

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 24 2026

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MATTHEW JOHN NASON,

Defendant - Appellant.

No. 25-1655

D.C. No.

3:22-cr-00017-MMD-CLB-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada

Miranda M. Du, District Judge, Presiding

Argued and Submitted August 13, 2026
Reno, Nevada

Before: BADE, FORREST, and VANDYKE, Circuit Judges.

Matthew John Nason appeals his conviction and sentence for assaulting a federal officer, in violation of 18 U.S.C. § 111(a)(1), (b). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. The district court did not constructively amend the indictment and therefore did not plainly err when it instructed the jury that it could convict Nason

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

of forcible assault by intentional threat. *See United States v. Choy*, 309 F.3d 602, 607 (9th Cir. 2002) (noting that the court reviews for plain error when a defendant fails to raise a constructive amendment objection before the district court). Nason argues that because the indictment described his offense as “firing a handgun in the direction of Deputy United States Marshal D.H.,” the indictment categorically “confined the means of assault to assault by attempted-striking.” But discharging a gun in the direction of another person could reasonably encompass both forcible assault by attempted striking and forcible assault by intentional threat. If Nason did not intend to strike Deputy D.H. by firing a gun in his direction, such conduct could be intended to threaten Deputy D.H. to force him to retreat or even force him to return fire and kill Nason. Although “[a]n indictment must include ‘a statement of facts and circumstances that will inform the accused of the specific offense with which he is charged,’” *United States v. Shipsey*, 190 F.3d 1081, 1087 (9th Cir. 1999) (quoting *United States v. Cecil*, 608 F.2d 1294, 1296 (9th Cir. 1979)), “it need not specify the theories or evidence upon which the government will rely to prove those facts,” *United States v. Cochrane*, 985 F.2d 1027, 1031 (9th Cir. 1993).

2. The district court did not plainly err by admitting Nason’s next-door neighbor’s testimony. *See United States v. McInnis*, 976 F.2d 1226, 1231 n.3 (9th Cir. 1992) (“When a defendant does not object to the introduction of evidence at

trial on the same grounds as raised on appeal, the district court will only be reversed for plain error.”). The neighbor’s testimony was not only relevant but also probative. It corroborated the shooter’s identity and provided an independent source of evidence as to Nason’s perceived ability to harm others because his actions required the neighbor and his family to immediately evacuate their apartment. And contrary to Nason’s contention, the neighbor’s testimony regarding the two gunshots was not cumulative of the law enforcement officers’ testimony. Moreover, any prejudice that might have resulted from admitting the neighbor’s testimony regarding the danger Nason’s actions posed to the neighbor’s children was mitigated by the district court’s instructions to the jury at the close of trial. *See United States v. Bradshaw*, 690 F.2d 704, 709 (9th Cir. 1982) (“Limiting instructions may reduce or eliminate prejudice which would otherwise occur.”).

3. Because Nason has failed to establish that the district court erred in instructing the jury or admitting the neighbor’s testimony, there was no cumulative error. *See United States v. Gutierrez*, 995 F.2d 169, 173 (9th Cir. 1993); *United States v. Berry*, 627 F.2d 193, 201 (9th Cir. 1980).

4. The district court did not plainly err at sentencing by applying United States Sentencing Guideline (U.S.S.G.) § 2A2.2 to determine the base offense level for Nason’s 18 U.S.C. § 111 conviction. *See United States v. Ayala-Nicanor*, 659 F.3d 744, 746–47 (9th Cir. 2011) (noting that when a defendant “did not object

below to the sufficiency of the court’s explanation for its sentencing determination, we review only for plain error”), *overruled on other grounds by United States v. Lopez*, No. 24-3268, --- F.4th ----, 2026 WL 2165840 (9th Cir. July 28, 2026).

Nason first argues that the district court procedurally erred by concluding that U.S.S.G. § 2A2.2 is “always” and “per se” the controlling Guideline for a conviction under 18 U.S.C. § 111. Nason’s argument relies on language in the presentence report (PSR). But the district court did not expressly adopt or otherwise use the exact language at issue during the sentencing proceedings. Rather, the district court reviewed the PSR and considered the parties’ sentencing arguments before adopting the calculations set forth in the PSR. Nason also did not object to the PSR’s application of aggravated assault under U.S.S.G. § 2A2.2. Because “[t]rial judges are presumed to know the law and to apply it in making their decisions,” *United States v. Carty*, 520 F.3d 984, 992 (9th Cir. 2008) (*en banc*) (citation omitted), and the record does not support the conclusion that the district court considered § 2A2.2 to be the controlling Guideline for all violations of 18 U.S.C. § 111, Nason’s argument fails.

Nason next argues that the district court plainly erred by failing to make a threshold finding that he used a dangerous weapon with the intent to cause bodily injury. While the district court did not expressly state its reasons for applying U.S.S.G. § 2A2.2 to determine the base offense level for Nason’s conviction under

18 U.S.C. § 111, “adequate explanation in some cases may also be inferred from the PSR or the record as a whole.” *Carty*, 520 F.3d at 992; *see United States v. Daniels*, 541 F.3d 915, 922 (9th Cir. 2008) (“No lengthy explanation is necessary if ‘the record makes clear that the sentencing judge considered the evidence and arguments.’” (quoting *Rita v. United States*, 551 U.S. 338, 359 (2007))). Here, the evidence in the record and the PSR establish the necessary finding for applying U.S.S.G. § 2A2.2 and there is no indication that the district court failed to consider any evidence or argument presented to it. Because Nason has failed to establish that the district court’s alleged error is “clear or obvious, rather than subject to reasonable dispute,” *United States v. Walls*, 784 F.3d 543, 546 (9th Cir. 2015), the district court did not plainly err by applying U.S.S.G. § 2A2.2 as the offense level for Nason’s 18 U.S.C. § 111 conviction.

AFFIRMED.