

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

v.

No. 97-4800

JAMES LEWIS DAVIS,

Defendant-Appellant.

Appeal from the United States District Court
for the District of South Carolina, at Greenville.
G. Ross Anderson, Jr., District Judge.
(CR-97-248)

Submitted: January 18, 2000

Decided: March 9, 2000

Before MOTZ and TRAXLER, Circuit Judges,
and BUTZNER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

COUNSEL

J. Dennis Bolt, Columbia, South Carolina, for Appellant. J. Rene
Josey, United States Attorney, E. Jean Howard, Assistant United
States Attorney, Greenville, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

James Lewis Davis appeals his conviction and sentence for possession with intent to distribute crack and powder cocaine in violation of 21 U.S.C. § 841(a)(1) (1994). On appeal, Davis contends that (1) the court plainly erred in admitting evidence that was derived from an illegal detention and (2) the sentencing court erred in enhancing his sentence for obstruction of justice under U.S. Sentencing Guidelines Manual § 3C1.1 (1995). After remand, the district court sentenced Davis to 235 months' imprisonment and five years' supervised release and ordered him to pay special assessment.

Because Davis did not move to suppress the evidence in question, he has waived review of his evidentiary claim absent plain error. See Fed. R. Crim. P. 52(b); United States v. Olano, 507 U.S. 725, 731-32 (1993). We find that the district court did not plainly err in admitting the drugs found in Davis' vehicle because the detention prior to his consent to search did not exceed its proper scope and thus did not violate the Fourth Amendment. See United States v. Lattimore, 87 F.3d 647, 650-51 (4th Cir. 1996) (en banc); United States v. Shabazz, 993 F.2d 431, 437 (5th Cir. 1993). We find that the district court's resentencing of Davis after remand renders his sentencing claim concerning the obstructing of justice enhancement moot.

Accordingly, we affirm Davis' 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