

OCT 29 2012

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NOT FOR PUBLICATION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.

EBER AGUILAR-ACEVEDO,

Defendant - Appellant.

No. 11-10470

D.C. No. 4:10-cr-00024-CKJ-
DTF-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Cindy K. Jorgenson, District Judge, Presiding

Submitted October 15, 2012**
San Francisco, California

Before: SCHROEDER and BEA, Circuit Judges, and RESTANI, Judge.***

Appellant Eber Aguilar-Acevedo appeals his jury conviction for illegal re-entry after deportation in violation of 8 U.S.C. § 1326 and for assault on a Federal

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

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

*** The Honorable Jane A. Restani, Judge for the U.S. Court of International Trade, sitting by designation.

Officer in violation of 18 U.S.C. §§ 111(a)(1) and 111(b)(2). We have jurisdiction under 28 U.S.C. § 1291, and we affirm the conviction and sentence.

The district court did not err in denying Appellant's request for an adverse inference jury instruction because there was no evidence of bad faith on the part of the police in failing to preserve the rocks used in the assault. See Arizona v. Youngblood, 488 U.S. 51, 58 (1988); United States v. Artero, 121 F.3d 1256, 1259–60 (9th Cir. 1997). The district court did not err in permitting lay witnesses to establish bodily injuries because the testimony was based on the witnesses' personal observations and recollection of concrete facts, and it did not require specialized or technical knowledge to establish that a person was injured by rocks hitting his head. See Fed. R. Evid. 701.

AFFIRMED.