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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>STEVEN BORG,</p> <p>Defendant - Appellant.</p>

No. 07-10392

DC No. CR 07-0090 HG

MEMORANDUM *

Appeal from the United States District Court
for the District of Hawaii
Helen Gillmor, District Judge, Presiding

Argued and Submitted April 16, 2008
San Francisco, California

Before: KOZINSKI, Chief Judge, TASHIMA, and N.R. SMITH, Circuit
Judges.

Steven Borg appeals from his jury-trial conviction for possessing a firearm
while a fugitive from justice, in violation of 18 U.S.C. § 922(g)(2). We affirm.

Borg contends that his Confrontation Clause rights were violated by the
admission of a transcript of a bench warrant proceeding. This contention fails

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

because this exhibit was cumulative of other properly admitted evidence, including the bench warrant itself; thus, any error was harmless. *See United States v. Monaco*, 735 F.2d 1173, 1178 (9th Cir. 1984).

Borg's evidentiary challenges to the admissibility of various trial exhibits and testimony under the Federal Rules of Evidence lack merit. Much of this evidence was properly admitted, and to the extent there was error, it was harmless. *See United States v. Talley*, 790 F.2d 1468, 1470 (9th Cir. 1986); *see also United States v. Gonzalez-Flores*, 418 F.3d 1093, 1100 (9th Cir. 2005).

In addition, the district court did not abuse its discretion in rejecting Borg's proposed jury instructions concerning "active concealment" because those instructions were not legally supported. *See United States v. Wazney*, 529 F.2d 1287, 1289 (9th Cir. 1976); *see also United States v. Powell*, 955 F.2d 1206, 1210 (9th Cir. 1991); Ninth Cir. Model Jury Instruction 8.44 (defining the term "fugitive from justice" for purposes of 18 U.S.C. § 922(g)).

We also reject Borg's argument that the prosecutor committed misconduct during the closing arguments that violated Borg's due process rights. Nothing Borg alleges "materially affected the fairness of the trial." *United States v. Cabrera*, 201 F.3d 1243, 1246 (9th Cir. 2000).

Finally, we reject Borg’s contention that the cumulative impact of the trial errors requires remand. *Cf. United States v. Frederick*, 78 F.3d 1370, 1381 (9th Cir. 1996) (finding cumulative error where “the evidence against the defendant was not overwhelming and . . . the case was a close one”).

AFFIRMED.