

NOV 01 2016

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NOT FOR PUBLICATION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-Appellant,

v.

RODNEY TOMMIE STEWART,

Defendant-Appellee.

No. 14-30108

D.C. No. 1:14-cr-00020-SPW

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Susan P. Watters, District Judge, Presiding

Submitted October 25, 2016**

Before: LEAVY, GRABER, and CHRISTEN, Circuit Judges.

The government appeals from the district court's order granting Rodney Tommie Stewart's motion to dismiss his indictment for domestic assault by a habitual offender under 18 U.S.C. § 117(a). We have jurisdiction under 28 U.S.C. § 1291, and we reverse and remand for further proceedings.

* 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 district court dismissed the indictment on the ground that the government could not use Stewart's uncounseled tribal court convictions to prove an element of the offense. After the district court's decision, the Supreme Court decided that the use of uncounseled tribal court convictions is permissible in a prosecution under section 117. *See United States v. Bryant*, 136 S. Ct. 1954, 1966 (2016). We agree with the parties that remand is required under *Bryant*. Accordingly, we reverse the district court's order dismissing Stewart's indictment and remand for further proceedings.

REVERSED and REMANDED.