

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

July 23, 2008

No. 07-41187
Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

JOE LUIS LERMA

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:07-CR-41-ALL

Before JOLLY, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:*

Joe Luis Lerma appeals his jury conviction for Medicare and Medicaid fraud. He argues that the district court abused its discretion in denying his motion for mistrial following the testimony of Jennifer Allen, which, he contends, gave the jury the impression that he had committed crimes or bad acts not alleged in the indictment.

Lerma is entitled to a new trial "only [if], after a review of the entire record, it appears that there is a significant possibility that the prejudicial

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

evidence had a substantial impact on the jury verdict.” *United States v. Lucas*, 516 F.3d 316, 345 (5th Cir. 2008), petition for cert. filed, (June 2, 2008) (No. 07-1512). The prejudicial effect of Allen’s testimony was rendered harmless by the district court’s curative jury instructions; Lerma’s lack of credibility, as evidenced by his own contradictory testimony; and the overwhelming evidence of his guilt. The denial of Lerma’s motion for mistrial was therefore not an abuse of discretion. See *id.*

AFFIRMED.