UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-50607
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

GARY DWAYNE ALLBRIGHT,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
(SA-94-CR-58)

(June 15, 1995)

Before GARWOOD, HIGGINBOTHAM and DAVIS, Circuit Judges.

PER CURIAM:[1]

Allbright challenges his conviction for drug trafficking and using a firearm in relation to the drug offense. We affirm.

I.

Gary Dwayne Allbright was convicted by a jury for possession with the intent to distribute methamphetamine and for using and carrying a firearm in relation to that offense. At trial, City of Terrell Hills, Texas, Police Officer Kenneth McPheeters and other

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

law enforcement agents testified that in December 1993, they searched, pursuant to a warrant, the two-bedroom mobile home where Allbright, his grandparents and his father lived. Allbright's brother Randy testified that he also lived there, but that he was incarcerated in the county jail at the time of the search.

Upon entry into the residence, law enforcement officers placed Allbright under arrest and found a loaded .22-caliber derringer in his back pocket. After informing Allbright of his rights, the officers asked Allbright whether there were any narcotics or firearms in the residence. Allbright responded that there might be some narcotics in his bedroom. He also stated that there was a gun under the pillow of his bed.

In searching the bedroom indicated by Allbright, law enforcement agents discovered a revolver, three shotguns and various drug paraphernalia, including kitchen utensils, scales, plastic vials, ziplock baggies, syringes, rubber tourniquets, and non-narcotic white-powdery substances. They also found two briefcases, one silver and one black, under the bed. The black briefcase, which bore the initials "G.A.," contained personal papers belonging to Allbright and a large sum of cash. The silver briefcase contained 30-38 grams of methamphetamine, a large sum of cash, checks, deposit slips from the account of Frank and Mabel Dowdell (Allbright's grandparents), notations on paper which appeared to be a drug ledger, labels from containers of a chemical used in manufacturing methamphetamine, a car-rental form made out to and signed by Allbright and two business cards with Allbright's

name on them. The officers also found in the silver briefcase a sales receipt for the purchase of ethyl ether, a chemical used in the manufacturing of methamphetamine, attached to an American Express sales receipt bearing Allbright's signature.

II.

A.

Allbright argues first that the evidence was insufficient to support his conviction for possession with intent to distribute methamphetamine. In reviewing a challenge to the sufficiency of the evidence, we must determine whether a rational trier of fact could have found that the evidence established the essential elements of the crime beyond a reasonable doubt. United States v. Munoz, 957 F.2d 171, 174 (5th Cir.), cert. denied, 113 S. Ct. 332 (1992). In doing so, we view all the evidence and draw all inferences in the light most favorable to the verdict. Id.

The elements of possession with intent to distribute "are (1) knowing, (2) possession, (3) with intent to distribute." Id. Allbright contests the sufficiency of the evidence to show possession. As this court stated in United States v. McKnight, 953 F.2d 898 (5th Cir.), cert. denied, 112 S. Ct. 2975 (1992):

> Possession of contraband may be either actual or constructive. In general, a person has constructive possession if he knowingly has ownership, dominion, or control over the contraband itself or over the premises in which the contraband is located. Constructive possession need not be exclusive, it may be joint with others, and it may be proven with circumstantial evidence.

Id. at 901 (citations omitted). Because there was no evidence of actual possession, the government sought to prove constructive

possession.

Although Allbright admits that he slept in the bedroom in which the officers found the silver briefcase containing the drugs, he argues that since more than one person shared that bedroom the fact that the drugs were found in the bedroom in which he slept cannot prove dominion or control over the room's contents.[2] The drugs were found inside the locked silver briefcase, which was in turn found under Allbright's bed. Allbright told the officers that he did not know the combination to the silver briefcase's lock. At trial, Randy testified that the silver briefcase was his and that only he and a friend knew the combination. He also testified that he shared the bedroom with Allbright.

We agree that when a residence is jointly occupied, "`the mere fact that contraband is discovered at the residence will not, without more, provide evidence sufficient to support a conviction based on constructive possession against any of the occupants." Id. (quoting United States v. Reese, 775 F.2d 1066, 1073 (9th Cir. 1985)). However, the government presented evidence at trial both to refute Randy's testimony and to show Allbright's dominion and control over the briefcase and the drugs. The silver briefcase contained several items linking its contents to Allbright, including: an American Express sales receipt signed by Allbright for the purchase of ethyl ether, two business cards with Allbright's name on them, and two receipts signed by Allbright. In

[2] Allbright contends, and the government does not dispute, that he did not own the mobile home.

addition, as Allbright was being led away by law enforcement agents, he told his grandmother where to find a bank deposit slip. This banking information matched a deposit slip found within the locked silver briefcase. Moreover, although Randy testified that he shared the bedroom with Allbright, Randy had been in jail for fifteen days before agents searched the residence. The contents of the briefcase also did not match Randy's description of what he had placed in it (contract forms, calculator, measuring tape, list of business leads, Randy's business cards).

Also, other evidence was found in the bedroom linking Allbright to the drugs: the gun that Allbright told the officers was under the bed clothing, drug paraphernalia, and the large sum of cash in the black briefcase marked "G.A." Moreover, Officer McPheeters and another officer involved in the December 17th search testified that Allbright told the officers that he had been selling methamphetamine "for some time" in order to generate income for the family. We conclude that, based on this evidence, it was reasonable for the jury to infer that Allbright possessed the methamphetamine.

B.

Allbright argues next that the district court committed reversible error in admitting a statement in contravention of Fed. R. Evid. 404(b). We review a district court's evidentiary rulings for an abuse of discretion. United States v. White, 972 F.2d 590, 598 (5th Cir. 1992), cert. denied, 113 S. Ct. 1651 (1993).

A.T.F. Special Agent Kris Mayfield testified that his agency

became involved in the investigation of Allbright in February 1994, which led to Allbright's arrest on federal charges that same month. As Agent Mayfield and another law enforcement officer transported Allbright to a federal detention center, Allbright questioned them about the booking procedures. Mayfield testified that Allbright "stated that he had been involved in either using or selling narcotics since he was twelve years old." Defense counsel objected based on Rule 404(b). The district court overruled the objection.

Rule 404(b) prohibits the introduction of other-acts evidence when offered to prove the defendant's character in order to show action in conformity therewith.[3] The government argues that the statement fits into one of the exceptions under Rule 404(b) or, alternatively, that the statement does not constitute Rule 404(b) evidence. We need not address the government's first argument because we conclude that the statement does not constitute Rule 404(b) evidence.

Rule 404(b) concerns extrinsic evidence only; it does not apply to intrinsic evidence. See United States v. Ridlehuber, 11 F.3d 516, 521 (5th Cir. 1993). "Other acts evidence is `intrinsic' when the evidence of the other act and the evidence of the crime charged are `inextricably intertwined' or both acts are part of a `single criminal episode' or the other acts were `necessary

[3] Rule 404(b) provides:
Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

preliminaries' to the crime charged." United States v. Williams, 900 F.3d 823, 825 (5th Cir. 1990).

The statement by Allbright was an admission (1) that he was currently engaged in selling and using drugs, and (2) he had been engaged in this activity for a number of years. The former is intrinsic evidence, in that it tended to prove that he possessed the amphetamine the officers recovered in the search. The latter could not be severed from the former. Thus, the district court did not abuse its discretion in admitting this statement.[4]

AFFIRMED.

[4] Allbright has filed a pro se motion requesting leave of court to file a supplemental brief to add undesignated "information pertinent to his [a]ppeal and not addressed" in the initial brief filed by appointed counsel. Allbright does not indicate what information or issues he desires to raise, thus failing to explain why additional briefing would be helpful to this court. We see no reason to depart from the general rule that a party is not entitled to "hybrid representation," partly by counsel and partly by himself. See United States v. Daniels, 572 F.2d 535, 540 (5th Cir. 1978). Accordingly, Allbright's motion is denied.