IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50233
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LUIS RAUL TORRES-JAUREGUI,

Defendant-Appellant.

Appeal from the United States District Court
for the
Western District of Texas
(P-93-CR-106-1)

(August 3, 1995)

Before JOHNSON, JONES and EMILIO M. GARZA, Circuit Judges.

JOHNSON, Circuit Judge:[1]

This is an appeal of a judgment of conviction entered after a jury found Luis Raul Torres-Jauregui ("Torres") guilty of one count of importing methamphetamine and one count of possession of methamphetamine with intent to distribute. Because we can find no reversible error on the part of the district court, we affirm the conviction.

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 Pursuant to this Rule, the Court has determined that this opinion should not be published.

I. Facts and Procedural History

On October 19, 1993, Torres attempted to enter the United States through the border station at Presidio, Texas. Torres approached the primary inspection area of the border station as the sole occupant of his 1984 Buick with license plates from Chihuahua, Mexico. That night Immigration Inspector Manuel Menchaca ("Inspector Menchaca") was manning the primary inspection station. Torres presented a border-crossing card to Inspector Menchaca.[2] Located immediately behind the primary inspection site, close to the office building at the border station, is a secondary inspection station with parking places for vehicles. When the primary inspector requires, a vehicle must proceed to the secondary inspection station for a more thorough inspection and possible vehicle search.

During the primary inspection, Torres told Inspector Menchaca that he was only proceeding as far as Presidio. Because Torres appeared calm, stated he was going only short a distance, and claimed to have nothing to declare to customs, Inspector Menchaca allowed Torres to drive on without requiring him to submit to a secondary inspection. However, instead of driving through the border station, Torres drove past the secondary inspection station, parked on the far side of the immigration building, and then began to approach the building. Customs agent and immigration officer

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[2]A border crossing card permits a nonimmigrant alien to remain in the United States for up to seventy-two hours and to travel up to twenty-five miles away from the border. A nonimmigrant alien wishing to exceed those limits must obtain a temporary permit, Immigration Form I-444, at the Port of Entry's immigration office.

Charles Wright ("Officer Wright") was seated in the hallway of the immigration office building when Torres entered the building. Torres approached Officer Wright and asked him where he could obtain a permit for extended travel within the United States. Officer Wright then directed Torres to the immigration office. Officer Wright's suspicion of Torres was aroused due to the fact that he had not seen Torres go through secondary inspection, and Officer Wright knew that Officer Menchaca would have referred an alien who sought to exceed the travel restrictions of a border-crossing card to secondary inspection. Officer Wright also found it odd that Torres had parked so far away from the secondary inspection area before proceeding to the office building when there were plenty of more convenient parking places available in the secondary inspection area. After Officer Wright learned that Torres had, in fact, obtained a permit to travel to Houston, Officer Wright decided that he should inspect Torres' vehicle.

Officer Wright then approached Torres and informed him of his intent to search his car. As the two walked toward Torres' car, Wright asked Torres what he would be doing in Houston. Torres said that he was an architect and that he was going to Houston in order to observe the architecture of Houston hospitals because he intended to enter a hospital design contest in Mexico and hoped to acquire ideas from the Houston designs. Torres indicated that he planned to remain in Houston for three or four weeks. Torres appeared somewhat nervous and his voice slightly trembled.

Upon Officer Wright's initial investigation of Torres'

vehicle, his suspicion was further aroused. Despite Torres' statement that he intended to stay in Houston for three to four weeks, there was no luggage and only one change of clothing in the car. In addition, Officer Wright found a bank bag which contained over $4,000 in United States currency along with immigration and other documents. One of these documents indicated that Torres' car had entered the United States at Douglas, Arizona, on October 23, 1993.[3] Agent Wright searched the trunk of the car and punctured a hole in the trunk's insulation so that he could inspect the rear of the back seat. Behind the insulation, Officer Wright discovered something resembling plastic or cardboard, which the officer knew was not a factory-installed characteristic of the vehicle. Officer Wright obtained the keys from Torres and removed the back seat. At this point, Torres became very stiff and would no longer look directly at Officer Wright. Officer Wright found fifty-three

[3]On appeal, Torres contends that the trial court reversibly erred by allowing the Government to violate a motion in limine which prohibited the prosecution from mentioning or alluding to evidence of extraneous probable crimes and wrongdoings committed by the defendant on October 24, 1993, in Douglas, Arizona. The district court made it clear before the trial that the prosecutor could introduce any documents found in Torres' car and could discuss the contents of such documents. Although evidence introduced at trial never exceeded the scope of what was contained in these documents, there was some confusion at trial as to precisely what the prosecutor was or was not allowed to discuss regarding Douglas, Arizona. Even assuming that the introduction of the evidence of Torres' Arizona trip of October of 1993 was erroneous, such error would not be reversible error. Other evidence set forth at trial provides more than sufficient grounds on which to support the verdict that Torres knew he was smuggling methamphetamine into this country for distribution. The little amount that was mentioned about Arizona was not prejudicial for or against Torres' case and cannot serve as a basis for reversal. *See United States v. Williams*, 957 F.2d 1238, 1240 (5th Cir. 1992).

plastic bags hidden within a cardboard encasement. The bags were later determined to contain 22,218.6 grams of methamphetamine of 86% purity.[4] Torres' fingerprints and palmprints were found all over the cardboard in which the methamphetamine had been packed. However, investigators were unable to take any from the plastic bags which actually contained the methamphetamine.

The jury used the above-mentioned evidence to convict Torres of smuggling methamphetamine into the United States and possessing such methamphetamine with the intent to distribute. Torres now appeals the trial court's judgment on the verdict upon various grounds, the most central of which being a sufficiency of evidence ground. Torres claims that there was insufficient evidence from which the jury could have determined that he had the requisite knowledge of the presence of the drugs. Because we find no merit in this, or any of the other grounds asserted by Torres,[5] we

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[4]This amount of methamphetamine was enough for two million doses, indicating that the methamphetamine was for distribution as opposed to personal use. The street value for the methamphetamine was between one and two million dollars. As one ground for reversal, Torres contends that the district court reversibly erred by admitting the hearsay evidence of one customs agent ragarding the street value of the methamphetamine. Even assuming that this testimony of which Torres complains was erroneously introduced, the admission of the evidence was harmless in light of other evidence cumulative of the amount and value. *See United States v. Williams*, 957 F.2d 1238, 1240 (5th Cir. 1992) (holding that even if evidence is erroneously introduced a conviction will not be overturned if the error was merely harmless).

[5]Two of the grounds of Torres' appeal are so without merit that they are not worthy of this Court's extended attention. He claims that trial court's giving a supplemental instruction of a modified *Allen* charge was erroneous. The trial judge's comments were completely uncoercive in nature and Torres failed to make any objection to the supplemental instruction at trial. Given the lack of any error, much less plain error, Torres is not entitled to

affirm.

II. Discussion

Relative to criminal convictions, the standard of review for sufficiency of the evidence is 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, 160-61 (5th Cir. 1992), *cert. denied*, 113 S. Ct. 1346 (1993). In evaluating the sufficiency of the evidence, this Court considers such evidence in the light most favorable to the government with all reasonable inferences and credibility choices made in support of the verdict. *United States v. Ivy*, 973 F.2d 1184, 1188 (5th Cir. 1992), *cert. denied*, 113 S. Ct. 1826 (1993).

For a conviction of possession of a controlled substance with intent to distribute to be upheld, there must be proof of three elements beyond a reasonable doubt: (1) knowing (2) possession of the controlled substance (3) with the intent to distribute. *United States v. Ojebode*, 957 F.2d 1218, 1223 (5th Cir. 1992), *cert. denied*, 113 S. Ct. 1291 (1993). The intent to distribute a controlled substance may generally be inferred solely from possession of a large amount of the substance. *United States v. Prieto-Tejas*, 779 F.2d 1098, 1101 (5th Cir. 1986).

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reversal on this ground.

Torres seeks reversal on an additional ground which he again failed to develop at trial——ineffective assistance of counsel. Because this Court will rarely consider such a ground for reversal on direct appeal and because of the present lack of any evidence as to this issue in the record, Torres must raise this issue in an appropriate proceeding under 28 U.S.C. § 2255. *See United States v. Thomas*, 12 F.3d 1350, 1368 (5th Cir.), *cert. denied*, 114 S. Ct. 1861, 2119 (1994).

Possession of a contraband substance may be either actual or constructive. *United States v. Lindell*, 881 F.2d 1313, 1322 (5th Cir. 1989), *cert. denied*, 493 U.S. 1087 (1990), 496 U.S. 926 (1990). Constructive possession can consist of ownership, dominion or control over the vehicle in which the contraband was concealed. *United States v. Posner*, 868 F.2d 720, 722-23 (5th Cir. 1989).

Proof that possession of contraband is knowing will usually depend on inference and circumstantial evidence. *United States. v. Richardson*, 848 F.2d 509, 514 (5th Cir. 1988). Knowledge of the presence of the contraband may ordinarily be inferred from the exercise of control over the vehicle in which the contraband is concealed. *Id.* at 513. When drugs are hidden in a vehicle, however, such knowledge can be inferred only if there exists other circumstantial evidence that is suspicious in nature so as to indicate guilty knowledge. *United States v. Garza*, 990 F.2d 171, 174 (5th Cir.), *cert. denied*, 114 S. Ct. 332 (1993). Additional evidence of guilty knowledge may come from nervousness, inconsistent statements, implausible stories, or possession of large amounts of cash by the defendant. *United States v. Pennington*, 20 F.3d 593, 598 (5th Cir. 1994).

There is more than sufficient evidence in the case at bar from which it may be inferred that Torres knew of the presence of the 22,218.6 grams of methamphetamine in his vehicle. Torres told the implausible story that he intended to be in Houston for three or four weeks despite the fact that he had no luggage and only one change of clothing. Torres told Officer Menchaca that he was going

only to Presidio and then proceeded to obtain a permit to go to Houston. Torres appeared to be nervous when he was walking to his vehicle with Officer Wright. Additionally, Torres possessed a large amount of cash. Most significantly, Torres fingerprints and handprints were found all over the cardboard in which the methamphetamine was encased. From this evidence, a rational factfinder could certainly have found that Torres knew that about the presence of the drugs.

III. Conclusion

Given the sufficiency of the evidence from which the jury found Torres guilty of smuggling and possession of methamphetamine with intent to distribute coupled with the lack of merit to any other of Torres contentions on appeal, we affirm the trial court's judgment conviction.

AFFIRMED.