

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

August 30, 2010

Lyle W. Cayce
Clerk

No. 09-41251

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ROLANDO RODRIGUEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:09-CR-872-1

Before WIENER, PRADO, and OWEN, Circuit Judges.

PER CURIAM:*

Defendant-Appellant Rolando Rodriguez pleaded guilty to possession with intent to distribute more than 100 kilograms of marijuana and was sentenced to 136 months of imprisonment, five years of supervised release, and \$7,197.04 in restitution.

Rodriguez argues that the district court erred in enhancing his sentence by six levels pursuant to U.S.S.G. § 3A1.2(c)(1) because the evidence in the record does not establish an intentional aggravated assault on police, but rather

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

demonstrates at best a negligent loss of control of his vehicle. However, Rodriguez's conduct, which involved threatening moves toward police, amounted to more than mere recklessness, and thus the district court's application of the § 3A1.2(c)(1) enhancement was plausible in light of the record as a whole. See *United States v. Anderson*, 559 F.3d 348, 356-57 (5th Cir.), *cert. denied*, 129 S. Ct. 2814 (2009); *United States v. Caldwell*, 448 F.3d 287, 290 (5th Cir. 2006); *United States v. Gillyard*, 261 F.3d 506, 510 (5th Cir. 2001). Accordingly, Rodriguez has not shown that the district court committed clear error. See *Caldwell*, 448 F.3d at 290.

AFFIRMED.