

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

March 25, 2008

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No. 05-60507  
Summary Calendar

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Charles R. Fulbruge III  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

TONEY HOUSTON,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Mississippi  
No. 2:04-CR-132-1

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Before SMITH, BARKSDALE, and ELROD, Circuit Judges.

PER CURIAM:\*

Toney Houston challenges his convictions of conspiring to make false and fictitious oral and written statements in connection with the acquisition of fire-

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

arms, and aiding, abetting, and inducing another to make false statements in connection with acquisition of a firearm. He does not challenge his conviction of being a felon in possession of a firearm.

Although the indictment is plainly erroneous because it fails to charge the “intended or likely to deceive” element of 18 U.S.C. § 922(a)(6), the error did not seriously affect the fairness, integrity, or public reputation of judicial proceedings. The evidence that the false statements were “intended or likely to deceive” was overwhelming and uncontroverted, and the jury was instructed before and at the end of trial that the government was required to prove that element beyond a reasonable doubt; the instruction largely mitigated the error. See *United States v. Cotton*, 535 U.S. 625, 632-34 (2002); *United States v. McGilberry*, 480 F.3d 326, 330-31 (5th Cir. 2007).

AFFIRMED.