

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

August 24, 2020

Lyle W. Cayce
Clerk

No. 19-40962
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ANTHONY TERRELE McCALEBB,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:19-CR-307-2

Before OWEN, *Chief Judge*, and DENNIS and HO, *Circuit Judges*.

PER CURIAM:*

Anthony Terrele McCalebb was convicted by a jury of conspiracy to transport undocumented aliens within the United States and two counts of transporting an undocumented alien within the United States for commercial

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 19-40962

advantage and private financial gain. On appeal, he challenges the sufficiency of the evidence supporting the two latter counts, specifically as to the transporting element. Because his sufficiency challenge is preserved, we review it de novo. *See United States v. Frye*, 489 F.3d 201, 207 (5th Cir. 2007); *United States v. Resio-Trejo*, 45 F.3d 907, 910 n.6 (5th Cir. 1995). We view all of the evidence in the light most favorable to the Government with all reasonable inferences made in support of the jury's verdict. *See United States v. Moser*, 123 F.3d 813, 819 (5th Cir. 1997).

McCalebb argues that the evidence was insufficient to support the transporting element because he was only the passenger during the offense. However, there was sufficient evidence showing that McCalebb had control over the operation by convincing his co-defendant to engage in these offenses; being the sole coordinator with the unidentified alien smuggler, both before and during the offense; and directing the aliens where and how to hide. *See United States v. Acosta-Ruiz*, 481 F. App'x 213, 216 (5th Cir. 2012); *United States v. Pineda-Jimenez*, 212 F. App'x 369, 372 (5th Cir. 2007).

Accordingly, the district court's judgment is AFFIRMED.