

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 07-2993

UNITED STATES OF AMERICA

vs.

KENNETH WILLIAMS,
a/k/a JUNIOR
Appellant

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
(D.C. Crim. No. 05-00125)
District Judge: Honorable John P. Fullam

Submitted Under Third Circuit L.A.R. 34.1(a)
December 2, 2008

Before: AMBRO, WEIS and VAN ANTWERPEN, Circuit Judges.

(Opinion Filed: December 17, 2008)

OPINION

WEIS, Circuit Judge.

A jury convicted defendant of possession of crack-cocaine with intent to distribute. The District Court sentenced him to 120 months incarceration, an eight year term of supervised release, and a \$100 special assessment. He has appealed, asserting

that the jury instructions created a reasonable likelihood that the jury misunderstood the government's burden to prove each and every element of the crime beyond a reasonable doubt. Defendant also contends that the District Court abused its discretion in finding that the verdict was not contrary to the weight of the evidence.

Defendant did not object to the jury charge at the trial. Consequently, we review for plain error. United States v. Flores, 454 F.3d 149, 156 (3d Cir. 2006). In doing so, we “consider the totality of the instructions and not a particular sentence or paragraph in isolation.” United States v. Coyle, 63 F.3d 1239, 1245 (3d Cir. 1995). After reviewing the District Court's charge in its entirety, we find no error in the instructions on reasonable doubt, let alone plain error. See generally Victor v. Nebraska, 511 U.S. 1, 5 (1994) (a proper reasonable doubt instruction need not contain any particular words or phrases provided that the charge, when read as a whole, adequately conveys the government's burden of proof). Accordingly, we reject the defendant's argument that the District Court erred in charging the jury.

As we observed in Virgin Islands v. Derricks, 810 F.2d 50, 55 (3d Cir. 1987), “[m]otions for a new trial based on the weight of the evidence are not favored.” They “are to be granted sparingly and only in exceptional cases.” Id. Our review demonstrates that this is not such an exceptional case and that the evidence supported the jury's verdict. The District Court did not err in denying a new trial.

Accordingly, the judgment of the District Court will be affirmed.