

NOT FOR PUBLICATION**FILED**

UNITED STATES COURT OF APPEALS

FEB 21 2019

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JESSE MENDIVIL, Sr., AKA Robert
Arriola, AKA Ruben Arriola, AKA Big
Jesse, AKA Jesse Mendival, AKA Jesse
Mendivil, AKA Jessie Mendivile, AKA
Jessie Mendiville,

Defendant-Appellant.

No. 17-50349

D.C. No.
5:14-cr-00107-VAP-3

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Virginia A. Phillips, Chief Judge, PresidingArgued and Submitted February 8, 2019
Pasadena, CaliforniaBefore: GOULD and NGUYEN, Circuit Judges, and MARBLEY,** District
Judge.

Defendant Jesse Mendivil, Sr. appeals his conviction and sentence after a

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

** The Honorable Algenon L. Marbley, United States District Judge for the Southern District of Ohio, sitting by designation.

jury found him guilty of one count of conspiracy to distribute or to possess with intent to distribute methamphetamine and heroin. We have jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a), and affirm.

The district court did not err in denying Mendivil's motion to dismiss the indictment for outrageous government conduct. "We review the district court's decision . . . de novo, viewing the evidence in the light most favorable to the government." *United States v. Pedrin*, 797 F.3d 792, 795 (9th Cir. 2015). First, none of the misconduct occurred in Mendivil's case, and therefore, it is not "conduct that violates [Mendivil's] due process in such a way that it is 'so grossly shocking and so outrageous as to violate the universal sense of justice.'" *United States v. Stinson*, 647 F.3d 1196, 1209 (9th Cir. 2011) (quoting *United States v. Restrepo*, 930 F.2d 705, 712 (9th Cir. 1991)). Second, the jury was presented with evidence about the agents' misconduct, which allowed the jury to make its own credibility determinations and decide whether any of the misconduct affected the reliability of the evidence in Mendivil's case.

The district court did not abuse its discretion in admitting evidence relating to the Westside Verdugo gang and the Mexican Mafia. *United States v. Skillman*, 922 F.2d 1370, 1373 (9th Cir. 1990). The probative value of the evidence pertaining to the Westside Verdugo gang, its drug-trafficking operations, and its relationship with the Mexican Mafia was not substantially outweighed by the

danger of wasting time or presenting unfairly prejudicial evidence under Federal Rule of Evidence 403. This evidence helped the jury understand the organizational structure and the operations of the drug conspiracy in which Mendivil was involved.

“[V]iewing the evidence in the light most favorable to the prosecution,” the evidence was “adequate to allow *any* rational trier of fact [to find]” that Mendivil joined a single conspiracy to distribute or to possess with intent to distribute heroin and more than 50 grams of methamphetamine “beyond a reasonable doubt.”

United States v. Nevils, 598 F.3d 1158, 1164 (9th Cir. 2010) (en banc) (internal quotation marks omitted) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

Finally, the district court did not rely upon clearly erroneous facts to support Mendivil’s sentence of 240 months imprisonment. *United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008). The evidence supported the government’s claim that Mendivil was higher up in the hierarchy of the gang. Nor was Mendivil’s sentence substantively unreasonable. The district court granted him a substantial downward departure from his Sentencing Guidelines range of 360 months to life. *United States v. Treadwell*, 593 F.3d 990, 1015 (9th Cir. 2010) (“Although we do not automatically presume reasonableness for a within-Guidelines sentence, ‘in the overwhelming majority of cases, a Guidelines sentence will fall comfortably within the broad range of sentences that would be reasonable in the particular

circumstances.” (quoting *Carty*, 520 F.3d at 994)).

AFFIRMED.

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Defendant-Appellant.

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D.C. No.
5:14-cr-00107-VAP-3
Central District of California,
Riverside

ORDER

Before: GOULD and NGUYEN, Circuit Judges, and MARBLEY,* District Judge.

The panel has voted to deny Appellant's petition for panel rehearing.

Appellant's petition for panel rehearing is DENIED.

* The Honorable Algenon L. Marbley, United States District Judge for the Southern District of Ohio, sitting by designation.