

IN THE SUPREME COURT OF THE UNITED STATES

BRENT DELVALEN BLAKE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether armed bank robbery, in violation of 18 U.S.C. 2113(a) and (d), is a "crime of violence" under 18 U.S.C. 924(c)(3).

ADDITIONAL RELATED PROCEEDINGS

United States District Court (E.D. Cal.):

United States v. Slater, No. 03-cr-371 (May 12, 2006; June 11, 2007; Jan. 4, 2008)

United States Court of Appeals (9th Cir.):

United States v. Blake, No. 07-10286 (July 11, 2008)

United States v. Williams, No. 06-10369 (Apr. 8, 2010)

United States v. Maddox, No. 08-10042 (Apr. 8, 2010)

United States v. Rodgers, No. 06-10378 (Apr. 8, 2010)
(appeal of co-defendant)

United States v. Arceneaux, No. 06-10381 (Apr. 8, 2010)
(appeal of co-defendant)

United States v. Maddox, No. 18-17172 (July 22, 2019)

United States v. Blake, No. 18-17167 (July 22, 2019)

United States v. Williams, No. 18-17173 (July 22, 2019)

Supreme Court of the United States:

Blake v. United States, No. 08-7327 (Jan. 12, 2009)

Williams v. United States, No. 10-6808 (Nov. 1, 2010)

Rodgers v. United States, No. 10-6597 (Nov. 1, 2010)
(co-defendant's petition for a writ of certiorari)

Arceneaux v. United States, No. 10-6750 (Nov. 1, 2010)
(co-defendant's petition for a writ of certiorari)

IN THE SUPREME COURT OF THE UNITED STATES

No. 19-6354

BRENT DELVALEN BLAKE, PETITIONER

v.

UNITED STATES OF AMERICA

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The orders of the court of appeals (Pet. App. 1-3) are not published in the Federal Reporter but are available at 2019 WL 5454850 (petitioner Blake), 2019 WL 5459146 (petitioner Maddox), and 2019 WL 5454901 (petitioner Williams).¹ The order of the district court (Pet. App. 4-5) is not published in the Federal Supplement but is available at 2018 WL 5016826. Prior opinions of the court of appeals are not published in the Federal Reporter but

¹ Pursuant to Rule 12.4 of the Rules of this Court, petitioners are Brent Blake, Derek Maddox, and Michael Williams. Pet. 1.

are reprinted at 375 Fed. Appx. 682 (Maddox and Williams) and 285 Fed. Appx. 449 (Blake).

JURISDICTION

The judgments of the court of appeals were entered on July 22, 2019. The petition for a writ of certiorari was filed on October 18, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Eastern District of California, petitioners Brent Blake and Derek Maddox were convicted of armed bank robbery, in violation of 18 U.S.C. 2113(a) and (d), and using or carrying a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1). Blake Judgment 1; Maddox Judgment 1. Following a separate jury trial in the United States District Court for the Eastern District of California, petitioner Michael Williams was convicted on two counts of armed bank robbery, in violation of 18 U.S.C. 2113(a) and (d), and two counts of using or carrying a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1). Williams Judgment 1-2. The district court sentenced Blake and Maddox to 346 months of imprisonment, and it sentenced Williams to 534 months of imprisonment, each term of imprisonment to be followed by five years of supervised release. Blake Judgment 2-3; Maddox Judgment 2-3; Williams Judgment 3-4. The court of appeals affirmed.

375 Fed. Appx. 682 (Maddox and Williams); 285 Fed. Appx. 449 (Blake).

In 2016, petitioners filed motions for postconviction relief under 28 U.S.C. 2255. D. Ct. Doc. 1029 (June 21, 2016) (Blake 2255 Mot.); D. Ct. Doc. 1030 (June 21, 2016) (Maddox 2255 Mot.); D. Ct. Doc. 1032 (June 21, 2016) (Williams 2255 Mot.). The district court denied petitioners' motions, Pet. App. 4-5, and denied their requests for certificates of appealability (COAs), D. Ct. Doc. 1109, at 1-2 (Oct. 22, 2018). The court of appeals likewise denied petitioners' requests for COAs. Pet. App. 1-3.

1. Petitioners were part of a crew, led by Dwayne Slater and Shondor Arceneaux, that robbed banks in California. See, e.g., Williams Presentence Investigation Report (PSR) ¶¶ 5, 8, 11. Slater and Arceneaux planned the robberies, which petitioners and other co-conspirators carried out. See PSR ¶¶ 3-7, 9-11.

On September 3, 2003, petitioners robbed the Financial Center Credit Union in Manteca, California. PSR ¶ 3. Williams and Maddox, along with co-conspirator Demond Vaughn, entered the credit union armed with pistols. PSR ¶¶ 3, 6. Blake and another co-conspirator, Kenneth Rodgers, remained outside the credit union and served as lookouts. PSR ¶¶ 5, 7. Blake had recruited Vaughn into the conspiracy and supplied one of the guns used during the robbery. PSR ¶ 5. During the course of the robbery, Williams, Maddox, and Vaughn pointed guns at the credit union employees and threatened to kill them. PSR ¶ 3. One of the robbers pressed his

gun to the head of the credit union's manager and threatened to shoot her in the head if she did not open the vault. Ibid. The manager was unable to open the vault but directed the robbers to the credit union's cash dispensers. Ibid. The robbers stole about \$117,000 from the cash dispensers and fled. PSR ¶¶ 3-4.

On March 10, 2003, Williams carried out another robbery on behalf of Slater and Arceneaux, this time with co-conspirator Deleshia Gilbert. See PSR ¶¶ 9-11. Williams, Gilbert, and an unidentified accomplice entered the Farmers and Merchants Bank in Hilmar, California, brandishing guns. PSR ¶¶ 9, 11. The robbers tied up bank employees with plastic zip ties and threatened to shoot them. PSR ¶ 9. After less than a minute inside the bank, Gilbert received a radio transmission from someone outside the bank warning the robbers to leave immediately. Ibid. The robbers stole about \$14,200 from the teller drawers and fled. Ibid.

2. A federal grand jury charged petitioners with multiple counts of armed bank robbery, in violation of 18 U.S.C. 2113(a) and (d), and using and carrying a firearm during and in relation to crimes of violence (the armed bank robberies), in violation of 18 U.S.C. 924(c)(1). Fifth Superseding Indictment 7-8, 10-11. Following a jury trial, Blake and Maddox were each convicted of armed bank robbery and a corresponding Section 924(c) offense. Blake Judgment 1; Maddox Judgment 1. Following a separate jury trial, Williams was convicted on two counts of armed bank robbery

and two corresponding Section 924(c) counts. Williams Judgment 1-2.

The district court sentenced Blake and Maddox each to 346 months of imprisonment, consisting of 262 months of imprisonment on the armed bank robbery counts and a consecutive term of 84 months of imprisonment on the Section 924(c) counts. Blake Judgment 2; Maddox Judgment 2. The court sentenced Williams to 534 months of imprisonment, consisting of concurrent terms of 150 months of imprisonment on the armed bank robbery counts, a consecutive term of 84 months of imprisonment on the first Section 924(c) count, and a consecutive term of 300 months of imprisonment on the second Section 924(c) count. Williams Judgment 3. The court of appeals affirmed. 375 Fed. Appx. 682 (Maddox and Williams); 285 Fed. Appx. 449 (Blake).

3. In 2016, petitioners filed motions for postconviction relief under 28 U.S.C. 2255, in which they contended that their Section 924(c) convictions should be vacated on the theory that the underlying offenses for those convictions -- armed bank robberies -- were not "crime[s] of violence." See Blake 2255 Mot. 3-12; Maddox 2255 Mot. 3-12; Williams 2255 Mot. 3-12. Section 924(c)(3) defines a "crime of violence" as a felony offense that either "has as an element the use, attempted use, or threatened use of physical force against the person or property of another," 18 U.S.C. 924(c)(3)(A), or, "by its nature, involves a substantial risk that physical force against the person or property of another

may be used in the course of committing the offense,” 18 U.S.C. 924(c)(3)(B). Petitioners argued that armed bank robbery does not qualify as a crime of violence under Section 924(c)(3)(A), and that Section 924(c)(3)(B) was unconstitutionally vague in light of Johnson v. United States, 135 S. Ct. 2551 (2015), which held that the “residual clause” of the Armed Career Criminal Act of 1984, 18 U.S.C. 924(e)(2)(B)(ii), is void for vagueness, 135 S. Ct. at 2557. See Blake 2255 Mot. 3-12; Maddox 2255 Mot. 3-12; Williams 2255 Mot. 3-12.

A magistrate judge recommended that petitioners’ Section 2255 motions be denied. Pet. App. 6-11. The magistrate judge observed that, after petitioners filed their Section 2255 motions, the Ninth Circuit had “explicitly held” that armed bank robbery qualifies as a crime of violence under Section 924(c)(3)(A). Id. at 9 (citing United States v. Watson, 881 F.3d 782 (9th Cir.) (per curiam), cert. denied, 139 S. Ct. 203 (2018)). The magistrate judge therefore determined that petitioners’ claims were “foreclose[d]” by precedent. Ibid.

The district court adopted the magistrate judge’s recommendations and denied petitioners’ motions for postconviction relief. Pet. App. 4-5. The court also denied petitioners’ requests for COAs. D. Ct. Doc. 1109, at 1-2.

4. The court of appeals likewise denied petitioners’ requests for COAs. Pet. App. 1-3. The court determined that, in light of Watson, petitioners could not make a “substantial showing

of the denial of a constitutional right,'" as required to obtain a COA. Id. at 1 (quoting 28 U.S.C. 2253(c)(2)); see id. at 2-3 (same).

ARGUMENT

Petitioners contend (Pet. 7-22) that the court of appeals erred in denying their requests for COAs because armed bank robbery is not a "crime of violence" under 18 U.S.C. 924(c). That contention lacks merit, and no further review is warranted.

1. A conviction for armed bank robbery requires proof that the defendant (1) took or attempted to take money from the custody or control of a bank "by force and violence, or by intimidation," 18 U.S.C. 2113(a); and (2) either committed an "assault[]" or endangered "the life of any person by the use of a dangerous weapon or device" while committing the robbery, 18 U.S.C. 2113(d). For the reasons stated in the government's brief in opposition to the petition for a writ of certiorari in Lloyd v. United States, No. 18-6269 (Jan. 9, 2019), cert. denied, 139 S. Ct. 1167 (2019), armed bank robbery qualifies as a crime of violence under Section 924(c) because it "has as an element the use, attempted use, or threatened use of physical force against the person or property of another," 18 U.S.C. 924(c)(3)(A). See Br. in Opp. at 6-13, Lloyd, supra (No. 18-6269).² Every court of appeals to have considered the question, including the court below, has so held. See id. at

² We have served petitioners with a copy of the government's brief in opposition in Lloyd.

8-9. This Court has recently and repeatedly denied petitions for a writ of certiorari challenging the circuits' consensus on the application of Section 924(c)(3)(A) -- and similarly worded federal statutes and provisions of the Sentencing Guidelines -- to bank robbery and armed bank robbery.³ The same result is warranted here.

2. Petitioners raise the additional argument (Pet 12-16), not specifically addressed in Lloyd, that the circuits' uniform determination that armed bank robbery qualifies as a crime of violence under Section 924(c)(3)(A) is inconsistent with decisions from several of the same circuits rejecting challenges to the sufficiency of the evidence in bank robbery cases that (according to petitioners) did not involve a threatened use of force.

³ See, e.g., Mojica v. United States, No. 19-35 (Jan. 13, 2020); Lockwood v. United States, 139 S. Ct. 2648 (2019) (No. 18-8799) (armed bank robbery); Cirino v. United States, 139 S. Ct. 2012 (2019) (No. 18-7680) (armed bank robbery); Winston v. United States, 139 S. Ct. 1637 (2019) (No. 18-8525) (armed bank robbery); Hearn v. United States, 139 S. Ct. 1620 (2019) (No. 18-7573) (armed bank robbery); Landingham v. United States, 139 S. Ct. 1620 (2019) (No. 18-7543) (armed bank robbery); Scott v. United States, 139 S. Ct. 1612 (2019) (No. 18-8536) (armed bank robbery); Lloyd, supra (No. 18-6269) (armed bank robbery); Johnson v. United States, 139 S. Ct. 647 (2018) (No. 18-6499) (bank robbery); Faurisma v. United States, 139 S. Ct. 578 (2018) (No. 18-6360) (armed bank robbery); Cadena v. United States, 139 S. Ct. 436 (2018) (No. 18-6069) (bank robbery); Patterson v. United States, 139 S. Ct. 291 (2018) (No. 18-5685) (bank robbery); Watson v. United States, 139 S. Ct. 203 (2018) (No. 18-5022) (armed bank robbery); Perry v. United States, 138 S. Ct. 1439 (2018) (No. 17-6611) (armed bank robbery); Schneider v. United States, 138 S. Ct. 638 (2018) (No. 17-5477) (bank robbery); Castillo v. United States, 138 S. Ct. 638 (2018) (No. 17-5471) (bank robbery); Stephens v. United States, 138 S. Ct. 502 (2017) (No. 17-5186) (armed bank robbery).

Petitioners' claim of intracircuit disagreement does not warrant this Court's review. See Wisniewski v. United States, 353 U.S. 901, 902 (1957) (per curiam). In any event, that claim is meritless.

The courts of appeals have consistently recognized that a "bank robbery under [Section] 2113(a) inherently contains a threat of violent physical force," such that a "bank employee can reasonably believe that a robber's demands for money to which he is not entitled will be met with violent force." United States v. Armour, 840 F.3d 904, 909 (7th Cir. 2016); see Br. in Opp. at 9, Lloyd, supra (No. 18-6269) (citing cases). As the court of appeals explained in United States v. Hopkins, 703 F.2d 1102 (9th Cir.), cert. denied, 464 U.S. 963 (1983) (cited at Pet. 13), "the threats implicit in [a bank robber's] written and verbal demands for money provide sufficient evidence of intimidation," even if the robber does not explicitly threaten violence. Id. at 1103; see ibid. (finding sufficient evidence of intimidation where defendant handed bank teller a note that stated, "[t]his is a robbery," and demanded money). Each of the cases on which petitioner relies comports with that standard. See, e.g., United States v. Ketchum, 550 F.3d 363, 368 (4th Cir. 2008) (finding sufficient evidence of intimidation where defendant "confronted the teller," "made a verbal demand for money," "referenced a gun," and told her not to call police); United States v. Lucas, 963 F.2d 243, 248 (9th Cir. 1992) (same where defendant "terrified" bank teller by confronting

her and demanding that she fill defendant's bag with money); United States v. Slater, 692 F.2d 107, 107-108, 109 (10th Cir. 1982) (same where defendant instilled "surprise and fear" in bank employees by "forceful[ly]" entering teller station, taking money from teller drawers, and ordering bank manager to "shut up" when confronted).

Petitioners identify no case in which a court of appeals has found that conduct similar to the conduct required for a federal bank-robbery conviction does not at least involve the threatened use of physical force.

Moreover, petitioners' arguments disregard that they were convicted of armed bank robbery, which entails "assault[ing]" or "put[ting] in jeopardy the life of" another person "by the use of a dangerous weapon or device." 18 U.S.C. 2113(d). Petitioners do not explain how "intimidation" under those circumstances would fail to constitute the "threatened use of force against the person or property of another," 18 U.S.C. 924(c)(3)(A).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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