

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

United States v. Gabriel Dejesus Cardenas

748 F.2d 1015 (5th Cir. 1984) · No. No. 83-1720 · Decided December 17, 1984

SUMMARY

The Fifth Circuit reversed a district court’s post-verdict judgment of acquittal entered after a jury convicted Gabriel Cardenas of possessing cocaine, methamphetamine, and methaqualone with intent to distribute. The court held that the circumstantial evidence was sufficient to establish constructive possession and intent to distribute, and remanded for reinstatement of the guilty verdict.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	E. Grady Jolly; John M. Johnson; W. Eugene Davis
JURISDICTION	Federal
DECIDED	December 17, 1984
DOCKET	No. 83-1720
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The government appealed a post-verdict judgment of acquittal entered after a jury convicted Cardenas on three counts of possessing controlled substances with intent to distribute.
STANDARD OF REVIEW	Whether a reasonable trier of fact could have found guilt beyond a reasonable doubt, viewing direct and circumstantial evidence in the light most favorable to the government and accepting reasonable inferences supporting the jury's verdict.
PRECEDENTIAL VALUE	Published Fifth Circuit opinion; precedential within the circuit subject to later treatment.
PARTIES	United States of America v. Gabriel Dejesus Cardenas

TOPICS

- criminal procedure
- evidence
- appellate procedure
- standard of review
- double jeopardy

PRACTICE AREAS

- Federal criminal law
- Criminal procedure
- Controlled-substance offenses
- Appellate jurisdiction

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to establish that Cardenas constructively possessed the controlled substances with intent to distribute.
2. Whether the Fifth Circuit had jurisdiction under 18 U.S.C. § 3731 to review the government's appeal from the post-verdict judgment of acquittal in light of double-jeopardy concerns.
3. Whether alleged prejudicial prosecutorial comments were properly before the appellate court on the government's appeal.

HOLDINGS

1. The evidence was sufficient for a reasonable jury to find beyond a reasonable doubt that Cardenas constructively possessed the controlled substances.
2. The evidence was sufficient to support the jury's finding that Cardenas possessed the cocaine and other controlled substances with intent to distribute.
3. The government may appeal a post-verdict judgment of acquittal when reversal would require only reinstatement of the jury's guilty verdict and would not subject the defendant to a new trial.
4. The issue whether the prosecutor's statements warranted a mistrial was not properly before the court on the government's appeal.

KEY QUOTATIONS

"Possession" of a contraband may be either actual or constructive." (¶ 22)

"It is necessary that some nexus between the accused and the prohibited substance be established." (¶ 22)

"[M]ere presence in the area where the narcotic is discovered or mere association with the person who does control the drug or the property where it is located, is insufficient to support a finding of possession." (¶ 22)

"The judgment of acquittal is reversed. The case is remanded to the district court to reinstate the jury's verdict of guilty." (¶ 40)

FACTUAL BACKGROUND

FBI agents investigating fugitive Paul Alan Van Riessen observed Cardenas being transported with associates and later found him in Van Riessen's hotel room. The room contained cocaine, methamphetamine, methaqualone, drug paraphernalia, concealed-compartment containers, a shoe with a false heel, and other evidence associated with drug distribution. Cardenas had traveled from Miami to Dallas shortly before the hotel-room encounter, had connections to persons involved in the events, and remained in the room for more than three and one-half hours while the drugs and paraphernalia were in plain view.

PROCEDURAL HISTORY

A jury convicted Cardenas under 21 U.S.C. § 841(a)(1) for possession with intent to distribute cocaine, methamphetamine, and methaqualone. The district court granted a post-verdict judgment of acquittal, concluding

that the evidence did not establish constructive possession, after previously finding insufficient evidence of conspiracy. The government appealed under 18 U.S.C. § 3731.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the post-verdict judgment of acquittal and remand for reinstatement of the jury's verdict of guilty.

CASES CITED

- United States v. Vergara, 687 F.2d 57 (5th Cir. 1982)
- United States v. Moreno, 649 F.2d 309, 312 (5th Cir. 1981)
- United States v. Loalza-Vasquez, 735 F.2d 153 (5th Cir. 1984)
- United States v. Bell, 678 F.2d 547 (5th Cir. 1982) (en banc), aff'd, 462 U.S. 356 (1983)
- United States v. Marx, 635 F.2d 436 (5th Cir. 1981)
- Glasser v. United States, 315 U.S. 60 (1942)
- United States v. Riggins, 563 F.2d 1264 (5th Cir. 1977), cert. denied, 439 U.S. 948 (1978)
- United States v. Thompson, 700 F.2d 944 (5th Cir. 1983)
- United States v. Salinas-Salinas, 555 F.2d 470, 473 (5th Cir. 1977)
- United States v. Ferg, 504 F.2d 914 (5th Cir. 1974)
- United States v. Stephenson, 474 F.2d 1353, 1355 (5th Cir. 1973)
- United States v. Galvan, 693 F.2d 417 (5th Cir. 1982)
- United States v. Gordon, 700 F.2d 215 (5th Cir. 1983)
- United States v. DeLeon, 641 F.2d 330 (5th Cir. 1981)
- United States v. Mendoza, 722 F.2d 96 (5th Cir. 1983)
- United States v. Scott, 437 U.S. 82 (1978)
- United States v. Black, 644 F.2d 445 (5th Cir. 1981)
- United States v. Burns, 597 F.2d 939 (5th Cir. 1979)
- United States v. Williams, 679 F.2d 504 (5th Cir. 1982), cert. denied, 459 U.S. 1111 (1983)
- Oregon v. Kennedy, 456 U.S. 667 (1982)

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