UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-8260
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

STEPHANIE DENISE WILSON
and MICHAEL SEAN CONEY,

Defendants-Appellants.

Appeals from the United States District Court
for the Western District of Texas
(P-92-CR-90-1)

(February 25, 1994)

Before POLITZ, Chief Judge, JONES and EMILIO M. GARZA, Circuit Judges.

POLITZ, Chief Judge:[*]

Stephanie Denise Wilson and Michael Sean Coney appeal their convictions of narcotics trafficking offenses. Finding no error, we affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Background

Wilson and Coney boarded a Greyhound bus in Los Angeles bound for Birmingham. Their baggage contained eight kilos of cocaine. Their journey ended at the Sierra Blanca, Texas checkpoint when border patrol agents conducting a routine inspection became suspicious, discovered the cocaine, and arrested them. They were delivered over to agents of the Drug Enforcement Administration.

Indicted and tried for conspiracy to possess with intent to distribute more than five kilos of cocaine, 21 U.S.C. § 846, and for the substantive offense, 21 U.S.C. § 841(a)(1), Wilson was found guilty by the jury of both counts; Coney was found guilty of the substantive offense only. Sentenced to prison for 10 years both timely appealed.

Analysis

The sole error assigned by Wilson is the admission of testimony by a DEA agent about her post-arrest statements. Wilson contends that the questioning she was subjected to violated **Miranda**[1].

Following the giving of the standard **Miranda** advisory by DEA agent Stewart Harms, Wilson maintains that she requested an attorney, triggering our rule that further custodial interrogation in the absence of counsel must be limited to a clarification of her

[1]**Miranda v. Arizona**, 384 U.S. 436 (1966).

request.[2] At a suppression hearing Wilson testified that she told Harms that she wanted an attorney present but would talk with him so as not to appear uncooperative. Harms, however, testified that she merely wanted assurance that by talking then she would not forfeit her right to have an attorney later. The trial court overruled Wilson's objection, implicitly crediting Harms. That credibility choice was not clearly erroneous and will not be disturbed on review.[3] According to Harms' version of the conversation, Wilson unequivocally expressed her willingness to talk to him so long as she was assured the assistance of counsel later.[4] There was no violation of Wilson's **Miranda** rights; Harms' testimony was admissible. Her assignment of error is without merit.

Coney challenges the denial of his motion for a mistrial in response to what he characterizes as grossly improper cross-examination by the prosecutor. Coney testified that a casual acquaintance stopped him on a Los Angeles street and offered $500 if he would accompany Wilson on a bus trip. Although Coney admitted to carrying the canvas bags when he and Wilson switched

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[2]**Thompson v. Wainwright**, 601 F.2d 768 (5th Cir. 1979), citing **Nash v. Estelle**, 597 F.2d 513 (5th Cir.) (*en banc*), cert. denied, 444 U.S. 981 (1979).

[3]**United States v. Roberson**, 6 F.3d 1088 (5th Cir. 1993); see also **United States v. Coletta**, 682 F.2d 820 (9th Cir. 1982) (affirming implicit credibility determination in the denial of a suppression motion), cert. denied, 459 U.S. 1202 (1983).

[4]Cf. **Nash** (where suspect states that he wants a lawyer appointed but is willing to talk to the district attorney without one, there is not an equivocal request for counsel).

buses en route, he insisted that he did not know what they contained. On cross-examination, the following colloquy ensued:

> Prosecutor: And you told the ladies and gentlemen on this jury that you have never had anything to do with drugs; is that correct?
>
> Coney: That's correct.
>
> Prosecutor: Have you ever used cocaine?
>
> Coney: No.
>
> Prosecutor: And if someone said your parents had thrown you out of the house, that is why you are homeless, was for using cocaine, is that a lie?
>
> Defense counsel: Objection, Your Honor. That is highly . . .
>
> The Court: Sustained.
>
> Defense counsel: I'm going to ask the Court to instruct the jury to disregard that.
>
> The Court: Please disregard the question.
>
> Defense counsel: I move for a mistrial, Your Honor.
>
> The Court: Denied.

Coney admitted that he had used marihuana.

We review denial of a mistrial for abuse of discretion only. We find none herein.[5] Having denied prior drug use on direct examination to buttress his claim of ignorance, Coney may not complain of being cross-examined thereon.[6] So viewed, any prejudice from an arguably improper question would not be so great

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[5]**United States v. Willis**, 6 F.3d 257 (5th Cir. 1993).

[6]**United States v. Wylie**, 919 F.2d 969 (5th Cir. 1990).

that a cautionary instruction would be ineffective.[7] The evidence of record is strong. We cannot accept the suggestion that the jury was confused or misled.

AFFIRMED.

[7]See **United States v. Magee**, 821 F.2d 234 (5th Cir. 1987); cf. **United States v. Hernandez**, 646 F.2d 970 (5th Cir.) (curative instruction overcomes prejudice from a question about prior narcotics possession in a drug trafficking prosecution), cert. denied, 454 U.S. 1082 (1981).