

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-41299

Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

RORI ELLEN HUSSAIN,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Texas  
(94-CR 37 1)

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(May 19, 1995)

Before KING, JOLLY, and DEMOSS, Circuit Judges.

PER CURIAM:\*

Defendant-appellant Rori Ellen Hussain appeals her conviction for possession of cocaine base with intent to distribute, in violation of 21 U.S.C. § 841(a)(1). Hussain's sole claim on appeal is that the evidence was insufficient to convict her. 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 Pursuant to that Rule, the court has determined that this opinion should not be published.

At approximately 1:00 p.m. on February 24, 1994, City of Beaumont, Texas, Police Officers David Froman and Gerald LaChance observed a grey Toyota, with Illinois plates, speeding eastbound on I-10. The officers proceeded to stop the vehicle for the traffic violation. The car contained three people: driver Rori Ellen Hussain, front seat passenger Carina Rojas, and back seat passenger Heverth Caicedo Angolo (Caicedo), a/k/a Louie or Luis.

Hussain complied with Froman's request to exit the vehicle and to show her driver's license. Hussain appeared to be extremely nervous, more than any usual nervousness exhibited by a driver during a traffic stop. Froman testified that Hussain's hands were shaking to the point of almost dropping her driver's license, that her breathing was rapid, and that her neck showed a rapid pulse. Upon questioning, Hussain told Froman that they were traveling to Beaumont, Texas, to visit friends, but that she could not tell the officer where they lived.

LaChance spoke with Rojas who remained in the vehicle. Upon questioning, Rojas said that they were traveling from Houston to Illinois and that Hussain had been visiting them for two weeks in Houston, but they were returning with her to Illinois for a visit. There was no luggage in the vehicle. Hussain had a Texas driver's license.

The officers received Hussain's written consent to search the vehicle. While Froman conducted the search, LaChance observed the three suspect's behavior as they stood by the patrol car. The three spoke softly to each other except when Froman was

near the trunk. When Froman was at the trunk, the three intently stared at his searching efforts. From this behavior, LaChance instructed Froman to search the trunk again. Froman found a women's Nike shoe box in the trunk. It was partially covered by some material. Inside the box were two cookie boxes, and inside the boxes was a substance which appeared to be cocaine base. The parties stipulated that the substance was 889 grams of cocaine base.

Hussain, Rojas, and Caicedo were indicted for drug conspiracy and possession with the intent to distribute cocaine base. Caicedo pleaded guilty to misprision of a felony. After the government rested, the district court granted Rojas' motion for judgment of acquittal on both counts and Hussain's motion as to the conspiracy count.

Caicedo, an illegal alien from Costa Rica, testified that Rojas had asked him to travel with Hussain and her to Chicago. She told him that Hussain was picking up her daughter in that city. The two women picked up Caicedo at his apartment. Hussain stopped at her apartment, entered and exited the building, and placed a cradle-like object in the car trunk. Outside of stopping for gasoline, that was the only stop the vehicle made before the traffic stop. While Froman searched the vehicle, Hussain told Caicedo not to worry about an arrest because "baldhead," Rojas' stepfather, would arrange his release.

In contrast to Caicedo's testimony, Rojas, Hussain, and Mirta Munoz, Rojas' mother, testified that Rojas and Hussain

drove to Beaumont in order to find a dress for Hussain's daughter for Hussain's impending wedding. Munoz's neighbor, Caicedo, needed a ride to the Houston bus station in order to buy a ticket to Beaumont. When Caicedo found out that Munoz's friend and daughter were driving to Beaumont, he asked for her to inquire if he could have a ride to the Beaumont bus station.

Hussain and Rojas picked up Caicedo at his apartment on the morning of February 24, and Caicedo was carrying a coat and a white plastic bag, with string handles, that one normally equates with buying shoes. At Caicedo's request, Rojas asked Hussain if she could press the trunk-release button so that Caicedo could place his belongings in the trunk of the car. Caicedo placed the white shoe box bag in the trunk. Rojas testified that Caicedo instructed her to tell the police officer that they were traveling to Chicago and that she complied because she was scared. Hussain testified that she had no knowledge of controlled substances in the car.

The jury found Hussain guilty on the remaining count, possession with the intent to distribute cocaine base. Hussain was sentenced to 120 months imprisonment. A five year term of supervised release and a special assessment of \$50 were also imposed.

Hussain argues that the evidence was insufficient to prove that she had knowing possession of the cocaine base found hidden in boxes located in the trunk. Hussain moved for judgment of acquittal at the close of the Government's case-in-chief and at

the close of all the evidence. This court upholds the conviction if "a rational trier of fact could have found [from the evidence] the essential elements of the crime beyond a reasonable doubt." United States v. Resio-Trejo, 45 F.3d 907, 911 (5th Cir. 1995). The evidence is viewed in favor of the jury's verdict, and "[all credibility determinations and reasonable inferences are to be resolved in favor of the verdict." Id. at 910-11.

To prove the knowledge element of the count of conviction, the Government had to prove that Hussain knowingly possessed the cocaine base. See id. at 911. "Possession of or control over a vehicle does not, standing alone, suffice to prove guilty knowledge."<sup>1</sup> United States v. Anchondo-Sandoval, 910 F.2d 1234, 1236 (5th Cir. 1990). "[K]nowing possession can be inferred from the defendant's control over the vehicle in which the illicit substance is contained if there exists other circumstantial evidence that is suspicious in nature or demonstrates guilty knowledge." Id.; see Resio-Trejo, 45 F.3d at 911.

The focus of Hussain's argument is on the evidence presented by the defense witnesses which presented the hypothesis that Caicedo possessed the drugs about which the two women knew nothing; the women were on a trip to buy a wedding dress and look up old friends. Review by this court does not require the exclusion of every reasonable hypothesis that the evidence may support. See Resio-Trejo, 45 F.3d at 911. The jury was entitled

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<sup>1</sup>Hussain's ownership and control of the vehicle is not in issue.

to discount or to value the testimony presented by any of the witnesses. See id. Further, Hussain's reliance on United States v. Mergerson, 4 F.3d 337, 348-49 (5th Cir. 1993), cert. denied, 114 S. Ct. 1310 (1994), is misplaced. Mergerson involved the possession of a firearm by a convicted felon in which the firearm was discovered between the mattress and box springs of a bed in the residence the defendant shared with his girlfriend. Id. at 348.

To meet the requirement of other circumstantial evidence in hidden-compartment cases, this court has relied on factors such as nervousness, inconsistent statements, and implausible story. See Resio-Trejo, 45 F.3d at 911. Officer Froman testified that Hussain's nervousness was more than any usual nervousness from a traffic stop. She was shaking to the point that she almost dropped her driver's license. Both officers testified that Hussain told them that she and her passengers were going to Beaumont to visit friends, but she did not know where her friends lived.

LaChance observed Hussain and her passenger's behavior while Froman searched the vehicle, and he noted a change in their behavior when Froman was near the trunk. Caicedo testified that Hussain made a stop before leaving Houston, Texas, in which Hussain entered an apartment, returned with a cradle-like item, and placed the item in the trunk of the car. He also testified that Hussain, while Froman searched the car, told Caicedo not to

worry, not to say anything if the police found something, and if arrested, she would contact someone to get him out of jail.

This evidence suffices to meet the requirement of additional circumstantial evidence. See Anchondo-Sandoval, 910 F.2d at 1237. From this evidence, combined with Hussain's control of the vehicle, a rational juror could find beyond a reasonable doubt that Hussain knowingly possessed the hidden cocaine base. See id.

The district court's judgment of conviction and sentence are AFFIRMED.