

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
DONALD BENJAMIN PATE,
Defendant-Appellant.

No. 00-4581

Appeal from the United States District Court
for the District of South Carolina, at Charleston.
Patrick Michael Duffy, District Judge.
(CR-99-316)

Submitted: May 31, 2001

Decided: August 6, 2001

Before MICHAEL, MOTZ, and TRAXLER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

David P. McCann, Charleston, South Carolina, for Appellant. Scott N. Schools, United States Attorney, Mary Gordon Baker, Assistant United States Attorney, Charleston, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Donald Pate was convicted by a jury of robbing a postal service letter carrier, 18 U.S.C. § 2114 (1994), and sentenced to sixty-three months imprisonment. He appeals, claiming that the district court erred in denying his motion for new trial based on newly discovered evidence. He also claims that the Government's failure to produce that evidence before trial denied him due process.

Because we find that the evidence—certain employment records of Pate and the victim, and handwritten investigators' notes—would not have resulted in Pate's acquittal, the district court did not abuse its discretion in denying Pate's motion for new trial under Fed. R. Crim. P. 33. *United States v. Singh*, 54 F.3d 1182, 1190 (4th Cir. 1995); *United States v. Christy*, 3 F.3d 765, 768 (4th Cir. 1993). Further, we find that Pate failed to establish a violation of *Brady v. Maryland*, 373 U.S. 83 (1963). Pate cannot show that he was prejudiced by the Government's failure to disclose investigators' notes containing the physical description of the robber because the description of the robber was generally consistent with Pate's physical characteristics.

Accordingly, we affirm the district court's denial of Pate's motion for new trial and affirm Pate'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 in the decisional process.

AFFIRMED