

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8282
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

WENDY OLIVIA DRURY,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
(92-CR-292-H)

(December 10, 1993)

Before GARWOOD, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:*

Wendy Drury challenges the sufficiency of the evidence supporting her convictions of importation of marihuana and possession of marihuana with intent to distribute, in violation of 21 U.S.C. §§ 952(a), 960(a)(1), and 841(a). Finding the evidence sufficient, we affirm.

* 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 Pursuant to that rule, the court has determined that this opinion should not be published.

I.

Drury was arrested as she attempted to re-enter the United States from Mexico at the port of entry at Fabens, Texas, driving a pickup truck that contained over 200 pounds of marihuana in a hidden compartment. At trial, Customs Inspector Enrique Solarzado testified that Drury and her three-year-old daughter arrived at Fabens in a beige 1977 Chevrolet truck. Drury indicated that they had gone to Mexico to eat and had been sightseeing. Solarzado testified that when Drury reached over to present him with her Texas identification card, he noticed that her arm was shaking and that he asked Drury where she lived, and she replied that she lived in El Paso on (or around) Yarbrough Street.

Solarzado then inspected the truck and noticed that it had a brand new bedliner, covering the bed of the truck. He tapped the bottom of the truck and heard a solid, dull sound, instead of the usual light, metallic sound. The purpose of tapping the vehicle is to determine whether it is hollow or whether, instead, something is concealed inside. Upon hearing the dull thud, Solarzado referred Drury to the secondary lane for a more extensive inspection.

Customs Inspector Sergio Gonzalez was working the secondary lane that day and stated that he noticed the truck had a "brand new paint job" and asked Drury where she had the truck painted and whether any work had been done on it in Mexico. Drury said that she had purchased the truck two weeks earlier and that it was painted when she bought it, and she denied having any work performed in Mexico. Gonzalez noticed some bolts on the gas tank

that had brand new scratches, and the clamps holding the gas tank to the side of the truck were new, indicating that something had been done to the truck. He also stated that he smelled fresh paint, which contradicted Drury's earlier statement. Gonzalez testified that his inspection revealed the presence of bondo, a substance generally used to repair vehicles and sometimes to construct hidden compartments for smuggling purposes.

Gonzalez instructed Drury to enter the customs building, where he continued to question her about the vehicle. Drury was very nervous, avoided making eye contact with him, kept grabbing her knees, and was chain smoking. This behavior caused Gonzalez to believe he should intensify the search.

He advised his supervisor of the circumstances, and they decided to "drill" the truck. They extracted a green leafy substance from under the bedliner of the truck, which a field test identified as marihuana. Then, they discovered a hidden compartment beneath the bedliner that contained numerous bags of marihuana.

Gonzalez testified that, about two days before Drury's arrest, he had seen her pass through Fabens with a male passenger. At that time, the truck had a regular metal Texas license plate, but on the day in question it had a temporary, paper plate. According to Gonzalez, there was no bedliner on the truck two days earlier. Gonzalez conceded on cross-examination that he failed to include in his written report his observations concerning Drury's nervousness, chain smoking, or his recollection of her prior crossing.

Port Director Gene Tipton testified that he was on duty when Drury was arrested. He described Drury as very talkative and nervous. Customs Agent Larry Lynch testified that he searched the truck and Drury's purse at the time of her arrest. The temporary license on the truck revealed that Drury had purchased it a week earlier, and it listed her address as 849 Lafayette, apartment 11-D. On cross-examination, Lynch testified that the marijuana in the truck appeared to be relatively old in that it was a little more dried out and not quite as sticky as some marijuana. He also stated that he had never heard of a case in which a person unknowingly purchased a vehicle loaded with marijuana.

The administrator of the apartments in which Drury resided, Eldon Lawrence, testified that Drury had lived at 849 Lafayette in a government-subsidized apartment for fourteen months. The building is about one block from Yarbrough Street. She paid \$35 per month in rent. Lawrence also indicated that Drury ran a used car business from the apartments. Customs agent Fred Schroeder testified that he interviewed Drury the evening of the stop, and she told him she was unemployed. Schroeder testified that, at the time of her arrest, Drury had \$452 in U.S. currency, \$127 worth of food stamps, and 75,000 pesos.

Drury's sister-in-law, Malena Gallegos, testified that, about one week before her arrest, Drury had shown her a truck she had just purchased. The truck had a hard black rubber bedliner on the back. Olivia Drury, the defendant's mother, testified that her

daughter was in an accident in June or July of 1991, and since then, she sometimes exhibits "shakes."

II.

We review the sufficiency of the evidence to determine whether any reasonable trier of fact could have found that the evidence established guilt beyond a reasonable doubt. United States v. Martinez, 975 F.2d 159, 1560-61 (5th Cir. 1991), cert. denied, 113 S. Ct. 1291 (1993). Similarly, the knowledge element of the importation charge requires the government to demonstrate that the defendant knew she was bringing a controlled substance into the United States.

Knowledge 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). Knowledge can be inferred from control of a vehicle in some cases, but when, as here, the drugs are hidden, control over the vehicle alone is not sufficient to prove knowledge. Id. In addition to control of the vehicle, there must be other circumstantial evidence that demonstrates guilty knowledge. Id.

Displaying nervousness in response to questioning from customs agents is circumstantial evidence of such knowledge. United States v. Greenwood, 974 F.2d 1449, 1456 (5th Cir. 1992), cert. denied, 113 S. Ct. 2354 (1993). Likewise, knowledge may be inferred from a defendant's inconsistent statements to authorities or when he

gives less than credible explanations for his actions. United States v. Rodriguez, 993 F.2d 1170, 1176 (5th Cir. 1993).

Here, the government presented sufficient circumstantial evidence from which the jury could infer Drury knew the marihuana was concealed in the truck, which she owned and had control over. Solarzado testified that Drury's arm was shaking when she handed over her identification card. Although Drury's mother testified that she was in an accident that caused her to shake, the jury did not have to accept this testimony. Moreover, Gonzalez testified that Drury appeared very nervous when she was being questioned in the office about repairs to the truck, that she refused to make eye contact with him, and that she was chain smoking. Similarly, Tipton described Drury's demeanor in the office as very nervous. See Greenwood, 974 F.2d at 1456 (nervousness displayed in response to questions from customs evidence of guilty knowledge).

Additional circumstantial evidence supports the jury's finding of guilty knowledge. Gonzalez testified that he smelled fresh paint and observed evidence of recent modifications to the truck, but Drury stated that the truck was painted when she purchased it and denied that she had any work done to it in Mexico. See Rodriguez, 993 F.2d at 1176 (less than credible explanation may be considered as part of overall circumstantial evidence from which guilty knowledge may be inferred). Likewise, Gonzalez's testimony that the truck had a brand new bedliner, under which the marihuana was concealed, only two days after Drury had driven the truck through Fabens without the bedliner, supports an inference of

guilty knowledge. Drury attacks the credibility of Gonzalez's testimony concerning his prior sighting of the truck, as she did at trial, but credibility determinations are for the jury. See Martinez, 975 F.2d at 161.

Finally, the government maintains that Drury gave inconsistent statements concerning her address and stresses that Drury possessed a relatively large amount of cash at the time of her arrest. Any inconsistencies in Drury's statements about her address were minor, and \$457 is not a large amount of cash. But, viewed in the light most favorable to the government and taken together with the other testimony, this evidence could provide additional support for the jury's conclusion that Drury was a drug smuggler and knew the marihuana was hidden in the truck.

AFFIRMED.