

DEC 13 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RICARDO OLIVAS,

Defendant - Appellant.

No. 09-50650

D.C. No. 3:09-cr-00053-JLS-1

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Janis L. Sammartino, District Judge, Presiding

Submitted December 9, 2010**
Pasadena, California

Before: TROTT, WARDLAW, and IKUTA, Circuit Judges.

Ricardo Olivas was convicted by a jury of importation of marijuana and possession of marijuana with intent to distribute, in violation of 21 U.S.C. §§ 952 and 960 and 21 U.S.C. § 841(a)(1). He appeals, alleging that the government

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

misled the jury during final argument with respect to what he told a government agent and a police detective regarding how the marijuana found its way into the secret compartments of the tires of his recently-purchased car without his knowledge. The jury knew that Olivas had made an exculpatory statement, but was not informed by either the prosecution or the defense of the details, just that he denied knowledge of the marijuana.

We are not surprised that neither side saw fit to introduce into evidence Olivas's innocent explanation. His statement about lending in Mexico his recently-purchased car to the prostitute "Susanna" is utterly implausible. Moreover, after the story failed to thwart his arrest, he lamented that "he had been told that if he did not admit to anything that nothing would happen" and that all charges would be dropped.

After reviewing the evidentiary record and both counsels' arguments, we conclude that the district court's response to Olivas's objection to the government's closing argument was appropriate and correct. The court said, "Again, I think it's argument. You've both taken a little bit of liberties and I think the jury understands this is argument, so you may proceed." We agree. Under these circumstances, we find no error, no misleading of the jury, and no misconduct.

AFFIRMED.