

May 19, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 05-40504
Summary Calendar

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

ROBERT RAMIREZ,
Defendant-Appellant.

Appeal from the United States District Court
For the Southern District of Texas

(USDC No. 2:04-CR-677-ALL)

Before HIGGINBOTHAM, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Robert Ramirez appeals his jury conviction for two counts of transporting illegal aliens within the United States in violation of 8 U.S.C. § 1324. He argues that the government failed to present sufficient evidence that he knowingly transported illegal aliens in the trailer of his truck. Although Ramirez moved for judgment of acquittal at the close of the government's case, he did not renew his motion after presenting his defense or at the close of all evidence at trial. Thus, Ramirez's sufficiency of the evidence challenge is reviewed only for a manifest miscarriage of justice. United States v. Avants, 367 F.3d 433, 449 (5th Cir.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

2004). To find a miscarriage of justice, the court must find that the record is "devoid of evidence of guilt or the evidence must be so tenuous that a conviction is shocking." Id.

Here, the evidence shows that Ramirez drove an 18-wheel tractor-trailer truck to the border checkpoint in Falfurrias, Texas, with twenty four illegal aliens locked in the otherwise empty trailer. Ramirez recognizes in his brief that the evidence showed that the lock on the trailer was his. Further, Ramirez was visibly nervous as he communicated with Border Patrol agents at the checkpoint. Ramirez also provided inconsistent statements to the agents regarding his itinerary, and a rational jury could have found his explanation for the aliens' presence implausible. In short, Ramirez has not shown that the record is "devoid of evidence of guilt" or "so tenuous that a conviction is shocking." Id.

AFFIRMED.