

FEB 16 2012

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SANTIAGO HUMBERTO RODRIGUEZ-
APARICIO,

Defendant - Appellant.

No. 11-10105

D.C. No. 2:09-cr-00060-PMP-
PAL-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Philip M. Pro, District Judge, Presiding

Argued and Submitted February 13, 2012
San Francisco, California

Before: THOMAS, FISHER, and IKUTA, Circuit Judges.

The district court’s denial of Rodriguez-Aparicio’s motion to exclude evidence related to his threats was not “illogical, implausible, or without support in inferences that may be drawn from the record,” *United States v. Hinkson*, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc), because the district court carefully weighed

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

the probative value and prejudicial effect of the evidence, and offered limiting instructions to cure any unfairly prejudicial impact, including an instruction stating that such threats were relevant only to show consciousness of guilt. *See* Fed R. Evid. 402, 403; *see also Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 897–98 (9th Cir. 1996).

Rodriguez’s argument regarding the constitutionality of 18 U.S.C. § 922(g)(1) is foreclosed by *United States v. Polanco*, 93 F.3d 555, 563 (9th Cir. 1996).

AFFIRMED.