NOT FOR PUBLICATION

FILED

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. CHRISTOPHER ROBERT LAWRENCE, Defendant-Appellant.	No. 17-30061 D.C. No. 2:13-cr-00001-SEH-1 ORDER*

Appeal from the United States District Court
for the District of Montana
Sam E. Haddon, District Judge, Presiding

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. KELLY DAVID ANKENY, Sr., Defendant-Appellant.	No. 17-35138 D.C. Nos. 3:16-cv-01013-MO 3:04-cr-00005-MO-1

Appeal from the United States District Court
for the District of Oregon
Michael W. Mosman, District Judge, Presiding

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

Argued and Submitted July 12, 2018
Portland, Oregon

Before: WARDLAW and OWENS, Circuit Judges, and LEFKOW,[**] District Judge.

After oral argument in these cases, we certified three questions to the Oregon Supreme Court concerning whether Oregon first-degree robbery (Or. Rev. Stat. § 164.415) (Robbery I) and Oregon second-degree robbery (*id.* § 164.405) (Robbery II) are divisible. The Oregon Supreme Court accepted the questions but has not yet rendered a decision. Based on *Stokeling v. United States*, 139 S. Ct. 544 (2019), the government moves in Kelly Ankeny's case to vacate our certification order to the Oregon Supreme Court and to affirm the judgment of the district court. Christopher Lawrence, who was convicted of Robbery I, moves voluntarily to dismiss his appeal.

Stokeling held that the elements (or force) clause of the Armed Career Criminal Act (ACCA) "encompasses robbery offenses that require the criminal to overcome the victim's resistance." 139 S. Ct. at 550. Based on this holding, the government argues that Oregon third-degree robbery (Or. Rev. Stat. § 164.395) (Robbery III), which forms the basis for Robbery I and II at issue in these appeals, is now categorically a violent felony or crime of violence under *Stokeling.* As such,

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[**] The Honorable Joan Lefkow, United States District Judge for the Northern District of Illinois, sitting by designation.

the government argues, the question whether Robbery I and II are divisible is moot, and *United States v. Strickland*, 860 F.3d 1224 (9th Cir. 2017), in which we held that Robbery III is not a "violent felony" under ACCA, is no longer good law. In *Strickland* we pointed to *State v. Johnson*, in which the Oregon Court of Appeals affirmed a conviction for Robbery III where the defendant had snatched a purse and a vase of flowers from an elderly victim as she was walking from her car to her house. *Strickland*, 860 F.3d at 1227 (citing *State v. Johnson*, 168 P.3d 312, 313 (Or. Ct. App. 2007)). The victim testified that the incident happened so quickly she did not actually feel much of anything. *Id.* The Oregon court ruled that, "in those circumstances, the jury was entitled to infer that defendant intended to use force sufficient to overcome any resistance that the victim *may have offered had she had more time to react* and that defendant intended to use force sufficient to prevent resistance." *Johnson*, 168 P.3d at 315 (emphasis added). This set of facts remains outside the scope of the elements clause as defined in *Stokeling*. *Strickland* thus remains good law.

Lawrence's motion to dismiss his appeal is granted, and we withdraw the certification memorandum insofar as it relates to him. The government's motion to vacate the certification is denied. A copy of this order shall serve as and for the mandate of this court for appeal No. 17-30061, USA v. Christopher Lawrence only.