

AUG 14 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>TIRRELL LEWIS,</p> <p>Defendant - Appellant.</p>

No. 08-30300

D.C. No. 1:07-CR-00084-RFC

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Richard F. Cebull, Chief District Judge, Presiding

Submitted August 11, 2009**

Before: KLEINFELD, M. SMITH, and IKUTA, Circuit Judges.

Tirrell Lewis appeals from the 96-month sentence imposed following his jury trial conviction for being a felon in possession of a firearm and being a felon

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

in possession of ammunition, in violation of 18 U.S.C. § 922(g)(1). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Lewis contends that the district court abused its discretion by denying his counsel's request for a third continuance to obtain a trial witness. The district court did not abuse its discretion because the denial of the motion for a continuance was neither arbitrary, nor unreasonable. *See United States v. Tham*, 960 F.2d 1391, 1396-97 (9th Cir. 1992). Furthermore, Lewis has not shown that the denial resulted in actual prejudice. *See United States v. Shirley*, 884 F.2d 1130, 1135 (9th Cir. 1989).

AFFIRMED.