

IN THE UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 94-60253  
(Summary Calendar)

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROY EDWARD CANTU, SR.,

Defendant-Appellant.

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Appeal from United States District Court  
for the Southern District of Texas  
(CR-B-93-172-1)

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(April 19, 1995)

Before DUHÉ, WIENER and STEWART, Circuit Judges.

PER CURIAM:\*

Roy E. Cantu, Sr. appeals his convictions on four counts of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). He contends that there was insufficient evidence at trial to convict him on all four counts and that evidence introduced at trial should have been suppressed. For the following reasons, the convictions are affirmed.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

## BACKGROUND

On September 10, 1993, agents from the Federal Custom Service received an anonymous tip that a young girl was being molested at a house in Brownsville, Texas. They went to investigate. When they arrived at the house, they found Roy Cantu, Sr. and Javier Cantu, Roy Cantu Sr.'s son, standing on the porch. Roy Cantu, Sr. had been staying at the house, which belonged to another one of his sons, Roy Cantu Jr. After arriving at the house, the federal agents got permission from Javier Cantu to search the house. They also searched the vehicles parked in front of the house. They found four weapons, two in the house and two in a truck outside, ostensibly belonging to Roy E. Cantu, Sr.

Cantu, who had been convicted of first degree murder in 1983, was arrested and charged by a four count indictment with possession of four firearms by a convicted felon in violation of 18 U.S.C. § 922(g)(1), one count for each weapon. A jury found Cantu guilty on all four counts, and the district court sentenced him to four concurrent 87-month prison terms to be followed by four concurrent three-year terms of supervised release.

## DISCUSSION

### Issue 1 - Sufficiency of the evidence

Cantu contends that the evidence was insufficient to support the convictions. When the sufficiency of the evidence is challenged, this court reviews the evidence in the light most favorable to the Government, making all reasonable inferences and credibility choices in favor of the verdict. Glasser v. United

States, 315 U.S. 60, 80 (1942). The conviction must be affirmed if any rational trier of fact could have found that the evidence established guilt beyond a reasonable doubt. United States v. Smith, 930 F.2d 1081, 1085 (5th Cir. 1991). The jury, however, is in a unique position to determine the credibility of the various witnesses. United States v. Layne, 43 F.3d 127, 130 (5th Cir. 1995). This court defers to the jury's resolutions of conflicts in the evidence. Id.

Section 922(g)(1) makes it a crime for a convicted felon to possess a firearm affecting interstate commerce. 18 U.S.C. § 922(g)(1). Cantu does not suggest that the evidence was insufficient to show that he was a convicted felon or that the four firearms traveled in interstate commerce. He argues only that the evidence did not show that he was in possession of the weapons.

A conviction under § 922(g)(1) requires knowing possession, which may be actual or constructive. United States v. Speer, 30 F.3d 605, 611 (5th Cir. 1994), cert. denied, 115 S.Ct. 603 (1994), 115 S.Ct. 768 (1995). Constructive possession may be shown by dominion or control over a vehicle in which contraband is found. Id. It may also be shown by dominion or control over the premises in which contraband is found. United States v. Mergerson, 4 F.3d 337, 348-49 (5th Cir. 1993), cert. denied, 114 S.Ct. 1310 (1994). In the instant case, the district court instructed the jury on actual and constructive possession.

At trial, the following evidence was adduced: On September 10, 1993, law enforcement officers received anonymous

information about a rape and the presence of guns and narcotics at a house on Browne Road in a rural area outside of Brownsville, Texas. They went to investigate. Cantu and his son Javier Cantu (Javier) were standing on the porch of the house when the officers arrived. One officer asked Cantu if the house was his, and he said that it was not. With Javier standing a few feet away, the officers asked Cantu for consent to search the house. Cantu told them that another son, Roy Jr., owned the house but that Javier had control over it and could consent to a search. Javier claimed control over the house while his brother was away and signed a form consenting to a search of the house and of the vehicles on the premises.

Upon questioning, Javier told an officer that a pickup truck on the premises belonged to Cantu. A search of the truck revealed a pistol under the passenger side of the bench seat and a rifle behind the seat. An officer asked Javier to identify the owner of the guns, and Javier responded that the officer would have to ask Cantu. A later check revealed that the registered owner of the truck was Jesus Canales.

Just before entering the house with another officer, Cantu stated that a rifle was inside, just to the right of the front door. The officer seized it. Cantu led the officer through the house to a bedroom, where he pointed out a revolver that was out of view on top of an armoire. The officer seized it. Cantu told the officers that he lived in the house and that the clothes in the bedroom were his. He later put on some of the clothes. The

officers found no indication of any other person living there. Approximately two weeks after the seizures, but before Cantu was arrested, an officer observed Cantu driving the pickup truck.

About a month after the seizures, officers executed an arrest warrant for Cantu at the house. Cantu was there at the time, preparing to take a shower. He told officers that he was the only person living at the house.

Cantu's daughter-in-law testified that she and her husband, Roy Jr., asked Cantu to stay in the otherwise vacant house to keep an eye on it. Cantu's former wife corroborated her testimony but stated that the house was never Cantu's permanent residence. Javier also corroborated his sister-in-law's testimony.

Isidro Trevino testified that he was present when the officers seized the weapons. He stated that he was driving the pickup truck on that day; Jesus Canales had lent the truck to him. Trevino said that the weapons found in the truck belonged to him, not Cantu. Canales testified that the truck was his and that he had never lent it to Cantu.

Wenceslado Collazo, Cantu's uncle, testified that he, not Cantu, owned the weapons that were found in the house. He explained that he kept the weapons there for protection from wild animals. Collazo said that Cantu did not live in the house, though he and other family members would bathe there occasionally. Javier corroborated that testimony. He also stated that his father was staying at the house at the time.

The jury heard conflicting evidence on the question whether Cantu exercised dominion or control over the truck and the house. The officers related that Cantu lived in the house and drove the truck. Trevino, Canales, and Collazo related that Cantu did not possess the weapons. The jurors apparently chose to give greater weight to the evidence indicating Cantu's possession than to that indicating possession by others. Such a choice is appropriate for the jury to make. The existence of conflicting evidence does not render the evidence insufficient. See United States v. Layne, 43 F.3d 127, 130 (5th Cir. 1995)

#### Issue 2 - Suppression

Cantu contends that, following the suppression hearing, the district court should have granted his motion to suppress evidence of the weapons seized in the house.<sup>1</sup> Cantu's argument has two prongs, both asserted in the district court. First, he argues that Javier gave his consent on the condition that his father would not be charged if weapons were found. In the district court, Cantu phrased the first prong slightly differently, arguing that the consent was not valid because it was coerced. Second, he argues that Javier lacked the authority to consent because he did not live on the premises.

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<sup>1</sup>On appeal, Cantu does not challenge whether the search of the truck was valid. This court does not entertain an issue not argued. United States v. Valdiosera-Godinez, 932 F.2d 1093, 1099 (5th Cir. 1991), cert. denied, 113 S. Ct. 2369 (1993). Accordingly, this court will not consider whether the admission of the evidence found in the truck was erroneous.

The district court found that Javier gave the consent voluntarily and intelligently, without undue coercion. The court also found that Javier had the authority to give the consent.

In reviewing a district court's denial of a motion to suppress, this court reviews findings of fact for clear error. United States v. Wilson, 36 F.3d 1298, 1303 (5th Cir. 1994). That includes a finding that consent justified a warrantless search. Id. at 1304. A clearly erroneous finding is one that is not plausible in light of the record viewed in its entirety. Anderson v. City of Bessemer City, 470 U.S. 564, 573-76 (1985). This court views the evidence in the light most favorable to the party who prevailed in the district court. Wilson, 36 F.3d at 1303. Conclusions of law are reviewed de novo. Id. This court has "long pitched the standard of review for a motion to suppress based on live testimony at a suppression hearing at a high level." United States v. Randall, 887 F.2d 1262, 1265 (5th Cir. 1989).

"Police may rely on the voluntary consent of a person holding common authority over the place to be searched." Wilson, 36 F.3d at 1304. This court's review includes the evidence adduced at the suppression hearing and at trial. United States v. Cardenas, 9 F.3d 1139, 1146 (5th Cir. 1993), cert. denied, 114 S.Ct. 2150 (1994).

An officer testified at the suppression hearing that, when he approached both Cantu and Javier outside the house, Cantu denied control over the premises, stating that Javier was in charge. The officer said that Javier acknowledged that he had

control of the premises, though the property belonged to Roy Jr. Javier testified at trial that he had control of the premises on the day of the search.

The officer related that Javier told him that Cantu was on probation and asked if Cantu would get into trouble if weapons were found. The officer responded affirmatively. Cantu, who testified at the suppression hearing but not at trial, clarified that he was on parole rather than probation. The officer testified that he did not coerce Javier, having made no promises or threats to elicit the consent.

Cantu testified that he heard Javier give the consent to search but that he did not say anything. Cantu also stated that he had lived in the house for about six months and that Javier had never lived there. He said that he did not consent to the search because, "It was not my house." On cross-examination, the prosecutor asked him, "You are saying the house was under your control that day?" Cantu responded, "Yes, sir."

Javier testified that he did not tell the officer that he was in charge. Rather, he testified, he told the officer that his sister-in-law was in charge of the premises because Roy Jr. was incarcerated. Javier further stated that he was threatened and pressured into giving his consent.

The testimony of the officer at the suppression hearing supports the finding that Javier gave the consent voluntarily, without undue coercion. Javier controverted the officer's testimony, but that does not render the district court's finding



clearly erroneous. The officer's testimony at the suppression hearing and Javier Cantu's testimony at trial also support the finding that Javier had the authority to consent because he had control of the premises. Because the record amply supports the trial court's finding, we reject Cantu's claim as meritless.

#### CONCLUSION

For the foregoing reasons, Cantu's convictions are AFFIRMED.