

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 23 2009

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ROBERTO MIRANDA-LOPEZ,

Defendant - Appellant.

No. 08-50499

D.C. No. 3:-06-cr-00706-L-1

MEMORANDUM*

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

Submitted June 16, 2009**
San Francisco, California

Before: SILVERMAN, BERZON and BYBEE, Circuit Judges.

Roberto Miranda-Lopez appeals the district court's denial of his motion for judgment of acquittal on remand following our decision in *United States v. Miranda-Lopez*, 532 F.3d 1034 (9th Cir. 2008). We review the sufficiency of the

* 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).

evidence de novo, *United States v. Esquivel-Ortega*, 484 F.3d 1221, 1224 (9th Cir. 2007), and we affirm.

The district court did not err in concluding that the evidence was sufficient to support a jury finding that Miranda-Lopez knew the identification card he used belonged to another person. The card, stipulated to be genuine, contained a photograph and fingerprint of another individual, there was no evidence that the card looked doctored or fake, and a Customs and Border Protection Officer testified that the card looked genuine. As the district court held, a rational jury could reasonably conclude from this evidence that Miranda-Lopez knew the identification card he used to enter the United States belonged to a real person other than himself. In particular, the jury could have relied on the inference that there would have been little point in using a counterfeit identification not in Miranda-Lopez's name. *Compare Flores-Figueroa v. United States*, 129 S. Ct. 1886 (2009) (adopting the same construction of the statute adopted in our prior opinion, in a case in which the identification used was counterfeit and in the defendant's real name, but used numbers assigned to other persons). The evidence was therefore sufficient to support the conviction under 18 U.S.C. § 1028A(a)(1).

AFFIRMED.