

OCT 04 2016

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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NOT FOR PUBLICATION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.

MICHAEL ERIC SALAS,

Defendant-Appellant.

No. 15-50359

D.C. No. 3:15-cr-00719-BAS

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Cynthia A. Bashant, District Judge, Presiding

Submitted September 27, 2016**

Before: TASHIMA, SILVERMAN, and M. SMITH, Circuit Judges.

Michael Eric Salas appeals from the district court's judgment and challenges his jury-trial conviction for assault on a federal officer, in violation of 18 U.S.C. § 111(a)(1). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

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

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

Salas claims that the prosecutor committed two instances of misconduct during closing arguments. First, he contends that the prosecutor improperly disparaged defense counsel by stating that the defense’s focus on the sequence of events surrounding the incident was “the classic lawyer thing” designed to “muddy up the water” and show the jury a “red herring.” We review for harmless error, *see United States v. Ruiz*, 710 F.3d 1077, 1082 (9th Cir. 2013), and find none. The prosecutor’s comments properly “attacked the strength of the defense on the merits, not the integrity of defense counsel.” *United States v. Nobari*, 574 F.3d 1065, 1079 (9th Cir. 2009) (internal quotations omitted). Second, Salas contends that the prosecutor improperly vouched for the credibility of the Border Patrol agents by stating that they acted “quite logically” and “wisely” during their interaction with Salas. We review for plain error, *see Ruiz*, 710 F.3d at 1082, and find none. The challenged statements were not comments on the agents’ credibility. Rather, the prosecutor was arguing that the agents acted reasonably in detaining Salas, which was an issue at trial. Finally, because we find no individual instances of misconduct, we reject Salas’s contention that the challenged statements resulted in cumulative error warranting reversal. *See United States v. Martinez-Martinez*, 369 F.3d 1076, 1090 (9th Cir. 2004).

AFFIRMED.