

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

October 8, 2008

No. 08-40006

Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

RAMIRO VARGAS, JR

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:06-CR-888-ALL

Before SMITH, STEWART, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Ramiro Vargas, Jr. appeals his jury verdict conviction for transmitting in interstate or foreign commerce a communication containing a threat to injure the person of another in violation of 18 U.S.C. § 875(c). He argues on appeal that: (1) the evidence produced at trial was insufficient to support the jury's verdict because his actual laptop computer was never produced at trial, and there was no mention that the laptop had been damaged by an electrical surge prior to its seizure; and (2) his trial counsel rendered ineffective assistance by

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

failing to request production of the laptop and by failing to assert that the laptop had been damaged.

Examination of the record indicates that, viewing the evidence in the light most favorable to the jury verdict, a rational trier of fact could have found that the Government proved all of the essential elements of Vargas's crime beyond a reasonable doubt. See *United States v. Morales*, 272 F.3d 284, 287 (5th Cir. 2001); *United States v. Lankford*, 196 F.3d 563, 575 (5th Cir. 1999). Moreover, we do not consider Vargas's claims of ineffective assistance of counsel because he did not raise them in district court and the present record is insufficiently developed to resolve them. See *United States v. Cantwell*, 470 F.3d 1087, 1091 (5th Cir. 2006).

The district court's judgment is AFFIRMED.