

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7141
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BURLINGTON ALEXANDER CARD,
a/k/a Burlington Card,
a/k/a Berlington Card,

Defendant-Appellant.

Appeal from the United States District Court for the
Southern District of Texas
(M-92-202-03)

(January 18, 1994)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Burlington Card was found guilty by a jury of 1) conspiracy to possess with intent to distribute cocaine; 2) aiding and abetting possession with intent to distribute cocaine; 3) conspiracy to import cocaine; 4) aiding and abetting the importation of cocaine; 5) conspiracy to possess with intent to distribute marijuana; 6)

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

aiding and abetting possession with intent to distribute marijuana; 7) conspiracy to import marijuana; and 8) aiding and abetting the importation of marijuana. The district court sentenced Card to concurrent terms of imprisonment of 133 months on counts 1-4, to be followed by concurrent four-year terms of supervised release. Card was sentenced to concurrent terms of sixty months on counts four through eight, to be followed by concurrent three-year terms of supervised release. All of the sentences are to run concurrently. The question raised on appeal is whether the evidence is sufficient to support the convictions. We hold that it is and affirm.

I

These are the relevant record facts: On September 2, 1992, at approximately 1:15 p.m., a 1982 brown Ford van crossed from Mexico into the United States at the Hidalgo port of entry. The vehicle was occupied by Glentsford Holland, an alien resident born in Belize, Central America, and Jacqueline Hunt, an American citizen. The agent working at the primary inspection area noted that Holland appeared to be very nervous. The agent placed a referral slip on the vehicle, requesting a canine inspection at the secondary inspection area because he suspected that the van was carrying drugs.

At the secondary inspection area, a canine immediately alerted to the interior roof area of the van. An examination of the outer roof of the van revealed that a section had been cut out, recovered, and repainted. Holes were drilled in the van's top and

a drill bit came out with pieces of duct tape having the odor of marijuana. A white powdery substance, which tested positive for cocaine, was discovered on another drill bit. The agents cut open the roof and retrieved 49 packages of marijuana and five packages of cocaine.

Burlington Card approached Holland in July 1992 about driving a van from Chicago to Belize and back to Chicago. Card agreed to pay Holland \$10,000 for making the trip. Holland testified that he believed that he was transporting marijuana because of the large sum of money that he was being paid by Card. Card instructed Holland to have the title to the van transferred to Holland's name because Holland would not have a problem driving the van into Mexican territory. Holland had previously seen Card driving the van. Holland stated that a woman named Gladys transferred ownership of the van to him, and he received a receipt showing a payment of \$1.00. Holland denied paying any money for the van and claimed that Card paid the \$40 transfer fee on the van.

Holland testified that he and Card left Chicago in the van on June 22, 1992. The van was followed by a 1991 Nissan Pathfinder occupied by Card's mother, brother, and a small child. Holland stated that Card agreed to pay all expenses of the trip and that Card purchased tires for the van during the trip. Holland claimed that he did not have access to the van during their stay in Belize. Holland was required to fly back to Chicago for a court appearance while the group was in Belize, and Card paid his airfare for the

trip. After they arrived in Belize, Card introduced Holland to Jacqueline Hunt. On the date of their departure from Belize, one of Card's friends picked up Holland, Hunt, and Carl Myvett. Holland requested gasoline money from Card for the trip back. Holland's group met with Card at Chetumal, Mexico. Card was accompanied by his mother, brother, niece, and girlfriend. According to Holland, Card instructed them that Hunt was to pose as Holland's mother-in-law and was to drive the van over the bridge into Hidalgo. Prior to leaving Mexico, the group removed immigration stickers from the van so that the occupants could pose as American citizens. Holland understood that Hunt was to be paid \$5000 for crossing the van. After the drugs were discovered in the van, Hunt told agents that the drugs belonged to Card and that Card had agreed to pay her \$2000 for driving the van over the border.

The Nissan Pathfinder crossed the port of entry at Hidalgo at about 2:30 p.m. and was placed under surveillance because it had Illinois plates. An agent followed the vehicle to a shopping center parking lot where it stopped. The agent observed Card stepping out of the vehicle and the vehicle subsequently pulling off. The agent testified that the port of entry and the secondary inspection area can be viewed from the shopping center parking lot. The Nissan was also occupied by another black male, two black females, and a black child. Card was arrested later that evening.

Edwin Wellington, Card's half-brother, testified that Card contacted him about making a vacation trip to Belize. Wellington

left Chicago in his Nissan Pathfinder in late July 1992 accompanied by his mother and daughter. Holland and Card accompanied them in the van, which was driven by both men during the trip. Card had agreed to pay all the expenses of the trip, but Wellington stated that they ultimately split the costs. Card did not stay with his family during their month-long stay in Belize, and Wellington did not see the van during the vacation. Wellington testified that his group met the van driven by Holland at Chetumal, and they traveled together through Mexico.

Wellington testified that, after seeing Holland's van stopped at the secondary inspection station, Card instructed them to deny knowing Holland if they were stopped at the port of entry. Card also instructed them to say that they had been in Mexico for a few days.

II

On appeal, Card argues only that the evidence was insufficient to support his convictions. He contends that the government failed to prove that he was aware that there were drugs located in a hidden compartment of the van during his temporary possession of the vehicle. Card further argues that the evidence showed that he was not the owner of the vehicle and failed to tie him into the scheme to transport drugs.

In reviewing insufficiency-of-evidence claims, we determine whether a rational trier of fact could have found that the government proved each of the substantial elements of the offense

beyond a reasonable doubt. U.S. v. Rojas-Martinez, 968 F.2d 415, 420 (5th Cir. 1992), cert. denied, 113 S.Ct. 828 (1992) and cert. denied, 113 S.Ct. 995 (1993). We "must examine the evidence and all reasonable inferences that may be drawn from it in the light most favorable to the jury verdict." U.S. v. Ojebode, 957 F.2d 1218, 1223 (5th Cir. 1992), cert. denied, 113 S.Ct. 1291 (1993) (internal quotation and citation omitted).

To establish the guilt of a defendant in a drug conspiracy, the government must prove that an agreement with an intent to distribute existed, that the defendant and his co-conspirators each had knowledge of the agreement, and that they voluntarily participated in the conspiracy. U.S. v. Rodriguez, 993 F.2d 1170, 1175 (5th Cir. 1993). "An agreement may be inferred from concert of action, participation from a collocation of circumstances[,] and knowledge from surrounding circumstances." Id. (internal quotations and citation omitted). "Mere presence at the scene and close association with those involved are insufficient factors alone; nevertheless, they are relevant factors for the jury." Id. (internal quotations and citation omitted).

"To prove possession of a controlled substance with intent to distribute, the government must show beyond a reasonable doubt that [the] defendant (1) possessed the illegal substance (2) knowingly (3) with intent to distribute it." U.S. v. Ramirez, 963 F.2d 693, 701 (5th Cir.), cert. denied, 113 S.Ct. 388 (1992). An intent to

distribute may be inferred if there is a large quantity of drugs involved in a transaction. Ojebode, 957 F.2d at 1226.

"Knowledge of the presence of a controlled substance often may be inferred from the exercise of control over a vehicle in which the illegal substance is concealed." U.S. v. Diaz-Carreon, 915 F.2d 951, 954 (5th Cir. 1990) (citation omitted). If the controlled substance is found in a hidden compartment of the vehicle, the government must produce "additional evidence indicating knowledge -- circumstances evidencing a consciousness of guilt on the part of the defendant." Id. "Possession may be either actual or constructive." U.S. v. Smith, 930 F.2d 1081, 1085 (5th Cir. 1991). "Constructive possession" is defined as "ownership, dominion, or control over the contraband itself or dominion or control over the premises in which the contraband is concealed." Id. (citations omitted). Importation requires proof that the defendant played a role in bringing a controlled substance from a foreign country into the United States. Rojas-Martinez, 968 F.2d at 420

Viewing the evidence in the light most favorable to the verdict, a rational jury could have found that the government proved the substantial elements of the charged offenses beyond a reasonable doubt. The evidence reflected that Card organized the trip and acted in concert with Holland and other individuals to transport a large quantity of drugs across the border into the United States for the purpose of distribution. Card's knowledge of

the presence of the drugs in the van was reflected by the evidence that he offered to pay large sums of money to his co-conspirators for making the trip and by his instructions to them to lie about their relationships and activities if they were stopped at the port of entry. Holland admitted that he was aware that he was importing drugs into the United States. Card's guilt was further confirmed by his brother's testimony that he instructed the group in the Nissan to deny that they knew Holland and to lie about the activities prior to being stopped.

III

For the reasons stated, the judgment of convictions of Burlington Card is

A F F I R M E D.