

May 9, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-50469
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

SRINATH AUDITYAN

Defendant - Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:03-CR-211-ALL-LY

Before KING, Chief Judge, and DeMOSS and CLEMENT, Circuit Judges.

PER CURIAM:*

Srinath Audityan has appealed his jury conviction of attempted enticement of a child to engage in illicit sexual activity. Audityan contends that the district court erred in refusing to give a spoliation instruction. Because there is no reason to believe that the Government acted in bad faith in failing to record the telephone conversations at issue, the district court did not abuse its discretion in refusing to give the instruction. See United States v. Wise, 221 F.3d 140, 156

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 2000); see also United States v. Townsend, 31 F.3d 262,
270 (5th Cir. 1994) (standard of review). The conviction is

AFFIRMED.