

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-20467
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

AZUBUIKE AZUOGU,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. 91-CR-206-18
- - - - -

December 11, 1996

Before WIENER, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Azubuike Azuogu appeals the denial of his motion for new trial in which he alleged newly discovered evidence. Azuogu relies on the testimony of a codefendant at that codefendant's sentencing proceeding. The testimony describes a conversation in which Azuogu participated. Azuogu cannot claim he was unaware, at the time of trial, of a conversation in which he took part. The evidence therefore is not "newly discovered." See United

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

States v. Metz, 652 F.2d 478, 480 (5th Cir. 1981). Azuogu's argument that "newly available" evidence is synonymous with "newly discovered" evidence is also without merit. Id. See also, United States v. Freeman, 77 F.3d 812, 817 (5th Cir. 1996). The district court did not abuse its discretion in denying appellant's motion for new trial.

AFFIRMED.