

FILED

December 22, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-40345
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ARMANDO CANALES,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:02-CR-17-1

Before JONES, BENAVIDES, and CLEMENT, Circuit Judges.

PER CURIAM:*

Armando Canales appeals his conviction for assaulting a fellow inmate with a dangerous weapon at the Federal Correctional Complex in Beaumont, Texas, in violation of 18 U.S.C. § 113(a)(3). Canales contends that the evidence was insufficient to prove that he stabbed the victim, and that the Government failed to prove that he used two different weapons, as he contends the indictment alleged.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Because Canales did not move for a judgment of acquittal in the district court, we review the sufficiency of the evidence to determine whether the verdict represents a "manifest miscarriage of justice." See United States v. Johnson, 87 F.3d 133, 136 (5th Cir. 1996). The evidence, which included the eyewitness testimony of a corrections officer, was more than sufficient for a reasonable jury to find that Canales stabbed the victim with a deadly weapon. Accordingly, the verdict does not reflect a miscarriage of justice. See United States v. Laury, 49 F.3d 145, 151 (5th Cir. 1995). Canales's assertion that the indictment required proof that he used two weapons is without merit.

AFFIRMED.