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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. JORGE ARMANDO FUENTES-PACHECO, Defendant - Appellant.	No. 24-4993 D.C. No. 4:22-cr-02701-JGZ-MAA-1 MEMORANDUM*

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. JORGE ARMANDO FUENTES-PACHECO, Defendant - Appellant.	No. 24-4996 D.C. No. 4:07-cr-02049-JGZ-MAA-1

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

Argued and Submitted March 19, 2026
Tucson, Arizona

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

Before: HAWKINS, HURWITZ, and DESAI, Circuit Judges.

Jorge Armando Fuentes-Pacheco appeals his jury convictions for importing and possessing large amounts of cocaine and fentanyl with intent to distribute. He also challenges the sentences imposed for these convictions and for violation of his supervised release. We affirm.

1. Fuentes-Pacheco first challenges the admission of testimony about a statement he made to a Customs and Border Protection Agent before being given a *Miranda* warning. Fuentes-Pacheco told the agent he "had" the vehicle in which the drugs were seized in a secondary inspection at the U.S.-Mexico border for "approximately two weeks," and was "in the process of purchasing" it.

Even assuming a *Miranda* violation, any error in admitting the statement was harmless. The evidence of Fuentes-Pacheco's guilt was overwhelming. Fuentes-Pacheco was the driver and sole occupant of a vehicle in which a large quantity of drugs were found, *see United States v. Diaz-Cardenas*, 351 F.3d 404, 407 (9th Cir. 2003), and was visibly nervous at primary inspection, *see United States v. Barbosa*, 906 F.2d 1366, 1368 (9th Cir. 1990). *See United States v. Butler*, 249 F.3d 1094, 1101 (9th Cir. 2001). The absence of formal ownership of the vehicle was irrelevant, and there was evidence that Fuentes-Pacheco had driven the same vehicle across the border two weeks prior.

2. Fuentes-Pacheco claims that the introduction of images depicting missed calls on his cellphone screen violated *Miranda* because he consented to the search of his cellphone after invoking his right to counsel. However, the images were taken by a Customs and Border Patrol agent before Fuentes-Pacheco invoked his right to counsel, and in any event, "[a] consent to a search is not the type of incriminating statement toward which the fifth amendment is directed." *United States v. Lemon*, 550 F.2d 467, 472 (9th Cir. 1977).

3. Fuentes-Pacheco next challenges the introduction of the images depicting missed calls on his cellphone, arguing that they were impermissible "other acts" evidence under Federal Rules of Evidence Rule 404(b). But simply missing a phone call is not a "bad act," nor were the images offered to show that Fuentes-Pacheco acted "in accordance" with any particular character. Fed. R. Evid. 404(b)(1). Moreover, the images are "'inextricably intertwined' with the charged offense." *United States v. Wells*, 879 F.3d 900, 928 (9th Cir. 2018) (citation modified). The missed calls were contemporaneous to Fuentes-Pacheco's detention at the border and "came in the course of the conduct with which [defendant] was charged." *United States v. Ramirez-Jiminez*, 967 F.2d 1321, 1327 (9th Cir. 1992).

The district court also did not abuse its discretion in concluding that Federal Rule of Evidence 403 did not require exclusion of the image because their probative value was not substantially outweighed by the risk of unfair prejudice. *See United*

States v. Ruiz, 167 F.4th 1024, 1031 (9th Cir. 2026). The missed calls had probative value because the government offered testimony that drug traffickers often communicated with those with whom they were working shortly after crossing the border. *See Ruiz*, 167 F.4th at 1036.

4. Next, Fuentes-Pacheco challenges the sufficiency of the evidence regarding his knowledge of the narcotics in his vehicle. In a drug-trafficking case, "[a] jury can infer knowledge when an individual is the driver and sole occupant of the vehicle." *Diaz-Cardenas*, 351 F.3d at 407 (citation modified). "A jury can also infer knowledge from possession of a large quantity of drugs." *Id.* Here, the parties stipulated that Fuentes-Pacheco was the driver of the vehicle containing 26.36 kilograms of fentanyl and 4.44 kilograms of cocaine. Therefore, the evidence is sufficient to sustain the convictions. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

5. Finally, the district court did not abuse its discretion by sentencing Fuentes-Pacheco to 156 months for the six drug-trafficking counts, which was lower than the guideline range, or 33 months for violating his supervised release, which was within the guideline range. The record "reflects rational and meaningful consideration" of the very factors upon which Fuentes-Pacheco brings this challenge: his age and an injury he sustained in custody. *United States v. Ressam*, 679 F.3d 1069, 1089 (9th Cir. 2012) (en banc) (citation modified).

AFFIRMED.