

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 18 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EDUARDO ARAZA,

Defendant - Appellant.

No. 06-50563

D.C. No. CR-05-02142-DMS

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Dana M. Sabraw, District Judge, Presiding

Argued and Submitted November 7, 2007
Pasadena, California

Before: FARRIS and PAEZ, Circuit Judges, and BLOCK,** District Judge.

Eduardo Araza appeals from his jury-trial conviction for importation of marijuana, in violation of 21 U.S.C. §§ 952 and 960, and possession of marijuana

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The Honorable Frederic Block, Senior United States District Judge for the Eastern District of New York, sitting by designation.

with intent to distribute, in violation of 21 U.S.C. § 841(a)(1). He also appeals from the 42-month sentence imposed following his conviction. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm Araza's conviction.

Araza seeks reversal of his conviction on the grounds that the district court erroneously denied his motion to suppress his confession and allowed the prosecutor to violate Federal Rule of Evidence 404(a) in rebuttal argument.

We review de novo the voluntariness of a confession. *United States v. Gamez*, 301 F.3d 1138, 1144 (9th Cir. 2002). The record fails to support Araza's position that the agents coerced him into involuntarily confessing through their treatment of his fifteen-year old son. The district court found no evidence that Araza's son was treated inappropriately. The court also found that Araza inculpated himself before discussing his son with the agents. *Cf. United States v. Tingle*, 658 F.2d 1332, 1336 (9th Cir. 1981). Araza fails to identify coercive law enforcement activity. His confession was not involuntary. *Colorado v. Connelly*, 479 U.S. 157, 167 (1986).

We review for abuse of discretion the district court's decision to admit evidence over Rule 404(a) objections. *United States v. Martinez*, 182 F.3d 1107, 1110 (9th Cir. 1999). The prosecutor's reference to Araza's business practices in rebuttal argument did not violate Rule 404(a). Prosecutors may draw reasonable

inferences from the evidence in closing argument. *United States v. Henderson*, 241 F.3d 638, 652 (9th Cir. 2000).

Araza also contends that the district court erred by denying a minor role adjustment pursuant to U.S.S.G. § 3B1.2(b) because he was a garden-variety drug courier. The district court found that Araza's activity in furtherance of the crimes rendered him more than a mere courier. *See United States v. Davis*, 36 F.3d 1424, 1436-37 (9th Cir. 1994). That finding has record support. The district court did not err by denying a minor role adjustment. *See United States v. Cantrell*, 433 F.3d 1269, 1283-84 (9th Cir. 2006).

Araza also challenges the reasonableness of his 42-month sentence. We vacate submission of this issue pending the en banc decision in *United States v. Zavala*, 443 F.3d 1165 (9th Cir. 2006), and *United States v. Carty*, 453 F.3d 1214 (9th Cir. 2006), *consolidated reh'g en banc granted*, 462 F.3d 1066. The panel will file a supplemental memorandum after these opinions have been filed; the memorandum will also address the effect, if any, of the Supreme Court's recent decision in *Gall v. United States*, — U.S. —, 2007 WL 4292116 (Dec. 10, 2007).

Conviction **AFFIRMED**. The mandate shall be stayed pending further order of the court.