

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 04-16117

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT JUNE 8, 2006 THOMAS K. KAHN CLERK

D. C. Docket No. 03-20764 CR-MGC

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DAVID PAUL MARKS,
a.k.a. Yellow,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(June 8, 2006)

Before DUBINA and KRAVITCH, Circuit Judges, and MILLS*, District Judge.

PER CURIAM:

*Honorable Richard Mills, United States District Judge for the Central District of Illinois, sitting by designation.

Appellant David Paul Marks appeals his conviction for conspiracy to possess with intent to distribute cocaine, in violation of 21 U.S.C. § 846. The issues presented on appeal are:

(1) Whether the district court abused its discretion by refusing to give Marks' requested jury instruction on the statute of limitations theory of defense.

(2) Whether the district court abused its discretion by denying Marks' motion for a mistrial based on the admission of allegedly prejudicial evidence pursuant to Fed. R. Evid. 404(b).

(3) Whether the district court abused its discretion by denying Marks' motion for a mistrial based on allegedly inappropriate remarks by the prosecutor during closing argument.

We review a district court's refusal to give a particular jury instruction for abuse of discretion. *United States v. Yeager*, 331 F.3d 1216, 1222 (11th Cir. 2003). The failure of a district court to give an instruction is reversible error where the requested instruction (1) was correct, (2) was not substantially covered by the charge actually given, and (3) dealt with some point in the trial so important that failure to give the requested instruction seriously impaired the defendant's ability to conduct his defense. *Id.* 1222-23.

We review the denial of a motion for a mistrial for abuse of discretion.

United States v. Diaz, 248 F.3d 1065, 1101 (11th Cir. 2001).

After reviewing the record, reading the parties' briefs, and having the benefit of oral argument, we first conclude that the district court properly exercised its discretion in declining to give Marks' requested instruction because (1) there was no evidence showing that Marks had withdrawn from the conspiracy; (2) the requested instruction was not a correct statement of law as it failed to account for Marks' potential liability as a co-conspirator; and (3) the district court's instructions, as a whole, were sufficient.

Because there is no merit to the remaining issues Marks presents in this appeal, we affirm his conviction.

AFFIRMED.