

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-8266  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DONALD RAY GONZALES,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. SA-92-CR-208-1  
- - - - -  
(November 1, 1993)

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

PER CURIAM:\*

On June 30, 1992, Sergeant Raul Guerrero of the Texas Department of Public Safety and other federal and state law enforcement officers set up surveillance to locate a two-toned Oldsmobile. The police officers unsuccessfully attempted to stop the car by using the lights, siren, and horn of a marked police car. The officers eventually blocked in the Oldsmobile and forced it to stop. As the Oldsmobile slowed to a stop, the defendant, Donald Ray Gonzales, jumped out from the passenger

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

side of the vehicle and ran behind a house. San Antonio Police Officer Robert Martinez chased Gonzales on foot and observed him attempt to throw a plastic bag onto the roof of a garage. The bag hit the side of the garage and fell to the ground. Gonzales retrieved it and continued to run. Martinez caught up to Gonzales when Gonzales unsuccessfully attempted to jump a fence. Police officers found a plastic bag containing approximately 11 grams of cocaine base, "crack" cocaine, nearby.

Subsequently, the two-toned Oldsmobile was searched. The vehicle was registered to Ida Gonzales, Gonzales's mother. The driver of the vehicle was Henry Taylor Brown. The officers discovered a pouch containing a loaded .380 caliber semi-automatic pistol in the passenger side of the engine compartment. Brown claimed ownership of the weapon.

On appeal, Gonzales argues that the district court erred by admitting the gun and related testimony into evidence. Gonzales contends that this evidence was not relevant to the adjudication of the possession with intent to distribute "crack" cocaine charge and that if it was relevant, its probative value was outweighed by its prejudicial effect. The district court's evidentiary rulings are reviewed under the "heightened" abuse-of-discretion standard employed in criminal cases. United States v. Carrillo, 981 F.2d 772, 774 (5th Cir. 1993).

Gonzales was charged with possession with intent to distribute "crack" cocaine. "In order to sustain a conviction for possession . . . with intent to distribute, the government must prove three elements: (1) knowing, (2) possession, (3) with

specific intent to distribute." United States v. Hernandez-Beltran, 867 F.2d 224, 226 (5th Cir.) (conviction for possession with intent to distribute heroin), cert. denied, 490 U.S. 1094 (1989).

At trial and on appeal, the Government argued that the gun and the testimony related to the gun was relevant to show Gonzales's intent to distribute the drugs. San Antonio Police Officer John Langerlaan testified that based on his 16 years as a police officer, firearms are associated with narcotics trafficking for the purpose of protecting both the drugs and the money associated with the trafficking. On cross-examination, Langerlaan testified that it had become popular practice to place a firearm under the hood of a car in order to prevent it from being detected by police. This testimony shows that the presence of the gun, regardless of its ownership, was relevant to whether Gonzales had specific intent to distribute "crack." See United States v. Martinez, 808 F.2d 1050, 1056-57 (5th Cir.), cert. denied, 481 U.S. 1032 (1987). The ownership of the gun is not a critical fact, it is the presence of the gun that is relevant to the issue of specific intent.

Gonzales's argument that the gun and Langerlaan's testimony was unduly prejudicial also fails. As shown above, the evidence of Gonzales's guilt was overwhelming. Gonzales has not shown that the district court abused its discretion in allowing the Government to present evidence related to the presence of the gun in the car. See Martinez, 808 F.2d at 1056-57.

AFFIRMED.