

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

FEB 14 2013

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FRANCISCO ALEJANDRO CARRILLO,

Defendant - Appellant.

No. 11-50538

D.C. No. 3:10-cr-04786-JAH-1

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
John A. Houston, District Judge, Presiding

Submitted February 12, 2013**
Pasadena, California

Before: GOODWIN, KLEINFELD, and SILVERMAN, Circuit Judges.

Francisco Carrillo appeals his conviction for importing 59.6 kilograms of marijuana in violation of 21 U.S.C. §§ 952 and 960. 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 concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Carrillo argues that the district court violated his Sixth Amendment right to a public trial by excluding his sister, Monica Lopez, and baby nephew from trial after she testified for the defense. However, a defendant can forfeit a Sixth Amendment claim by not promptly objecting or requesting that the individuals be allowed to stay. *United States v. Rivera*, 682 F.3d 1223, 1232-34 (9th Cir. 2012). Carrillo raised no objection when the district judge excluded Lopez and the infant from the courtroom. Carrillo forfeited his claim by not promptly objecting or asking that Lopez and her baby be allowed to stay. By the time, later in the day, that Carrillo objected to the exclusion order, an order the district court modified in response to the objection, Lopez had already left.

Carrillo also claims that the district court abused its discretion by allowing a mechanic to testify as an expert about the effect of the drug-filled containers hidden in the tires on the truck's performance. This claim fails because although foundation for the mechanic's opinions was arguable, foundation was not so lacking as to make admission of the testimony an abuse of discretion. He had 36 years of experience as a mechanic, mounting and balancing tires and diagnosing and repairing tire and balance problems with cars and Dodge Ram trucks. Furthermore, the witness had personally inspected Carrillo's truck and the drug containers. The district court did not abuse its discretion in ruling that Carrillo's

objections went to the weight of the testimony, not its admissibility. *See United States v. Garcia*, 7 F.3d 885, 889-90 (9th Cir. 1993).

AFFIRMED.