

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 00-3110

September Term, 2000

00cr00118-01

Filed On: August 6, 2001 [615280]

United States of America,  
Appellee

v.

James A. Penn,  
Appellant

**BEFORE:** Henderson, Rogers, and Garland, Circuit Judges

## J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. The court has determined that the issues presented occasion no need for an opinion. See Fed. R. App. P. 36; D.C. Cir. Rule 36(b). It is

**ORDERED AND ADJUDGED** that the district court's judgment filed October 19, 2000, be affirmed. Appellant has not demonstrated that the reasonable doubt jury instruction constituted error, much less plain error. See United States v. Merlos, 8 F.3d 48, 50 (D.C. Cir. 1993) (citing United States v. Olano, 507 U.S. 725, 732-36 (1993)). The district court did not commit error when it instructed the jury on reasonable doubt. See, e.g., United States v. Dale, 991 F.2d 819, 853 (D.C. Cir.), cert. denied, 510 U.S. 1030 (1993) (approving the same Redbook model jury instruction used by the district court). Moreover, looking at the instruction as a whole, we conclude that there appears no reasonable likelihood that the jury applied the instruction in an unconstitutional manner. Victor v. Nebraska, 511 U.S. 1, 6 (1994). Furthermore, as neither the instruction nor any portion of it has been disapproved by a court, the asserted error would not be plain. See Merlos, 8 F.3d at 51. Finally, even if the instruction constituted plain error, it did not seriously affect "the fairness, integrity or public reputation of judicial proceedings." See Olano, 507 U.S. at 736.

The Clerk is directed to withhold issuance of the mandate herein until seven days

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after disposition of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

**Per Curiam**