

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No.94-20876  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE RODRIGUEZ,

Defendant-Appellant.

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Appeal from the United States District Court  
For the Southern District of Texas  
(CR-H-94-52-1)

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( September 14, 1995 )

Before POLITZ, Chief Judge, DUHÉ and PARKER, Circuit Judges.

PER CURIAM:\*

Jose Gonzales Rodriguez appeals the district court's application of the Sentencing Guidelines. We affirm.

Background

On February 7, 1994, Brookshire Police Department Sergeant Oscar Garcia was dispatched to investigate suspicious activity

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Local rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

involving a maroon van at a motel just outside of Houston. Upon arrival Garcia saw the maroon van exiting the motel parking lot. Garcia, in a marked police vehicle, followed the van and signaled for it to pull over. In response the van accelerated and Garcia gave chase.

The van sped into a residential area running stop signs, including one located at an intersection near a church and an elementary school. The van turned onto an entrance ramp to Interstate 10 but then stopped and backed into Garcia's vehicle twice in an attempt to disable it, continuing thereafter onto the interstate.

The van traveled for several miles, eventually stopping on the shoulder of the inside lane of the interstate against a concrete barrier. At that point the driver, later identified as Rodriguez, abandoned the van, jumped over the median concrete barrier, dodged oncoming traffic, and then leaped over another concrete barrier which marked the highway boundary. Garcia and another officer gave chase on foot and ultimately apprehended Rodriguez about 200 yards from the interstate. A subsequent inventory of the van disclosed 43 boxes of cocaine.

Further investigation led to the arrest of one Raymundo Reyes, who cooperated with authorities and provided details of his dealings with Rodriguez.<sup>1</sup> Reyes claimed to have been recruited as a "driver" by Guillermo Rodriguez, Jose Rodriguez's son. Reyes

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A search of the tractor-trailer being driven by Reyes when he was apprehended resulted in the recovery of 1250 kilograms of cocaine and just over one pound of marihuana.

also stated that Jose Rodriguez had provided him with \$56,000 in cash to purchase a tractor-trailer, which was to be used to transport cocaine. Reyes maintained that Jose Rodriguez had paid Reyes to deliver cocaine to several cities, and had given Reyes specific instructions on when and where to unload the cocaine.

Rodriguez pled guilty to two drug offenses.<sup>2</sup> The presentence report recommended a two-level enhancement for Rodriguez's managerial role, under U.S.S.G. § 3B1.1(c), and for his reckless endangerment of others during flight, under § 3C1.2. The report also applied a three-level downward departure for timely acceptance of responsibility under § 3E1.1(a), resulting in a total offense level of 39. The district court, rejecting Rodriguez's objections, adopted these recommendations and sentenced him to 360 months imprisonment, the minimum guideline sentence. Rodriguez timely appealed.

#### Analysis

We review the district court's application of the guidelines *de novo* and the factual findings in support thereof for clear error.<sup>3</sup> Section 3C1.2 of the Sentencing Guidelines provides for a two-level increase in a defendant's offense level when "the defendant recklessly created a substantial risk of death or serious

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These were violations of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), (b)(1)(D), 846, 851 (conspiracy to possess with the intent to distribute in excess of five kilograms of cocaine) and 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), 841(b)(1)(D), 851, and 18 U.S.C. § 2 (aiding and abetting possession with intent to distribute in excess of five kilograms of cocaine).

**United States v. Cabral-Castillo**, 35 F.3d 182 (5th Cir. 1994), cert. denied, \_\_\_\_\_ U.S. \_\_\_\_\_, 115 S.Ct. 1157 (1995).

bodily injury to another person in the course of fleeing from a law enforcement officer." Rodriguez, when he sped through a residential area disregarding traffic regulations in his effort to evade police pursuit, placed in danger the lives of innocent pedestrians and motorists. Further, by backing his van into Sergeant Garcia's car, and then leading Garcia and his fellow officer on a foot chase through traffic, Rodriguez placed his pursuers in danger of serious bodily injury. Enhancement of Rodriguez's offense level under section 3C1.2 was proper.

We likewise reject Rodriguez's challenge to the enhancement under section 3B1.1(c). The record reveals that Rodriguez directed the activities of both Guillermo Rodriguez and Reyes, and that Rodriguez provided all of the funding. In an attempt to defeat the enhancement Rodriguez claims that he was merely a middleman in a larger drug conspiracy. Even if this assertion is true, we find it to be inapposite to enhancement under section 3B1.1(c). That subsection, as contrasted with subsections (a) and (b) of section 3B1.1, is directed not at organizers and leaders of a major criminal enterprise but, rather, at defendants who assume any sort of supervisory role in a criminal activity involving more than one person. The district court did not err in applying the section B1.1(c) enhancement.

The judgment of the district court is AFFIRMED.