

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 98-51210
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GERALD WAYNE HOWARD, SR., also
known as Gerald Howard,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
(W-98-CR-71-ALL)

August 26, 1999

Before POLITZ, WIENER, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Gerald Wayne Howard, Sr. appeals his conviction and sentence after a jury trial for wire fraud in violation of 18 U.S.C. § 1343. He contends that the district court erred in enhancing his sentence for more than minimal planning, in denying his motion for a judgment of acquittal, and in denying his motion for a mistrial based on an improper remark by the prosecutor during closing arguments.

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Our review of the record and briefs of the parties persuades that the district court did not clearly err in determining that Howard engaged in more than minimal planning.¹ The record contains sufficient evidence upon which a rational juror could find all of the elements of wire fraud proven beyond a reasonable doubt and the district court did not err in denying Howard's motion for a judgment of acquittal.² We further conclude that the improper remark made by the prosecutor during closing arguments did not substantially affect Howard's right to a fair trial.³

AFFIRMED.

¹ **United States v. Barndt**, 913 F.2d 201 (5th Cir. 1990).

² **United States v. Aggarwal**, 17 F.3d 737 (5th Cir. 1994); **United States v. Greenwood**, 974 F.2d 1449 (5th Cir. 1992).

³ **United States v. Andrews**, 22 F.3d 1328 (5th Cir. 1994).