

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2120
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MANUEL MARTINEZ,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of
USDC No. CR-H-92-210-2
- - - - -
(January 5, 1994)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Manuel Martinez argues that the district court should have granted his motion for a mistrial because the Government violated a pretrial agreement. The Government did not violate the agreement. When the Government determined that a "surprising event" had occurred, Martinez was provided with the remedy dictated by the pretrial agreement: the confidential informant was made available to Martinez. The confidential informant did not ultimately testify.

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Assuming that the Government did violate the agreement, and that the agreement was definite enough to be enforceable, Martinez did not suffer any prejudice. Martinez maintains that he was prejudiced because the Government's announcement that it intended to call the informant prevented him from testifying in his own defense. A defendant's right to testify on his own behalf is "the right to testify truthfully in accordance with the oath" United States v. Grayson, 438 U.S. 41, 54, 98 S.Ct. 2610, 57 L.Ed.2d 582 (1978). "[A]ny chilling effect on defendant's decision to testify falsely . . . is entirely permissible. There is no protected right to commit perjury." Id. at 54.

The district court did not abuse its discretion in denying the motion for a mistrial. Martinez's conviction is AFFIRMED.