

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-4725

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DONNIE J. AUSTIN,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Henry E. Hudson, District Judge. (CR-02-124)

Submitted: February 27, 2004

Decided: March 25, 2004

Before LUTTIG, SHEDD, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

David R. Lett, Richmond, Virginia, for Appellant. Paul J. McNulty, United States Attorney, Michael J. Elston, Peter S. Duffey, Assistant United States Attorneys, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Donnie J. Austin was convicted of possession with intent to distribute cocaine base, in violation of 21 U.S.C. § 841 (2000), possession of cocaine base, in violation of 21 U.S.C. § 844 (2000), possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c) (2000), and possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1,3) (2000). On appeal, he alleges the evidence was insufficient to support his conviction for possession of a firearm in furtherance of a drug trafficking crime.

We find that there is substantial evidence, taking the view most favorable to the Government, to support the jury's verdict. United States v. Glasser, 315 U.S. 60, 80 (1942). Austin's counsel asserts that the firearm found near crack cocaine in Austin's apartment should not be considered actively employed in furtherance of his drug trafficking. However, we must assume that the jury resolved this issue in the Government's favor. See United States v. Wilson, 115 F.3d 1185, 1190 (4th Cir. 1997). Thus, we deny Austin's motion to substitute attorney, deny his motion to extend time to file pro se formal brief, and affirm his 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