

June 2, 2021

Christopher M. Wolpert
Clerk of Court

PUBLISH

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

Nos. 19-8021 & 19-8022

CHRISTOPHER DOMINGUEZ,

Defendant - Appellant.

**Appeals from the United States District Court
for the District of Wyoming
(D.C. No. 2:18-CR-00186-NDF-1)
(D.C. No. 2:17-CR-00098-NDF-3)**

Grant R. Smith, Assistant Federal Public Defender (Virginia L. Grady, Federal Public Defender, with him on the briefs), Office of the Federal Public Defender, Denver, Colorado, for Defendant-Appellant.

Stuart S. Healy, III, Assistant United States Attorney (L. Robert Murray, Acting United States Attorney, with him on the brief), Office of the United States Attorney, District of Wyoming, Cheyenne, Wyoming, for Plaintiff-Appellee.

Before **HOLMES**, Circuit Judge, **LUCERO**, Senior Circuit Judge, and **EID**, Circuit Judge.

HOLMES, Circuit Judge.

Christopher Dominguez appeals from the district court's denial of his motion to withdraw his guilty plea. He contends that his plea is invalid for two reasons: first, he did not knowingly and intelligently plead guilty, and second, he did not receive the requisite "close assistance" of counsel in making his plea. Based on these contentions, he asks that we reverse the district court's decision and remand with instructions to vacate his plea. We decline to do so. Despite his arguments to the contrary, Mr. Dominguez does not convince us that he unknowingly and unintelligently pleaded guilty or that he did not receive "close assistance" of counsel. Accordingly, exercising jurisdiction under 28 U.S.C. § 1291, we affirm the district court's judgment.

I

This case arises from Mr. Dominguez's involvement in a series of robberies in New Mexico and Wyoming. On December 3, 2016, Mr. Dominguez was arrested along with two other suspects, Antoine Mitchell and Moses D. Dickens III, for the armed robbery on that same day of the Medicine Shoppe Pharmacy in Raton, New Mexico. There were a number of salient features of the robbery. The robbery was committed by only three men. Prior to the robbery, the robbers had stolen a vehicle, which they used during the robbery and abandoned thereafter. During the robbery, the robbers wore face coverings, displayed firearms, and ordered the pharmacy employees to load certain drugs into black trash bags that the robbers supplied. The robbers identified the requested drugs by name,

specifically mentioning “Oxy 30,” by which they apparently meant Oxycontin and Oxycodone.

After Mr. Dominguez and his cohorts were arrested, the Raton Police Department posted information concerning the robbery, including photos, on the Department’s Facebook page. This post drew the attention of a pharmacist who had been shot during a robbery of the Medicap Pharmacy in Cheyenne, Wyoming, on October 6, 2016. The salient features of that robbery closely resembled those of the Raton, New Mexico, robbery. However, notably, the robbers in the Wyoming robbery of the Medicap Pharmacy obtained the stolen vehicle used in the robbery by carjacking a female victim. Moreover, not only did they display their firearms, they also engaged in a gun battle with the pharmacist before fleeing the scene.

After seeing the Raton Police Department Facebook information, the Medicap pharmacist alerted law enforcement, which began investigating whether the suspects in the New Mexico robbery had also committed the prior Wyoming robbery. Law enforcement would eventually directly connect Messrs. Mitchell and Dickens to the Wyoming robbery through DNA uncovered in the carjacking victim’s stolen vehicle and through that victim’s eyewitness identifications of the two men. Furthermore, one of the firearms that law enforcement seized from a vehicle involved in the New Mexico robbery was forensically shown to have fired shells recovered at the scene of the Wyoming robbery. Though Mr. Dominguez

was arrested with Messrs. Mitchell and Dickens after the New Mexico robbery, there was no evidence directly connecting him to the Wyoming robbery.

However, law enforcement made note that the vehicle in the driveway of Mr. Dominguez's girlfriend matched the description of the vehicle that the Wyoming robbers used during the victim's carjacking and to flee the robbery scene.

Federal grand juries in New Mexico and Wyoming returned multi-count indictments charging Mr. Dominguez and the other two men with various crimes related to these robberies.¹ Mr. Dominguez pleaded not guilty to all charges.

¹ Mr. Dominguez was charged with the following crimes relating to the New Mexico robbery: Count 1—Hobbs Act Robbery, in violation of 18 U.S.C. § 1951(a); Count 2—Brandishing a Firearm in Furtherance of a Crime of Violence and a Drug Trafficking Crime, in violation of 18 U.S.C. § 924(c); Count 3—Robbery Involving Controlled Substances and Aiding and Abetting, in violation of 18 U.S.C. §§ 2, 2118(a)(1), (c)(1); Count 4—Theft of Medical Products and Aiding and Abetting, in violation of 18 U.S.C. §§ 2, 670(a)(1), (b)(2)(A)–(B); Count 5—Possession with Intent to Distribute Oxycodone and Aiding and Abetting, in violation of 18 U.S.C. § 2 and 21 U.S.C. § 841(a)(1), (b)(1)(C); and Count 8—Felon in Possession of a Firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). *See R.*, Vol. II, at 18–23 (N.M. Indictment, filed Dec. 20, 2016). In relation to the Wyoming robbery, Mr. Dominguez was indicted on the following charges: Count 1—Conspiracy to Commit Carjacking, in violation of 18 U.S.C. § 371; Count 2—Carjacking and Aiding and Abetting, in violation of 18 U.S.C. §§ 2, 2119; Counts 3 and 4—Using, Carrying, and Discharging a Firearm During and in Relation to a Crime of Violence and Aiding and Abetting, in violation of 18 U.S.C. §§ 2, 924(c)(1)(A)(iii); Count 5—Attempted Robbery Involving Controlled Substances and Aiding and Abetting, in violation of 18 U.S.C. §§ 2, 2118(a)(1)(3)(c)(1); Count 6—Hobbs Act Robbery, in violation of 18 U.S.C. § 1951; and Counts 7 and 8—Using, Carrying, and Discharging a Firearm During and in Relation to a Crime of Violence, in violation of 18 U.S.C. § 924(c)(1)(A)(iii). *See id.*, Vol. I, at 15–23 (Wyo. Indictment, filed May 19, 2017). Counts 3 and 8 of the Wyoming Indictment were dismissed prior to Mr. Dominguez's change of plea.

Among Mr. Dominguez’s charges were three separate violations of 18 U.S.C. § 924(c)—one in relation to the New Mexico robbery, and two in relation to the Wyoming robbery. Under § 924(c),

any person who, during and in relation to any crime of violence or drug trafficking crime . . . uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—(i) be sentenced to a term of imprisonment of not less than 5 years; (ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and (iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

18 U.S.C. § 924(c)(1)(A). Notably, as to the New Mexico robbery, Mr. Dominguez’s only § 924(c) charge alleged that he brandished a firearm and thus invoked the seven-year mandatory minimum sentence; and, as to the Wyoming robbery, his two § 924(c) charges each averred that Mr. Dominguez discharged a firearm, which invoked the ten-year mandatory minimum sentence.

Section 924(c) requires that each term of imprisonment for a violation of the statute run consecutively to each of a defendant’s other terms of imprisonment. *See id.* § 924(c)(1)(D)(ii) (“[N]o term of imprisonment imposed on a person under [§ 924(c)] shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed.”). Additionally, *at the time Mr. Dominguez was charged*, § 924(c) contained a “stacking provision,” which

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