

August 18, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-41295
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PEDRO RENTERIA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:05-CR-321-ALL

Before DeMOSS, STEWART, and PRADO, Circuit Judges.

PER CURIAM:*

Pedro Renteria appeals his 18-month sentence following his guilty-plea conviction of transporting an undocumented alien within the United States for financial gain by means of a motor vehicle. He argues that the district court erred in increasing his offense level after finding that the offense "involved intentionally or recklessly creating a substantial risk of death or serious bodily injury to another person," under U.S.S.G. § 2L1.1(b)(5). Even after United States v. Booker, 543 U.S. 220

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

(2005), we review the district court's application of the Guidelines de novo and the district court's findings of fact for clear error. United States v. Villanueva, 408 F.3d 193, 202 & n.9 (5th Cir.), cert. denied, 126 S. Ct. 268 (2005).

The record reflects that Renteria was driving a tractor trailer carrying six illegal aliens. One of the aliens was hiding under the bed in the trailer's sleeper compartment and the other five aliens were hiding in the sleeper compartment's closets in "cramped fetal positions." The district court did not err in concluding that these circumstances qualified as intentional or reckless creation of a "substantial risk of death or serious bodily injury to another person." See United States v. Rodriguez-Mesa, 443 F.3d 397, 401-03 (5th Cir. 2006); U.S.S.G. § 2L1.1, comment. (n.6).

The sentence is AFFIRMED.