

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 95-40809  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAMES ROBERT BARRA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 4:95-CR-2  
- - - - -

May 1, 1996

Before SMITH, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:\*

James Robert Barra appeals his conviction for possession of firearms after having been convicted of the felony offense of possession with intent to distribute a controlled substance. He argues that his conviction should be reversed because the district court permitted the Government to amend the indictment as to an essential element of the offense, the evidence of a prior conviction was insufficient, and the district court abused its discretion in denying his motion for a new trial based on

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Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

prosecutorial misconduct during closing argument. Our review of the record, the arguments, and authorities convince us that no reversible error was committed. The indictment was not "amended" because the location of the predicate conviction was surplusage, and Barra was not misled. See United States v. Prior, 546 F.2d 1254, 1257 (5th Cir. 1977); United States v. Wylie, 919 F.2d 969, 973 (5th Cir. 1990). Hence, the evidence was sufficient to prove the element that Barra was previously convicted of a felony. See United States v. Bell, 678 F.2d 547, 549 (5th Cir. 1982) (en banc), aff'd, 462 U.S. 356 (1983). Further, the district court did not abuse its discretion in overruling the objection to the prosecutor's statements in closing argument and denying the motion for a new trial. See United States v. Wallace, 32 F.3d 921, 926 (5th Cir. 1994).

AFFIRMED.