

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVION L. JEFFERSON,

Defendant.

Case No. 15-20012-01-CM

MEMORANDUM AND ORDER

In August 2016, a jury convicted defendant Davion Jefferson of a number of charges. Two of those convictions are for Hobbs Act robbery under 18 U.S.C. § 1951 (Counts 5 and 7). The jury also convicted defendant of brandishing a firearm during and in relation to the two robberies charged in Counts 5 and 7 (Counts 6 and 8). Both Counts 6 and 8 charged that robbery is a “crime of violence,” which is based on language in 18 U.S.C. § 924(c)(1)(A)(ii).

Defendant filed a Motion for Judgment of Acquittal (Doc. 71) on Counts 6 and 8. In this motion, defendant argues that Hobbs Act robbery is not a “crime of violence,” and it therefore cannot serve as a predicate “crime of violence” for convictions under § 924(c)(1)(A)(ii). Defendant argues that Hobbs Act robbery is not a “crime of violence” because (1) it does not require the use, attempted use, or threatened use of physical force against the person or property of another, as § 924(c)(3)(A) mandates; and (2) § 924(c)(3)(B) does not offer relief because it is unconstitutionally vague. For the following reasons, the court denies defendant’s motion.

The court turns to defendant’s second argument first. Citing *Johnson v. United States*, 135 S. Ct. 1551 (2015), defendant claims that § 924(c)(3)(B)’s residual clause cannot serve as a predicate “crime of violence” because it is unconstitutionally vague. But in this case, the convictions were not

based on § 924(c)(3)(B). Instead, they were based on § 924(c)(3)(A). Defendant's argument does not apply in this situation.

Next: whether Hobbs Act robbery constitutes a "crime of violence" under § 924(c)(3)(A). The court concludes that it does. This decision is in line with that of a number of courts, and the court will not repeat that analysis here, but adopts it by reference. *See, e.g., United States v. Moreno*, No. 16-5116, 2016 WL 6648670, at *2 (10th Cir. Nov. 10, 2016) ("The district court correctly held that robbery, as defined in § 1951, qualifies as a 'crime of violence' under § 924(c)(3)(A) because it 'has as an element the use, attempted use, or threatened use of physical force against the person or property of another.'"); *United States v. Pasley*, Nos. 08-289-R, 16-553-R, 2016 WL 7156787, at *3 (W.D. Okla. Dec. 7, 2016) (citing *United States v. Hill*, 832 F.3d 135, 144 (2d Cir. 2016) ("[W]e agree . . . that Hobbs Act robbery 'has as an element the use, attempted use, or threatened use of physical force against the person or property of another.'"); *United States v. Howard*, 650 F. App'x 466, 468 (9th Cir. 2016) ("Hobbs Act robbery indisputably qualifies as a crime of violence under" § 924(c)(3)(A)); *In re Fleur*, 824 F.3d 1337, 1341 (11th Cir. 2016) (holding that Hobbs Act robbery "meets the use-of-force clause of the definition of a crime of violence under § 924(c)(3)(A)"); *see also United States v. Nguyen*, Nos. 94-10129-01-JTM, 16-1231-JTM, 2016 WL 4479131, at *3 (Aug. 25, 2016) (citations omitted).

Because Hobbs Act robbery constitutes a § 924(c)(3)(A) crime of violence, defendant's convictions for Counts 6 and 8 must stand. The court denies defendant's motion.

IT IS THEREFORE ORDERED that defendant's Motion for Judgment of Acquittal (Doc. 71) is denied.

Dated this 27th day of February, 2017, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge