

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-7387  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DOEL JOSEPH CANCIO,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. CR B-93-004-01  
- - - - -  
(March 23, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:\*

Doel Joseph Cancio appeals his conviction for conspiracy to possess with the intent to distribute cocaine and for possession with the intent to distribute cocaine. We AFFIRM.

Cancio argues that due process was violated by the Government's knowing use of perjured testimony as to the amount of marijuana involved from Cancio's 1992 state court conviction, a conviction admitted into evidence pursuant to Fed. R. Evid. 404(b). This issue was not brought to the district court's

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

attention. "[I]ssues raised for the first time on appeal `are not reviewable by this [C]ourt unless they involve purely legal questions and failure to consider them would result in manifest injustice.'" United States v. Garcia-Pillado, 898 F.2d 36, 39 (5th Cir. 1990) (citation omitted). The factual questions underpinning Cancio's due process issue prevent our review.

Cancio argues that the district court erred in admitting under Rule 404(b) his 1992 state court conviction. Cancio did not object to the Government's notice of its intent to use his priors or to the district court's Rule 404(b) ruling. Therefore, this Court reviews for plain error, "`error' that is `plain' and that `affect[s] substantial rights.'" United States v. Olano, \_\_\_ U.S. \_\_\_, 113 S.Ct. 1770, 1776, 123 L.Ed.2d 508 (1993) (quoting Fed. R. Crim. P. 52(b)); see Fed. R. Evid. 103(d).

Cancio's prior drug conviction was relevant to the issue of intent on both counts and was relevant as rebuttal to his entrapment defense. See United States v. Hooker, 997 F.2d 67, 76 (5th Cir. 1993). The district court gave a limiting instruction three times. See United States v. White, 972 F.2d 590, 599 (5th Cir. 1992), cert. denied, 113 S.Ct. 1651 (1993). Because Cancio testified at trial, his prior conviction could have been admissible under Fed. R. Evid. 609(a)(1). Moreover, detailed on-the-record findings were not required, in the absence of a request and in light of the evidence's probative value and prejudice readily apparent from the record. See Hooker, 997 F.2d at 77.

To the extent that Cancio argues that the extremely prejudicial impact of the evidence came from the alleged erroneous amount of marijuana from the prior conviction, the argument is premised on a factual issue not presented to the district court. See Garcia-Pillado, 898 F.2d at 39. Therefore, no plain error occurred by the admission of the Rule 404(b) evidence.

Cancio argues that he received ineffective assistance of counsel. Generally, we do not address a claim of ineffective assistance of counsel unless the district court has addressed the issue, thus developing an adequate record for review. See United States v. Navejar, 963 F.2d 732, 735 (5th Cir. 1992). Because the record lacks necessary details to evaluate the trial counsel's strategy and reasons, we decline to review the merits of this argument, without prejudice to Cancio's right to raise the issue in a 28 U.S.C. § 2255 proceeding. See United States v. Bounds, 943 F.2d 541, 544 (5th Cir. 1991), cert. denied, 114 S.Ct. 135 (1993).

AFFIRMED.