

UNPUBLISHED

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

v.

KEVIN LOWELL BRITT, a/k/a Kevin  
Powell, a/k/a KP,  
*Defendant-Appellant.*

No. 02-4970

Appeal from the United States District Court  
for the Eastern District of Virginia, at Norfolk.  
Robert E. Payne, District Judge.  
(CR-02-130)

Submitted: April 30, 2003

Decided: June 11, 2003

Before KING and GREGORY, Circuit Judges, and  
HAMILTON, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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**COUNSEL**

Frank W. Dunham, Jr., Federal Public Defender, Larry M. Dash,  
Assistant Federal Public Defender, Norfolk, Virginia, for Appellant.  
Paul J. McNulty, United States Attorney, James Ashford Metcalfe,  
Assistant United States Attorney, Norfolk, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

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## OPINION

### PER CURIAM:

A grand jury charged Kevin Lowell Britt in a superceding indictment with: a drug conspiracy, in violation of 21 U.S.C. § 846 (2000) (Count 1); distribution of powder cocaine, in violation of 21 U.S.C. § 841(a)(1) (2000) (Counts 2 and 3); distribution of five grams or more of crack cocaine, in violation of 21 U.S.C. § 841(a)(1) (Count 4); possession with intent to distribute crack cocaine, in violation of 21 U.S.C. § 841(a)(1) (Count 5); possession with intent to distribute powder cocaine, in violation of 21 U.S.C. § 841(a)(1) (Count 6); and possession of a firearm and ammunition by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2) (2000) (Count 7). Following a jury trial, Britt was acquitted on Counts 1, 2, and 3, and was convicted on Counts 4, 5, 6, and 7. The district court sentenced him to 175 months in prison. Britt timely appealed.

Claiming that police did not properly advise him of his rights in accordance with *Miranda v. Arizona*, 384 U.S. 436 (1966), and that any statements he made were not voluntary because he was under the influence of drugs and alcohol, Britt contends that the district court erred by denying his motion to suppress statements he made to the police. The district court held an evidentiary hearing at which police officers testified that officers administered *Miranda* warnings before questioning Britt, both at his house and at the police station, that he did not ask for a lawyer, and that, although he seemed nervous and shaky, he did not appear to be under the influence of drugs or alcohol. Britt testified that in the hour before he was taken into custody, he consumed four beers and inhaled about "four needle lines" of cocaine and smoked two cigarettes laced with crack cocaine. He also claimed that an officer only partially administered *Miranda* warnings before questioning him at his residence, and that he requested a lawyer. Finding the officers more credible than Britt, the district court denied the motion to suppress.

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This court reviews the factual findings underlying a motion to suppress for clear error and reviews the legal determinations de novo. *United States v. Photogrammetric Data Servs., Inc.*, 259 F.3d 229, 237 (4th Cir. 2001), *cert. denied*, 535 U.S. 926 (2002). The district court's decision rested on its credibility determinations based on testimony at the suppression hearing and such credibility determinations are not subject to appellate review. *United States v. Saunders*, 886 F.2d 56, 60 (4th Cir. 1989). We find that the district court did not commit clear error in denying the motion to suppress.

Britt also argues that the district court erred by denying his motion for judgment of acquittal on Counts 1 through 3 of the indictment. Britt points to the fact that the jury acquitted him on these counts as proof that the district court erred in denying his motion. However, as Britt was acquitted on these counts, no further relief is available to him.

Accordingly, we affirm Britt's conviction and sentence. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

*AFFIRMED*