

FILED

SEP 12 2024

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NOT FOR PUBLICATION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.

ROBERTO RIOS-BAUTISTA,

Defendant-Appellant.

No. 23-1507

D.C. No.

3:19-cr-02883-BLM-BTM-1

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
Barry Ted Moskowitz, District Judge, Presiding

Submitted September 10, 2024\*\*  
Pasadena, California

Before: IKUTA and FRIEDLAND, Circuit Judges, and HSU,\*\*\* District Judge.

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\* 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 Honorable Wesley L. Hsu, United States District Judge for the Central District of California, sitting by designation.

Roberto Rios-Bautista appeals his conviction for misdemeanor attempted illegal entry by an alien in violation of 8 U.S.C. § 1325(a)(1). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

We need not decide whether the magistrate judge erred in admitting evidence of Rios-Bautista's prior apprehension and removal, because even if there were an error, it would be harmless. As the magistrate judge concluded, "there was overwhelming evidence against the defendant." A border patrol agent testified that he located Rios-Bautista in a sparsely populated area approximately 20 miles away from the closest port of entry, and approximately one mile away from a gap in the 20-foot tall fence that runs across the U.S.-Mexico border. Rios-Bautista admitted that he was not a U.S. citizen and that he had illegally crossed the border. Therefore, in light of the circumstances of Rios-Bautista's July 3 arrest, "it is more probable than not that the erroneous admission of the [other act] evidence did not affect" the verdict. *United States v. Hill*, 953 F.2d 452, 458 (9th Cir. 1991).

**AFFIRMED.**