

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 18 2022

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 21-10291

Plaintiff-Appellee,

D.C. Nos. 3:21-cr-00180-SI-1

3:21-cr-00180-SI

v.

JAMON MORTON,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of California
Susan Illston, District Judge, Presiding

Submitted November 14, 2022**
San Francisco, California

Before: RAWLINSON and HURWITZ, Circuit Judges, and CARDONE,**
District Judge.

Jamon Morton appeals the fifty-seven-month sentence he received after
pleading guilty to being a felon in possession of a firearm and ammunition, in

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 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 Kathleen Cardone, United States District Judge for the
Western District of Texas, sitting by designation.

violation of 18 U.S.C. § 922(g). We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742, and we affirm the sentence.

Morton challenges the district court’s decision to increase his base offense level under section 2K2.1(a)(1) of the United States Sentencing Guidelines (“USSG”), due to his two prior felony convictions for crimes of violence. Those convictions were for assault with a semiautomatic firearm and assault by means of force likely to produce great bodily injury, under sections 245(b) and 245(a)(4) of the California Penal Code, respectively.

1. We have repeatedly held that assaults under sections 245(a)(1) and 245(a)(2) of the California Penal Code are categorically crimes of violence. *United States v. Vasquez-Gonzalez*, 901 F.3d 1060, 1067–68 (9th Cir. 2018); *United States v. Jimenez-Arzate*, 781 F.3d 1062, 1064 (9th Cir. 2015) (per curiam); *United States v. Grajeda*, 581 F.3d 1186, 1196–97 (9th Cir. 2009); *United States v. Heron-Salinas*, 566 F.3d 898, 899 (9th Cir. 2009) (per curiam). Although *Vasquez-Gonzalez* dealt with section 245(a)(1), the statute’s reorganization moved the exact language of that subsection to section 245(a)(4). *See* 901 F.3d at 1068 n.8. That case controls our decision today as to section 245(a)(4). And the elements of section 245(b) are the same as those of section 245(a)(2), except that subsection (b) requires use of a “semiautomatic firearm” instead of any “firearm.” *See People v. Martinez*, 145 Cal. Rptr. 3d 141, 142 (Ct. App. 2012). Thus, under our precedent, the assaults for

which Morton was convicted are plainly crimes of violence.

2. Morton argues that *Borden v. United States*, 141 S. Ct. 1817 (2021), abrogates this precedent. *Borden* concerned the definition of “violent felony” in the Armed Career Criminal Act (“ACCA”), *id.* at 1821–22, but also governs our interpretation of “crime of violence” in the USSG, which “is defined identically to the phrase ‘violent felony’ in the ACCA.” *United States v. Walker*, 953 F.3d 577, 579 (9th Cir. 2020). *Borden* held that an offense is not a violent felony—and thus, not a crime of violence—“if it requires only a *mens rea* of recklessness—a less culpable mental state than purpose or knowledge.” 141 S. Ct. at 1821–22. We previously held that section 245 offenses are crimes of violence precisely because the statute requires a *mens rea* greater than recklessness. *See Vasquez-Gonzalez*, 901 F.3d at 1067 (“[T]he California Supreme Court expressly rejected the conclusion that the *mens rea* for assault could be satisfied by negligent or reckless conduct.” (citing *People v. Williams*, 29 P.3d 197, 203 (Cal. 2001))). *Borden* requires nothing more. *See Amaya v. Garland*, 15 F.4th 976, 983 (9th Cir. 2021) (citing *Borden*, 141 S. Ct. at 1825) (rejecting the argument that a crime of violence requires proof of specific intent after *Borden*).

AFFIRMED.