

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8570
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

QUINTIN BENEBY,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-91-CR-486
- - - - -

(May 17, 1994)

Before HIGGINBOTHAM, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Quintin Beneby argues that the district court's instruction to the jury on his insanity defense was insufficient. Because Beneby did not object to the court's jury charges, this Court reviews the issue for "plain error." United States v. Birdsell, 775 F.2d 645, 654 (5th Cir. 1985), cert. denied, 476 U.S. 1119 (1986).

This Court will exercise its discretion to correct errors under Fed. R. Crim. P. 52(b) only if there is error which is plain and which affects substantial rights of the defendant, and

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

"seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." United States v. Rodriguez, 15 F.3d 408, 415-16 (5th Cir. 1994) (quoting United States v. Olano, ___ U.S. ___, 113 S.Ct. 1770, 1779, 123 L.Ed.2d 508 (1993)).

The district court's instruction on the definition of insanity was virtually identical to the definition adopted by this Court in United States v. Lyons, 731 F.2d 243, 248 (5th Cir.) (en banc), cert. denied, 469 U.S. 930 (1984); see also, Birdsell, 775 F.2d at 655. Moreover, the court's instruction that the jury could "consider evidence of the defendant's mental condition before or after the crime charged" and "not only the statements and opinions of experts who have testified, but also all of the other evidence received in the case" substantially incorporates Beneby's proposal that the jury be told "that observation of extraordinary or bizarre acts performed by the defendant" could be considered in their determination of the insanity defense. Accordingly, the district court's instruction to the jury on Beneby's insanity defense was not plain error; nor did it substantially affect his rights or "seriously affect the fairness, integrity or public reputation of judicial proceedings." See Rodriguez, 15 F.3d at 415-16 (quoting Olano, 113 S.Ct. at 1770).

The judgment of the district court is AFFIRMED.