

April 4, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-40013
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ELOY LIENDO, JR.,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:05-CR-1166

Before DeMOSS, STEWART, and PRADO, Circuit Judges.

PER CURIAM:*

Eloy Liendo, Jr. appeals the sentence imposed following his guilty-plea conviction for transportation of undocumented aliens by means of a motor vehicle for private financial gain. Liendo argues that the district court erred in increasing his offense level pursuant to U.S.S.G. § 2L1.1(b)(5) after finding that the offense "involved intentionally or recklessly creating a substantial risk of death or serious bodily injury to another person." Even after United States v. Booker, 543 U.S. 220 (2005), we review the district court's findings of fact for clear

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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 Liendo was driving a tractor trailer carrying four illegal aliens. Two of the aliens were hiding in a compartment under the bottom bunk in the trailer's sleeper area from which they could not easily extricate themselves. 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.