

**UNITED STATES COURT OF APPEALS
For the Fifth Circuit**

No. 93-7265
Summary Calendar

United States of America,

Plaintiff-Appellee,

VERSUS

Jorge Ruiz-Gonzalez,

Defendant-Appellant.

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

(CR L-92-277-1)

(January 5, 1994)

Before WISDOM, KING, and GARWOOD, Circuit Judges.

PER CURIAM:*

On November 10, 1992, the defendant, Jorge Ruiz-Gonzalez drove a tractor-trailer truck into a U.S. Border Patrol checkpoint. The agent at the checkpoint asked Ruiz-Gonzalez and his 16 year-old passenger routine questions regarding their citizenship and the contents of the truck. In the course of this interaction, Ruiz-Gonzalez showed the agent a bill of lading describing the payload.

* Local Rule 47.5.1 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Pursuant to that Rule, the Court has determined that this opinion should not be published.

Although this border conversation took place at 9:00 p.m., the bill of lading indicated that Ruiz-Gonzalez had left the nearby warehouse at 2:57 p.m. that afternoon. This temporal gap aroused the agent's suspicion. When asked to explain the gap, Ruiz-Gonzalez became noticeably nervous. The agent accordingly directed him to drive the truck to a secondary interrogation station.

Upon arriving at the secondary interrogation area, a dog trained in the art of narcotics detection alerted the agent that the truck might contain contraband, particularly toward the front of the vehicle. Ruiz-Gonzalez consented to a search of the truck. Because the legitimate contents of the truck (boxed glassware) occupied all but the two feet between the ceiling of the truck and the top of the boxes, an agent had to crawl along the top of the cargo. In the front of the truck, he found three duffle bags on top of the boxes. The dog was correct; the agents discovered 20 bundles of marijuana in the bags.

An agent from the Drug Enforcement Administration (DEA) was called to the scene at which point he continued the interrogation. After informing Ruiz-Gonzalez of his rights (which the suspect readily waived), the agent asked him a number of questions about his acquaintances in the drug trade and his explanation for the marijuana. Ruiz-Gonzalez gave statements that conflict with his trial testimony.

Ruiz-Gonzalez was charged with possession with intent to distribute approximately 221 pounds of marijuana in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B). After the evidence in the

case was presented, he moved for a judgment of acquittal. The court denied it and the jury subsequently found him guilty. Ruiz-Gonzalez was sentenced to 60 months in prison, followed by three years of supervised release.¹

Ruiz-Gonzalez contends that the evidence was insufficient to sustain his conviction. He charges in particular that the government failed to prove that he possessed the requisite knowledge that his vehicle contained marijuana.² The mere exercise of control over the contraband often is sufficient to allow a finding of guilt. Because the marijuana in this case was not in plain view or readily accessible, however, the government was required to introduce additional circumstantial evidence demonstrating the defendant's knowledge.³

The government did exactly that. The jury had before it evidence and testimony demonstrating Ruiz-Gonzalez's control over the truck, an unexplained six-hour time gap after the truck had been loaded, the defendant's visible nervousness when asked to account for that time span, his inconsistent statements during questioning, and the implausible alibi that some criminal stashed approximately \$200,000 worth of marijuana on top of boxed glassware in the hope that the driver would not discover it before making a

¹In addition, the district court levied a fine of \$750.00 and a mandatory \$50.00 penalty.

²Instead, he posits that someone else must have put the marijuana in the truck without him knowing, thus making him an unwitting drug courier.

³See United States v. Garza, 990 F.2d 171, 174 (5th Cir.), cert. denied, 114 S.Ct. 332 (1993).

safe delivery.

Taken as a whole, the evidence presented in this case was sufficient to permit a jury to conclude that Ruiz-Gonzalez knew that he was transporting marijuana. Accordingly, we AFFIRM the defendant's conviction.