

JAN 09 2014

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAVID FRANCISCO LAZO-ROMERO,

Defendant - Appellant.

No. 12-50466

D.C. No. 3:10-cr-01366-MMA-1

MEMORANDUM*

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

Submitted August 30, 2013**
Pasadena, California

Before: O'SCANNLAIN and BEA, Circuit Judges, and NAVARRO, District
Judge.***

* 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).

*** The Honorable Gloria M. Navarro, District Judge for the U.S. District
Court for the District of Nevada, sitting by designation.

Defendant-Appellant David Francisco Lazo-Romero appeals his conviction of illegal reentry in violation of 8 U.S.C. § 1326. We affirm. Even if the delay in Lazo-Romero's presentment to the magistrate was unreasonable or unnecessary under the circumstances of the case, *see Corley v. United States*, 556 U.S. 303 (2009); *United States v. Garcia-Hernandez*, 569 F.3d 1100 (9th Cir. 2009), any error was harmless. It is less probable than not that such error materially affected the verdict. *United States v. Seschillie*, 310 F.3d 1208, 1214 (9th Cir. 2002).

Even without Lazo-Romero's post-*Miranda*, pre-arraignment confession, an abundance of evidence supported the verdict that Lazo-Romero knowingly and illegally re-entered the United States. Border Patrol agents discovered Lazo-Romero three miles north of the border, in a desolate area in rough terrain, at night, carrying a backpack, and moving north. He attempted to avoid detection by hiding in brush. Immediately after being discovered, he admitted to being a national of El Salvador without permission to enter or remain legally in the United States. He had a lengthy immigration history, which included previous deportation. The government has met its burden to show a "fair assurance of harmlessness," and that any error was harmless. *Seschillie*, 310 F.3d at 1214 (internal quotation marks omitted).

AFFIRMED.