

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-4030

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

MARCUS TERRELL BURNEY,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Wilmington. James C. Fox, Senior District Judge. (CR-04-36)

Submitted: November 30, 2005

Decided: December 19, 2005

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

Affirmed by unpublished per curiam opinion.

Thomas P. McNamara, Federal Public Defender, Stephen C. Gordon, Assistant Federal Public Defender, Windy C. Venable, Research and Writing Attorney, Raleigh, North Carolina, for Appellant. Frank D. Whitney, United States Attorney, Anne M. Hayes, Christine Witcover Dean, Assistant United States Attorneys, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Marcus Terrell Burney was found guilty by a jury of possessing with intent to distribute marijuana (Count 2) and possessing a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C.A. § 924(c) (West Supp. 2005) (Count 3). On appeal, he raises one issue: whether the district court erred by failing to use his proposed jury instruction regarding the § 924(c) charge. For the reasons that follow, we affirm.

We do not find that the district court abused its discretion by declining to use Burney's proposed jury instruction. See United States v. Russell, 971 F.2d 1098, 1107 (4th Cir. 1992) (giving review standard). Burney has failed to show that the court committed reversible error by not giving the contested instruction. See United States v. Lewis, 53 F.3d 29, 32-33 (4th Cir. 1995) (stating standard). We have held that a "district court is not required to give defendant's particular form of instruction, as long as the instruction the court gives fairly covers a theory that the defense offers." United States v. Smith, 44 F.3d 1259, 1270-71 (4th Cir. 1995) (citation omitted).

Accordingly, we affirm. 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