

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	4:02CR3205
)	
Plaintiff,)	
vs.)	MEMORANDUM
)	
JOSE ELISEO ZAVALA RIVAS,)	
)	
Defendant.)	

The defendant, Jose Eliseo Zavala Rivas, has been tried and acquitted of possession of a controlled substance with intent to deliver, in violation of 21 U.S.C. § 841(a)(1). Immediately before trial his counsel made an oral motion in limine to exclude evidence regarding a small picture that was seized from a loaned vehicle the defendant was driving prior to his arrest.

The small picture, which was affixed to a phone card depicting the Virgin of Guadalupe, was believed by the government to be a representation of “The Narco Saint,” Jesus Malverde. After conducting a hearing outside the presence of the jury, pursuant to Fed. Rule of Evid. 104(a), I ruled that the exhibit would be received in evidence, and also that expert testimony would be permitted to establish that drug traffickers operating out of Sinaloa, Mexico, where Mr. Zavala Rivas comes from, frequently carry medallions or other objects bearing the likeness of Jesus Malverde.

The question of admissibility of such evidence has not been the subject of any reported decisions,¹ but it is likely to arise again in other cases. I therefore write this memorandum to summarize my ruling.

¹ In an unreported decision, however, the California Court of Appeals upheld the admission of such expert testimony. See People v. Islas, No. F040734, 2003 WL 21465341, at *4-6 (Cal.App., 5th Dist., June 23, 2003).

Mr. Zavala Rivas and his former co-defendant, Guadalupe Sanchez Labrada, who also resides in Sinaloa, Mexico, were stopped by a Nebraska state patrolman for a traffic violation on Interstate 80 on October 28, 2002. The patrolman was given consent to search their vehicle, and he promptly found five pounds of amphetamine concealed in a door panel. The defendants were placed under arrest and the vehicle was impounded. Found sitting on the center console of the vehicle, within the plain view of both the driver (Mr. Zavala Rivas) and the passenger (Ms. Sanchez Labrada), was this phone card with the small picture attached:



At the Rule 104(a) hearing the government called as a witness Investigator Steven R. Kolb of the Nebraska State Patrol. Investigator Kolb testified that he has been involved in narcotics investigation for thirteen years and is currently assigned to the Tri-City State-Federal Task Force, conducting investigations out of Grand Island, Nebraska. In 1997, when he was first assigned to the Grand Island area, he noticed that several persons arrested there for methamphetamine trafficking wore medallions that depicted an Hispanic male. By asking around and doing some research, he found out that the personage shown on the medallions was Jesus Malverde, who is considered to be the patron saint of drug traffickers from Sinaloa, Mexico.

Investigator Kolb has spoken to other state patrol investigators regarding the medallions, and has read a number of articles on the internet about Jesus Malverde. Two such articles were received in evidence for purposes of the hearing,² along with some of the medallions that were seized in other drug cases in the Grand Island area. Investigator Kolb expressed the opinion that the Hispanic male shown in profile in the small picture in this case is Jesus Malverde. On cross-examination, Inspector Kolb admitted that while Malverde is not recognized as a saint by the Catholic Church, Malverde is regarded as a sort of “Robin Hood” and venerated by many people in Sinaloa, Mexico, who are not drug traffickers.

I concluded that sufficient foundation was laid to permit Investigator Kolb to identify the small picture and to explain its possible significance. I also determined that the relevance of such evidence was not substantially outweighed by the danger of unfair prejudice. At the same time, however, I instructed the government to inform the jury through Investigator Kolb’s testimony that while Jesus Malverde is not recognized as a saint by the Catholic Church, he is venerated by many people in Sinaloa, Mexico who are not drug traffickers.

DATED: October 21, 2003.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge

² Those articles’ web addresses are:

http://www.sp.utexas.edu/~jnicolopulos/cwp3/ncg/jesus_malverde.htm

<http://www.mit.edu/people/aaelenes/sinaloa/narco/malverde/malverde4.html>