UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 94-60431
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SANTIAGO SALINAS-GALVAN,

Defendant-Appellant.

* *

No. 94-60436
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SANTIAGO SALINAS-GALVAN,

Defendant-Appellant.

Appeals from the United States District Court
for the Southern District of Texas
(CR-B-92-141-01 & CR-B-93-31-1)

(July 12, 1995)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:[*]

Santiago Salinas-Galvan ("Salinas") was convicted of

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

conspiracy to import cocaine, *see* 21 U.S.C. §§ 963, 952(a), 960(b)(2) (1988); importation of cocaine, *see* 21 U.S.C. §§ 952(a), 960(b)(2), 18 U.S.C. § 2 (1988); conspiracy to possess with intent to distribute cocaine, *see* 21 U.S.C. §§ 846, 841(a)(1), 841(b)(1)(B) (1988); possession with intent to distribute cocaine, *see* 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B), 18 U.S.C. § 2; conspiracy to import marijuana, *see* 21 U.S.C. §§ 963, 952(a), 960(b)(4) (1988); importation of marijuana, *see* 21 U.S.C. §§ 952(a), 960(b)(4), 18 U.S.C. § 2; conspiracy to possess with intent to distribute marijuana, *see* 21 U.S.C. §§ 846, 841(a)(1), 841(b)(1)(D) (1988); and possession with intent to distribute marijuana, *see* 21 U.S.C. §§ 841(a)(1), 841(b)(1)(D), 18 U.S.C. § 2. After failing to appear for sentencing, Salinas pled guilty to and was convicted of failing to appear in connection with a felony charge, *see* 18 U.S.C. § 3146 (1988). Salinas appeals his convictions. We affirm Salinas' drug convictions and dismiss his appeal of the failure-to-appear conviction.

I

The evidence presented to the jury included the following testimony. United States Customs Agents Espindola and DiNicola saw Salinas drive a brown car down a road leading to the United States-Mexico border at the Rio Grande. Salinas was alone at the time, but he returned to the road with a passenger approximately ninety minutes later. The agents stopped the vehicle.

Agent Espindola testified that Salinas told him that he had gone to the beach to swim. Espindola observed that Salinas'

clothing,[1] shoes, socks, and hair were dry, and he saw no bathing suit in the car.[2] Salinas then explained that he had decided not to swim, but instead to dig under ebony trees for topsoil for his garden. Espindola testified that there was no dirt in the car, and that the ebony trees were located at least five miles from the beach in a different direction.

After agreeing to a search of the car, Salinas opened the trunk. Espindola testified that the trunk contained buckets, tubs, a spare tire, a shovel, and a section of carpet. Upon lifting the carpet, Espindola found a board covering the spare tire compartment; underneath, he found a bag. Salinas told Espindola that he did not know what was in the bag, but his passenger, Jose Garza-Arratia, volunteered that the bag was his and that it contained marijuana. Espindola also found a smaller, plastic package of white powder in the bag, and Garza-Arratia commented to the agents that it appeared to be cocaine.[3]

Agent DiNicola testified that he observed Espindola search the car, and that he smelled marijuana when Salinas opened the trunk. DiNicola also stated that Salinas was cooperative, but that "he looked shaken," and that Salinas' "hands were trembling."

Garza-Arratia testified that he had been fishing in Mexico when several unidentified men hired him to carry a bag containing

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[1] Salinas was wearing long pants and a shirt.

[2] Agents later determined that Salinas had no bathing suit either on his person or in the car.

[3] Testing later determined that the bag contained approximately 23 pounds of marijuana and 754.9 grams of cocaine.

marijuana into the United States.[4] They told him to put the bag in the trunk of a red car once he reached the American side of the river, and one of the men pointed to the only car visible on the other side. A boy then took Garza-Arratia across the river in a motorboat.

Garza-Arratia testified that once he reached the American side of the river, the boy told him to run to the car that the men had identified, and that Salinas, who was standing near the car, motioned to him and called to him to hurry. Salinas had the trunk open, and a tub and shovel were on the ground near the car.[5] Salinas and Garza-Arratia put the bag in the spare tire compartment, and Salinas covered the compartment with a board, some carpet, a tire, and the tub. According to Garza-Arratia, Salinas did not speak with him, and they got in the car and proceeded down the beach. The car became stuck in the sand twice before they left the beach. After Salinas reached the road and proceeded toward Brownsville, the Customs agents stopped the car.

Salinas, who is retired and sixty-seven years old, testified that every few months he drove to the beach area to collect mulch for his garden and to sell. On the day in question, he drove to the ebony grove and marked a spot where he planned to dig mulch, but then he decided to swim before digging.

Salinas then testified that he drove along the beach and

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[4] Garza-Arratia testified at trial that the men did not tell him about the cocaine in the bag.

[5] Garza-Arratia could see no dirt in the car.

watched people fishing, but when he went into the water to swim, he merely wet his head because the water was so cold.[6] He then gave a ride to a man who wanted to join his uncle who was fishing. Salinas continued down the beach and stopped to talk to "about ten boys that were fishing" where there were "a lot of pickups and trucks." Salinas testified that he then noticed that his car had lost oil and that the dip stick was broken, and he opened his trunk to look for some string or wire. After fixing the car and talking to the boys for some time, they watched a man cross the river and approach Salinas' car. Salinas testified that he went over to see what the man wanted, and that the man asked if Salinas would take him to Brownsville and if he could put his bag in Salinas' trunk. Agreeing, Salinas moved the tire and board to one side of the trunk, and the man put the bag in the trunk. Part of the bag was in the spare tire compartment, but Salinas stated that it was easily seen when the trunk was open. Salinas testified that he did not know that the bag contained drugs, that he had not helped the man, later identified as Garza-Arratia, place the bag in the trunk, and that he had not noticed any odor of marijuana. When asked about the discrepancy between his testimony and the agents' description of the trunk and the location of the bag, Salinas suggested that the board and carpet may have slid over and covered the bag.

After the Customs agents stopped Salinas' car and found the

[6] Salinas stated that he was wearing gym shorts and slippers when he went into the water.

drugs in the bag, they arrested Salinas and Garza-Arratia. Both were indicted on eight counts of drug offenses: conspiracy to import and possess marijuana and cocaine, possession of marijuana and cocaine with intent to distribute, importation of marijuana and cocaine, and aiding and abetting the possession and importation of marijuana and cocaine. Garza-Arratia pled guilty to importation of cocaine and testified against Salinas pursuant to a plea agreement in which the Government agreed to petition for a reduced sentence for Garza-Arratia if he cooperated in the prosecution of Salinas. After Salinas was convicted on all eight counts, he was released on bond. He failed to appear for sentencing. Following his subsequent arrest, Salinas pled guilty to failing to appear. The district court sentenced him to sixty months' imprisonment on the drug offenses, to be followed by twenty-seven months' imprisonment on the failure-to-appear offense. Salinas now appeals his convictions.

II

Salinas challenges his drug convictions on the grounds that the evidence is insufficient to support his convictions. He argues that the Government failed to prove beyond a reasonable doubt that he participated in a drug conspiracy or that he knew the bag in his trunk contained drugs. Salinas does not dispute that Garza-Arratia imported marijuana and cocaine and placed them in Salinas' car, or that the quantity of each drug found is sufficient to support a

finding of intent to distribute.[7]

Because Salinas moved for a judgment of acquittal both at the end of the Government's case-in-chief and at the close of the evidence, we review the sufficiency of the evidence to determine whether a rational trier of fact could have found the essential elements of each offense beyond a reasonable doubt. *United States v. Quiroz-Hernandez*, 48 F.3d 858, 865 (5th Cir. 1995) ("[T]he inquiry into the sufficiency of the evidence is whether the jury could reasonably, logically and legally infer that the defendant was guilty beyond a reasonable doubt."), *petition for cert. filed*, No. 94-8950 (U.S. Apr. 10, 1995); *accord United States v. Jaramillo*, 42 F.3d 920, 922-23 (5th Cir. 1995); *United States v. Fierro*, 38 F.3d 761, 768 (5th Cir. 1994), *cert. denied*, ___ U.S. ___, 115 S. Ct. 1388, 131 L. Ed. 2d 240 (1995). "The jury retains sole responsibility for determining the weight and credibility of the evidence." *Jaramillo*, 42 F.3d at 922-23; *see also United States v. Zuniga*, 18 F.3d 1254, 1260 (5th Cir.) ("We will not second guess the jury in its choice of which witnesses to believe."), *cert. denied*, ___ U.S. ___, 115 S. Ct. 214, 130 L. Ed. 2d 142 (1994). We view the evidence, both direct and circumstantial, as well as all reasonable inferences from that

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[7] *See United States v. Rodriguez*, 15 F.3d 408, 411 n.2 (5th Cir. 1994) ("Intent to distribute may be inferred from the possession of a large quantity of narcotics."); *United States v. Cardenas*, 9 F.3d 1139, 1158 (5th Cir. 1993) (noting that large amounts of cash or value of contraband can support inference of intent to distribute), *cert. denied*, ___ U.S. ___, 114 S. Ct. 2150, 128 L. Ed. 2d 876 (1994); *United States v. Pruneda-Gonzalez*, 953 F.2d 190, 194 (5th Cir.) ("A jury may infer a defendant's intent to distribute [a controlled substance] from the possession of a large amount."), *cert. denied*, ___ U.S. ___, 112 S. Ct. 2952, 229 L. Ed. 2d 575 (1992).

evidence, in the light most favorable to the verdict. *Jaramillo*, 42 F.3d at 923; *Fierro*, 38 F.3d at 768. Moreover, we determine only whether the jury made a rational decision, not whether its verdict was correct on the issue of guilt or innocence. *See Jaramillo*, 42 F.3d at 923 ("A review concentrates on whether the trier of fact made a rational decision to convict or acquit, not whether the fact finder correctly determined the defendant's guilt or innocence."). "Further, the evidence need not exclude every reasonable hypothesis of innocence." *Jaramillo*, 42 F.3d at 923; *United States v. Leed*, 981 F.2d 202, 207 (5th Cir.), *cert. denied*, ___ U.S. ___, 113 S. Ct. 1346, 122 L. Ed. 2d 728 (1993). "However, we must reverse a conviction if the evidence construed in favor of the verdict `gives equal or nearly equal circumstantial support to a theory of guilt and a theory of innocence of the crime charged.'" *Jaramillo*, 42 F.3d at 923 (quoting *United States v. Menesses*, 962 F.2d 420, 426 (5th Cir. 1992)).

In order to convict a defendant of a drug conspiracy, the government must prove the existence of an agreement to violate the controlled substance laws, the alleged conspirator's knowledge of the conspiracy and intent to join it, and the voluntary participation of the alleged conspirator in the conspiracy. *See Quiroz-Hernandez*, 48 F.3d at 866; *Fierro*, 38 F.3d at 768; *United States v. Bermea*, 30 F.3d 1539, 1551 (5th Cir. 1994), *cert. denied*, ___ U.S. ___, 115 S. Ct. 1113, 130 L. Ed. 2d 1077 (1995); *United States v. Puig-Infante*, 19 F.3d 929, 936 (5th Cir.), *cert. denied*, ___ U.S. ___, 115 S. Ct. 180, 130 L. Ed. 2d 115 (1994). "Among the

factors that may be considered by the factfinder in determining whether a defendant is guilty of committing a drug conspiracy crime are `concert of action,' presence among or association with drug conspirators, and `[e]vasive and erratic behavior.'" *Bermea*, 30 F.3d at 1552 (quoting *Cardenas*, 9 F.3d at 1157); *see also Quiroz-Hernandez*, 48 F.3d at 866 ("Concert of action can indicate agreement and voluntary participation."). "Proof of an overt act in furtherance of the conspiracy is not required." *Fierro*, 38 F.3d at 768; *accord Bermea*, 30 F.3d at 1551. The government may also establish elements through the circumstances surrounding the conspiracy.[8]

A conviction for possession of a controlled substance with intent to distribute requires proof that the defendant knowingly both possessed a controlled substance and intended to distribute it.[9] Actual or constructive possession satisfies the possession element, and the government may prove possession with either direct or circumstantial evidence. *Quiroz-Hernandez*, 48 F.3d at 865; *Rodriguez*, 15 F.3d at 411 n.2. To show constructive possession of

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[8] *See Quiroz-Hernandez*, 48 F.3d at 866 ("The surrounding circumstances may establish knowledge of a conspiracy."); *Fierro*, 38 F.3d at 768 ("[A] common purpose and plan may be inferred from a development and collection of circumstances.").

[9] *See Quiroz-Hernandez*, 48 F.3d at 865 ("A conviction for possession of drugs with intent to distribute requires the government to prove that the defendant knowingly possessed contraband with the intent to distribute."); *Pruneda-Gonzalez*, 953 F.2d at 194 ("In order to prove the offense of possession with intent to distribute [controlled substances], in violation of 21 U.S.C. § 841(a)(1), the government was required to prove beyond a reasonable doubt the (1) knowing (2) possession of [a controlled substance] (3) with intent to distribute it."); *United States v. Moreno-Hinojosa*, 804 F.2d 845, 847 (5th Cir. 1986) (requiring government to "show beyond a reasonable doubt that [the defendant] possessed [a controlled substance], that he intended to distribute it, and that he did these two things knowingly").

drugs found in a vehicle, "the government must show that the defendant controlled, or had the power to control, the vehicle or the contraband; mere proximity to the contraband is not enough." *Quiroz-Hernandez*, 48 F.3d at 865; *see also United States v. Posner*, 868 F.2d 720, 722-23 (5th Cir. 1989) ("Constructive possession is defined as `ownership, dominion, or control over the contraband itself, or dominion or control over the premises or the vehicle in which the contraband was concealed.'" (quoting *United States v. Salinas-Salinas*, 555 F.2d 470, 473 (5th Cir. 1977)). The government usually proves knowledge through inference based on the surrounding circumstances. *United States v. Romero-Reyna*, 867 F.2d 834, 836 (5th Cir. 1989), *cert. denied*, 494 U.S. 1084, 110 S. Ct. 1818, 108 L. Ed. 2d 948 (1990).

To obtain a conviction for importation of a controlled substance, the government must prove the elements of possession with intent to distribute and also that the defendant played a role in bringing the controlled substance from a foreign country into the United States. *United States v. Ojebode*, 957 F.2d 1218, 1223 (5th Cir. 1992), *cert. denied*, ___ U.S. ___, 113 S. Ct. 1291, 122 L. Ed. 2d 683 (1993); *United States v. Williams-Hendricks*, 805 F.2d 496, 500 (5th Cir. 1986).

A conviction for aiding and abetting requires the government to show that the defendant "associated with a criminal venture, purposefully participated in the criminal activity, and sought by her actions to make the venture succeed." *Jaramillo*, 42 F.3d at 923; *accord Fierro*, 38 F.3d at 768; *United States v. Mergerson*, 4

F.3d 337, 342 (5th Cir. 1993), *cert. denied*, ___ U.S. ___, 114 S. Ct. 1310, 127 L. Ed. 2d 660 (1994); *United States v. Williams*, 985 F.2d 749, 753 (5th Cir.), *cert. denied*, ___ U.S. ___, 114 S. Ct. 148, 126 L. Ed. 2d 110 (1993). A defendant associates with a criminal venture by sharing in the criminal intent of the principal and participates in the criminal activity by acting "in some affirmative manner designed to aid the venture." *Jaramillo*, 42 F.3d at 923.

Salinas argues that the evidence is insufficient to prove that he knowingly possessed the marijuana and cocaine and that he knowingly participated in the conspiracy to import and possess the marijuana and cocaine with the intent to distribute it. He contends that because his version of the facts only shows that he was present in the car, and because his explanation is plausible, a rational jury should not have found him guilty beyond a reasonable doubt. Salinas correctly states that a defendant's mere presence does not suffice to prove knowledge or participation in a drug conspiracy,[10] nor does it provide sufficient evidence of either knowing possession of drugs[11] or aiding and abetting.[12] Indeed, we

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[10] However, although "mere presence at the scene of a crime or close association with others will not alone support the inference of a conspiracy, presence is still a significant factor to be considered within the context of the circumstances under which it occurs." *Id.* at 867; *see also Fierro*, 38 F.3d at 768 ("The jury may infer a conspiracy from circumstantial evidence and may rely upon presence and association, along with other evidence."); *United States v. Robles-Pantoja*, 887 F.2d 1250, 1254 (5th Cir. 1989) ("The jury may infer a conspiracy agreement from circumstantial evidence, and may rely upon presence and association, along with other evidence, in finding that a conspiracy existed." (citations omitted)).

[11] Because the drugs were hidden inside the bag in the vehicle, the Government must show more than the defendant's control of the vehicle to warrant an inference of knowledge. *See United States v. Pennington*, 20 F.3d 593, 598

have reversed convictions where the defendant's mere presence constituted the only evidence of his involvement. *See United States v. Sacerio*, 952 F.2d 860, 863-66 (5th Cir. 1992) (reversing conspiracy and possession with intent to distribute convictions because "mere suspicion cannot support a verdict of guilty" and no evidence of knowledge and participation other than defendant's presence was offered); *United States v. Espinoza-Saenez*, 862 F.2d 526, 536-38 (5th Cir. 1988) (reversing conspiracy conviction where government offered "no competing facts" of knowledge and participation and thus, innocent explanation was equally as likely as guilty explanation); *United States v. Gardea-Carrasco*, 830 F.2d 41, 45 (5th Cir. 1987) (reversing conspiracy and possession with intent to distribute convictions where no evidence of knowledge that suitcases contained drugs except defendant's presence); *Moreno-Hinojosa*, 804 F.2d at 847 (reversing possession with intent to distribute conviction where no evidence of intent to participate in drug transactions except defendant's presence); *United States v. Tolliver*, 780 F.2d 1177, 1182-83 (5th Cir. 1986) (reversing conspiracy and possession with intent to distribute convictions where drugs hidden and no evidence to show knowledge except

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(5th Cir. 1994) ("The knowledge element in a possession case can be inferred from control of the vehicle [in which the drugs are found] in some cases; when the drugs are hidden, however, control alone is not sufficient to prove knowledge."); *United States v. Garza*, 990 F.2d 171, 174 (5th Cir. 1993) (agreeing that "because the drugs were hidden [in the vehicle], the government was required to show more than control of the vehicle"), *cert. denied*, ___ U.S. ___, 114 S. Ct. 332, 126 L. Ed. 2d 278 (1993); *Romero-Reyna*, 867 F.2d at 836 (requiring other evidence of knowledge when drugs were hidden inside vehicle).

[12] "Mere presence and association . . . are not alone enough to sustain a conviction for aiding and abetting." *Jaramillo*, 42 F.3d at 923.

presence, and defendant's behavior consistent with lack of knowledge), *vacated on other grounds*, 479 U.S. 1074, 107 S. Ct. 1267, 94 L. Ed. 2d 128 (1987). Salinas argues that his case is like *Sacerio*, *Espinoza*, *Gardea*, *Moreno*, and *Tolliver*, in which the evidence was insufficient to prove anything other than mere presence, and that we should likewise reverse his conviction.

Salinas' argument, however, requires us to reject Garza-Arratia's testimony. He contends that a rational trier of fact would not credit Garza-Arratia's testimony, and offers as grounds the fact that Garza-Arratia testified that he was told to put the drugs in a red car, while Salinas' car is brown. Uncorroborated testimony of an accomplice or coconspirator, however, may suffice to prove a conviction as long as the testimony is not incredible or insubstantial on its face. *Bermea*, 30 F.3d at 1552; *United States v. Singer*, 970 F.2d 1414, 1419 (5th Cir. 1992); *United States v. Osum*, 943 F.2d 1394, 1405 (5th Cir. 1991); *Robles-Pantoja*, 887 F.2d at 1254-55. "Testimony is incredible as a matter of law only if it related to facts that the witness could not possibly have observed or to events which could not have occurred under the laws of nature." *Bermea*, 30 F.3d at 1552. The color discrepancy does not make Garza-Arratia's entire testimony incredible, especially given that Garza-Arratia also testified that Salinas' car was the vehicle the men had identified as the red car.

Moreover, the evidence in this case provided additional "competing facts" that corroborated Garza-Arratia's account and supported the jury's conclusions that Salinas knowingly

participated in the conspiracy, and knowingly possessed the drugs. First, unlike other cases in which the drugs were hidden,[13] Salinas owned the vehicle. Accordingly, Salinas' ownership of the car is evidence of his control over and knowledge of its contents, including the bag. *See id.* ("[W]e have observed that the defendant's ownership and control over the vehicle constitutes evidence showing that the defendant knew the vehicle contained drugs."). Second, Salinas' explanations contained inconsistencies and false statements, specifically that he went to the beach to swim, but had no swimsuit or wet hair, and that he was digging mulch, but had no dirt and was in the wrong location for that activity. As in other cases,[14] these discrepancies serve as evidence of Salinas' knowing possession of the drugs and participation in the conspiracy. Third, Salinas' presence at the rendezvous point and the conflict between the agents' testimony concerning how the bag was hidden and Salinas' description of the placement of the bag constitute evidence of his participation in the conspiracy to import and possess the drugs with the intent to distribute. *See United States v. Rodrigo*, 934 F.2d 595, 597 (5th

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[13] *See United States v. Resio-Trejo*, 45 F.3d 907, 912 (5th Cir. 1995) ("In the typical hidden compartment case, the driver disclaims ownership of the vehicle and the government does not disprove the disclaimer.").

[14] *See United States v. Casilla*, 20 F.3d 600, 606 (5th Cir.) (noting that "less than credible stories" and inconsistencies "are well-recognized circumstantial evidence of guilty knowledge" and support convictions for conspiracy, importation, possession with intent to distribute, and aiding and abetting), *cert. denied*, ___ U.S. ___, 115 S. Ct. 240, 130 L. Ed. 2d 163 (1994); *United States v. Rodriguez*, 993 F.2d 1170, 1176 (5th Cir. 1993) (holding that less-than-credible explanation and inconsistent statements supported finding of guilty knowledge in conspiracy and possession with intent to distribute convictions), *cert. denied*, ___ U.S. ___, 114 S. Ct. 1547, 128 L. Ed. 2d 197 (1994).

Cir.) (inferring knowledge element in importation and possession with intent to distribute convictions from covert behavior), *cert. denied*, 502 U.S. 1006, 112 S. Ct. 641, 116 L. Ed. 2d 659 (1991).[15] Fourth, while "[n]ervousness is a normal reaction to circumstances which one does not understand, and being stopped at a border certainly [can be] one of those situations," *Williams-Hendricks*, 805 F.2d at 500,[16] nervousness can provide circumstantial evidence of guilty knowledge, *Casilla*, 20 F.3d at 607. Accordingly, DiNicola's testimony that Salinas' was nervous supports a finding of knowledge. In short, although each individual circumstance may not have supported Salinas' convictions when viewed in isolation, the combination viewed as a whole corroborates Salinas' guilt.[17]

Accordingly, the jury did not have a choice only between Garza-Arratia's version and Salinas' version. *See United States v.*

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[15] *Cf. United States v. Harris*, 932 F.2d 1529, 1534 (5th Cir. 1991) (holding, in conspiracy case, that jury was allowed to infer that defendant was on his way to rendezvous because defendant had been present at rendezvous point before), *cert. denied*, 502 U.S. 897, 112 S. Ct. 270, 116 L. Ed. 2d 223 (1991); *United States v. Medina*, 887 F.2d 528, 531 (5th Cir. 1989) (holding, in conspiracy and possession with intent to distribute case, that knowledge and participation could be inferred from defendant's presence at "secluded area" for length of time while drugs were loaded).

[16] *See also id.* (finding anxiety "inconclusive *unless* viewed in the context of other facts which we are required to view in the light most favorable to the government" in possession with intent to distribute and importation case).

[17] *See United States v. Martinez*, 975 F.2d 159, 161 (5th Cir. 1992) (holding that although individual circumstances on their own might be insufficient, combination of circumstances may be sufficient to support conviction), *cert. denied*, ___ U.S. ___, 113 S. Ct. 1346, 122 L. Ed. 2d 728 (1993); *Rodriguez*, 15 F.3d at 412 ("Although individual facts and incidents, considered separately, might be inconclusive, they `may, by their number and joint operation, especially when corroborated by moral coincidences, be sufficient to constitute conclusive proof.'" (quoting *United States v. Lechuga*, 888 F.2d 1472, 1476 (5th Cir. 1989) (citations omitted))); *Medina*, 887 F.2d at 531 ("Although, when viewed separately, each of the . . . circumstances might be considered consistent with innocent behavior, the cumulative effect of all this evidence and the reasonable inferences which may be drawn from it [may] enable a reasonable trier of fact to find [defendant] guilty . . . .").

Carillo-Morales, 27 F.3d 1054, 1065 (5th Cir. 1994) (stating that, while mere presence alone does not constitute sufficient evidence to sustain conspiracy and possession with intent to distribute convictions, defendant was not merely present because government supplied other evidence to support finding of knowledge and conviction), *cert. denied*, ___ U.S. ___, 115 S. Ct. 240, 130 L. Ed. 2d 1119 (1995); *United States v. Rosalez-Orozco*, 8 F.3d 198, 201 (5th Cir. 1993) (holding that defendant's presence, along with implausible explanation and other circumstances was sufficient evidence of knowledge in conspiracy to import case); *Garza*, 990 F.2d at 174 (holding, in possession with intent to distribute case, that government showed "more than control" by showing defendant's nervousness, length of time during which drugs were loaded, and other circumstances); *United States v. Pineda-Ortuno*, 952 F.2d 98, 102 (5th Cir.) (holding that control plus nervousness, conflicting statements and implausible stories sufficient to prove knowledge element of conspiracy and possession with intent to distribute case even if drugs hidden), *cert. denied*, ___ U.S. ___, 112 S. Ct. 1990, 118 L. Ed. 2d 587 (1992). Because a rational jury could have chosen to believe Garza-Arratia and not Salinas,[18] and because the

[18] *See Quiroz-Hernandez*, 48 F.3d at 868 (stating that the jury "was free to reject any testimony exonerating the [defendant] since that evidence turned on the credibility of the witnesses."); *Bermea*, 30 F.3d at 1552 ("Although the credibility of witnesses who receive compensation in exchange for their cooperation or testimony may suffer from that fact, we have concluded that `it is up to the jury to evaluate the credibility of a compensated witness.'" (quoting *United States v. Cervantes-Pacheco*, 826 F.2d 310, 315 (5th Cir. 1987) (en banc))); *Zuniga*, 18 F.3d at 1260 (holding that a reasonable jury could choose to believe cooperating individual's testimony rather than defendant's); *United States v. Limones*, 8 F.3d 1004, 1009 (5th Cir. 1993) (noting that witness' status as known drug dealer "goes to the weight rather than the sufficiency of the evidence"), *cert. denied*, ___ U.S. ___, 114 S. Ct. 1543, 128 L. Ed. 2d 194

other evidence, as stated above, corroborated Garza-Arratia's account, the evidence was sufficient to show not only that Salinas was present and controlled the car, but also that he knew that the bag contained drugs, voluntarily participated in bringing the drugs into the United States, and helped Garza-Arratia hide the drugs in his car. Accordingly, Salinas' challenge to the sufficiency of the evidence offered to prove his convictions fails.

III

For the foregoing reasons, we AFFIRM Salinas' convictions.[19]

(1994); *United States v. Garcia*, 995 F.2d 556, 561 (5th Cir. 1993) (noting, with respect to whether accomplice's testimony should have been believed, that "[t]his court, however, is concerned only with the sufficiency))not the weight))of evidence"); *United States v. Greenwood*, 974 F.2d 1449, 1458 (5th Cir. 1992) ("[W]hether judges doubt the credibility of a witness, even an accomplice cooperating with the Government, is beside the point in reviewing a sufficiency claim . . . ."), *cert. denied*, ___ U.S. ___, 113 S. Ct. 2354, 124 L. Ed. 2d 262 (1993).

[19] Because Salinas offered no brief and makes no argument with respect to his failure-to-appear conviction, No. 94-60436, we DISMISS his appeal of that case for failure to prosecute. Local Rule 42.3.