

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-60269  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

MARIA ELLA FLORES,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
(M 93 CR 192 03)

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September 1, 1995

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Maria Flores challenges the sufficiency of the evidence to support her conviction of conspiracy to possess with intent to distribute marihuana, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B) and 846. Finding the evidence sufficient, we affirm.

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\* Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

I.

Emilio Pacheco testified for the government pursuant to a plea agreement, stating that, on October 15, 1993, Jose Garcia, his neighbor, asked him whether Garcia could store some "merchandise" (marihuana) on Pacheco's property. The following day, Pacheco told Garcia that Garcia could store it at his house, as it seemed an easy way to make a little money. Garcia told Pacheco that a van needed to be parked on his property for five or six hours and that Garcia would return later in the day with the driver.

Pacheco testified that Garcia returned later that morning and introduced Flores as the driver. Pacheco stated that he shook Flores's hand on that day, and Pacheco identified Flores in court. Garcia and Flores left, and Flores returned in the van that afternoon. Pacheco stated that Flores parked the van and asked him for a ride to her house.

Pacheco testified that, as he was driving Flores to her house, he noticed two vehicles following him. When Pacheco returned to his house, he was greeted by police officers who had been driving the vehicles he had seen earlier.

Arnoldo Villarreal, an officer on the narcotics task force of the Mission Police Department, testified that, on the morning of October 16, an anonymous caller provided the narcotics task force with the license plate number and a description of a vehicle that would be coming into Rio Grande City and possibly into Roma to pick up a load of marihuana. Villarreal drove to highway 83, spotted the van with the matching license plate number, followed as it made

several stops, and notified the police department of the van's locations.

Jose Antonio Garcia, commander of the department's narcotics division, received Villarreal's call concerning the van and met him at the subdivision where the van was parked. Garcia proceeded to the Pacheco residence and asked Angela Pacheco, Emilio Pacheco's wife, for consent to search the van. As he approached the van, Garcia detected the strong odor of marihuana. Inside the van, he found large bundles of marihuana wrapped in canvas packed from the floor to the windows. Edwin Albers, a chemist for the Drug Enforcement Administration, testified that he received samples from the bundles and that the samples were marihuana.

Angela Pacheco testified that, at about 10:30 or 11:00 a.m. on October 16, her husband told her that a woman would be driving the van and that the woman arrived at the Pacheco house in the van at about 3:00 that afternoon. Angela Pacheco testified that Flores, whom she identified in court and at the Police department, handed her the keys to the van.

Investigator Rodolfo Cedillo of the police department testified that he took a statement from Pacheco and that Pacheco agreed to take Cedillo to Flores's residence. Cedillo stated that, as they approached Flores's home, Pacheco spotted Flores standing in her yard and pointed her out. Cedillo arrested Flores at that time.

## II.

In reviewing a challenge to the sufficiency of the evidence, we determine whether a rational trier of fact could have found that the evidence established guilt beyond a reasonable doubt. United States v. Ivey, 949 F.2d 759, 766 (5th Cir. 1991), cert. denied, 113 S. Ct. 64 (1992).<sup>1</sup> Moreover, we view "all evidence and any inferences that may be drawn from it in the light most favorable to the government." Id. The evidence need not exclude every reasonable hypothesis of innocence or be wholly inconsistent with every conclusion except that of guilt, and we accept all credibility choices that tend to support the verdict. United States v. Pofahl, 990 F.2d 1456, 1467 (5th Cir.), cert. denied, 114 S. Ct. 266 (1993). "[I]f the evidence gives equal or nearly equal circumstantial support to a finding of guilty and a finding of not guilty, reversal is in order." United States v. Cavin, 39 F.3d 1299, 1305 (5th Cir. 1994).

To prove the drug-conspiracy charges, the government was required to establish beyond a reasonable doubt (1) that a conspiracy existed, i.e., that two or more people agreed to violate the narcotics laws; (2) that the defendant knew of the conspiracy; and (3) that he voluntarily participated in the conspiracy. United States v. Cardenas, 9 F.3d 1139, 1157 (5th Cir. 1993), cert. denied, 114 S. Ct. 2150 (1994). The elements of the conspiracy need not be proved by direct evidence but may be inferred from

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<sup>1</sup> This standard of review is applied because Flores moved for a judgment of acquittal at the close of the government's case in chief and reurged her motion at the close of the case.

circumstantial evidence. Id. Thus, agreement may be inferred from "concert of action" and voluntary participation inferred from a "collection of circumstances.'" Id. Similarly, knowledge of the conspiracy may be inferred from a "collection of circumstances.'" Id. (citation omitted).<sup>2</sup> "[P]roof of the defendant's knowledge of all the details of the drug conspiracy is not required, as long as knowledge of the essential details is established, and the defendant need neither have been present at the inception of the conspiracy, nor have played a major role therein." United States v. Parrish, 736 F.2d 152, 157 (5th Cir. 1984) (internal quotation and citation omitted).

Through testimony showing the concert of action between Flores, Garcia, and Pacheco to transport the marihuana, the government proved that the conspiracy existed. See Cardenas, 9 F.3d at 1157. To prove possession with intent to distribute, the government was required to show that Flores knowingly possessed the marihuana and intended to distribute it. Id. at 1158. Possession may be proved by direct or circumstantial evidence, may be actual or constructive, and may be joint among several defendants. Id. Constructive possession is "the knowing exercise of, or the knowing power or right to exercise dominion and control over the proscribed

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<sup>2</sup> The quotation in Cardenas is not precise. The case quoted therein, United States v. Espinoza-Seanez, 862 F.2d 5226, 537 (5th Cir. 1988), quotes earlier opinions for the principle that voluntary participation may be inferred from "a collection of circumstances'" and that knowledge may be inferred from "surrounding circumstances.'" (emphasis added). The "collocation" standard originates in United States v. Manton, 107 F.2d 834, 839 (2d Cir. 1939), cert. denied, 309 U.S. 664 (1940), and was adopted in the seminal case setting standards of review on direct criminal appeal, United States v. Glasser, 315 U.S. 60, 80 (1942).

substance." Id. (internal quotation and citation omitted).

Flores exercised control over the marihuana by transporting it in the van. Her contention that she lacked knowledge of the marihuana is belied by testimony that the van produced a strong odor of marihuana and that the marihuana was packed from the ceiling to the windows of the van. The large amount of marihuana, 903 pounds, permits an inference that Flores intended to distribute it. See United States v. Prieto-Tejas, 779 F.2d 1098, 1101 (5th Cir. 1986) (The "[i]ntent to distribute a controlled substance may generally be inferred solely from possession of a large amount of the substance.").

AFFIRMED.