Proving Guilty Knowledge

Caught Red-Handed or Empty Headed?

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State and federal statutes prohibiting the possession of contraband, such as illegal drugs, require the government to prove that the possessor knowingly possessed the contraband. Individuals who possess illegal drugs but do not know what they have are not guilty of illegally possessing the drugs. Proving knowledge is often an issue in vehicle courier and package delivery cases. Suspects who have been caught red-handed many times claim that they did not know that the object they possessed contained illegal drugs. This article explains what evidence is relevant to determining whether a suspect who is caught in possession of drugs knew he had the drugs or whether he is simply an innocent dupe.

Hidden Compartments

It ordinarily is reasonable to infer that the driver of a vehicle that contains drugs knows that the drugs are present in the car because the driver has control over the vehicle. However, when the drugs are secreted in a hidden compartment, there must be some additional evidence that establishes guilty knowledge because there is at least a fair probability that someone could have secreted the controlled substance in the vehicle and used the driver as an unwitting courier.[1] There is seldom direct evidence that proves knowledge. Knowledge

usually must be inferred from the facts and circumstances of the case.[2] Many times a defendant will make inconsistent statements or come up with implausible stories. Inconsistent or implausible statements can be circumstantial evidence of guilty knowledge.

United States v. Cano-Guel[3] is a typical border drug courier case. The defendant was arrested while trying to enter the United States in a car loaded with marijuana. The defendant was the driver and sole occupant of the vehicle. He told the Customs inspector at the border that he had nothing to declare and was traveling to El Paso to buy groceries. The defendant did not appear nervous and the car did not smell of marijuana. The defendant told the inspector that the car belonged to a friend. Because the car did not contain registration or insurance papers, the driver was referred to a secondary inspection station. The defendant told the inspector at that station that he had borrowed the car from his mechanic because his car was not running. A trained drug canine alerted to the presence of marijuana, and the officers discovered 59.7 pounds of marijuana hidden inside the dashboard and the rear doors. The defendant claimed that he did not know the marijuana was hidden in the car.

After the Customs inspectors found the drugs hidden in the car, the defendant changed his story and stated that he was going to El Paso to see a doctor who had performed a hernia operation on him some 4 years earlier. The defendant, however, could not remember the doctor's name until he pondered it for some time. The defendant also admitted that he did not have an appointment with the doctor, but said that he was on his way to the office to make an appointment. The defendant stated that the car belonged to a friend he had known since childhood, however, he did not know the friend's last name. At the trial, the defendant testified that he was crossing the border to see his doctor, because he was in great pain from the hernia operation. He did not mention his pain at the border checkpoint or while being processed at the county detention facility, nor did he see a doctor concerning his hernia pain until the Friday before the trial, which was some 4 months after the border stop.

The U.S. Court of Appeals for the Fifth Circuit ruled that, based on the conflicting and implausible statements of the defendant at the border and at trial, there was sufficient evidence to prove that the defendant knowingly possessed with the intent to distribute the marijuana.

There are other factors that point to guilty knowledge. For instance, in *United States v. Ramos-Garcia*,[4] an immigration inspector was suspicious that the defendant, who was a U.S. resident alien, was seeking to enter the United States in a vehicle that was registered in Mexico. Further inspection of the vehicle revealed 70 pounds of marijuana in a hidden compartment. The defendant denied any knowledge of the marijuana. The defendant stated that he was paid $500 to drive the vehicle 4 miles across the U.S.–Mexico border. The defendant was convicted of importing marijuana into the United States from Mexico. He appealed his conviction claiming that the evidence was insufficient to prove that he knew marijuana was in the vehicle he was driving. The appeals court ruled that the defendant's failure to ask any questions about the trip

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suggested willful ignorance, which was consistent with guilty knowledge. Furthermore, the court felt that it was implausible that the defendant would be entrusted with such a large quantity of marijuana without his knowledge. Finally, the court noted that the defendant was nervous during his encounter with the immigration inspector, which suggested that he had guilty knowledge.

Willful Blindness

The *Ramos-Garcia* court considered the fact that the defendant did not ask any questions about the trip as an indication of guilty knowledge. The court understood that some drug suspects purposely avoid learning all the information regarding what is contained in an automobile or a package in the hope that, if caught, they would be able to argue that they did not actually know that the automobile or package contained drugs. Such "willful blindness" on the part of drug couriers is not a defense in federal drug prosecutions because the U.S. Supreme Court has applied the Model Penal Code definition of knowledge in federal drug cases.[5] Section 2.02 (7) of the Model Penal Code provides that: "When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence, unless he actually believes that does not exist."

In order for the government to prove knowledge when a defendant deliberately avoids finding out whether a vehicle or package contains illegal drugs, the government must prove that the defendant was aware of a high probability that he possessed a prohibited drug and deliberately avoided learning the truth. It is not enough that the defendant is merely careless or even reckless regarding the contents of a vehicle or package.[6] A finding of willful blindness is only proper where it can almost be said that the defendant actually knew that drugs were present, but consciously and deliberately avoided taking the extra step to confirm the presence of the drugs.[7]

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For example, in *United States v. Jewell,*[8] the defendant testified that he was approached in Tijuana, Mexico, by a stranger who identified himself only as "Ray." Ray asked the defendant if he wanted to buy some marijuana, and when the defendant declined the offer, Ray offered to pay him $100 for driving a car across the border. The defendant was stopped at the border by a U.S. Customs agent, who found 110 pounds of marijuana concealed in a secret compartment between the trunk and the rear seat. The defendant claimed he did not know the marijuana was in the car. He testified at trial that he thought there was probably something wrong and perhaps something illegal in the vehicle. He claimed though that prior to driving the vehicle across the border he checked the vehicle but did not find anything illegal inside. He assumed that because he did not find anything in the vehicle then the Customs agents at the border would not find anything either. The defendant further testified that he saw the hidden compartment in the trunk but did not know what it was and did not investigate any further.

The defendant was ultimately convicted of possession with intent to distribute and importation of marijuana. The entire bench of the U.S. Court of Appeals for the Ninth Circuit accepted the concept of willful blindness and ruled that even though the trial court's instruction on willful blindness was deficient, the deficiency did not require reversal of the defendant's conviction. The court took the position that where a defendant deliberately avoids confirming his suspicions, in the face of a high probability that illegal drugs are present, in order to purposely remain ignorant of their presence, such deliberate avoidance of knowledge is equivalent to actually knowing the drugs are there.[9]

While willful blindness is generally viewed as equivalent to actual knowledge in the federal courts,[10] there has been a split on the applicability of the willful blindness concept in the few state court decisions that have addressed the issue.[11]

Limited Application of Willful Blindness

Willful blindness is not a concept that can be applied to every courier case. Willful blindness can only be properly applied in those cases where the defendant claims lack of knowledge and the evidence supports an inference of deliberate ignorance.[12] For example, in *United States v. Baron,*[13] the defendant was pulled over for speeding by a Phoenix, Arizona, police officer. The officer noticed an intense cherry fragrance coming from inside the vehicle. A canine unit alerted to the presence of illegal drugs. Twenty-seven pounds of illegal methamphetamine were found hidden in a compartment in the left rear quarter panel of the car. The defendant claimed he did not know the drugs were in the car. The defendant stated that he was simply given $200 to drive the car from Los Angeles to Phoenix. The defendant gave inconsistent and implausible stories as to what he was to do with the car once he arrived in Phoenix. In addition, the defendant had receipts on his person indicating recent cash purchases by him of over $13,000 even though he admitted being unemployed during the previous 7 to 8 months.

The defendant was convicted of possession with intent to distribute methamphetamine, and he appealed. The U.S. Court of Appeals for the Ninth Circuit ruled that the evidence suggested the defendant had either actual knowledge the drugs were hidden in the car (which points to his guilt) or was negligent in disregarding a risk that drugs were in the car (which would mean he is not guilty), but there was insufficient evidence to demonstrate that he purposely avoided learning all the facts in order to have a defense in the event of being arrested and charged. The appeals court, consequently, ruled that the trial court erred when it instructed the jury that they could consider the willful blindness of the defendant. Such an instruction is inappropriate when the evidence suggests that either the defendant has actual knowledge or no knowledge that illegal drugs are present.[14] The *Baron* court was concerned that giving a willful blindness instruction when there is not sufficient evidence that the defendant deliberately avoided exploring whether drugs are present could serve to reduce the criminal state of mind required for conviction from knowledge to something less, such as negligence. The court ruled that a jury can only be instructed on willful blindness in cases where there is sufficient evidence establishing that the defendant 1) suspects that an object contains drugs, 2) deliberately avoids taking steps to confirm or refute his suspicions, and 3) does so in order to provide himself with a defense in the event of prosecution.[15]

Multiple Passengers in a Vehicle

Proving knowledge can be difficult when there are multiple passengers in an automobile where illegal drugs are found. For instance, in *United States v. Leonard,*[16] three suspects were pulled over as they were driving through Georgia on Interstate 75. The driver claimed that he only began driving at the Georgia/Florida line and that he had slept during the entire drive through Florida. The other two passengers also claimed that they had slept during the drive through Florida and consequently did not know where in Florida they had traveled. None of the occupants of the vehicle had any photographic identification. The driver first stated that they were

traveling from Orlando but later changed that to Miami. The owner of the car was sitting in the front passenger seat when the car was pulled over. After obtaining consent from the owner, the officer searched the car and found nine bricks of cocaine and a 9 mm handgun hidden behind the inside panel in the tailgate of the car. All of the passengers were arrested and subsequently convicted of possession with intent to distribute the cocaine and carrying a firearm during a drug trafficking offense.

All three defendants appealed their convictions claiming that there was insufficient evidence at trial for a finding that they knew that a gun and drugs were in the car. The U.S. Court of Appeals for the Eleventh Circuit ruled that there was sufficient evidence to prove that all three defendants knew the drugs were hidden in the vehicle. The court pointed out that each of the passengers claimed to have slept during the drive through Florida. Obviously, that could not have been true. The court also thought it was significant that none of the passengers were surprised when the police discovered cocaine hidden in the tailgate of the vehicle, which indicated that they all knew the drugs were hidden there. Nonetheless, the court reversed the convictions of the one passenger who was seated in the rear of the car. The court pointed out that mere knowledge of the presence of illegal contraband is not enough to convict.[17] There must be evidence that the person charged possessed or aided and abetted others in the possession of the contraband. The court felt that although the rear passenger knew the gun and drugs were hidden in the car, there was insufficient evidence to prove that he possessed or owned the drugs, gun, or vehicle or that he aided and abetted the other passengers in possessing them.

In *United States v. Stanley,*[18] a suspect arrested on drug charges decided to cooperate with the police by arranging a purchase of cocaine from his supplier, Charles Cameron. At the appointed time, the informant met with his supplier.

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The informant walked up to Cameron, who at the time was pumping gas into his car, and asked him where the dope was. Two people were sitting in Cameron's car; Tiffany Stanley was in the front seat, and Ronald Powers was sitting in the back seat. Powers told the informant, "You need to talk to me." The informant and Powers walked across the street, negotiated the drug deal, and returned and entered Cameron's car. Shortly afterward, all three suspects were arrested by the police. Upon searching the vehicle, officers discovered 88 grams of cocaine base hidden underneath the dashboard.

All three defendants were convicted of conspiracy and possession with intent to distribute cocaine base. Stanley appealed her conviction, arguing that the evidence was insufficient to prove that she was involved in the drug deal. The U.S. Court of Appeals for the Eleventh Circuit agreed that the evidence was insufficient to support her conviction. The court noted that the evidence only indicated that she was present. Mere presence during illegal activity is never sufficient to support a conviction.[19] In this case, there was no reliable evidence that proved Stanley was involved in the illegal attempt to distribute the cocaine. The government argued that because she was sitting in the front seat, she would have known that a drug deal was being arranged because she would have overheard the question posed by the informant as he walked up to the car. The court noted, however, that there was no testimony that Stanley heard the question by the informant, or, if she did hear it, whether she reacted in any way to it. Even if she did hear the question, her mere knowledge of the crime, without any evidence that she assisted in its commission, would not be enough to support a conviction.[20]

Both *Stanley* and *Leonard* involved drugs hidden in a car. Proving knowledge in multiple passenger cases is sometimes difficult even when the drugs are not hidden in a secret compartment. For example, in *United States v. Pace,*[21] the defendant was the driver in a station wagon that the Missouri State Police pulled over for speeding. Pursuant to a consent search of

the vehicle, the trooper found bricks of cocaine totaling 200 pounds in three duffel bags and one suitcase. The drugs had a street value of between 12 and 15 million dollars. Two of the duffel bags were in the back seat; the third duffel bag and the suitcase were in the cargo area. The testimony at the trial indicated that a used car dealer paid the driver $250 to drive a car the dealer owned from Los Angeles to Chicago. The dealer rode with him during the trip. The evidence at trial also indicated that all of the bags containing the cocaine belonged to the owner. During the trip, the driver noticed that they were being followed by a black van containing two people, one of whom was described as a Colombian. At one point during the trip, the driver asked the owner of the vehicle why the van was making the trip with them, and the owner told the driver that it was none of his business.

Both the driver and the owner of the vehicle were convicted of possession with intent to distribute the cocaine. The U.S. Court of Appeals for the Eighth Circuit ruled that, while there was probable cause to arrest both the passenger and the driver, there was insufficient evidence to convict the driver. The court felt that because there was no evidence introduced that the driver ever looked into the bags, it was merely conjecture to conclude that the driver knew that there was cocaine in them. Furthermore, the court did not feel that the driver's question and the owner's answer about the black van was enough to prove that the driver was willfully ignorant that the car contained contraband. The government argued that it was reasonable to infer that criminals would not ordinarily trust an unwitting person to deliver a valuable shipment of a large quantity of drugs, and, therefore, it is reasonable to further infer that a driver entrusted with drugs valued at between 12 and15 million dollars must have known the drugs were in the car.[22] In *Pace,* however, the evidence suggested that the driver was not truly trusted. He was not driving alone; the owner of the vehicle drove with him as a passenger, and the vehicle was being followed by a van apparently to keep an eye on the

shipment. Furthermore, all drug statutes prohibiting possession of illegal drugs require that there be sufficient evidence to prove beyond a reasonable doubt that the defendant knowingly possessed the drugs. Even if the driver had suspicions about whether there were illegal drugs in the car, mere suspicion of illegal activity is not a substitute for knowledge.[23]

Unopened Packages

Many times, the issue as to whether a suspect knew of the presence of illegal drugs arises in situations where the police have intercepted a package filled with illegal drugs. Typically, the police must deliver the package to the suspect before they can prove the suspect knowlingly possessed the illegal contents. Mere receipt of a package, however, is usually insufficient in itself to prove knowledge of its contents.[24] That is particularly true when the package is not opened by the suspect before his arrest. Under those circumstances, a suspect can argue that because he did not see what was inside the package, he could not have known it contained illegal drugs. In such a case, the police must obtain evidence in addition to the receipt of the package in order to prove knowledge.[25]

For example, in *Ramsey v. People,*[26] the defendant claimed a suitcase at the Grand Junction airport. The police had previously determined that the suitcase contained marijuana. The defendant was arrested immediately after taking possession of the suitcase. The testimony at the trial indicated that the defendant picked up the suitcase at the request of a friend whom he had driven to the airport for a flight to Denver. The Supreme Court of Colorado ruled that on those facts there was insufficient evidence to prove beyond a reasonable doubt that the defendant knew there was marijuana in the suitcase.

Three weeks before its decision in *Ramsey,* the same Colorado Supreme Court ruled that the defendant in *People v. Hankin*[27] knew there was marijuana in a package that he picked up from freight personnel at the Denver Airport. The

Denver Police were notified by the San Mateo County, California, Sheriff's Department that the package contained marijuana. The Denver Police arrested the defendant as soon as he picked up the package. The difference between the *Ramsey* and *Hankin* cases is that in *Hankin* the police found a small quantity of marijuana and a note bearing the name and address of the party sending the package in the defendant's pockets. The freight employee, who talked with the defendant on the telephone prior to the defendant picking up the package, testified that he did not disclose the sender's name or address to the defendant. The court ruled that those facts were sufficient to infer that the defendant knew marijuana was in the package, even though it was not opened, and he only had possession of it for a moment before being arrested.

In *State v. Arthun*,[28] workers at the United Parcel Service (UPS) transport hub in Louisville, Kentucky, inspected a package addressed to Ellen Arthun and discovered what appeared to be a sizable amount of marijuana (3.96 pounds). The police were called and made an undercover controlled delivery to Ellen Arthun at the address on the package. The police set up surveillance and watched the house while one of the officers obtained a search warrant for the residence. The police executed the search warrant and, during the search, found a small bag of marijuana, rolling papers, "roach" clips, and some partially burned marijuana cigarettes in the house. They also found several UPS receipts, more marijuana, and rolling papers in Ellen Arthun's purse. Initially, Ellen's husband, Bruce, denied any knowledge of the UPS package. When, however, Bruce was informed of the controlled delivery, he led the officers to a shed and showed them where the box was hidden.

Both Ellen and Bruce Arthun were convicted of criminal possession of dangerous drugs. They appealed their convictions claiming that there was insufficient evidence to prove knowing possession of the drugs in the UPS package. The defendants maintained that mere possession of the unopened package

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was not enough to establish their knowledge of its contents. The Supreme Court of Montana acknowledged that knowing control cannot be inferred from mere possession alone. The court, however, ruled that there was sufficient evidence that both defendants knew that the UPS package contained marijuana. The court stated that guilty knowledge could be inferred from the following facts: Ellen accepted the package without question or surprise; both Ellen and Bruce kept the package without attempting to return or disclaim it; Bruce took the package to a shed and concealed it within hours of it being delivered; Bruce claimed ignorance when questioned about the package; and the police found other marijuana and drug paraphernalia in the house.

Fictitious Addressee

Drug suspects sometimes arrange to have a fictitious name used for the addressee. For example, in *Commonwealth v. Sheline,*[29] police made a controlled delivery of a package containing 48 grams of cocaine to Howard Sheline at Portside Marina. Sheline worked at the marina, which contained a bait and tackle shop and a small office. During the week before the controlled delivery, Sheline asked the regular UPS driver twice if there were any packages for him—a question Sheline had never asked the driver before. The package was addressed from "M. Shark" to "Howie Tuna." Sheline told the undercover officer delivering the package that the person named as the addressee on the package was aboard one of the boats out back. After receiving the package, Sheline left the package unopened in the bait and tackle shop; he then scanned the parking lot and looked in one of the parked cars seemingly as though he was looking for police surveillance. A few minutes later, the police entered the marina office with a search warrant. The police asked Sheline if he knew Howie Tuna and whether he had received a package for a person named "M. Shark" or anyone else. Sheline denied knowing Howie Tuna or receiving a package.

A jury convicted Sheline of knowingly possessing cocaine. He

appealed his conviction, claiming that there was insufficient evidence to prove that he knowingly possessed the cocaine. The Supreme Court of Massachusetts stated that merely possessing a package received by mail or common carrier which contains drugs is not sufficient to support an inference beyond a reasonable doubt that the possessor knows the contents of the package. The court ruled, however, that there was evidence in the case that proved Sheline knew that cocaine was in the package. Sheline's denying receipt of a delivery and telling the police that he did not know Howie Tuna suggested that he was attempting to disassociate himself from the package because he knew it contained cocaine. In addition, his inquiries of UPS earlier in the week regarding the delivery of a package indicated that he expected the package to arrive. His behavior after the delivery of seeming to look for police surveillance also suggested that he had knowledge of the contents of the package.

Multiple Residents in a Dwelling

There is a strong inference that a person who is the sole occupant of a house or apartment has dominion and control over the contents of his house or apartment. If illegal drugs are found in the dwelling, then it would be reasonable to infer that the sole occupant knowingly possessed those drugs.[30] When, on the other hand, there is more than one person living at a residence, there must be some additional evidence to prove the guilt of each of the suspects. While association between suspects may be relevant when deciding probable cause to arrest, association alone is never sufficient to prove guilt beyond a reasonable doubt.[31]

For instance, in *United States v. Samad,*[32] U.S. Customs officials opened a package that contained 22 grams of 72 percent pure heroin. DEA agents removed most of the heroin, leaving only a remnant and resealed the package. The DEA agents arranged with the mail service a controlled delivery of the package to the address listed on the package. Samad answered the door at the residence, and when the letter carrier asked for M. Amin, the person named on the package, Samad answered, "Yes." The package was fitted with a beeper that was designed to emit a radio signal when the package was opened. When the package was opened, the DEA agents went to the door and were admitted by Samad's housemate, Hanan. When the agents asked Hanan where the package was located, he asked, "What package?" The agents saw the package opened in the kitchen and found the bag containing the remnant of heroin underneath a rug in the living room. Both Samad and Hanan denied knowing that there was heroin in the package. Nonetheless, they were both convicted of possession with intent to distribute the heroin and importation of the heroin into the United States.

Samad and Hanan appealed their convictions claiming that there was insufficient evidence that they knew heroin was in the package. The evidence at trial indicated that Samad handed the package to Hanan, who opened the package. When the agents knocked on the door, Hanan quickly kicked the heroin underneath the carpet. The U.S. Court of Appeals for the Fourth Circuit had little trouble finding that Hanan knowingly imported the heroin into the United States and possessed it with the intent to distribute it.

Although Samad was receiving welfare, he had $850 in cash on his person and another $3,500 in a suitcase. A large amount of money found on a person who is closely associated with illegal drugs suggests that the money is proceeds from drug trafficking, particularly when the person has no gainful employment. The court, however, was persuaded by Samad's explanation that he brought the money with him from Afghanistan when he was granted political asylum in the United States. Furthermore, the court felt that Samad's affirmative response to the letter courier at the door was the result of Samad's language difficulty with English. Consequently, the court found that there was insufficient evidence to prove that Samad was aware of the importation or distribution scheme.

Conclusion

The government has the burden of proving at trial that an individual found in possession of an object containing illegal drugs knew that the object contained the illegal substance. If the drugs are hidden in a vehicle or in a package the recipient has not opened and the suspect does not admit he knew that the contraband was present, then the government must have sufficient circumstantial evidence from which to infer that the possessor knew the contraband was present. Courts have found that the following facts are particularly relevant to proving knowledge: 1) inconsistent statements, 2) implausible stories, 3) a large quantity of valuable contraband, 4) nervousness, 5) failure to ask any questions regarding the nature of a trip, 6) more contraband or drug paraphernalia found in the subject's possession, 7) lack of surprise upon discovery of the contraband, 8) scanning for police surveillance, 9) accepting a package without question or surprise, 10) hiding a package once it is delivered, and 11) inquiring about the status of a package in anticipation of its delivery. The above list is only a partial roster of facts which may point to guilty knowledge. Each situation will give rise to its own unique facts which will either point to guilty knowledge or innocence. ✦

> ***"Even if the driver had suspicions about whether there were illegal drugs in the car, mere suspicion...is not a substitute for knowledge."***

Endnotes

[1] *United States v. Resio-Trejo*, 45 F.3d 907, 911 (5th Cir. 1995); *United States v. Diaz – Carreon*, 915 F.2d 951, 954 (5th Cir. 1990). *See also United States v. Ortega Reyna,*148 F.3d 540 (5th Cir. 1998).

[2] *See United States v. Moreno,* 185 F.3d 465 (5th Cir. 1999) (implausible and inconsistent statements were sufficient to infer guilty knowledge in an airport courier case involving a hidden compartment). *See also Seeley v. State,* 959 P.2d 170 (Wyo. 1998).

[3] 167 F. 3d 900 (5th Cir. 1999).

[4] 184 F.3d 463 (5th Cir. 1999).

[5] *Turner v. United States*, 396 U.S. 398 (1970); *Leary v. United States*, 395 U.S. 6 (1969).

[6] *See United States v. Baron,* 94 F.3d 1312, 1317 (9th Cir. 1996).

[7] *Id.* (quoting *United States v. Jewell,* 532 F.2d 697, 704 (9th Cir. 1976) (en banc)).

[8] 532 F.2d 697 (9th Cir. 1976) (en banc). *See also* Kristen L. Chesnut, *Alvarado: Reflections on a Jewell*, 19 Golden Gate U. L. Rev. 47 (1989).

[9] *But see United States v. Hiland*, 909 F.2d 1114, 1130 (8th Cir. 1990). In *Hiland,* the Eighth Circuit rejected the requirement that the willful blindness instruction to the jury must specifically state that "a defendant has knowledge of a certain fact only if he is aware of a high probability of its existence, unless he actually believes that it does not exist." The Second Circuit, however, requires that the willful blindness instruction given to the jury have the "high probability" language. *See United States v. Feroz*, 848 F.2d 359, 360 (2d Cir. 1988).

[10] *See, e.g., United States v. Bilis,* 170 F.3d 88 (1st Cir. 1999); *United States v. Wilson,* 134 F.3d 855 (7th Cir. 1998); *United States v. Feroz,* 848 F.2d 359 (2d Cir. 1988); *United States v. Rada-Salano,* 625 F.2d 577 (5th Cir. 1980); *United States v. Aleman,* 728 F.2d 492 (11th Cir. 1984).

[11] *See North Carolina v. Bogle,* 376 N.E.2d 745 (N.C. 1988) (rejecting the concept of "willful blindness"in North Carolina drug case); *contra, State v. McCallum*, 583 A.2d 250 (Md. 1991) (applied "willful blindness" to driver's license suspension case); *Wetzler v. Florida,* 455 So.2d 511 (Fla. Dist. Ct. App. 1984) (applied "willful blindness" in a Florida drug case).

[12] *See United States v. Aguilar,* 80 F.3d 329, 332 (9th Cir. 1996) (en banc) (overturning conviction of federal judge in wiretap disclosure case where willful blindness instruction was improperly given to the jury).

[13] 94 F.3d 1312 (9th Cir. 1996).

[14] *See United States v. Lara-Velasquez*, 919 F.2d 946, 951-53 (5th Cir. 1990).

[15] *But see United States v. Ruhe*,--- F.3d ----, 1999 WL 674758 (4th Cir. 1999) (the Fourth Circuit rejected the Ninth Circuit's requirement that the government prove that the defendant's ignorance was for the purpose of providing a defense in case of prosecution before a willful blindness instruction may be given).

[16] 138 F.3d 906 (11th Cir. 1998).

[17] *See United States v. Vasquez-Chan,* 978 F.2d 546, 552 (9th Cir. 1992) (The defendant was a live-in housekeeper who knew that the homeowner was involved in large scale drug trafficking. The police found approximately 600 kilograms of cocaine in the house. The housekeeper admitted that she knew the drugs were in the house. The court reversed her

conviction because the evidence only proved that she was a housekeeper and there was insufficient evidence that she assisted in the illegal venture.). *See also United States v. Teffera,* 985 F.2d 1082, 1087 (D.C. Cir. 1993) ("[I]t is not a crime simply to travel— even knowingly— with someone who is carrying drugs; to be liable for the substantive offense, one must actively seek to aid or assist the person in possessing the drugs."); *United States v. Ramirez,* 176 F.3d 1179 (9th Cir. 1999) (The driver in a rental vehicle was annoyed and his passenger was very nervous during a Mexican/U.S. border inspection where 46.4 pounds of marijuana were found hidden in the spare tire. The driver's conviction was affirmed but the passenger's conviction was reversed. While evidence of a passenger's nervousness suggests knowledge of the presence of drugs in a vehicle, mere knowledge without evidence pointing to the passenger's dominion or control of the contraband is insufficient to prove possession. In *Ramirez* the passenger was not connected to the illegal contraband by fingerprint evidence nor was he connected to the vehicle other than as a mere passenger. No drugs or cash were found on his person and he did not attempt to evade arrest.)

[18] 24 F.3d 1314 (11th Cir. 1994).

[19] *See United States v. Pantoja-Soto,* 739 F.2d 1520 (11th Cir. 1984).

[20] *See United States v. Pena,* 983 F.2d 71, 72 (6th Cir. 1993); *United States v. Kelly,* 888 F.2d 732 (11th Cir. 1989).

[21] 922 F.2d 451 (8th Cir. 1990).

[22] *See also United States v. Ramos-Garcia,* 167 F. 3d 900 (5th Cir. 1999); *United States v. Del Aguila-Reyes,* 722 F.2d 155 (5th Cir. 1983).

[23] *See United States v. Pena,* 983 F.2d 71 (6th Cir. 1993) (Seventeen kilograms of cocaine were found hidden in a vehicle's secret compartment. The conviction of the passenger was overturned because she did not know the vehicle contained cocaine, even though she felt there was something illegal in the car.)

[24] *See, e.g., Commonwealth v. Rambo,* 412 A.2d 535, 537-38 (Pa. 1980); *People v. Larson,* 503 P.2d 343, 344-45 (Colo. 1972) (en banc).

[25] *See, e.g., State v. Smith,* 661 P.2d 463 (Mont. 1983); *United States v. Shinder,* 8 F.3d 633 (8th Cir. 1994).

[26] 498 P.2d 1148 (Colo. 1972).

[27] 498 P.2d 1116 (Colo. 1972).

[28] 906 P.2d 216 (Mont. 1995).

[29] 461 N.E.2d 1197 (Mass. 1984).

[30] *United States v. Morris*, 977 F.2d 617 (D.C. Cir. 1992).

[31] *See United States v. Bautista-Avila,* 6 F.3d 1360, 1363 (9th Cir. 1993).

[32] 754 F.2d 1091 (4th Cir. 1984).

Law enforcement officers of other than federal jurisdiction who are interested in this article should consult their legal advisors. Some police procedures ruled permissible under federal constitutional law are of questionable legality under state law or are not permitted at all.