

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7436
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EMMA CAMPOS-BARRIENTOS,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(CR-L-93-13-1)

(March 11, 1994)

Before POLITZ, Chief Judge, DAVIS and SMITH, Circuit Judges.

POLITZ, Chief Judge:*

Convicted of possessing heroin with intent to distribute and importation of heroin, 21 U.S.C. §§ 841(a)(1), (b)(1)(B), 952(a)(1), 960(b)(2), Emma Campos-Barrientos appeals her convictions, challenging evidentiary rulings by the district court and the prosecutor's closing argument. Finding neither error nor abuse of discretion, we affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Background

At approximately 3:30 p.m. on January 9, 1993, Customs Agent Gerardo Chavez received a telephone tip from a reliable informant "that a lady dressed with a black and white blouse, short in stature, dark complected, carrying a large beige bag, with her hair rolled up in a bun would be smuggling approximately ten ounces of heroin in her purse." The woman was to enter Laredo on International Bridge Number One through the pedestrian walk at about 4:30 p.m. The woman was described as elderly, in her sixties. This informant had provided reliable information twice to the Customs Service and on numerous occasions to other federal agencies in preceding years. Shortly thereafter Chavez and another agent observed a person matching the description crossing the bridge. The person was Campos-Barrientos, a 63-year-old Hispanic female. Chavez received another call from the informant advising that the woman was headed for San Agustin Plaza. The agents maintained surveillance of Campos-Barrientos as she walked across the bridge and into Laredo.

Campos-Barrientos sat down on a nearby park bench; Chavez sat next to her, identified himself as a Customs agent, and asked her to return to the Customs facility for further inspection because he suspected her of smuggling narcotics. Chavez testified that she responded that she had just crossed the bridge and was going to the San Agustin Plaza to buy a few items. She then agreed to go back to the facility, and Chavez took her purse to inspect it for weapons. As Chavez visually examined the contents of the purse

Campos-Barrientos said, "Just take the package and leave me here." The package was wrapped in masking tape. From past experience Chavez knew that drugs are sometimes packaged in this manner. Campos-Barrientos also told Chavez that the package belonged to a woman who was supposed to pick it up in the plaza.

The agents and Campos-Barrientos returned to the Customs office. Campos-Barrientos told Chavez that she had traveled by bus from Acapulco, Guerrero, to Nuevo Laredo. At the bus station a strange woman had asked her to take the package across the border and offered to pay her for doing so. Campos-Barrientos agreed because she was poor. The agents found in the purse a single-edge razor blade wrapped in a green satin cloth which tested positive for opium alkaloid or heroin. Campos-Barrientos told Chavez that a man in her neighborhood had given her the blade and asked her to buy him some like it in Laredo. Chavez then opened the package and discovered a brown candy-like substance which proved to be 210 grams of heroin.

Campos-Barrientos moved to suppress the heroin and the single-edge razor blade recovered from her purse, arguing that the warrantless and nonconsensual search violated the fourth amendment. After an evidentiary hearing the district court denied the motion, finding that the search met the requirements of an extended border search. The case was tried, and the jury convicted Campos-Barrientos of possession of heroin with intent to distribute and importation. She was sentenced to 65 months in prison, five years supervised release, and the mandatory assessment. She timely

appealed.

Analysis

Campos-Barrientos appeals the denial of her motion to suppress for which we review findings of fact for clear error and conclusions of law *de novo*.¹ The district court upheld the search and seizure under the extended border search exception to the search warrant requirement. Three factors must be demonstrated before an extended border search is deemed constitutionally permissible: (1) a reasonable certainty or a high degree of probability that a border crossing has occurred; (2) a reasonable certainty that no change in the condition of the person or vehicle has occurred between the time of the crossing and the search and that the contraband was present when the crossing occurred; and (3) a reasonable suspicion of criminal activity.²

The challenge to the adequacy of the evidence as to these factors is not persuasive. The reliable informant's tip which proved to be accurate and the follow-up and confirmation by Chavez and the other agent, satisfied the requirements for an extended border search.³ The district court did not err in denying the motion to suppress.

¹**United States v. Seals**, 987 F.2d 1102 (5th Cir.), cert. denied, 114 S.Ct. 155 (1993).

²**United States v. Cardenas**, 9 F.3d 1139 (5th Cir. 1993).

³Campos-Barrientos argues that extended border searches only apply to the search of vehicles. This argument is foreclosed by our decision in **Cardenas**, supra.

Appellant next challenges the sufficiency of the evidence as to the charged offenses. We view the evidence in the light most favorable to the verdict and determine whether any reasonable trier of fact could have found guilt established beyond a reasonable doubt.⁴ To convict, the government must show knowing possession with intent to distribute.⁵ The same elements must be proven to support a conviction of importation together with proof that the defendant was involved in bringing the controlled substance from a foreign country into the United States.⁶

Appellant's contention that the government failed to prove her knowing possession and importation of heroin lacks persuasive force. The uncontested facts overwhelm. Her actions and statements when confronted by Agent Chavez, including "just take the package and leave me here," and her explanation that a strange woman approached her at the bus station in Nuevo Laredo and offered her money if she would carry the package across the international bridge and return it to her in Laredo at the San Agustin Plaza, coupled with the discovery of the heroin and the tainted razor blade in her purse, provide a more than sufficient basis for her convictions.

Campos-Barrientos contends that the prosecutor's statements

⁴**United States v. Martinez**, 975 F.2d 159 (5th Cir. 1992), cert. denied, 113 S.Ct. 1346 (1993).

⁵**United States v. Munoz**, 957 F.2d 171 (5th Cir.), cert. denied, 113 S.Ct. 332 (1992).

⁶**United States v. Ojebode**, 957 F.2d 1218 (5th Cir. 1992), cert. denied, 113 S.Ct. 1291 (1993).

during closing argument deprived her of a fair trial. To prevail on a claim of prosecutorial misconduct during closing argument she must show that the prosecutor's statements were both improper and harmful.⁷ The first allegedly improper statement is: "If any of you all feel sympathy for the defendant, feel sympathy for the members of our community, the young, the children that may have been exposed to this deadly drug." Campos-Barrientos objected, the objection was sustained, and the court instructed the jury that it would be improper to base a verdict "on some kind of notion of saving the children of the community." We conclude that the district court's timely admonition to the jury to disregard the statement and decide the case on the evidence sufficiently attenuated any prejudicial impact the statement may have had.⁸ The remainder of Campos-Barrientos' claimed errors in the prosecutor's closing argument were not objected to at trial. We review for plain error.⁹ We find none.

Finally, appellant contends that the trial judge erred by allowing Chavez to testify based on his professional experience that drug traffickers do not entrust significant quantities of heroin to total strangers, and that appellant's home region in Mexico is known as a place where opium, the source of heroin, is

⁷**United States v. Sanchez**, 961 F.2d 1169 (5th Cir.), cert. denied, 113 S.Ct. 330 (1992).

⁸See, e.g., United States v. Villarreal, 963 F.2d 725 (5th Cir.), cert. denied, 113 S.Ct. 353 (1992).

⁹**United States v. Casel**, 995 F.2d 1299 (5th Cir.), cert. denied, 114 S.Ct. 472 (1993).

grown. We perceive neither error nor abuse of discretion in these rulings.

The convictions are AFFIRMED.