UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 93-7109
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

JESUS MARIA IBARRA-ALEJANDRO,

Defendant-Appellant.

Appeal from the United States District Court
For the Southern District of Texas
(CR C92 205 1)

(August 13, 1993)

Before GARWOOD, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:[*]

OPINION

Jesus Maria Ibarra-Alejandro ("Ibarra") was indicted and later convicted for one count of possessing with intent to distribute 88 kilograms of marijuana, in violation of 21 U.S.C. §§ 841(a)(1) and

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

841(b)(1)(C). Ibarra was indicted after Border Patrol Agents discovered 195 pounds of marijuana in the roof of a 1986 Ford pickup truck he was driving across the border checkpoint station at Sarita, Texas. He was sentenced to a fifty-seven-month term of imprisonment, three years of supervised release, a $500 fine and a $50 special assessment. Ibarra timely appealed.

OPINION

Ibarra argues that the evidence was insufficient to sustain his conviction. In assessing a challenge to the sufficiency of the evidence, this Court must consider the evidence in the light most favorable to the government and must afford the government all reasonable inferences and credibility choices. The evidence is sufficient if a rational trier of fact could have found the defendant guilty beyond a reasonable doubt based upon the evidence presented at trial. United States v. Bell, 678 F.2d 547, 549 (5th Cir. Unit B 1982) (en banc), aff'd, 462 U.S. 356 (1983); see also United States v. Barrilleaux, 746 F.2d 254, 256 (5th Cir. 1984).

In order to establish Ibarra's guilt under § 841(a)(1) for possession with intent to distribute, the government must prove beyond a reasonable doubt that Ibarra: (1) knowingly, (2) possessed the marijuana, (3) with the intent to distribute it. United States v. Martinez-Mercado, 888 F.2d 1484, 1491 (5th Cir. 1989). Ibarra does not challenge the possession element of the offense. He argues, instead, that the Government failed to prove that his possession was knowing, or that he intended to distribute the marijuana.

In "concealed compartment" cases such as this one, this Court employs a stricter standard of proof, where knowing possession may be inferred from the defendant's control over the vehicle in which the contraband is contained only if such control is supplemented by other circumstantial evidence of guilty knowledge. United States v. Shabazz, 993 F.2d 431, 441 (5th Cir. 1993); United States v. Diaz-Carreon, 915 F.2d 951, 954 (5th Cir. 1990).

Nervousness at an inspection station, for example, has been held to constitute relevant evidence of guilty knowledge. Diaz-Carreon, 915 F.2d at 954. The customs agent who initially approached Ibarra testified that Ibarra was acting "real nervous," chewing gum rapidly, and avoiding eye contact with the agent. Because nervousness may be "a normal reaction to circumstances which one does not understand," Diaz-Carreon, 915 F.2d at 954 (quotation and internal citation omitted), evidence of nervous behavior must also be supported by additional facts which suggest that the nervousness was a result of consciousness of criminal behavior. Since Ibarra had been through the checkpoint many times, however, such nervousness in his case might be indicative of something other than a normal reaction.

Moreover, Ibarra's inconsistent statements to the customs officials constitute additional facts supporting an inference that Ibarra knew of the existence of the contraband. Diaz-Carreon, 915 F.2d at 954-55; Shabazz, 993 F.2d at 441-42. He first told the customs agents that he was on his way to Corpus Christi to work on a construction job, despite the fact that he had no tools in the

truck and could not say where they were. Following his arrest, however, he changed his story, telling agents that he had been paid $800 by a man he had never met before to make three trips back and forth from McAllen to Corpus Christi. He also told agents initially that the truck belonged to his sister, but later told the agents that he had been instructed by the man who hired him to say that the truck belonged to his sister, in the event that he was stopped.

In addition, Ibarra's professed ignorance of the marijuana also supports an inference of guilty knowledge. See United States v. Williams-Hendricks, 805 F.2d 496, 500-01 (5th Cir. 1986). Such ignorance may be deemed "deliberate," especially in light of the details surrounding his trip to Corpus Christi. See id. Ibarra's own testimony established that he was hired by a man he had never met before, whose name he did not know, and paid $1,100 to make three trips from Corpus Christi to McAllen. He met this still-unidentified man outside of a grocery store at 4:00 in the morning to pick up the truck, at which time he agreed to drive the truck to Corpus Christi or, at the man's suggestion, to the first gas station on the way into Corpus Christi. Further, when asked by one of the agents at the checkpoint if he knew there was marijuana in the truck Ibarra replied, "I didn't know the marijuana was in the truck but I knew there was something in there." Again, such deliberate ignorance in the face of suspicious circumstances supports the jury's conclusion that Ibarra knew of the existence of the drugs in the truck. Williams-Hendricks, 805 F.2d at 500-01.

Therefore, taking into consideration Ibarra's nervous behavior at the checkpoint, his inconsistent statements regarding his destination, his deliberate ignorance of the suspicious circumstances behind his agreement to drive the truck across the border, and the favorable inferences which must be granted to the Government's evidence, a rational jury could have found that Ibarra knew of the existence of the marijuana in the truck.

Finally, as for Ibarra's contention that the Government failed to prove that he intended to distribute the marijuana, the jury could have inferred his intent to distribute solely from the large quantity of marijuana found in his possession. United States v. Pigrum, 922 F.2d 249, 254 (5th Cir.), cert. denied, 111 S. Ct. 2064 (1991); Williams-Hendricks, 805 F.2d at 500.

AFFIRMED.