

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 98-50861  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOEL ELOY GOMEZ-PERALTA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. EP-98-CR-405-All-H  
- - - - -

April 15, 1999

Before JONES, SMITH, and DUHÉ, Circuit Judges.

PER CURIAM:\*

Joel Eloy Gomez-Peralta (Gomez) appeals his conviction and sentence for importation of cocaine in violation of 21 U.S.C. §§ 952(a) and 960(a)(1), and possession with intent to distribute cocaine in violation of 21 U.S.C. § 841(a)(1). Gomez contends that the district court abused its discretion when it refused to submit a proposed verdict form that would allow the jury to consider a charge of importation and possession with intent to distribute marijuana, rather than cocaine. *See United States v.*

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

*Townsend*, 31 F.3d 262, 270 (5th Cir. 1994)(holding that challenges to jury instructions are reviewed for abuse of discretion); see also *Solis v. Rio Grande City Indep. School*, 734 F.2d 243, 249 (5th Cir. 1984)(holding that refusal to include a requested special verdict is reviewed for abuse of discretion).

Although Gomez knew he was smuggling a controlled substance, he testified at trial that he did not know he was smuggling cocaine. Rather, he thought he was smuggling marijuana. This court has held that the government is not required to prove that a defendant knew the exact nature of the substance with which he was dealing; it is sufficient that he was aware that he possessed some controlled substance. *United States v. Gonzalez*, 700 F.2d 196, 200 (5th Cir. 1983). The district court did not abuse its discretion when refusing to submit Gomez's requested verdict form to the jury, because knowledge of the exact controlled substance is not an element of the offense. *Id.* Consequently, Gomez's conviction and sentence are AFFIRMED.

AFFIRMED.