

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 13 2012

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

VERONICA CRUZ-JIMENEZ,

Defendant - Appellant.

No. 11-30210

D.C. No. 4:10-cr-00073-BLW-10

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
B. Lynn Winmill, Chief District Judge, Presiding

Submitted August 9, 2012**
Seattle, Washington

Before: GRABER, RAWLINSON, and BLACK***, Circuit Judges.

Appellant Veronica Cruz-Jimenez (Cruz-Jimenez) challenges her conviction for conspiracy to distribute methamphetamine. Cruz-Jimenez asserts that a new

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 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 Susan H. Black, United States Senior Circuit Judge for the Eleventh Circuit, sitting by designation.

trial is warranted because the district court improperly admitted a non-testifying co-conspirator's statement regarding Cruz-Jimenez's involvement in the conspiracy.

The district court properly admitted the co-conspirator's statement pursuant to Federal Rule of Evidence 801(d)(2)(E) because Cruz-Jimenez actively participated in the conspiracy to distribute methamphetamine and the statement was made in furtherance of the conspiracy. *See United States v. Bridgeforth*, 441 F.3d 864, 869 (9th Cir. 2006). Because the statement was admissible as a co-conspirator statement, Cruz-Jimenez's Confrontation Clause rights were not violated. *See id.* at 868-69.

Even if the district court erred in admitting the statement, any error was harmless given the substantial evidence of Cruz-Jimenez's involvement in the conspiracy. *See United States v. Hardy*, 289 F.3d 608, 613 (9th Cir. 2002), *as amended*; *see also United States v. Gonzalez-Flores*, 418 F.3d 1093, 1102 (9th Cir. 2005).

AFFIRMED.