

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-30904

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOHNNY MARTINEZ,

Defendant-Appellant.

Appeal from the United States District Court
For the Western District of Louisiana
USDC No. 96-CR-60012-001

September 25, 1998

Before HIGGINBOTHAM, JONES, AND DENNIS, Circuit Judges.

PER CURIAM:*

At Johnny Martinez's trial for conspiracy, possession with intent to distribute cocaine, and interstate travel in aid of illegal activity, a government witness twice indicated his opinion that Martinez was not credible. The court twice refused a motion for mistrial. It did, however, give the jury a limiting instruction to disregard the witness's characterization of Martinez's credibility. The defendant was convicted, and he appeals.

*Pursuant to 5th Cir. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

A district court's refusal to grant a mistrial based on prejudicial evidence is reviewed for abuse of discretion, with a mistrial "required only if there is a significant possibility that the prejudicial evidence had a substantial impact upon the jury verdict, viewed in light of the entire record." United States v. Paul, 142 F.3d 836, 844 (5th Cir. 1998). Here, the evidence of Martinez's guilt is overwhelming. The defendant objects that the jury deliberated a long time. This indicates care, not that the case ultimately was a close one. The court's instruction to the jury thus cured any prejudice that the unprovoked remarks might have caused. See, e.g., United States v. Willis, 6 F.3d 257, 263 (5th Cir. 1993). The cases cited by the defendant are inapposite.

AFFIRMED.