

September 21, 2004

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-41435  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DAVID KRAMER,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 4:02-CR-110-ALL  
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Before DAVIS, SMITH, DENNIS, Circuit Judges.

PER CURIAM:\*

David Kramer was convicted by a jury of making false statements to a government agent. He argues that the district court's charge to the jury to continue deliberations in an effort to reach a verdict was an impermissible abbreviated Allen\*\* charge and that the court erred in failing to notify counsel of its intention to give the charge.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

\*\* See Allen v. United States, 164 U.S. 492 (1896).

Giving Kramer the benefit of the doubt that the court did not confer with counsel prior to giving the supplemental charge, the court's failure to consult with counsel was error. However, any error was harmless. United States v. McDuffie, 542 F.2d 236, 241 (5th Cir. 1976). The district court's charge to the jury to continue deliberations was not an abuse of discretion, and Kramer's challenge with respect to the charge is without merit. See United States v. Warren, 594 F.2d 1046, 1050 (5th Cir. 1979); United States v. Straach, 987 F.2d 232, 242 (5th Cir. 1993). The judgment of the district court is affirmed.

AFFIRMED.