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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. MECHERYL MARIA BEGAY, Defendant - Appellant.	No. 07-10591 D.C. No. CR-06-00453-FJM MEMORANDUM[*]

Appeal from the United States District Court
for the District of Arizona
Frederick J. Martone, District Judge, Presiding

Submitted April 13, 2009[**]
San Francisco, California

Before: T.G. NELSON, KLEINFELD and M. SMITH, Circuit Judges.

Mecheryl Maria Begay appeals her conviction and sentence for making false statements to the FBI and a grand jury. We affirm.

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

[**] The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Because Begay did not review her Rule 29 motion at the close of all the evidence, we review for plain error. United States v. Cruz, 554 F.3d 840, 844-45 (9th Cir. 2009). There was none. A reasonable jury could have credited Agent Jones's testimony that whether she had attended the party was "very crucial" to the FBI and material to the grand jury.

The district court did not abuse its discretion in prohibiting testimony about the potential penalty for perjury. United States v. Dadanian, 818 F.2d 1443, 1449 (9th Cir. 1987).

The district court did not plainly err in sentencing Begay. United States v. Hilgers, No. 08-30078, slip. op. at 3212, 2009 WL 606220, *2 (9th Cir. Mar. 11, 2009) (citing United States v. Knows His Gun, 438 F.3d 913, 918 (9th Cir. 2006)). It first determined that "the pre-departure advisory guideline range remains offense level 30, criminal history category 1." After setting this initial benchmark, see United States v. Carty, 520 F.3d 984, 991 (9th Cir. 2008) (en banc), the district court decided to vary from the Guidelines range. Such a variance is permissible. See Kimbrough v. United States, 128 S. Ct. 558, 570 (2007).

AFFIRMED.