

EXHIBIT “A”

FILED

DEC 11 2017

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

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

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

BOGAR AGUDO-MONROY,

Defendant-Appellant.

No. 16-50380

D.C. No.

3:15-cr-01631-AJB-1

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Anthony J. Battaglia, District Judge, Presiding

Argued and Submitted December 6, 2017
Pasadena, California

Before: CANBY and REINHARDT, Circuit Judges, and BLOCK,** District Judge.

Defendant-Appellant Bogar Agudo-Monroy argues on appeal that a number of mostly unpreserved trial errors deprived him of a fair trial, either individually or cumulatively.

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

** The Honorable Frederic Block, United States District Judge for the Eastern District of New York, sitting by designation.

We conclude that the district court plainly erred by admitting irrelevant evidence regarding the deconfliction of phone numbers in a cell phone connected to Agudo-Monroy. The district court also abused its discretion by allowing unnoticed expert testimony interpreting the cell phone log. We find these errors harmless, both individually and cumulatively, in light of the overwhelming evidence of guilt. *See United States v. Whitehead*, 200 F.3d 634, 639 (9th Cir. 2000); *see also United States v. Kartermann*, 60 F.3d 576, 580 (9th Cir. 1995).

The other grounds on which Agudo-Monroy appeals did not amount to error, but even if they did it would not affect our conclusion regarding harmlessness.

AFFIRMED.

EXHIBIT “B”

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FEB 20 2018

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UNITED STATES OF AMERICA,

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No. 16-50380

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Southern District of California,
San Diego

ORDER

Before: CANBY and REINHARDT, Circuit Judges, and BLOCK,* District Judge.

The panel has voted unanimously to deny the petition for rehearing and rehearing en banc. Judge Reinhardt voted to deny the suggestion for rehearing en banc, and Judge Canby and Judge Block so recommended.

The full court was advised of the suggestion for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App.

P. 35.

The petition for rehearing and the suggestion for rehearing en banc are **DENIED**. No further petitions for panel or en banc rehearing will be entertained.

* The Honorable Frederic Block, United States District Judge for the Eastern District of New York, sitting by designation.