

FEB 19 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GENE AUSTIN,

Defendant - Appellant.

No. 09-50082

D.C. No. 5:07-cr-00146-SGL-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Stephen G. Larson, District Judge, Presiding

Argued and Submitted February 5, 2010
Pasadena, California

Before: B. FLETCHER, PREGERSON, and GRABER, Circuit Judges.

Gene Austin appeals his conviction for assaulting a United States Bureau of Prisons officer in violation of 18 U.S.C. § 111(a)(1), (b). Austin argues that the trial court erred because it failed to provide the jury with a sufficiently precise instruction that the jury must agree on the particular conduct that violated the

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

statute. We disagree. Even assuming that Austin was entitled to a “specific unanimity” instruction, *see, e.g., Schad v. Arizona*, 501 U.S. 624, 631-32 (1991); *United States v. Gavin*, 959 F.2d 788, 792 (9th Cir. 1992), the district court instructed the jury that they must agree on the “particular act that amounted to assaulting, resisting, opposing, impeding, intimidating, or interfering” with the officer. This instruction was adequate.

AFFIRMED.