

Appendix A: Ninth Circuit's Opinion

Reporter

830 Fed. Appx. 894 *; 2020 U.S. App. LEXIS 38374 **; 2020 WL 7238456

UNITED STATES OF AMERICA, Plaintiff-Appellee, v.
LANCE LAMONT LAVERT, Defendant-Appellant.

Notice: PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Subsequent History: Rehearing denied by, Rehearing denied by, En banc *United States v. Lavert*, 2021 U.S. App. LEXIS 10293 (9th Cir. Cal., Apr. 9, 2021)

Prior History: [**1] Appeal from the United States District Court for the Southern District of California. D.C. No. 3:18-cr-03485-AGS-1. Larry A. Burns, District Judge, Presiding.

Disposition: AFFIRMED.

Core Terms

enhancement, serious bodily injury, violent crime, brandishing, firearm, district court, Hobbs Act, laceration, robbery, abused, gun

Counsel: For UNITED STATES OF AMERICA, Plaintiff - Appellee: Matthew Craig Brehm, Assistant U.S. Attorney, Brandon Kimura, Special Assistant U.S. Attorney, Daniel Earl Zipp, Assistant U.S. Attorney, Office of the US Attorney, San Diego, CA.

For LANCE LAMONT LAVERT, Defendant - Appellant: David James Zugman, Attorney, Burcham & Zugman, San Diego, CA.

Judges: Before: WALLACE, CLIFTON, and BRESS, Circuit Judges.

Opinion

MEMORANDUM*

Lance Lamont Lavert was convicted by jury of Hobbs Act robbery under 18 U.S.C. § 1951(a), brandishing a firearm during a crime of violence under 18 U.S.C. § 924(c), and being a felon in possession of a firearm under 18 U.S.C. § 922(g)(1). He appeals his brandishing conviction, as well as the 189-month sentence he received for the three offenses. We

have jurisdiction under 28 U.S.C. § 1291. We affirm.

Lavert contends that the court should vacate his conviction for brandishing a firearm "during and in relation to any crime of violence" because Hobbs Act robbery does not categorically qualify as a crime of violence under § 924(c)(3)(A). We review de novo and conclude that this argument is foreclosed by circuit precedent. [**2] See *United States v. Dominguez*, 954 F.3d 1251, 1256, 1260-61 (9th Cir. 2020).

Lavert also asserts that the district court abused its discretion when it imposed [**895] an enhancement under U.S.S.G. § 2B3.1(b)(3)(B) for causing serious bodily injury to one of his victims. While Lavert concedes that the victim was injured, he argues that the injuries were not sufficiently serious to warrant the four-level enhancement. We disagree. The record shows that Lavert struck the victim on the head with a gun, causing a laceration requiring nine staples, continuing treatment for trauma and the head injury, and an extended medical leave from work. On this record, the district court did not abuse its discretion in imposing the enhancement. See U.S.S.G. § 1B1.1 cmt. n.1(M) ("serious bodily injury" is "injury involving extreme physical pain or the protracted impairment of a function of a bodily member, organ, or mental faculty; or requiring medical intervention such as surgery, hospitalization, or physical rehabilitation"); *United States v. Gasca-Ruiz*, 852 F.3d 1167, 1170, 1175 (9th Cir. 2017) (en banc) (stating standard of review and explaining that a court abuses its discretion only if the decision to impose the enhancement is "illogical" or "implausible" based on the facts in the record); *United States v. Corbin*, 972 F.2d 271, 272-73 (9th Cir. 1992) (affirming application of "serious bodily injury" enhancement when the victim was hit "on the head with a [**3] metal object resembling a gun, causing a laceration which required a two-layer closure using more than 25 sutures").

AFFIRMED.

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*This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.