

July 11, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-40320
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE VALENTIN REMEDIOS,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:04-CR-1523-ALL

Before JOLLY, DAVIS, and OWEN, Circuit Judges.

PER CURIAM:*

Jose Valentin Remedios (Remedios) appeals his jury convictions and 30-month sentences for two counts of transporting illegal aliens by means of a motor vehicle within the United States for the purpose of private financial gain, in violation of 8 U.S.C. § 1324. Remedios contends that the evidence at trial was insufficient to sustain the jury's verdict. Specifically, Remedios asserts that the Government did not establish that he knew the illegal aliens were in the trucks that he was hauling.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Because Remedios did not move for a judgment of acquittal, our review of Remedios' sufficiency claim is restricted to whether Remedios' conviction resulted in a manifest miscarriage of justice. United States v. Galvan, 949 F.2d 777, 782-83 (5th Cir.1991). "Such a miscarriage would exist only if the record is devoid of evidence pointing to guilt, or [if] the evidence on a key element of the offense was so tenuous that a conviction would be shocking." Id. at 783 (internal quotation marks and citation omitted).

The record is not devoid of evidence that Remedios knew illegal aliens were in the trucks that he was hauling. Two of the illegal aliens identified Remedios as the man who told them to get into the trucks and to keep their heads down. The jury is the arbiter of the credibility of the witnesses. See United States v. Garza, 990 F.2d 171, 174 (5th Cir. 1993). The evidence was sufficient to establish that Remedios knew that he was transporting illegal aliens. See Galvan, 949 F.2d at 782-83.

AFFIRMED.