

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 18 2009

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JORGE HERNANDEZ,

Defendant - Appellant.

No. 08-50514

D.C. No. 3:07-cr-02953-IEG-1

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Irma E. Gonzalez, Chief District Judge, Presiding

Submitted November 4, 2009**
Pasadena, California

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

Jorge Hernandez appeals his conviction under 8 U.S.C. § 1326. This court has jurisdiction under 28 U.S.C. § 1291. We affirm.

* 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).

Here, the indictment alleged the elements of the offense and provided sufficient detail to give Hernandez notice of the crime alleged. *See United States v. Alber*, 56 F.3d 1106, 1111 (9th Cir. 1995). Hernandez's claim that the indictment did not protect against double jeopardy is waived because he failed to argue this issue beyond a cursory assertion. *See Fed. R. App. P. 28(a)(9); Ghahremani v. Gonzales*, 498 F.3d 993, 997 (9th Cir. 2007)

The district court neither misapplied the correct burden of proof nor attempted to shift the burden of proof; the district court's statements reflect its effort to analyze the record and weigh the evidence. *See United States v. Brobst*, 558 F.3d 982, 998 (9th Cir. 2009) (burden shifting); *United States v. Banuelos*, 322 F.3d 700, 704 (9th Cir. 2003) (standard of proof).

Lastly, the cumulative error doctrine is inapplicable because we have found no error in the asserted issues. *See United States v. Berry*, 627 F.2d 193, 201 (9th Cir. 1980).

We have considered and reject all other arguments Hernandez raises on appeal.

AFFIRMED.