

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 10-5310**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JUSTIN MATTHEW,

Defendant - Appellant.

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Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Robert J. Conrad, Jr., Chief District Judge. (3:06-cr-00016-RJC-CH-1)

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Submitted: October 14, 2011

Decided: October 20, 2011

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Before WILKINSON and AGEE, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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Angela G. Parrott, Acting Executive Director, Matthew R. Segal, Allison Wexler, Assistant Federal Defenders, Asheville, North Carolina, Elizabeth A. Blackwood, Assistant Federal Defender, Charlotte, North Carolina, for Appellant. Anne M. Tompkins, United States Attorney, Laura L. Ferris, Assistant United States Attorney, Charlotte, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Justin Matthew pled guilty without a plea agreement to one count of possession with intent to distribute marijuana, in violation of 21 U.S.C.A. § 841 (West 1999 & Supp. 2011), and one count of knowingly using and carrying a firearm during and in relation to a drug trafficking crime, in violation of 18 U.S.C.A. § 924(c)(1) (West 2000 & Supp. 2011), and was sentenced to seventy months in prison. He appeals from the district court's judgment, challenging only the district court's decision to enhance his base offense level four levels under U.S. Sentencing Guidelines Manual ("USSG") § 3B1.5(2)(B) (2006), based on the fact that he was wearing a bulletproof vest at the time he committed a drug trafficking crime. We affirm the district court's judgment.

We review the district court's factual findings underlying its Guidelines range calculation for clear error, and its legal interpretation of the Guidelines de novo. See United States v. Farrior, 535 F.3d 210, 223 (4th Cir. 2008). Under USSG § 3B1.5, an enhancement for body armor should be applied if: (1) the defendant was convicted of a drug trafficking crime or a crime of violence; *and* (2) the offense involved the use of body armor, *or* (3) the defendant used body armor during the commission of the offense, in preparation for the offense, or in an attempt to avoid apprehension for the offense. See USSG

§ 3B1.5 (2006). If the offense involved the use of body armor, a two-level enhancement applies, USSG § 3B1.5(2)(A), and if the defendant used body armor during the commission of, in preparation for, or in an attempt to avoid apprehension for the offense, a four-level enhancement applies. USSG § 3B1.5(2)(B). We have reviewed the record and considered the parties' arguments and discern no error in the district court's decision to apply the four-level enhancement under USSG § 3B1.5(2)(B).

Accordingly, we affirm the district court's judgment. 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