

December 20, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 03-20968
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-

Appellee,

versus

JUAN DELGADO-GAMA,

Defendant-

Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-02-CR-698-ALL

Before WIENER, BENAVIDES AND STEWART, Circuit Judges.

PER CURIAM:*

Juan Delgado-Gama (“Delgado-Gama”) appeals his conviction for illegal reentry into the United States after having been convicted of an aggravated felony. Delgado-Gama argues that subsection (b)(2) of 8 U.S.C. § 1326 is a sentencing provision and that the district court erred in instructing the jury that the Government was required to prove that he had been deported after a

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

conviction for an aggravated felony. He contends that he was prejudiced by the district court's erroneous jury instruction because evidence of his prior criminal history was introduced at trial. He further contends that the district court abused its discretion in admitting the testimony of a fingerprint expert at trial.

Delgado-Gama is correct that the district court erred in instructing the jury that the Government had to prove that he was deported following an aggravated felony conviction. See Almendarez-Torres v. United States, 523 U.S. 224, 226-27 (1998). Nevertheless, because the evidence of Delgado-Gama's guilt was overwhelming, the erroneous jury instruction and consequently the introduction of his prior criminal history at trial, had no effect on Delgado-Gama's substantial rights. See United States v. Brown, 161 F.3d 256, 259 (5th Cir. 1998) (en banc); United States v. Arteaga-Limones, 529 F.2d 1183, 1199 (5th Cir. 1976).

Additionally, Delgado-Gama has failed to show that the district court plainly erred in admitting expert testimony at trial. See United States v. Ramirez-Velasquez, 322 F.3d 868, 878-79 (5th Cir. 2003), cert. denied, 124 S. Ct. 107 (2003).

Accordingly, Delgado-Gama's conviction is AFFIRMED.