

FEB 18 2010

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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NOT FOR PUBLICATION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.

DARWIN LEONES,

Defendant - Appellant.

No. 09-10218

D.C. No. 1:08-CR-00495-HG-2

MEMORANDUM*

Appeal from the United States District Court
for the District of Hawaii
Helen Gillmor, Senior District Judge, Presiding

Submitted February 9, 2010**
Honolulu, Hawaii

Before: FARRIS, D.W. NELSON and BEA, Circuit Judges.

Darwin Leones appeals his jury conviction for aiding in the use of a firearm in relation to a drug trafficking offense, a violation of 18 U.S.C. § 924(c)(1), on the

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

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

ground there was insufficient evidence to support that such a drug trafficking offense occurred.

Leones raised the insufficiency of evidence issue for the first time in his reply brief. This court “will not ordinarily consider matters on appeal that are not specifically and distinctly argued in appellant’s opening brief.” *Miller v. Fairchild Indus., Inc.*, 797 F.2d 727, 738 (9th Cir. 1986); *see also* FED. R. APP. P. 28(a)(5).

Assuming, *arguendo*, that the issue is not waived, Leones’ argument is meritless. “The standard of review for determining the sufficiency of the evidence ‘is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *United States v. Inzunza*, 580 F.3d 894, 899 (9th Cir. 2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)) (emphasis in *Jackson*). The record is replete with evidence that Leones and his colleagues acquired, possessed and distributed more than enough methamphetamine to establish the factual predicate required for Mr. Leones’ conviction. The parties do not dispute that Leones used a gun in furtherance of this conduct.

AFFIRMED.