

DEC 21 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RODNEY AUDIE BELVADO,

Defendant - Appellant.

No. 08-10567

D.C. No. 2:05-CR-00014-EHC-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Earl H. Carroll, District Judge, Presiding

Argued and Submitted December 14, 2009
San Francisco, California

Before: W. FLETCHER, CLIFTON and IKUTA, Circuit Judges.

This is Belvado's second appeal of his conviction for first degree murder. On the first appeal, this court remanded for consideration of whether Belvado's pre-confession waiver of *Miranda* rights was knowing and intelligent. "For inculpatory statements made by a defendant during custodial interrogation to be

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

admissible in evidence, the defendant's 'waiver of Miranda rights must be voluntary, knowing, and intelligent.' ” *United States v. Garibay*, 143 F.3d 534, 536 (9th Cir. 1998) (quoting *United States v. Binder*, 769 F.2d 595, 599 (9th Cir. 1985)).

Upon remand, the district court found that Belvado’s waiver was knowing and intelligent. We review that determination for clear error. *Garibay*, 143 F.3d at 536 (citing *United States v. Cazares*, 121 F.3d 1241, 1243 (9th Cir. 1997)). Under the totality of the circumstances here and the case law of this circuit, the district court’s conclusion was not clear error.

AFFIRMED.