

June 27, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-41028
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAVIER RAMIREZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-01-CR-539-1

Before JONES, STEWART, and DENNIS, Circuit Judges.

PER CURIAM:*

Javier Ramirez was convicted for conspiracy and possession with intent to distribute in excess of 100 kilograms of marijuana. The district court made a two-level upward departure and sentenced Ramirez to 121 months of imprisonment. Ramirez has moved to supplement the record with additional evidence indicating he was a minor player in the drug conspiracy. But "[a]n appellate court may not consider new evidence furnished for the first time on appeal. . . . " Theriot v. Parish of Jefferson, 185 F.3d 477, 491 n.26

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

(5th Cir. 1999). Therefore, Ramirez's motion to supplement the record is DENIED.

On appeal, Ramirez first argues that the district court erred in denying his request to remove a member of the venire for cause. Because the prospective juror was not seated on the jury, Ramirez has not shown that any reversible error arose from the district court's decision not to strike this juror for cause. See United States v. Martinez-Salazar, 528 U.S. 304, 306-07 (2000).

Ramirez also argues that the district court's addition of two levels to his sentencing score under § 3B1.1(c) was in error, as he disputes the district court's factual finding that he supervised Charles Elizondo. Ramirez has not shown this finding was in clear error, however, and therefore we will not vacate his sentence.

AFFIRMED; MOTION DENIED.