

FILED
United States Court of Appeals
Tenth Circuit

FEB 23 1990

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

ROBERT L. HOECKER
Clerk

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
ANTONIO ROMAN-VASQUEZ,
Defendant-Appellant.

No. 88-1452
(D.C. No. 87-424-1)
(D. N.M.)

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
ALBERDIN HERNANDEZ-AVITA,
Defendant-Appellant.

No. 88-1453
(D.C. No. 87-424-2)
(D. N.M.)

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
ALONZO HINOJOS-JACQUEZ,
Defendant-Appellant.

No. 88-1454
(D.C. No. 87-424-3)
(D. N.M.)

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
RUDOLFO HINOJOS-NAJARA,
Defendant-Appellant.

No. 88-1455
(D.C. No. 87-424-4)
(D. N.M.)

ORDER AND JUDGMENT*

Before TACHA, BALDOCK, and BRORBY, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of these appeals. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. These cases are therefore ordered submitted without oral argument.

Defendants, Antonio Roman-Vasquez (Vasquez), Rudolfo Hinojos-Najara (Najara), Alberdin Hernandez-Avita (Hernandez), and Alonzo Hinojos-Jacquez (Jacquez), were each convicted by a jury of one count of conspiracy to possess cocaine with intent to distribute in violation of 21 U.S.C. § 846 and one count of possession with intent to distribute more than 500 grams of cocaine in violation of 21 U.S.C. § 841(a)(1). On appeal, (1) Vasquez and Hernandez challenge the district court's denial of their motion for judgment of acquittal pursuant to Fed. R. Crim P. 29(a), (2) Najara challenges the sufficiency of the evidence underlying his convictions, (3) Jacquez challenges the admission of a government exhibit and the refusal to give an addit instruction, and (4) all

* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

defendants challenge the district court's instruction on the doctrine of "deliberate avoidance."

We have carefully reviewed the parties' appellate briefs and the record on appeal. We find no error in the denial of the motion for judgment of acquittal or the refusal to give the addit instruction. Further the evidence is sufficient to support Najara's convictions. Finally, any error in the admission of the government's exhibit 7(a) or the giving of the deliberate avoidance instruction was, at most, harmless.

Accordingly, the judgments of the United States District Court for the District of New Mexico are AFFIRMED.

ENTERED FOR THE COURT
PER CURIAM