IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7556
(Summary Calendar)

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DUSK LORANG,
a/k/a "Westfall",

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Mississippi
(CR-3:93-38 (L) (C)-2 & 1)

(August 25, 1994)

Before JOLLY, WIENER and STEWART, Circuit Judges.

PER CURIAM:*

Appealing her jury conviction and sentence for conspiracy, possession with intent to distribute marijuana, and use of a firearm during a drug-trafficking crime, in violation of 21 U.S.C.

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

§§ 846 & 841(a) and 18 U.S.C. § 924(c)(1), Defendant-Appellant Dusk Lorang complains that the government's evidence was insufficient to support the guilty verdict. Finding no reversible error, we affirm.

I

FACTS AND PROCEEDINGS

Hinds County (MS) Deputy Sheriff Richard Thomas stopped a car driven by Stephen Acre and occupied by Lorang. Deputy Thomas testified that he smelled marijuana when he approached the car so he called for a backup unit with a trained dog and instructed Acre to get out of the car while he (Thomas) wrote a speeding ticket. Acre told Thomas that he did not know who owned the car. From inside the car, Lorang gave the registration papers to Thomas and told him that the car belonged to "a guy" named Bruce whose last name she could not remember. Acre refused to allow Thomas to search the car.

Lorang got out of the car, asked Thomas if there was a problem, and was told by him that Acre would not permit a search. When Thomas asked Lorang if there were any guns in the car she answered that she had one in her purse. After the backup unit arrived and the dog alerted on the trunk of the car, Acre was advised by Thomas that he intended to search the trunk. Acre refused to cooperate so Thomas took the keys from the ignition, opened the trunk, and discovered suitcases, a make-up case, and four boxes containing in the aggregate 97.7 kilograms of marijuana.

Acre and Lorang were placed under arrest. In addition to the loaded gun found in Lorang's purse, an unloaded gun was found on the driver's side of the car's front seat. The make-up case held several Ace bandages and approximately $17,000 in cash; an envelope containing $1,000 was on the back seat in a pile of papers belonging to Lorang. Lorang, who walked with a limp, wore an Ace bandage similar to the ones in the make-up case. She told Thomas that she had been injured in an automobile accident. The backup officer, Deputy Jones, testified that he had to help Lorang from the car but that she was able to walk without assistance after she got out. Deputy Jones confirmed that the passenger compartment of the car smelled of "green, unburnt marijuana."

II

ANALYSIS

Lorang urges that the evidence was insufficient to support her conviction because it failed to prove that she was aware that the trunk of the car contained marijuana. As she moved for judgment of acquittal at the end of the government's case-in-chief and again at the close of the evidence, the standard for evaluating the sufficiency of the evidence is whether, after viewing all of the evidence in the light most favorable to the government, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. United States v. Bell, 678 F.2d 547, 549 (5th Cir. 1982) (en banc), affirmed, 462 U.S. 356 (1983). We view direct and circumstantial evidence adduced at trial, as well as all inferences reasonably drawn therefrom, in the

light most favorable to the verdict. United States v. Sanchez, 961 F.2d 1169, 1173 (5th Cir.), cert. denied, 113 S.Ct. 330 (1992).

To establish a drug conspiracy under 21 U.S.C. § 846, the government must prove the existence of an agreement to violate the narcotics laws; the defendant's knowledge of the agreement; and the defendant's voluntary and intentional participation in the conspiracy. United States v. Lopez, 979 F.2d 1024, 1029 (5th Cir. 1992), cert. denied, 113 S.Ct. 2349 (1993).[1] "An agreement may be inferred from concert of action, participation from a collocation of circumstances, and knowledge from surrounding circumstances." Sanchez, 961 F.2d at 1174 (internal quotation and citation omitted).

To establish possession of a controlled substance with intent to distribute, the government must prove beyond a reasonable doubt that the defendant knowingly possessed the contraband and intended to distribute it. United States v. Valdiosera-Godinez, 932 F.2d 1093, 1095 (5th Cir. 1991), cert. denied, 113 S.Ct. 2369 (1993). "Possession . . . may be joint among several defendants . . . ." Id. (quotation and citation omitted). The possession of a larger quantity of drugs than would ordinarily be used for personal consumption can support a finding of intent to distribute. United States v. Pineda-Ortuno, 952 F.2d 98, 102 (5th Cir.), cert. denied, 112 S.Ct. 1990 (1992).

To obtain a conviction under § 924(c), the government must

[1] The Supreme Court has granted certiorari on whether an overt act is an element of § 846. United States v. Shabani, 114 S.Ct. 1047 (1994).

prove beyond a reasonable doubt that the defendant committed a drug-trafficking crime and knowingly used or carried a firearm during and in relation to the crime. United States v. Willis, 6 F.3d 257, 264 (5th Cir. 1993). A conviction under § 924(c)(1) will be sustained if the evidence shows that "the firearm was available to provide protection to the defendant in connection with his engagement in drug trafficking." Id. (internal quotation and citation omitted).

Lorang has neither disputed that she possessed a firearm nor presented a separate sufficiency argument concerning her firearms conviction. If, therefore, the evidence is sufficient to support the drug convictions it will also support the jury's determination that Lorang violated §924(c).

The government need not exclude every hypothesis of innocence to obtain a conviction. United States v. Leed, 981 F.2d 202, 207 (5th Cir.), cert. denied, 113 S.Ct. 2971 (1993). "What a jury is permitted to infer from the evidence in a particular case is governed by a rule of reason, and juries may properly use their common sense in evaluating that evidence." Id. (quotation and citation omitted).

A defendant's knowledge of possession of contraband "can rarely be established by direct evidence." United States v. Garza, 990 F.2d 171, 174 (5th Cir.), cert. denied, 114 S.Ct. 332 (1993). "In the nature of things, proof that possession of contraband is knowing will usually depend on inference and circumstantial evidence." United States v. Richardson, 848 F.2d 509, 514

(5th Cir. 1988). Possession of a contraband substance may be either actual or constructive, United States v. Lindell, 881 F.2d 1313, 1322 (5th Cir. 1989), cert. denied, 493 U.S. 1087, and cert. denied, 496 U.S. 926 (1990). Such possession may be proved by either direct or circumstantial evidence. United States v. Vergara, 687 F.2d 57, 61 (5th Cir. 1982). When drugs are hidden in a vehicle, however, such knowledge can be inferred only "if there exists other circumstantial evidence that is suspicious in nature or demonstrates guilty knowledge." Garza, 990 F.2d at 174 (quoting United States v. Anchondo-Sandoval, 910 F.2d 1234, 1236 (5th Cir. 1990)).

The facts of this case present a fairly close question whether the drugs in the trunk of the car were "hidden"; but these facts are distinguishable from cases in which we have determined that drugs were hidden. The smell of unburnt marijuana pervaded the car, and the boxes containing the marijuana were in the plain view of anyone who opened the trunk. See United States v. Pennington, 20 F.3d 593, 597-98 (5th Cir. 1994) (marijuana concealed in boxes between pallets in a trailer was "hidden"; the boxes were not visible unless one entered the trailer and there was no noticeable odor of marijuana); Garza, 990 F.3d at 174 nn. 10 & 12 (cocaine in sacks partially concealed behind boxes of limes in a trailer was "hidden" because it was not in "plain view" or "readily accessible"; the Garza court noted that the issue presented a close question).

Even if the drugs are considered "hidden," however, a rational

jury still could have determined that Lorang was guilty beyond a reasonable doubt. A defendant's "ownership, dominion or control over the . . . vehicle in which the contraband was concealed" will support a finding that the defendant constructively possessed the contraband. United States v. Posner, 868 F.2d 720, 722-23 (5th Cir. 1989) (internal quotations and citation omitted). Although Lorang was not the driver of the car,[2] other facts support the inference that she constructively possessed the car containing the marijuana and reeking with its odor: Lorang alone knew the identity of the car's owner; she had possession of the car's registration papers; the gun in her purse was loaded while the gun found on Acre's side of the seat was not loaded; she was the owner of the $17,000 found in the trunk next to the marijuana; and she was physically capable of looking into the trunk of the car. Under these circumstances a reasonable jury could conclude that Lorang was not unaware that the car contained a large quantity of marijuana.

True, the evidence of guilty knowledge in this case is weaker than the evidence in some of our reported opinions affirming convictions in cases involving similar fact scenarios. See Garza, 990 F.2d at 174 (nervousness, implausible story); Pineda-Ortuno, 952 F.2d at 102 (5th Cir.) (nervousness, conflicting statements, implausible stories); United States v. McDonald, 905 F.2d 871, 874 (5th Cir.) (nervousness, conflicting statements, lengthy ownership

[2] Constructive possession may be imputed to one who is not the driver of a vehicle containing hidden drugs. See Pennington, 20 F.3d at 598 n.3.

and control of vehicle), cert. denied, 498 U.S. 1002 (1990); Richardson, 848 F.2d at 512 (nervousness, suspicious circumstances of long trip, implausible story). Nevertheless, the reasonable inferences from the evidence are sufficient for a reasonable juror to find Lorang guilty beyond a reasonable doubt. Bell, 678 F.2d at 549.

AFFIRMED.