

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 06-3257

United States of America,

Appellee,

v.

Bud Theus, III,

Appellant.

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Appeal from the United States
District Court for the
District of South Dakota.

[UNPUBLISHED]

Submitted: May 16, 2007
Filed: August 6, 2007

Before WOLLMAN, BRIGHT, and JOHN R. GIBSON, Circuit Judges.

PER CURIAM.

A jury found Bud Theus, III guilty of conspiring to possess with intent to distribute five kilograms or more of a mixture and substance containing cocaine, in violation of 21 U.S.C. § 841(a)(1) and 846. Theus argues that the evidence was insufficient to convict him and that the district court¹ erred by failing to recognize that a variance between the conspiracy for which Theus was convicted and the one alleged in the indictment affected his substantial rights. Having considered the briefs, the record, and the district court's thorough memorandum opinion, we conclude that even

¹The Honorable Lawrence L. Piersol, United States District Judge for the District of South Dakota.

if there was a variance, Theus's substantial rights were not affected and that sufficient evidence supports his conviction. Accordingly, Theus's arguments lack merit and do not warrant further discussion.

The judgment is affirmed. See 8th Cir. R. 47B.
