

September 29, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40986
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MICHELLE LENNETTE PILCHER,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:03-CR-84-RAS-DDB-3

Before SMITH, GARZA, and PRADO, Circuit Judges.

PER CURIAM:*

Michelle Lennette Pilcher appeals from her guilty-plea conviction for possession or distribution of a listed chemical with knowledge, or reason to know, of its wrongful intended use. Pilcher argues that, in light of United States v. Booker, 125 S. Ct. 738 (2005), the district court erred in sentencing her based upon facts that were not admitted by her or found by a jury. The increases in Pilcher's sentence for relevant conduct, possession of a firearm, and creating a substantial risk of harm

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

to human life or the environment violated her Sixth Amendment right to a trial by jury, and the Government has not carried its burden of demonstrating that the errors were harmless. See United States v. Akpan, 407 F.3d 360, 376-77 (5th Cir. 2005). Accordingly, Pilcher's sentence is VACATED, and the case is REMANDED FOR RESENTENCING.