

APPENDIX B:

UNPUBLISHED MEMORANDUM FILED SEPTEMBER 18, 2018

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 18 2018

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JAVIER PORTILLO,

Defendant-Appellant.

No. 17-50142

D.C. No. 3:16-cr-00858-W

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Thomas J. Whelan, District Judge, Presiding

Submitted September 12, 2018**

Before: LEAVY, HAWKINS, and TALLMAN, Circuit Judges.

Javier Portillo appeals from the district court's judgment and challenges his jury-trial conviction for importation of cocaine, in violation of 21 U.S.C. §§ 952 and 960. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Portillo contends that there was insufficient evidence for the jury to conclude

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

that Portillo knew about the cocaine hidden in his vehicle when he crossed the border. We review de novo, asking whether, viewing the evidence in the light most favorable to the government, “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *United States v. Diaz-Cardenas*, 351 F.3d 404, 407 (9th Cir. 2003). The government presented evidence that Portillo was the owner, driver, and sole occupant of a vehicle containing almost 50 pounds of cocaine in an elaborate non-factory compartment. Viewing this evidence in the light most favorable to the government, a rational trier of fact could have found beyond a reasonable doubt that Portillo had knowledge of the cocaine hidden in his vehicle. *See id.* (“A jury can infer knowledge when an individual is the driver and sole occupant of the vehicle. A jury can also infer knowledge from possession of a large quantity of drugs.” (citation omitted)).

AFFIRMED.