

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

United States v. Nelly Cazares

No. 18-40296, United States Court of Appeals for the Fifth Circuit (October 25, 2018)

SUMMARY

The Fifth Circuit held that a defendant's guilty plea to possession with intent to distribute marijuana was supported by an adequate factual basis because the government is not required to prove the defendant's knowledge of the drug type and quantity as an element of a 21 U.S.C. § 841 offense. This argument is foreclosed by circuit precedent, which determined that **Flores-Figueroa v. United States** did not overrule **United States v. Gamez-Gonzalez**. The court granted summary disposition and affirmed the conviction.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Patrick E. Higginbotham; Jennifer Walker Elrod; Stuart Kyle Duncan
JURISDICTION	Federal
DECIDED	October 25, 2018
DOCKET	18-40296
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the United States District Court for the Southern District of Texas, USDC No. 1:17-CR-563-1.
PRECEDENTIAL VALUE	unpublished
PARTIES	Nelly Beatriz Cazares v. United States of America

TOPICS

- criminal procedure
- plea bargaining
- mens rea

PRACTICE AREAS

- Criminal Law

QUESTIONS PRESENTED

1. Whether the government is required to prove that a defendant knew the type and quantity of drugs involved in a 21 U.S.C. § 841 possession with intent to distribute offense.

HOLDINGS

1. The government is not required to prove knowledge of the drug type and quantity as an element of a 21 U.S.C. § 841 drug trafficking offense.

KEY QUOTATIONS

“As Cazares concedes, her sole appellate argument is foreclosed by United States v. Betancourt, 586 F.3d 303, 308-09 (5th Cir. 2009), which determined that Flores-Figueroa v. United States, 556 U.S. 646 (2009), did not overturn United States v. Gamez-Gonzalez, 319 F.3d 695 (5th Cir. 2003), and that the Government is not required to prove knowledge of the drug type and quantity as an element of a 21 U.S.C. § 841 drug trafficking offense.” (2)

“The Government thus did not have to prove that Cazares was aware of the type and quantity of controlled substances involved in her offense.” (2)

FACTUAL BACKGROUND

Cazares pleaded guilty to one count of possession with intent to distribute more than 100 kilograms of marijuana. The factual basis for the plea was not challenged at the district court level, but on appeal Cazares argued that the government failed to prove she had knowledge of the drug type and quantity.

PROCEDURAL HISTORY

Cazares pleaded guilty to a single count of possession with intent to distribute more than 100 kilograms of marijuana. She appealed, arguing that the factual basis for her plea was insufficient because the government did not prove she knew the type and quantity of drugs.

DISPOSITION

affirmed

CASES CITED

- United States v. Betancourt, 586 F.3d 303, 308-09 (5th Cir. 2009)
- Flores-Figueroa v. United States, 556 U.S. 646 (2009)
- United States v. Gamez-Gonzalez, 319 F.3d 695 (5th Cir. 2003)

OPINION

PER CURIAM.

Case: 18-40296 Document: 00514698121 Page: 1 Date Filed: 10/25/2018 IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT No. 18-40296 United States Court of Appeals Summary Calendar Fifth Circuit FILED October 25, 2018 UNITED STATES OF AMERICA, Lyle W. Cayce Clerk Plaintiff-Appellee v. NELLY BEATRIZ CAZARES, Defendant-

Appellant Appeal from the United States District Court for the Southern District of Texas USDC No. 1:17-CR-563-1 Before HIGGINBOTHAM, ELROD, and DUNCAN, Circuit Judges.

PER CURIAM: * Nelly Beatriz Cazares pleaded guilty to a single count of possession with intent to distribute more than 100 kilograms of marijuana. Cazares contends that her conviction was not supported by an adequate factual basis because the Government did not meet its obligation to prove that she had knowledge of the type and quantity of drugs involved in her offense. * 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. Case: 18-40296 Document: 00514698121 Page: 2 Date Filed: 10/25/2018 No. 18-40296 As Cazares concedes, her sole appellate argument is foreclosed by *United States v. Betancourt*, 586 F.3d 303, 308-09 (5th Cir.

2009), which determined that *Flores-Figueroa v. United States*, 556 U.S. 646 (2009), did not overturn *United States v. Gamez-Gonzalez*, 319 F.3d 695 (5th Cir. 2003), and that the Government is not required to prove knowledge of the drug type and quantity as an element of a 21 U.S.C. § 841 drug trafficking offense.

The Government thus did not have to prove that Cazares was aware of the type and quantity of controlled substances involved in her offense. Therefore, Cazares's motion for summary disposition is GRANTED, and the district court's judgment is AFFIRMED. 2