

October 6, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-50140
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RUBEN M. AVILA,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-02-CR-413-ALL-OG
USDC No. SA-02-M-35-ALL

Before BARKSDALE, EMILO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM:*

Rubin M. Avila appeals his conviction under 18 U.S.C. § 111 for simple assault, following a jury trial. Avila argues that the evidence was not sufficient to support his conviction because it did not show that he forcibly assaulted James Palermo, a member of the Security Forces, or that he intended to place him in reasonable apprehension of immediate harm.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

Title 18 U.S.C. § 111 punishes anyone who "forcibly assaults, resists, opposes, impedes, intimidates, or interferes with a [federal officer] while engaged in or on account of the performance of official duties." See United States v. Moore, 958 F.2d 646, 649 (5th Cir. 1992). Given the testimony at trial that Avila swung his right arm towards the security officer who had placed his fingers on the back of Avila's arm because Palermo had insulted him, a reasonable trier of fact could have found that the evidence established guilt beyond a reasonable doubt. United States v. Jaramillo, 42 F.3d 920, 923 (5th Cir. 1995).

AFFIRMED.