

IN THE UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

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No. 94-50670  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

ALFREDO HECTOR MEZA, JR. and MARIA ROSALINA MARTINEZ

Defendants-Appellants.

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Appeal from the United States District Court  
For the Western District of Texas  
(SA 93 CR 377)

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( July 10, 1995 )

Before REYNALDO G. GARZA, DUHE, and EMILIO M. GARZA, Circuit  
Judges.

PER CURIAM:\*

On May 12, 1993, a Medic Ambulance owned by Alfredo Hector  
Meza, approached the Border Patrol checkpoint on Interstate 35,  
north of Laredo, Texas, where all northbound traffic is stopped.

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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that this opinion should not be published.

When the ambulance stopped at the checkpoint, the driver, Sylvester Lacour, was interviewed by Border Patrol Agent Phillip Leveck who was told by Lacour, the driver, that he was transporting a patient from Mercy Hospital in Laredo to Santa Rosa Hospital in San Antonio. However, Leveck at trial testified that the driver appeared to be very nervous, avoiding eye contact and clenching the steering wheel.

Also, at the checkpoint was Border Patrol Agent Thomas Lozano, and his drug-detection dog. While Agent Lozano was making his routine walk amongst the cars and trucks stopped at the checkpoint, he noticed that the drug-detection dog he was handling "perked up and started to work odor" as he approached the ambulance. At trial, Border Patrol Agent Lozano explained that when a drug-detection dog "works odor" it usually means that the dog is reacting to concealed narcotics. He further testified that as he and the dog approached the back of the ambulance, the dog alerted to the presence of narcotics in the ambulance. Border Patrol Agent Lozano then instructed Agent Leveck to question further the driver and told another Border Patrol Agent, Presley Madrid, to question the nurse and the patient in the back of the ambulance.

Border Patrol Agent Madrid testified that when he got inside the ambulance he observed that the patient, who was later identified as defendant Maria Rosalina Martinez, was lying on a stretcher, hooked up to a heart monitor, and apparently receiving oxygen as well as an intravenous line. He observed that the IV bag was not dripping anything into the intravenous line supposedly

connected to Martinez. There was a nurse with patient Martinez, codefendant Lynn Sabo, who told Agent Madrid that they were transferring the patient due to an upper respiratory infection and gave him what was supposedly the verifying paperwork. Agent Madrid then exited the back of the ambulance and told Agents Lozano and Leveck that the patient appeared to be uncomfortable. At that juncture, Leveck then instructed the driver that he could proceed.

The agents informed their superiors about what had occurred and started verifying the transfer of the patient by calling Mercy Hospital in Laredo to verify the driver's and nurse's explanations. Their investigation discovered that although Sabo was employed as a nurse at Mercy Hospital, no patient was being transferred from there that day and no patient was expected at Santa Rosa Hospital in San Antonio. The agents at the Border Patrol Station informed Border Patrol Agents between the checkpoint and San Antonio to be on the lookout for the ambulance. Border Patrol units following the ambulance were joined by Dib Waldrip, a Commander with the 81st Judicial District Narcotics Task Force. Waldrip decided to stop the ambulance on Interstate 35 and the driver, Lacour, could not produce the appropriate paperwork concerning the transfer of the patient and could not even remember the patient's name. Waldrip further observed patient Maria Rosalina Martinez was not hooked up to any equipment at that point, but that she remained on the stretcher.

The nurse, codefendant Lynn Sabo, informed Waldrip that the patient had only one kidney and had cancer, but she did not say

that the patient had an upper respiratory infection. Martinez herself said that she had a bleeding ulcer and she began to spit up blood as the questioning continued.

Waldrip decided to release the ambulance although other law enforcement vehicles followed it to Santa Rosa Hospital. When the ambulance arrived at the Santa Rosa Hospital, Sabo and the driver, Lacour, took Martinez into the emergency room. The agent-in-charge of the San Antonio office of the Border Patrol, Bill Schellenger, who was at the hospital at the time the ambulance arrived and who had been informed of the drug-detection dog's alerting to the presence of narcotics in the ambulance, began a search of the ambulance after the occupants had entered the hospital. He found a large package of marijuana underneath the nurse's seat and three or four packages in the wheel well. After noticing a hole in the headliner above the passenger's seat, he looked inside the headboard and discovered more packages of marijuana. Marijuana was even found in the air-conditioning ducts.

On May 4, 1994, Alfredo Hector Meza, Maria Rosalina Martinez and Lynn Sabo were charged in a two-count superseding indictment charging them with conspiracy to possess with intent to distribute and with possession of marijuana. Lynn Sabo pleaded guilty and testified at the trial of Meza and Martinez. After a jury trial, Meza was found guilty on both counts and Martinez on the conspiracy count in the indictment. The driver, Sylvester Lacour, was charged separately, was found guilty and sentenced to 46 months imprisonment and 48 months supervised release. He also testified

for the government in the trial of Meza and Martinez.

As stated, codefendants Sabo and Lacour both testified in the trial of Meza and Martinez, which has prompted Meza to object to the district court's admitting the testimony of these witnesses on the issue of Meza's past drug smuggling activities involving his ambulance service. Nurse Lynn Sabo testified that she had made at least six trips transporting marijuana in Meza's ambulance. She testified that on those occasions she would play the role of a nurse in the ambulance and that on several occasions she used her daughter as a fake patient because the child's age made it easier to avoid the drug-sniffing dogs while going through the checkpoint. She testified that Meza drove the ambulance on each occasion and that she had helped him load and unload the marijuana on at least one trip. The driver, Lacour, testified that Meza had bragged to him on several occasions that he had shipped marijuana using his ambulance thirteen or fourteen times. Lacour also testified that Meza had told him that he had used a nurse and a fake patient. Defendant Meza argues that the district court abused its discretion by admitting the testimony of Sabo and Lacour about other ambulance trips in which marijuana was hauled because the evidence itself was not relevant to the issue other than his character and, that the probative value of the evidence was substantially outweighed by its potentially prejudicial effect. He argues that the district court's decision to admit the evidence as relevant to show knowledge and scheme was erroneous because substantial evidence had already been admitted that established his knowledge of the May 12,

1993, drug shipment. Meza's defense tried to lay all the blame on Lacour, the driver, and was denying any knowledge of the ambulance carrying marijuana.

The court below determined that the testimony was relevant to the issues of his knowledge of the May 1993 shipment and of the overall conspiracy to transport marijuana using his ambulance.

Just as the court below, we find that the evidence of previous instances was exactly the same. Meza's smuggling marijuana through the checkpoint using his ambulance was proper 404(b) evidence. The evidence of codefendants Sabo and Lacour was pertinent to the knowledge and intent elements of Rule 404(b). The district court was correct that its probative value exceeded any unfair prejudice. The evidence was the same as the one that occurred on the day in question and it was all the same kind of criminal operation.

Furthermore, any error was harmless. The knowledge of Meza's past practices could not have influenced the jury given the overwhelming evidence against him on the day in question in the indictment.

Meza also asserts that the district court clearly erred in determining his base offense level by attributing to him under relevant conduct too large a quantity of marijuana.

Lynn Sabo had testified that Meza told her that the ambulances' hidden compartment could not hold more than 100 pounds or (272.16 kilograms) of marijuana. Because of this, the probation officer counted the six previous ambulance trips that Sabo

testified she had made with Meza carrying marijuana as "relevant conduct." The probation officer concluded that the total associated amount of marijuana involved on the May 12, 1993 trip was 370.81 kilograms. Meza objected to the inclusion of the previous trips as "relevant conduct", arguing that he should be held accountable only for the 98.65 kilograms recovered from the ambulance on May 12, 1993. The district court overruled Meza, determining that Sabo's testimony provided sufficient evidence to support the presentence investigation report that Meza 's relevant conduct involved over 100 kilograms but less than 400 kilograms of marijuana, therefore resulting in a base offense level of 24.

Meza in his brief does not contend that the testimony that the district court relied on is materially untrue, but instead argues simply that there was no testimony as to the quantity of marijuana Meza transported on those six prior occasions. Meza did not offer evidence at sentencing to dispute the accuracy or reliability of the information related in the presentence investigation report. If no relevant affidavits or other evidence are submitted to rebut the information in the presentence investigation report, the district court is free to adopt its findings without further inquiry or explanation. United States v. Mir, 919 F.2d 940, 943 (5th Cir. 1990). Meza therefore failed to establish that the district court's determination was clearly erroneous.

Defendant Maria Rosalina Martinez' defense was that she truly was a patient and was going to Santa Rosa Hospital without any of her doctors' permission because she wanted to get sympathy from her

estranged spouse. She also testified that she picked Meza's ambulance to go to San Antonio at random, but both the driver, Lacour and Lynn Sabo testified that she was not ill and had never complained of going to a hospital. Lynn Sabo testified that when she told the Border Patrol Agents that Martinez had an upper respiratory infection and later that she had only one kidney and cancer, Martinez never objected to her statement. There was also testimony that Martinez, who was also known as "Nena", knew Meza, who had been trying to date her, and that he had an ambulance. This shows that she did not have to pick the ambulance at random.

Martinez objects to the district court's denial of a motion for bill of particulars. This contention is frivolous. The indictment contained what is needed in conspiring to possess with intent to distribute marijuana. There is no evidence that she was surprised in any way by the evidence that came out, so we must affirm the court's denial of the motion for bill of particulars.

This court reviews the denial of a motion for bill of particulars for abuse of discretion and we do not find any abuse in the trial below.

The defendant Martinez also argues that the district court erred by admitting the results of the hospital drug tests conducted on May 12, 1993, that indicated the presence of cocaine in her system. Martinez contends that the government violated a prior ruling that the district court entered on the issue of admissibility of those test results. She argues in her brief that the district court had ruled during a bench conference that the



government could not delve into the issue of Martinez' cocaine use. The trial transcript is silent as to the bench hearing dealing with this issue. Even if the court made such a ruling, the court later changed its mind. During the testimony at trial, both Sabo and Lacour claimed that there was nothing wrong with Martinez to where she had to enter a hospital. Sabo also testified that she and Martinez smoked crack cocaine before the trip, and that evidence was given before the results of the cocaine tests came out.

Martinez' contention that she had an ulcer and was spitting blood is not borne by the tests conducted at Santa Rosa Hospital. Tests on Martinez uncovered no blood in her stool, no traces of blood in her stomach, and no blood in her throat. Her lungs were clear and vital signs normal. An abdominal examination was unremarkable. Martinez had not vomited at the hospital and they were unable to find any evidence of vomiting blood. The doctor who examined Martinez believed she was "malingering" because her complaint was not a true complaint. This meant that she had gone to the emergency room with a "fake complaint."

Martinez' final contention on her conviction is that the evidence was not sufficient to support the jury's verdict finding her guilty on conspiracy and that therefore the district court erred by denying her a motion for judgment of acquittal. A review of the record of the evidence against her convinces this court that the evidence was more than sufficient for the jury to have found her guilty of the conspiracy count. To review the law on this issue would be frivolous and unnecessary. Her conviction must

stand.

Therefore, the judgment of guilty and sentences imposed on both Meza and Martinez are hereby AFFIRMED.