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APPENDIX A

747 Fed.Appx. 551 (Mem)

This case was not selected for publication in West's Federal Reporter. See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 9th Cir. Rule 36-3. United States Court of Appeals, Ninth Circuit.

UNITED STATES of America, Plaintiff-Appellee,

v.

Jose CAMARGO-ALEJO, aka Jessica Camargo-Alejo, Defendant-Appellant.

No. 17-50352

Argued and Submitted December 4, 2018 Pasadena, California

Filed December 21, 2018

Attorneys and Law Firms

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Appeal from the United States District Court for the Southern District of California, Marilyn L. Huff, District Judge, Presiding, D.C. No. 3:17-cr-1369-H-1

Before: [O'SCANNLAIN](#) and [IKUTA](#), Circuit Judges, and [KENNELLY](#), * District Judge.

* The Honorable Matthew F. Kennelly, United States District Judge for the Northern District of Illinois, sitting by designation.

MEMORANDUM **

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

Jessica Camargo-Alejo ¹ appeals her conviction under [18 U.S.C. § 111\(a\)\(1\)](#) for assaulting a Border Patrol agent while she was in custody at an immigration detention center. She argues that the district court erroneously precluded her from raising an entrapment defense at trial in violation of her constitutional right to present a complete defense.

¹ This disposition refers to the defendant by her preferred name.

The record shows that the district court did not bar the entrapment defense but instead declined to instruct the jury on entrapment due to insufficient evidence. At a pretrial hearing on motions in limine, the court expressly stated that it would not preclude the defense. And when it next ruled on the entrapment issue after the government's case-in-chief, the court found that there was insufficient evidence presented at trial to permit a finding that the government induced the crime and declined the entrapment instruction on that basis.

This Court reviews the refusal to instruct the jury on entrapment due to insufficient evidence for abuse of discretion. [United States v. Spentz](#), 653 F.3d 815, 818 (9th Cir. 2011). Camargo-Alejo argues that the district court abused its discretion because it erroneously required her to introduce evidence that the government *552 induced the crime purposefully or intentionally. We need not address this issue, however, because there was insufficient evidence presented at trial to support the other element of the entrapment defense—Camargo-Alejo's lack of predisposition to commit the crime—thus rendering any error harmless. See [United States v. Gurolla](#), 333 F.3d 944, 957 (9th Cir. 2003) (applying harmless-error review to the refusal to give an entrapment instruction due to insufficient evidence); see also [United States v. Burt](#), 143 F.3d 1215, 1218 (9th Cir. 1998) (noting that a defendant is entitled to an entrapment instruction only if she presents evidence of both inducement and lack of predisposition). At trial, the only evidence putatively bearing on her lack of predisposition concerned her conduct immediately before and during the altercation with the Border Patrol agent. But neither the surveillance footage of the incident nor the testimony about Camargo-Alejo's conduct indicates any reluctance to commit the crime or supports any other factor that would tend to show lack of predisposition. See [United States v. Marbella](#), 73 F.3d 1508, 1512 (9th Cir. 1996) (listing five factors for determining whether

evidence of lack of predisposition is sufficient to warrant an entrapment instruction). Without evidence from which a reasonable jury could find lack of predisposition, any alleged error in the district court's statement of the law regarding inducement was harmless.

AFFIRMED.

All Citations

747 Fed.Appx. 551 (Mem)

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APPENDIX B

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 7. Assault

18 U.S.C.A. § 111

§ 111. Assaulting, resisting, or impeding certain officers or employees

Effective: January 7, 2008

[Currentness](#)

(a) In general.--Whoever--

(1) forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in [section 1114](#) of this title while engaged in or on account of the performance of official duties; or

(2) forcibly assaults or intimidates any person who formerly served as a person designated in [section 1114](#) on account of the performance of official duties during such person's term of service,

shall, where the acts in violation of this section constitute only simple assault, be fined under this title or imprisoned not more than one year, or both, and where such acts involve physical contact with the victim of that assault or the intent to commit another felony, be fined under this title or imprisoned not more than 8 years, or both.

(b) Enhanced penalty.--Whoever, in the commission of any acts described in subsection (a), uses a deadly or dangerous weapon (including a weapon intended to cause death or danger but that fails to do so by reason of a defective component) or inflicts bodily injury, shall be fined under this title or imprisoned not more than 20 years, or both.

CREDIT(S)

(June 25, 1948, c. 645, 62 Stat. 688; [Pub.L. 100-690, Title VI, § 6487\(a\)](#), Nov. 18, 1988, 102 Stat. 4386; [Pub.L. 103-322, Title XXXII, § 320101\(a\)](#), Sept. 13, 1994, 108 Stat. 2108; [Pub.L. 104-132, Title VII, § 727\(c\)](#), Apr. 24, 1996, 110 Stat. 1302; [Pub.L. 107-273](#), Div. C, Title I, § 11008(b), Nov. 2, 2002, 116 Stat. 1818; [Pub.L. 110-177, Title II, § 208\(b\)](#), Jan. 7, 2008, 121 Stat. 2538.)

[Notes of Decisions \(454\)](#)

18 U.S.C.A. § 111, 18 USCA § 111

Current through P.L. 116-5. Title 26 current through 116-7.