

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-3173
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EDWIN T. CHESHIRE,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. CR-89-2-A-M1 & CR-89-14-A
- - - - -
(January 21, 1993)

Before GARWOOD, SMITH, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Proceeding pro se, Cheshire seeks to appeal the district court's order of restitution to the Housing Authority of East Baton Rouge Parish (Housing Authority), and to the Hartford Insurance Company (Hartford).

Cheshire's allegations rely, in part, on facts and exhibits that were not considered by the district court. Because he raises issues based on evidence not submitted to the district court at the restitution hearing, the Government urges that

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Cheshire has failed to preserve error on appeal. Where the defendant raises a new issue for the first time on appeal, this Court reviews only for plain error. See United States v. Lopez, 923 F.2d 47, 50 (5th Cir.), cert. denied, 111 S.Ct. 2032 (1991). Plain error is error that, "when examined in the context of the entire case, is so obvious and substantial that failure to notice and correct it would affect the fairness, integrity or public reputation of judicial proceedings." Id.

There was no plain error here. At the restitution hearing, Larry Cole, the Housing Authority's Executive Director, testified that the Housing Authority made payments of \$157,320.00 to Classic for vacant apartments from October 1986 through March 1987. The total figure was obtained from three checks paid by the Housing Authority to Classic for the unoccupied apartments. Each check was supported by an invoice from Classic which requested payment for vacant units. The record also supports the court's restitution order to Hartford. Cheshire was convicted for his participation in a scheme which caused Hartford to pay \$125,000.00 to Classic for art prints falsely reported as stolen. At the time of the restitution hearing, the salvage company hired by Hartford had not found a purchaser for the prints.

As the record supports the restitution imposed, there is no basis for reversal even under a less deferential abuse-of-discretion standard of review. See United States v. Ryan, 874 F.2d 1052, 1054 (5th Cir. 1989).

AFFIRMED.