

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7068
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

versus

SALVADOR MIRANDA-ROMAN,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CR M-200-1
- - - - -
August 18, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Salvador Miranda-Roman argues that there was insufficient evidence to support his conviction because the Government did not prove that he physically possessed marihuana. The standard of review for a claim that the evidence was insufficient to support a conviction is whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. United States v. Lopez, 979 F.2d 1024, 1028 (5th Cir. 1992), cert. denied, 113 S.Ct. 2349 (1993). The evidence is

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

viewed in the light most favorable to the jury verdict. United States v. Ruiz, 987 F.2d 243, 250 (5th Cir.), petition for cert. filed, (June 21, 1993). It is the function of the jury, not the reviewing court, to weigh the evidence, determine the credibility of the witnesses, and find the facts. Id. The scope of appellate review remains the same regardless whether the evidence is direct or circumstantial. United States v. Lorence, 706 F.2d 512, 518 (5th Cir. 1983). A conviction for possession of marihuana with the intent to distribute requires proof of three elements: (1) knowing (2) possession of marihuana (3) with intent to distribute it. Lopez, 979 F.2d at 1031.

Possession may be actual or constructive and may be proved by circumstantial evidence. United States v. Vergara, 687 F.2d 57, 61 (5th Cir. 1982). Constructive possession is the ability to reduce an object to actual possession. United States v. Posner, 868 F.2d 720, 723 (5th Cir. 1989). Generally, knowing possession may be inferred from control over the contraband along with other circumstantial evidence that is suspicious in nature or demonstrates guilty knowledge. United States v. Martinez-Mercado, 888 F.2d 1484, 1491 (5th Cir. 1989). A "less-than-credible explanation" for a defendant's actions may also form "part of the overall circumstantial evidence from which possession and knowledge may be inferred." United States v. Diaz-Carreon, 915 F.2d 951, 955 (5th Cir. 1990) (internal quotations and citation omitted). Intent to distribute may be inferred from the possession of a large quantity of narcotics. See United States v. Kaufman, 858 F.2d 994, 1000 (5th Cir. 1988)

(defendant had almost ten pounds of marihuana, a quantity not for personal consumption).

Miranda was found lying next to two bags of marihuana in an area where officers found ten other bags of marihuana. The total weight of marihuana was 503 pounds. No one other than Miranda was found in the area, and Miranda explained his presence by stating that he was going to work or was looking for work at about 3:30 a.m.

Miranda argues that the Ninth Circuit's decision in United States v. Jose Luis L., 978 F.2d 543 (9th Cir. 1992) is applicable because the Government did not show that Miranda carried or possessed the marihuana. In that case, the defendant's footprints passed by a cache of marihuana, and border patrol agents found the defendant one-half mile from the location where the marihuana was found. Luis, 978 F.2d at 544-545. In contrast, Miranda was found lying next to two of the bundles of marihuana. See United States v. Rodriguez-Mireles, 896 F.2d 890, 891, 893 (5th Cir. 1990) (evidence sufficient where defendant found sleeping within a few yards of an outhouse filled with marihuana and footprint evidence indicated defendant involved in transporting marihuana); United States v. Rojas-Martinez, 968 F.2d 415, 421 (5th Cir. 1992) (evidence sufficient where group was spotted carrying bundles, footprints matched and no other group spotted crossing the border that night).

AFFIRMED.