

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

October 20, 2022

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANDREW GIBBS, a/k/a Andrew Lee
Gibbs,

Defendant - Appellant.

No. 22-5020
(D.C. No. 4:21-CR-00144-GKF-1)
(N.D. Okla.)

ORDER AND JUDGMENT*

Before **MATHESON**, **BACHARACH**, and **PHILLIPS**, Circuit Judges.

This matter is before us on the parties’ *Joint Motion to Remand*. The parties agree that the district court constructively amended the indictment via a jury instruction defining sexual contact, and Appellant Andrew Gibbs is entitled to relief for plain error.

Upon consideration, the *Joint Motion to Remand* is granted. Mr. Gibbs’ conviction on Count Two is vacated. This appeal is dismissed and this matter is

* In light of the parties’ joint motion, oral argument is not necessary, and this matter is submitted on the briefs. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

remanded with instructions to the district court to enter an amended judgment as to County Three only consistent with the *Joint Motion to Remand*.

The Clerk is directed to issue the mandate forthwith.

Entered for the Court
Per Curiam