

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

RODOLFO CANTU, JR., also known as Lil Rudy
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI- APPENDIX

SANDRA A. EASTWOOD
Attorney at Law
CJA Panel

By: /s/Sandra Eastwood
3636 S. Alameda Street
Suite B197
Corpus Christi, Texas 78411
Email: sandraeastwoodlaw@yahoo.com
Telephone: (361) 688-4900
Fax: (361) 271-1310
Texas State Bar No. 00789274
Attorney for Petitioner

APPENDIX A- United States Court of Appeals, Fifth Circuit- Memorandum
Opinion (April 23, 2019)

Clerk, U.S. District Court
Southern District of Texas
FILED

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MAY 15 2019

David J. Bradley, Clerk of Court

United States Court of Appeals
Fifth Circuit

FILED

April 23, 2019

Lyle W. Cayce
Clerk

No. 18-40607
Summary Calendar

D.C. Docket No. 2:17-CR-644-1

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

RODOLFO CANTU, JR., also known as Lil Rudy,

Defendant - Appellant

Appeal from the United States District Court for the
Southern District of Texas

Before BENAVIDES, HAYNES, and WILLETT, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the judgment of the District Court is affirmed.



Certified as a true copy and issued
as the mandate on May 15, 2019

Attest: *Lyle W. Cayce*
Clerk, U.S. Court of Appeals, Fifth Circuit

765 Fed.Appx. 111 (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. 5th Cir. Rules 28.7 and 47.5. United States Court of Appeals, Fifth Circuit.

UNITED STATES of America, Plaintiff-Appellee

v.

Rodolfo CANTU, Jr., also known as Lil Rudy, Defendant-Appellant

No. 18-40607

Summary Calendar

Filed April 23, 2019

Appeal from the United States District Court for the Southern District of Texas, USDC No. 2:17-CR-644-1

Attorneys and Law Firms

Carmen Castillo Mitchell, Anna Elizabeth Kalluri, Assistant U.S. Attorneys, U.S. Attorney's Office, Southern District of Texas, Houston, TX, for Plaintiff-Appellee

Sandra Eastwood, Law Office of Sandra Eastwood, Corpus Christi, TX, for Defendant - Appellant

Before BENAVIDES, HAYNES, and WILLETT, Circuit Judges.

Opinion

PER CURIAM: *

Rodolfo Cantu, Jr., appeals the sentence imposed after he pleaded guilty to possession with intent to distribute 22.02 grams of methamphetamine. He challenges the two-level enhancement under U.S.S.G. § 2D1.1(b)(2) for making a credible threat to use violence, which disqualified him from being eligible for the safety valve reduction. Cantu argues that the district court erred by enhancing his base offense level pursuant to § 2D1.1(b)(2) because the facts in the presentence

report (PSR) were vague and did not support a finding of a credible threat of violence.

We review for clear error the district court's factual finding that Cantu made a credible threat to use violence. See *United States v. Cisneros-Gutierrez*, 517 F.3d 751, 764 (5th Cir. 2008). "A factual finding is not clearly erroneous as long as it is plausible in light of the record as a whole." *United States v. Betancourt*, 422 F.3d 240, 246 (5th Cir. 2005) (internal quotation marks and citation omitted). We also review for clear error the district court's reasonable inferences from the facts. See *United States v. Caldwell*, 448 F.3d 287, 290 (5th Cir. 2006). The sentencing court was allowed to rely on the facts recounted in the presentence report (PSR) unless Cantu demonstrated by competent rebuttal evidence that the information is "materially untrue, inaccurate or unreliable." *United States v. Harris*, 702 F.3d 226, 230 (5th Cir. 2012) (internal quotation marks and citation omitted).

As stated in the PSR, Cantu, a member of the Texas Mexican Mafia (TMM), told two arresting officers that he and the other members of the TMM knew personal information about them. He also told one officer that he should conceal his face while executing warrants and questioned why the officer continued to work in law enforcement given what the TMM knew about him. Cantu made no attempt to demonstrate by competent rebuttal evidence that the information was materially untrue. See *id.* at 230. Based on the evidence, the district court reasonably inferred that Cantu's statements to the police officers constituted a credible threat to use violence. See *Caldwell*, 448 F.3d at 290. Accordingly, the district court's finding that Cantu made a credible threat to use violence *112 was "plausible in light of the record as a whole." *Betancourt*, 422 F.3d at 246 (internal quotation marks and citations omitted). Because a defendant qualifies for the safety valve if he, among other things, did not use credible threats of violence, the district court did not clearly err in determining that Cantu failed to qualify for a safety valve adjustment. See 18 U.S.C. § 3553(f); U.S.S.G. § 5C1.2; *Cisneros-Gutierrez*, 517 F.3d at 764. Accordingly, the judgment of the district court is AFFIRMED.

All Citations

765 Fed.Appx. 111 (Mem)

Footnotes

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- * Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

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