

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

January 7, 2008

No. 07-40447

Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DEAMOND LAROCCA MITCHELL,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:06-CR-1516-1

Before WIENER, GARZA, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Deamond Larocca Mitchell appeals his conviction for transporting an alien unlawfully in the United States. He argues that the evidence was insufficient to support his conviction insofar as it failed to establish that he knowingly transported, or attempted to transport, an undocumented alien.

Mitchell did not renew his motion for judgment of acquittal at the close of the evidence. Therefore, our review of the sufficiency issue is "limited to determining whether . . . the record is devoid of evidence pointing to guilt."

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

United States v. Herrera, 313 F.3d 882, 885 (5th Cir. 2002) (en banc). The following evidence is sufficient to support the jury's determination that Mitchell knew his trailer contained illegal aliens: (1) he parked his tractor-trailer in a dimly lit area where 18-wheeler parking was prohibited; (2) he did not secure his trailer doors when he allegedly went to the bathroom in the theater and then went in search of body lotion; (3) his allegation that he went in search of lotion was not credible given that the shopping mall did not contain a Dollar General Store; (4) he was observed pacing back and forth behind the trailer and talking on a two-way radio that he purportedly found in his hotel room; (5) he had to physically enter the trailer around the very time the aliens were being loaded inside to perform the temperature checks; and (6) the three testifying aliens were independently led to his truck within a relatively short period of time, suggesting that Mitchell was knowingly involved in the offense. Consequently, the record contains indirect evidence pointing to his guilty knowledge.

AFFIRMED.