IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30481
(Summary Calendar)

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LIONEL ADAMS,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CR-93-55-A)

(March 20, 1995)

Before DUHÉ, WIENER and STEWART, Circuit Judges.

PER CURIAM:*

In this direct criminal appeal, Defendant-Appellant Lionel Adams appeals both his conviction and his sentence. He contends that the district court erred in denying his motion to suppress

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

evidence seized following a search of his luggage, that the evidence was insufficient to support his conviction for conspiracy to possess cocaine base, and that his constitutional right to equal protection was violated when he was sentenced under the guidelines' heightened penalty provisions for cocaine base. Finding no reversible error, we affirm.

I

FACTS AND PROCEEDINGS

Adams was convicted after a jury trial of conspiracy to possess with the intent to distribute more than 50 grams of cocaine base in violation of 21 U.S.C. §§ 841(a)(1) and 846, and was sentenced to imprisonment for 151 months. Prior to trial, Adams filed a motion to suppress evidence obtained in a search of his bag, which motion the district court denied.

At the hearing on Adams's motion to suppress, Baton Rouge Police Officer Rudy Babin testified that Adams was under surveillance because officers "had received word that it was possible [that Adams] was carrying a large quantity of cocaine." The information was obtained in the course of a larger investigation of Michael Nelson, a "major" drug dealer for whom Adams had worked in the past, and who had been arrested several hours earlier.

Babin waited in the Baton Rouge bus terminal for Adams to arrive on a bus from Houston. He was expected to be carrying a blue bag. After Adams got off the bus carrying a blue tote bag, he was approached by Babin who asked to speak to him. Even though

Adams responded that "he didn't have any problem talking" to Babin, the officer noticed that Adams had become very nervous. He was introduced to Detectives Bosco and Scrantz by Babin and was asked his name. Bosco then asked Adams "where he had gotten on the bus," and Adams replied, "Lafayette," which the officers knew was untrue. Bosco explained to Adams that they were narcotics officers "fighting the war on drugs," then asked Adams "about his bag." Adams "waited a minute," then replied, "[t]hat's not my bag." Babin asked Adams whose bag it was and, after a "long pause," Adams replied, "[t]hat girl." When Babin asked, "[w]hat girl?," Adams replied, "[t]he girl in the bus with the big boobs." When Detective Bosco then asked Adams if the officers could look in the bag, Adams replied that it was not his bag but that the officers could go ahead and look. Officer Babin testified that Adams "freely gave consent to look." The officers then opened the bag, discovered that it contained half of a kilo of crack cocaine, and arrested Adams.

II

ANALYSIS

Adams insists that the district court erred by denying his motion to suppress. He contends that the arresting officers had neither probable cause nor reasonable suspicion to stop and question him or to search the bag that he was carrying.

We employ a two-tiered standard in reviewing a denial of a motion to suppress. The district court's findings of fact are accepted unless clearly erroneous; its ultimate conclusion as to

the constitutionality of the law enforcement action is reviewed de novo. United States v. Chavez-Villarreal, 3 F.3d 124, 126 (5th Cir. 1993). We must review the evidence in the light most favorable to the prevailing party, the government in this case. A district court's denial of a suppression motion will be upheld if there is any reasonable view of the evidence to support it. United States v. Tellez, 11 F.3d 530, 532 (5th Cir. 1993), cert. denied, 114 S. Ct. 1630 (1994).

Police officers may briefly detain an individual even though there is no probable cause to arrest him if the officers have a reasonable suspicion that criminal activity is afoot. United States v. Michelletti, 13 F.3d 838, 840 (5th Cir.) (en banc), cert. denied, 115 S. Ct. 102 (1994). "The Fourth Amendment requires only some minimum level of objective justification for the officers' actions -- but more than a hunch -- measured in light of the totality of the circumstances." Id. Reasonable suspicion must be supported by particular and articulable facts which, taken together with rational inferences from those facts, reasonably warrant an intrusion. Id.

Adams's contention that the officers lacked reasonable suspicion to stop and question him has no merit. The officers had received information indicating that Adams would arrive from Houston, would be carrying a blue bag, and would possess a large quantity of cocaine. Once the officers approached Adams, who had just arrived from Houston carrying a blue bag, he became very nervous. The officers' brief detention and questioning of Adams

prior to the search of his bag was supported by reasonable suspicion and thus was not unlawful.

Adams also contends that the officers lacked probable cause to search the blue bag. After Adams disclaimed ownership of the bag, however, he had no legitimate expectation of privacy in the bag or its contents. See United States v. Canady, 615 F.2d 694, 696-97 (5th Cir.), cert. denied, 449 U.S. 862 (1980). "Once a bag has been abandoned, and the abandonment is not a product of improper police conduct, the defendant cannot challenge the subsequent search of the bag." United States v. Piaget, 915 F.2d 138, 140 (5th Cir. 1990). As the detention was supported by reasonable suspicion, Adams did not abandon the bag as a result of improper police conduct. Adams thus cannot now be heard to object to the search of the bag or to the seizure of the crack cocaine contained therein. See Canady, 615 F.2d at 696.

Even assuming arguendo that Adams has standing to contest the search of the bag, his arguments are without merit because he voluntarily consented to the search. The government has the burden of proving by a preponderance of the evidence that a consent to search was voluntary. United States v. Yeagin, 927 F.2d 798, 800 (5th Cir. 1991). The voluntariness of consent is a question of fact to be determined from a totality of the circumstances. Schneckloth v. Bustamonte, 412 U.S. 218, 227 (1973). We review the district court's findings respecting voluntariness for clear error. United States v. Olivier-Becerril, 861 F.2d 424, 425-26 (5th Cir. 1988).

Officer Babin testified that Adams "freely gave consent" for the officers to look in the bag. Babin further testified that the three officers who approached Adams never displayed their weapons. Adams admitted at trial that he told the officers he "didn't care" if they searched the bag. We conclude, based on the testimony of both Adams and Officer Babin, and on the totality of the circumstances, that the district court's finding that Adams voluntarily consented to the search is not clearly erroneous.

Turning to the merits of the case, Adams insists that the evidence was insufficient to support his conviction for conspiracy to possess with the intent to distribute cocaine base. Although Adams's counsel made a motion for judgment of acquittal at the close of the government's evidence, counsel failed to renew the motion at the close of all of the evidence. Our review is therefore narrowed by defense counsel's failure to preserve the district court's ruling on Adams's motion. United States v. Ruiz, 860 F.2d 615, 617 (5th Cir. 1988); see United States v. Inocencio, 40 F.3d 716, 724 (5th Cir. 1994).

> [This court is] limited to the determination of "whether there was a manifest miscarriage of justice." Such a miscarriage would exist only if the record is "devoid of evidence pointing to guilt," . . . [or] "because the evidence on a key element of the offense was so tenuous that a conviction would be shocking." In making this determination, the evidence . . . must be considered "in the light most favorable to the government, giving the government the benefit of all reasonable inferences and credibility choices."

Ruiz, 860 F.2d at 617 (citations omitted).

To support a conviction in a drug conspiracy prosecution, "the government must prove beyond a reasonable doubt (1) the existence

of an agreement between two or more persons to violate the narcotics laws, (2) that the defendant knew of the agreement, and (3) that he voluntarily participated in the agreement." United States v. Maltos, 985 F.2d 743, 746 (5th Cir. 1992). "The agreement, a defendant's guilty knowledge and a defendant's participation in the conspiracy all may be inferred from the development and collocation of circumstances." Id. (internal quotations and citations omitted).

Chad Scott, a Tangipahoa Parish narcotics investigator, testified that his office, members of the Hammond Police Department, and several Drug Enforcement Administration (DEA) agents began an investigation of Michael Nelson, a "major" narcotics dealer, in the fall of 1992. In January or February 1993, Officer Scott met Charlisa Baham, who had "made a few trips for [Nelson] to pick up cocaine." After speaking with Baham on February 8, 1993, Scott notified DEA agents that "there would be a trip made to Houston on the following morning."

Officers accompanied Baham on the flight to Houston the next day. She informed them that Nelson had given her $8,000 and told her that Andre Felder would be meeting her at the airport in a blue Ford Tempo. After the plane landed in Houston, officers followed Baham and the individual occupying the blue Ford Tempo to a residence and instituted surveillance. Following several hours of surveillance, officers contacted Baham, who informed them that "the dope wasn't there yet."

Adams arrived in a taxi several hours later, entered the

residence, then went back outside in "a few minutes" with "another black male." Shortly, a pickup truck pulled into the driveway of the residence, whereupon Adams got into the passenger side of the truck and the other individual stood at the driver's side of the truck. That individual "handed the driver something, and a package came out the window." The individual "placed the package under his shirt." Adams then got out of the truck and "appeared to be holding a package under his shirt," and both men went back inside the residence.

Baham returned to Baton Rouge by bus, and Nelson picked her up at the bus terminal. Nelson was arrested after a high-speed chase, during which a package of crack cocaine was thrown out of the car window. Officers then waited for Adams at the bus terminal. As noted earlier, after Adams exited the bus, officers searched his bag and discovered a half kilogram of cocaine. Officer Scott testified that the amount of cocaine Adams was carrying was a larger amount than is normally possessed for personal use.

The record is certainly not devoid of evidence pointing to Adams's guilt. Viewing the evidence in the light most favorable to the government and drawing all reasonable inferences in favor of the verdict, the evidence is sufficient to support Adams's conviction for conspiracy to possess with the intent to distribute more than 50 grams of cocaine base.

Finally, Adams contends that the guidelines' heightened penalty provisions for cocaine base, as compared to cocaine powder, violate his right to equal protection. He urges that cocaine base

and cocaine powder are synonymous but his contentions are unavailing.

We have held that the guidelines' disparate sentencing provisions for crack cocaine and cocaine powder do not offend constitutional due process or equal protection guarantees. United States v. Watson, 953 F.2d 895, 897 (5th Cir.), cert. denied, 112 S. Ct. 1989 (1992). "Even if a neutral law has a disproportionately adverse affect upon a racial minority, it is unconstitutional under the Equal Protection Clause only if that impact can be traced to a discriminatory purpose." United States v. Galloway, 951 F.2d 64, 65 (5th Cir. 1992) (internal quotation and citation omitted). Adams has alleged no discriminatory purpose. As such, the disparate sentencing provisions "will survive an equal protection analysis if [they] bear[] a rational relationship to a legitimate end." Id. at 66. "[T]he fact that crack cocaine is more addictive, more dangerous, and can therefore be sold in smaller quantities is reason enough for providing harsher penalties for its possession." Watson, 953 F.2d at 898. Thus, Adams's complaints about his sentencing are insupportable.

In conclusion, we affirm in their entirety Adams's conviction and sentence.

AFFIRMED.