "the knowing exercise of, or the knowing power or right to exercise dominion and control over the proscribed substance." Cardenas, 9 F.3d at 1158 (internal quotations and citation omitted). Intent to distribute may be inferred from large amounts of cash, the presence of paraphernalia for distribution, or value and quality of the contraband. Id.

Evidence shows that Hollis resided at the 5810 Attaway Street address and was present there on May 18, 1992. In the residence, officers seized quantities of crack cocaine, cocaine, and marijuana along with several firearms and over \$15,000 in cash. Hollis had access to the back bedroom where drugs and guns were found. One of the bills seized from Hollis's person had been used to make an earlier drug purchase. The packaging and amounts of the controlled substances were consistent with distribution rather than personal use. Based on the record as a whole, a rational jury could have inferred Hollis's guilt beyond a reasonable doubt. Thus, the

jury's verdict is supported by the evidence under either the Pierre or Pennington standards of review.

Hollis also contends that the district court unduly restricted defense counsel's cross-examination of Ethel Hollis concerning her understanding of her plea agreement.

The Confrontation Clause of the Sixth Amendment guarantees a criminal defendant the right to cross-examine prosecution witnesses. United States v. Pace, 10 F.3d 1106, 1112 (5th Cir. 1993), cert. denied, 62 U.S.L.W. 3807 (U.S. June 6, 1994). The Confrontation Clause nevertheless accords a trial judge "wide latitude" to limit cross-examination. United States v. Tansley, 986 F.2d 880, 886 (5th Cir. 1993). "The relevant inquiry is whether the jury had sufficient information to appraise the bias and motives of the witness." Id. Only after there has been sufficient cross-examination to satisfy the Sixth Amendment does the trial judge's discretionary authority come into play. United States v. Restivo, 8 F.3d 274, 278 (5th Cir. 1993), petition for cert. filed, 62 USLW 3707 (U.S. April 28, 1994) (No. 93-1630).

Defense counsel questioned Ethel Hollis extensively about her plea agreement. On re-cross examination, defense counsel asked if "part of the deal is you have to testify in such a way that pleases the Government." Although the court sustained the Government's objection to this question on the ground that it mischaracterized Ethel Hollis's testimony regarding the agreement, the court did permit defense counsel to rephrase his question and continue with his probing of the witnesses's bias. Defense counsel chose not to

do so. Id. As the trial court allowed defense counsel to develop adequately any bias Ethel Hollis had based on her plea agreement, Hollis's Sixth Amendment rights were not violated, and there was no abuse of the court's discretion. See United States v. Bourgeois, 950 F.2d 980, 986 (5th Cir. 1992).

AFFIRMED.