

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

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No. 93-7263  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

BENITO GONZALEZ, III,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas

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(CR-B-92-252-S1)

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(April 4, 1994)

Before THORNBERRY, DAVIS and SMITH, Circuit Judges.

THORNBERRY, Circuit Judge:\*

Benito Gonzalez, III, entered a conditional guilty plea to possessing 850 kilograms of cocaine with the intent to distribute the cocaine. Gonzalez reserved his right to appeal the district court's adverse rulings on his pretrial suppression motions. All of the motions were denied. The court sentenced Gonzalez to 210

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

months prison. He timely appeals the denial of his pretrial motions to this Court.

### **Discussion**

First, Gonzalez argues that the district court erred by denying his motions to suppress because the Drug Enforcement Agency (DEA) agents exceeded the scope of the initial search warrant. This Court reviews a district court's findings of fact on a motion to suppress under the clearly erroneous standard, and the ultimate Fourth Amendment determination is reviewed de novo. **United States v. Seals**, 987 F.2d 1102, 1106 (5th Cir.), **cert. denied**, 114 S.Ct. 155 (1993). The evidence must be viewed in the light most favorable to the prevailing party. **Id.**

Gonzalez's arrest was the result of a probe that began in September 1992. The DEA's Brownsville, Texas office was investigating a group of drug traffickers that had been transporting cocaine in metal containers concealed inside large wooden crates to New York through Houston, Texas. The suspected drug traffickers operated a business front in Houston known as Star Trans. Investigation revealed that the shipments were sent from an entity named John's Rebuild Electric Co., of Primera, Texas, and sent to Star Trans freight through Central Freight Lines Co., in Harlingen, Texas.

On September 10, 1992, the Harlingen, Texas Police Department received a call from an employee of Central Freight reporting a suspicious transaction. A man had requested shipment to Houston of several crates which were hermetically sealed, the person had no

identification, and he refused to give his name or to sign the bill of lading. The DEA was informed and agent Joe Dubois arrived with a trained narcotics dog to check the crates. The dog reacted mildly to the presence of drugs in the bottom of the crates. Due to the mild reaction, the officers decided not to delay the delivery.

The following day, DEA agent Leo Silva was informed of this incident, and he became suspicious because of the similarity in transportation method to the Star Trans drug trafficking ring under investigation. Further investigation revealed a connection between the shippers and recipients of these crates with other businesses under investigation, and the DEA office in Houston obtained a warrant to search the crates. Each crate contained one black tool box. The agents opened the tool boxes and discovered 387.5 pounds of marijuana inside. While investigating the records of Central Freight with relation to the marijuana, the DEA discovered similar shipments made from a rented warehouse in Harlingen, Texas. The agents brought a trained dog to check the warehouse from the outside, and the dog alerted strongly to the presence of narcotics. It was the discoveries made inside the warehouse that led to the subsequent arrest of Gonzalez.

Gonzales maintains that the initial search of the sealed boxes in Houston on September 12 exceeded the scope of the warrant because the warrant authorized search of the crates only.<sup>1</sup> This

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<sup>1</sup> The Government argues that Gonzalez failed to preserve this issue for appeal because, while Gonzalez raised this issue in his motion to suppress, he did not advance this challenge at the

claim is meritless. First, Gonzalez denied any ownership interest in or connection with these crates at the suppression hearing. "[A] defendant can urge the suppression of evidence obtained in violation of the Fourth Amendment only if that defendant demonstrates that his Fourth Amendment rights were violated by the challenged search or seizure." **United States v. Padilla**, 113 S.Ct. 1936, 1939 (1993). The defendant must have a legitimate expectation of privacy in the property searched or seized to raise a Fourth Amendment challenge. **Id.** Gonzalez failed to establish such an interest; thus, he has no standing to object to the search. Secondly, the warrant authorized a search of the two crates, which, as the attached affidavit indicated, the agent had probable cause to believe contained controlled substances. "A warrant to open a footlocker to search for marijuana would also authorize the opening of packages found inside." **United States v. Ross**, 102 S.Ct. 2157 (1982). This Court has held that a warrant authorizing a search of a residential premises also authorizes a search of any containers which could conceal the type of items that formed the basis of the warrant. **United States v. Thomas**, 973 F.2d 1152, 1157-58 (5th Cir. 1992); **see also United States v. Giwa**, 831 F.2d 538, 543-45 (5th Cir. 1987)(container within residential premises subject of valid warrant may be searched if reasonable to assume container could

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suppression hearing. Instead, he attacked the validity of the warrant on the grounds that the application was not signed by the affiant and that the affidavit did not set forth sufficient probable cause to support issuance of the warrant. We find it unnecessary to address this issue because Gonzalez's arguments have no merit.

conceal items of the kind portrayed in the warrant). It was reasonable for the officers to believe that controlled substances might be discovered inside the black tool boxes since a drug dog had reacted mildly to the crates when the crates were in Harlingen, and the officers had knowledge that a group of cocaine traffickers under investigation were using this method to transport their cocaine. Moreover, though the warrant did not state that the purpose of the search was to seize specific controlled substances, the attached affidavit and application make that fact evident. **See United States v. Beaumont**, 972 F.2d 553, 561 (5th Cir. 1992)(citing **United States v. Haydel**, 649 F.2d 1152 (5th Cir. Unit A July 8, 1981), **cert. denied**, 102 S.Ct. 1721 (1982)(affidavit attached to warrant may be used to clarify ambiguity on face of warrant)). The application for the search warrant refers to the attached affidavit of probable cause which specifically details the facts supporting the search. The agents in this case did not exceed the scope of the search authorized by the warrant by opening the black boxes concealed inside the crates.

Next, Gonzalez argues that the agents lacked probable cause for his arrest. This Court reviews the district court's probable cause determination de novo. **United States v. Orozco**, 982 F.2d 152, 154 (5th Cir.), **cert. denied**, 113 S.Ct. 2430 (1993). "Probable cause exists when the facts and circumstances known to the arresting officer are sufficient to cause a person of reasonable caution to believe that an offense has been or is being committed and the arrested person is the guilty person." **United**

**States v. Ramirez**, 963 F.2d 693, 698 (5th Cir.), **cert. denied**, 113 S.Ct. 388 (1992). A probable cause determination must be viewed in the light of the observations, knowledge, and training of the law-enforcement officers. **United States v. Muniz-Melchor**, 894 F.2d 1430, 1438 (5th Cir.), **cert. denied**, 495 U.S. 923 (1990).

The district court correctly concluded that the officers had ample probable cause for the arrest. First, the DEA agents knew that cocaine was being shipped by Star Trans to a New York warehouse through Houston, Texas. Through a valid search warrant, the DEA agents discovered that a warehouse in Harlingen, Texas was being used to make shipments that were very similar to Star Trans shipments to New York. The night before the arrest, the agents had seen three vehicles leave the Harlingen warehouse. Two men in one of these vehicles had discarded sacks in a convenience store trash bin which were soon retrieved by an agent and tested positive for cocaine. At about midnight, pursuant to a warrant, the agents searched the warehouse and discovered cocaine concealed in one of three crates in the warehouse. They staked out the warehouse and then observed Gonzalez and three other men arrive the next afternoon. After about forty minutes, the men left the warehouse driving a white bobtail truck that had been inside the warehouse. Agent Leo Silva testified that the truck appeared to be weighted down. Based on these facts, it was reasonable for the agents to believe that the truck was loaded with the crates they had seen in the warehouse the night before, one of which contained cocaine. The agents then followed the truck to its destination, a shipping

company law enforcement officers believed to have been used by the drug trafficking ring under investigation. When the officers saw Gonzalez back the truck up to the loading dock, they moved in because they believed the men in the truck had crates of cocaine ready for shipment. These facts are sufficient for an arresting officer to believe that probable cause existed to make an arrest.

Finally, Gonzalez argues that the district court erred by concluding that his mother validly consented to the search of his home. He maintains that Mrs. Gonzalez had no authority to consent to the search, that the agents could not have reasonably believed she had such authority, and that the agents used coercive tactics to obtain her consent. The district court determined that Mrs. Gonzalez had apparent if not actual authority to consent because she had complete access to and control over the premises at the time, and it found no evidence of coercion.

Law enforcement officials may obtain consent to search from a third party with common authority over the premises to be searched. **United States v. Smith**, 930 F.2d 1081, 1085 (5th Cir. 1991). Third party consent is judged by an objective standard: would the facts available to the officer at the time justify a reasonable belief "that the consenting party had authority over the premises?" **Illinois v. Rodriguez**, 110 S.Ct. 2793 (1990).

Here, agent Dubois saw Mrs. Gonzalez and her son Javier removing Benito's personal items from Benito's rented home on the day of the search. At this time, Benito was in jail and no longer residing in the home. The agents could have reasonably believed

that Benito gave one of these people authority over the premises. Moreover, since Benito's mother was on the scene with her younger son and daughter-in-law, it seems reasonable for the officers to have concluded that the mother, as an authority figure, was the person to whom Benito had delegated authority. The agents specifically asked Mrs. Gonzalez whether she had control over the premises, and she responded that she did, agreed to allow the search, and signed a consent form. As for the voluntariness of the Mrs. Gonzalez's consent, this is a question of fact which this Court reviews for clear error. **United States v. Gonzalez-Basulto**, 898 F.2d 1011, 1012-13 (5th Cir. 1990). Agent Dubois testified that Mrs. Gonzalez did not appear afraid or nervous at the time she gave her consent. There was no evidence of threats, and Dubois testified that none of the eight agents present at the scene had their guns drawn. Further, only three of the agents were near Mrs. Gonzalez when agent Dubois asked for her consent to search. Mrs. Gonzalez once owned and operated her own grocery store, thus it appears that she is intelligent enough to give effective consent. The district court was not clearly erroneous in concluding that Gonzalez voluntarily consented to the search. **See Gonzalez-Basulto**, 898 F.2d at 1013.

#### **Conclusion**

Based on the foregoing, the district court's judgment is AFFIRMED.