

June 21, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-40398
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WALTER DARNELL HUGHES,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:04-CR-1185-ALL

Before STEWART, DENNIS, and OWEN, Circuit Judges.

PER CURIAM:*

Walter Darnell Hughes appeals his guilty-plea conviction and sentence for two counts of transporting undocumented aliens within the United States by means of a motor vehicle for private financial gain. Hughes argues that the facts of this case do not give rise to the level of endangerment required for a sentencing enhancement under U.S.S.G. § 2L1.1(b)(5).

The presentence report stated that ten undocumented aliens were found within the sleeper compartment of Hughes's tractor-

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

trailer with regard to the first count and four undocumented aliens were found with regard to the second count. Ten aliens concealed in storage compartments in a sleeper area of a tractor-trailer constitutes harboring persons in a crowded and dangerous condition. § 2L1.1(b)(5), comment. (n.6).

Some of the aliens gave material witness statements to the effect that Hughes instructed them to hide in various compartments within the sleeper area of his tractor-trailer. The aliens were hidden in closets, under beds, and various other storage compartments. One alien detailed how he was instructed by Hughes to hide with another alien in a closed compartment underneath the bed. The aliens were required to crouch in a fetal position in order to fit in the compartment. This position, maintained in a closed compartment, would make it difficult for the aliens to extricate themselves. See United States v. Rodriguez-Mesa, 443 F.3d 397, 403 (5th Cir. 2006). The district court's application of the enhancement was not error. Id.

Accordingly, the district court's judgment is AFFIRMED.