

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-50542
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JOSÉ GABRIEL SALAZAR

Defendant - Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. P-00-CR-71-1

March 9, 2001

Before KING, Chief Judge, and WIENER and DENNIS, Circuit Judges.

PER CURIAM:*

José Gabriel Salazar appeals his conviction for possession with intent to distribute marijuana. Appellant contends that the evidence was insufficient to convict him because the Government did not prove beyond a reasonable doubt that he actually or constructively possessed the marijuana found in a truck registered to his parents and occupied by his friend and a brother-in-law. He contends that the district court abused its discretion in instructing the jury that he could be found guilty as an aider and abettor because he was unfairly surprised by the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

instruction and the instruction constructively amended the indictment and diluted the Government's burden of proof.

The district court did not abuse its discretion in giving the aiding-and-abetting instruction. See United States v. Botello, 991 F.2d 189, 191 (5th Cir. 1993); United States v. Neal, 951 F.2d 630, 633 (5th Cir. 1992). The evidence was sufficient for the jury to conclude that appellant aided and abetted the possession of marijuana with the intent to distribute it. See United States v. Williams, 985 F.2d 749, 753-54 (5th Cir. 1993).

AFFIRMED.