

FILED

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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NOT FOR PUBLICATION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.

RICARDO MORENO-HERNANDEZ,
AKA Ricardo Moreno Hernandez,

Defendant-Appellant.

No. 17-10119

D.C. No.

4:16-cr-00165-JGZ-LAB-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Jennifer G. Zips, District Judge, Presiding

Submitted February 7, 2018**
San Francisco, California

Before: THOMAS, Chief Judge, and TASHIMA and CHRISTEN, Circuit Judges.

Ricardo Moreno-Hernandez appeals his jury conviction for violating
8 U.S.C. § 1326. We have jurisdiction over this appeal, 28 U.S.C. § 1291, and
affirm.

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

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

The district court did not abuse its discretion in denying Moreno-Hernandez's motion for a new trial on the grounds of his excluded prior consistent hearsay statement to Immigration & Customs Enforcement officials in September 2015 that he was born in Santa Monica, California. The district court correctly identified Federal Rule of Evidence 801(d)(1)(B) and the four-element test from *United States v. Collicott*, 92 F.3d 973, 979 (9th Cir.), *as amended* (Oct. 21, 1996), that guide the admission of prior consistent hearsay statements. The district court's application of this Rule to Moreno-Hernandez's prior consistent hearsay statement is not implausible or illogical. *United States v. Hinkson*, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc).

The prosecution's inadvertent misstatement does not rise to the level of prosecutorial misconduct, and does not constitute plain error. *See, e.g., United States v. Lloyd*, 807 F.3d 1128, 1168 (9th Cir. 2015) ("A prosecutor's inadvertent mistakes or misstatements are not misconduct.").

For these reasons, Moreno-Hernandez is not entitled to a new trial.

AFFIRMED.