

April 26, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-40245
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KENNETH GREGORY,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:04-CR-6-ALL

Before JONES, Chief Judge, and BARKSDALE and BENAVIDES, Circuit
Judges.

PER CURIAM:*

Kenneth Gregory challenges his conviction following a jury trial for assaulting, resisting, and impeding a federal officer in violation of 18 U.S.C. § 111(a)(1). Gregory waived his argument that the district court erred when it failed to order a mistrial sua sponte because he explicitly waived his right to challenge the juror. United States v. Reveles, 190 F.3d 678, 682 (5th Cir. 1999); United States v. Musquiz, 45 F.3d 927, 931-32 (5th Cir. 1995).

Gregory's argument that the evidence was not sufficient to support his conviction because the Government failed to prove that he intended to strike Officer Matt is unavailing. Because Gregory was not required to know that he was striking a federal officer to be criminally liable under § 111(a)(1), that he intended to assault Officer Breaux and instead assaulted Officer Matt does not exonerate him. United States v. Feola, 420 U.S. 671, 686 (1975); United States v. Moore, 997 F.2d 30, 35 n.8 (5th Cir. 1993).

AFFIRMED.