

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50508

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

OSCAR INCLAN BRACAMONTE, JR.,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
(P-94-CR-12)

(February 15, 1995)

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Oscar Inclan Bracamonte, Jr., was convicted for possession with intent to distribute more than 50 kilograms of marijuana. On appeal, he argues that the evidence is insufficient to support his conviction. We disagree.

Bracamonte was arrested at a border checkpoint on Interstate Highway 10 after authorities found marijuana hidden in the bed of

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

the pickup truck he was driving. At trial, he argued that he did not know that the marijuana was hidden in his truck. The jury found otherwise, and on appeal, Bracamonte contends that the government did not produce sufficient evidence to support the jury's finding.

In order to sustain Bracamonte's conviction, the government must prove three elements: "(1) knowing (2) possession of marijuana (3) with intent to distribute it." U.S. v. Diaz-Carreon, 915 F.2d 951, 953 (5th Cir. 1990). Because the government can only rarely produce direct evidence of knowledge, we permit the jury to infer knowledge from circumstantial evidence. See U.S. v. Garza, 990 F.2d 171, 174 (5th Cir.), cert. denied, 114 S. Ct. 332 (1993). The question here is whether the jury could reasonably have inferred from the circumstantial evidence that Bracamonte knew about the marijuana hidden in his truck.

At trial, the government sought to establish Bracamonte's guilty knowledge through evidence of his behavior during and immediately before and after his arrest. The government produced evidence that Bracamonte was nervous, evidence which, if combined with other evidence, can help support a finding of guilty knowledge. See Garza, 990 F.2d at 174. The government established that as he approached the drive-through checkpoint in his truck, Bracamonte appeared hesitant and slowed down. He clenched the steering wheel until his knuckles were white when one of the Border Patrol agents questioned him. He answered the Border Patrol agent

first in an "overly friendly" manner and then abruptly switched to an "almost rude" tone.

As further evidence of his guilty knowledge, the government showed that Bracamonte's story was inconsistent. See Diaz-Carreon, 915 F.2d at 955. First, he told a Border Patrol agent that he was traveling to Odessa; later, he told the agent that he had been traveling to Oklahoma; later still, he told another agent that he had been traveling to the Texas-Arkansas border; at trial, he testified that he had been headed to Wichita Falls.

Finally, the government presented evidence showing that Bracamonte's story was not entirely credible. See Diaz-Carreon, 915 F.2d at 955 (implausible stories can be evidence of guilty knowledge). Although Bracamonte claimed to have borrowed the truck from a friend he had known for eight years, he did not know his friend's address and could not contact him. The certificate of title found in the truck had been issued on the day that Bracamonte said that he picked up the truck from his friend. One of the government agents testified that in his experience, the titles of vehicles used to transport narcotics are commonly fictitious or very newly acquired.

Bracamonte argues that this circumstantial evidence does not establish his guilty knowledge. The evidence of nervousness is weak, he argues. The drug enforcement agents who questioned him testified that drivers commonly slow down and hesitate at highway checkpoints. The fact that Bracamonte did so may not be evidence of nervousness. Bracamonte's change in tone from very friendly to

almost rude may have been caused less by nerves than by exasperation with repeated questioning by the agents. Bracamonte had been "very friendly, almost overly friendly," one of the agents testified, until the agent asked him for a second time where he had been going. Nor did the government produce any evidence that Bracamonte interfered with the search or tried to evade arrest. Finally, Bracamonte explains his inconsistent statements about his destination by suggesting in his appellate brief that they were "the result of [his] giving more specific answers as the questioning continued or a misunderstanding on the part of the agents."

Reviewing the evidence in the light most favorable to the jury's verdict, we rule that the verdict was based on sufficient evidence. The government produced evidence of Bracamonte's apparent nervousness, his inconsistent statements to law enforcement agents, and gaps in his story's credibility. Bracamonte has countered with innocent explanations for his actions. The jury, however, rejected his explanations and drew a reasonable inference from the circumstantial evidence that he knew his truck concealed marijuana.

Accordingly, we AFFIRM.