

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-8507  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ENRIQUE CHAVEZ-RIOS,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. P-93-CR-23-1  
- - - - -

(May 19, 1994)

Before HIGGINBOTHAM, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

Enrique Chavez-Rios (Chavez) challenges the sufficiency of the evidence on the knowing element of the offense of conviction, possession with the intent to distribute more than 50 kilograms of marijuana.

[We] view[] the evidence in a light most favorable to the government and with all reasonable inferences and credibility choices made in support of the jury's verdict. The standard of review inquires whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

United States v. Anchondo-Sandoval, 910 F.2d 1234, 1236 (5th Cir. 1990). "[T]he evidence need not exclude every hypothesis of innocence . . . ." United States v. Diaz-Carreon, 915 F.2d 951, 953-54 (5th Cir. 1990).

The knowledge element in a possession case can rarely be established by direct evidence. Knowledge can be inferred from control of the vehicle in some cases; however, when the drugs are hidden, control over the vehicle alone is not sufficient to prove knowledge. The general rule in this circuit is that knowledge can be inferred from control over the vehicle in which the drugs are hidden "if there exists other circumstantial evidence that is suspicious in nature or demonstrates guilty knowledge."

United States v. Garza, 990 F.2d 171, 174 (5th Cir.) (footnotes omitted), cert. denied, 114 S.Ct. 332 (1993).

The Border Patrol agents testified that Chavez's dirt-road, circuitous route around the checkpoint was most unusual and appeared to be checkpoint avoidance. Both agents noticed Chavez's nervous behavior. See Diaz-Carreon, 915 F.2d at 954; see also United States v. McDonald, 905 F.2d 871, 874 (5th Cir.) (noting as a factor the defendant's "heightened anxiety" as the search came closer to the hidden contraband), cert. denied, 498 U.S. 1002 (1990).

Chavez was hesitant in his answers. He stated that he was a naturalized citizen when in fact he was a resident alien. He offered two explanations for being in the area: He was looking for fence posts and he had gone to visit an area resident. No fence posts were found in the bed of the pickup truck, Chavez's driving route was the reverse of that resident's habit of driving

to his dwelling, and the agents did not observe the truck stop along the unpaved roads. See Diaz-Carreon, 915 F.2d at 955 ("less-than-credible" story as a factor).

These combined circumstances, along with Chavez's control over the vehicle, are sufficient to support the jury's determination that Chavez knowingly possessed the marijuana. See id.

AFFIRMED.