

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-50407  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SANDRA REFUGIO SOTO,

Defendant-Appellant.

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Appeal from the United States District Court  
For the Western District of Texas  
(EP-93-CR-441-H)

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(January 18, 1995)

Before POLITZ, Chief Judge, JONES and BARKSDALE, Circuit Judges.

PER CURIAM:\*

Challenging the sufficiency of the evidence, Sandra Refugio Soto appeals her bench trial convictions for the importation<sup>1</sup> and possession with intent to distribute marihuana.<sup>2</sup> Finding no error

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

<sup>1</sup>21 U.S.C. §§ 952, 960.

<sup>2</sup>21 U.S.C. § 841(a)(1).

we affirm.

Soto was apprehended by customs agents while driving a friend's automobile, containing 101 pounds of marihuana secreted between the back seat and the trunk of the automobile, from Juarez, Mexico to El Paso. Soto contends that the government did not present sufficient evidence that she knew the vehicle she was driving contained the contraband. We are not persuaded.

We review a district court's finding of guilty for substantial evidence, viewing the evidence in the light most favorable to the verdict and necessarily deferring to the trial court's credibility choices.<sup>3</sup> That Soto was driving the vehicle, exhibiting extreme nervousness when questioned by the agents, and that she gave inconsistent accounts of her travel activities, are relevant facts which suffice to support the convictions.<sup>4</sup> According to the customs agents, Soto was trembling and shaking and refused to make eye contact. She told one agent that she had gone to Juarez to visit her boyfriend; she told another agent that she was visiting her sick grandmother there. She told the agents that she had traveled by bus from her home in Denver to El Paso with a woman she knew only as Maria. She testified at trial that she had driven to El Paso with Maria Arrendondo, a family friend. As we observed in **Diaz-Carreón**, "[i]nconsistent statements are inherently suspicious; a factfinder could reasonably conclude that they mask an underlying

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<sup>3</sup>**United States v. Cardenas**, 9 F.3d 1139 (5th Cir. 1993), cert. denied, 114 S.Ct. 2150 (1994).

<sup>4</sup>See **United States v. Diaz-Carreón**, 915 F.2d 951 (5th Cir. 1990).

consciousness of guilt."<sup>5</sup>

Soto maintains that her case is indistinguishable from **United States v. Rosas-Fuentes**,<sup>6</sup> where we found nervousness and an implausible story insufficient to convict an automobile passenger of either conspiracy or a possession offense. Unlike the instant case, however, there was no indication in **Rosas-Fuentes** that the passenger had dominion over the vehicle. Here, by contrast, Soto was the driver and sole occupant of the car.<sup>7</sup> The evidence of record supports the convictions.

AFFIRMED.

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<sup>5</sup>915 F.2d at 955.

<sup>6</sup>970 F.2d 1379 (5th Cir. 1992).

<sup>7</sup>See **Diaz-Carreón** (control over a vehicle in which contraband is found is probative of knowledge of the presence of the contraband); **United States v. Wright**, 24 F.3d 732 (5th Cir. 1994) (same).