

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14-6567

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ROBERT FENN,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. James C. Cacheris, Senior District Judge. (1:12-cr-00510-JCC-1)

Submitted: September 26, 2014

Decided: October 1, 2014

Before KING, GREGORY, and THACKER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

James W. Hundley, BRIGLIAHUNDLEY, P.C., Vienna, Virginia, for Appellant. Dana J. Boente, United States Attorney, Alicia J. Yass, Special Assistant United States Attorney, Lindsay A. Kelly, Assistant United States Attorney, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Robert Fenn appeals from the district court's order denying his motion for a new trial in his criminal conviction for receipt of child pornography, in violation of 18 U.S.C. § 2252(a)(2) (2012), and possession of child pornography, in violation of 18 U.S.C. § 2252(a)(4)(B) (2012). After careful review, we affirm the denial of Fenn's motion for a new trial.

We review the district court's denial of Fenn's motion for a new trial for abuse of discretion. United States v. Bartko, 728 F.3d 327, 334 (4th Cir. 2013), cert. denied, 134 S. Ct. 1043 (2014). Generally speaking, the district court has broad discretion to grant or deny a motion for a new trial. United States v. Perry, 335 F.3d 316, 320 (4th Cir. 2003).

The court may vacate its judgment and grant a new trial if the interest of justice so requires. Fed. R. Crim. P. 33(a). To obtain a new trial due to newly discovered evidence, Fenn must show (1) the evidence is newly discovered, (2) the evidence could not have been discovered at trial through the exercise of due diligence, (3) the evidence is not merely cumulative or impeaching, (4) the evidence is material, and (5) the evidence probably would result in acquittal at a new trial. United States v. Chavis, 880 F.2d 788, 793 (4th Cir. 1989).

We have reviewed the record and conclude that the newly discovered evidence likely would not have resulted in acquittal. We thus conclude that the district court did not abuse its discretion in denying Fenn's motion for a new trial.

Accordingly, we affirm the district court's decision. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED