

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

April 14, 2011

Lyle W. Cayce
Clerk

No. 10-20476
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ABEDNEGO ESPINOSA,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:09-CR-631-2

Before DAVIS, SMITH, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Abednego Espinosa pleaded guilty to conspiracy to commit hostage taking. The district court sentenced him to 210 months of imprisonment and five years of supervised release. The district court also ordered that Espinosa pay, jointly and severably with his codefendants, \$9,000 in restitution. Espinosa appeals, arguing that the district court erred when it applied a six-level guidelines enhancement based on its finding that a ransom demand was made and a two-

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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level guidelines enhancement based on its finding that firearms were used during the offense.

The district court did not clearly err in finding that the demanding of a ransom was the purpose of the offense and was a reasonably foreseeable act of one of Espinosa's coconspirators in furtherance of the conspiracy, because these findings are plausible in light of the record as a whole. *See* U.S.S.G. § 1B1.3(a)(1)(B); *United States v. Solis*, 299 F.3d 420, 461-62 (5th Cir. 2002). The district court also did not clearly err in finding that Espinosa's coconspirators pointed pistols at the victims or err in determining that such conduct qualified as "otherwise us[ing]" firearms during the offense conduct. U.S.S.G. § 2A4.1(b)(3), § 2A4.1, comment. (n.2); *United States v. Dunigan*, 555 F.3d 501, 504-06 (5th Cir. 2009). Further, the district court did not clearly err in finding that the use of firearms was reasonably foreseeable to Espinosa, as Espinosa viewed his coconspirators in possession of the pistols at the time of the offense. *See Solis*, 299 F.3d at 462.

AFFIRMED.