UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 15 2012

UNITED STATES OF AMERICA,	No. 10-10273
Plaintiff - Appellee,	D.C. No. 2:07-cr-00248-WBS-18
v.	
JOSE ANGEL VILLASENOR, AKA Pepito,	MEMORANDUM[*]
Defendant - Appellant.	

Appeal from the United States District Court
for the Eastern District of California
William B. Shubb, Senior District Judge, Presiding

Submitted June 13, 2012[**]
San Francisco, California

Before: GOULD, TALLMAN, and BEA, Circuit Judges.

Defendant-Appellant Jose Villaseñor was convicted in the U.S. District

Court for the Eastern District of California of one count of conspiring to distribute

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methamphetamine, cocaine, marijuana, and MDMA (also known as "ecstasy"), and

two counts of using a telephone to facilitate a drug trafficking conspiracy, both

federal crimes. We AFFIRM his conviction.

Villaseñor contends on appeal that the evidence at trial proved the existence

of two separate conspiracies—one in California and one in Ohio—but that

Villaseñor had no knowledge of or participation in the Ohio conspiracy and so

could not have been convicted of participating in the combined conspiracy. This is

contradicted by the testimony at trial. Villaseñor's co-conspirator, Mario Diaz,

testified that Villaseñor sold Diaz a car with a hidden compartment for transporting

drugs. When Villaseñor asked Diaz why Diaz wanted the car, Diaz testified: "I

told [Villaseñor] that I need a reliable, dependent car for long distance *because I

wanted it to travel out of state.*" Thus, there was sufficient evidence to show that

Villaseñor knowingly participated in an out-of-state drug distribution ring. Based

on this evidence, and granting all reasonable inferences to the government, *see

United States v. Stanton*, 501 F.3d 1093, 1100 (9th Cir. 2007), the jury could have

reasonably inferred that Villaseñor and Diaz engaged in the single, multi-state

conspiracy of which he was convicted.[1]

Villaseñor contends that the conviction must be reversed because the

indictment charged Villaseñor with participating in a conspiracy "to distribute

methamphetamine *and* cocaine *and* marijuana *and* MDMA [commonly known as

ecstasy]," but the government presented no evidence that Villaseñor distributed

MDMA. Villaseñor's claim fails because, in a conspiracy case, the law is clear

that "[t]he government may charge in the conjunctive form that which the statutes

denounce disjunctively, and evidence supporting any one of the charges will

support a guilty verdict." *United States v. Abascal*, 564 F.2d 821, 832 (9th Cir.

1977).

Finally, Villaseñor contends that the use of the Federal Rule of Evidence

902(11) self-authentication procedure and the admission of the subscriber record

violated his Confrontation Clause rights. We decline to decide the merits of this

issue. Even assuming constitutional error, any error would have been harmless

beyond a reasonable doubt. *See United States v. Norwood*, 603 F.3d 1063, 1068

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[1] For the same reason, Villaseñor's claim that a variance occurred between
indictment and proof fails. If the evidence supports the existence of a single
conspiracy, then there could not have been any variance between indictment and
conviction.

(9th Cir. 2010). There was substantial evidence showing conclusively that

Villaseñor was the subscriber of the relevant phone number, including: a T-Mobile

receipt for the relevant phone number, containing Villaseñor's name, discovered at

his home; testimony that the voice heard in calls to that phone number was

Villaseñor's; a business card showing that Villaseñor used that phone number; and

a phone seized at Villaseñor's home containing a cellphone SIM card showing the

phone number in question.

     AFFIRMED.