

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 16-31166
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 26, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

BRIAN GRACO,

Defendant-Appellant

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:14-CR-150-1

Before WIENER, DENNIS, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Defendant-Appellant Brian Graco was indicted for receiving child pornography. Graco filed a notice of an insanity defense to be supported by testimony from Dr. Frederic J. Sautter. The Government filed a motion in limine seeking to prevent Graco from raising an insanity defense or introducing any evidence of his alleged post-traumatic stress disorder. Relying on *United States v. Eff*, 524 F.3d 712, 717-19 (5th Cir. 2008), the district court

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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found that Dr. Sautter's report did not show that Graco satisfied the elements required for an insanity defense under 18 U.S.C. § 17. The district court granted the Government's motion. Graco pleaded guilty and specifically reserved the right to appeal the granting of the Government's motion.

We review a district court's exclusion of expert testimony for abuse of discretion. *United States v. Ogle*, 328 F.3d 182, 188 (5th Cir. 2003). In *Eff*, we held that an insanity defense under § 17 requires that the defendant be completely unable to appreciate the quality of his actions and that having only a diminished capacity to do so was insufficient for the defense. *Eff*, 524 F.3d at 718-720. Graco concedes that the district court was bound by the existing definition of insanity in § 17 and that *Eff* governs our review. Graco raises a challenge to § 17 to preserve it for further direct review.

The judgment of the district court is **AFFIRMED**.