

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 94-60670
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

RAFAEL SANDOVAL MENDOZA,

Defendant-Appellant.

Appeal from the United States District Court
For the Southern District of Texas
(94-CR-32-1)

(July 27, 1995)

Before THORNBERRY, HIGGINBOTHAM, AND BARKSDALE, Circuit Judges.

PER CURIAM:*

Appellant, Rafael Sandoval Mendoza, appeals his convictions for possession with intent to distribute marijuana and conspiracy to possess with intent to distribute marijuana. We affirm.

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

I. FACTS

This prosecution arose from the arrest of Roberto Reynosa, Rosa Reynoso, and Sandra Gonzales, occupants of a white Ford station wagon, at a United States Border Patrol checkpoint in Sarita, Texas. After an officer received consent from Roberto to search the vehicle, ninety-eight kilograms of marijuana were found in the headliner of the station wagon. Mendoza was eventually implicated as a participant in a marijuana smuggling venture. Rosa, Roberto and Sandra entered guilty pleas and testified as government witnesses at Mendoza's trial. Mendoza was convicted of the two above-referenced offenses, and was assessed concurrent ninety-seven month sentences followed by four years of supervised release, a fine of \$1,400, and an assessment of \$100. On appeal he brings two challenges to his convictions.

II. MENDOZA'S CONTENTIONS

During its deliberations, the jury sent out a note requesting to "read or re-hear the testimony by Rosa or Robert or Sandra which indicates when Mr. Mendoza was first identified positively by them? Did she testify as to his identity at the checkpoint in Sarita when they were first apprehended?" The court explained to jurors that the requested information involved a question of fact which the court could not properly answer. In addition, the request was not to hear the testimony of a particular witness, and for the judge to respond to the question would be an improper comment on the evidence.

Jurors later sent out another note asking to rehear the testimony of Internal Revenue Service agent William Cotter, who had interrogated Rosa, Roberto, and Sandra after the three had been arrested. The district court allowed Cotter's testimony to be replayed for the jury, finding no reason to deny this request.

Mendoza contends that the district court should have granted the request to rehear the testimony regarding when the witnesses first identified him. He also complains it was error to allow the rehearing of Cotter's entire testimony, especially in view of the fact that no cautionary instruction was given.¹

III. ANALYSIS

The district court enjoys wide discretion when responding to jury inquiries. United States v. Stevens, 38 F.3d 167, 170 (5th Cir. 1995). In addition, the district judge has broad discretion in responding to a jury's request to reread testimony. United States v. Sandoval, 847 F.2d 179, 186 (5th Cir. 1988). We must thus determine whether the district court abused its discretion.

We find no error in the district court's refusal to answer the inquiry regarding when Mendoza was identified by the three witnesses. This was not a request for a specific witness' testimony, and would have required the district court to review the record and extract those portions the court believed relevant to the jury's inquiry. The district court's concern that it was being

¹ Mendoza made no objection regarding either of these contentions, and did not request a cautionary instruction.

asked to act as a factfinder was legitimate. Compare United States v. Martinez-Moncivais, 14 F.3d 1030, 1037 (5th Cir.), cert. denied, _____ U.S. _____, 115 S.Ct. 72, 130 L.Ed.2d 27 (1994) (court was responding to narrow, factual request, and was not endorsing testimony as correct).

In contrast, the request for Cotter's testimony was specific. The jury asked to rehear the entire testimony, which included the cross-examination. Because the district court allowed the tape of Cotter's entire testimony to be replayed, there was little danger that the jury might have taken that testimony out of context. See Sandoval, 847 F.2d at 186. The district court did not abuse its discretion in allowing the jury to rehear Cotter's testimony.

IV. CONCLUSION

The district court did not err in refusing to respond to the jury's note regarding Rosa's identification of Mendoza, and did not err in allowing the jury to rehear Cotter's testimony. Therefore, the judgment of conviction is

AFFIRMED.