

21-7068
No. _____

U.S. SUPREME COURT
RECEIVED
JAN 31 2022

FILED
JAN 31 2022
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

JaVar Clarke — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JaVar Clarke #56872039
(Your Name)

FCI p.o. Box 1000 Milan, MI 48160
(Address)

Milan, MI 48160
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. May Bank robbery apply as a crime of violence for purposes of 18 U.S.C.924(c) when Bank robbery does not match the elements Clause of section 924(c).

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

- United States vs. Shropshire, 259 F.Supp.3d 798 (6th Cir. 2017)
- United States v. O'Conner, 874 F.3d 1147 (10th Cir 2017)
- United States v. Mathis, 136 S.Ct 2243, 2251 2017
- United States vs. Taylor, 495 U.S. 575 1990
- United States v. Lattiere, 09-049-M-DWM July 13, 2018
- United States v. Johnson, U.S. 135 S.Ct. 2851, 192 LEd. 2d 569 (2015)
- United States v. Descamps, 133 S.Ct. 2276, 2283 (2013)

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A Court of Appeals decision filed September 7, 2018..pg1
Sixth Circuit final order was filed on September 3, 2021...pg1

APPENDIX B

Court of Appeals final order was filed November 22, 2021....pg4

APPENDIX C

18 U.S.C. 2113(a) (excerpts).....pg4

APPENDIX D

18 U.S.C. 924(c) (excerpts).....pg3

APPENDIX E

APPENDIX F

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the use of the bank robbery 18 U.S.C 2113 (A), as a crime of violence for purposes of 18 U.S.C. 924(C).

18 U.S.C. 924(C) imposes mandatory minimum sentences on person who use firearms during and in relation to crimes of violence.

STATEMENT OF THE CASE

The Government charged Clarke with Bank robbery 18 U.S.C. 2113(A) and 18 U.S.C. 924(c) use of a firearm during and in relation to a crime of violence. McBride, 826 f.3d 293(6th cir 2016) is a 2016 case that states intimidation is a crime of violence. Shropshire, 259 f.supp.3d 798(6th cir.2017) is a 2017 case that states intimidation is not a crime of violence. Also O'Conner, 874 f.3d 1147(10th cir 2017) It states: "Because Hobbs Act robbery includes threats to property, it is broader than generic robbery and extortion under the United States Sentencing Guidelines section 4B1.2(a)(2) which are limited to threats to a person." the courts found that Hobbs Act robbery was not categorically a crime of violence under that clause. The same applies here where 2113(a) includes "threats to the presence of another" and the definition of crime of violence is limited to threats to a person or property.

The District Court denied Clarke's motion due to McBride *supra*. Clarke appealed. He showed clearly that the appeal Court held jurisdiction under Federal rules of Appellate Procedure II. Rule(3)(4) (12) and 28 U.S.C. pp1292(A)(1)(2)(3)(B)(c)(1)(2)(4)(A). The Court of Appeals rejected Clarke's appeal for lack of jurisdiction.

REASONS FOR GRANTING THE PETITION

1. The Court should grant the petition in order to settle an important question of federal law. In holding that Bank robbery can't serve as a crime of violence for purposes of 924(c). Taylor 495 U.S.575(1990) stated that it is impermissible for a particular crime to sometimes count towards enhancements and sometimes not, depending on the facts of the case. Shropshire, 259 f.Supp.3d 798(6th Cir.2017) shows the elements do not qualify as a crime of violence. O'Conner 874 f.3d 1147(10th Cir.2017) as well, quoting (Johnson v. United States_, U.S. 135 sct.2551, 192 l.ed. 2d 569(2015)).

This case presents an important question of Federal law that has not been settled by the Court. Sup.Ct.R.10(c). The Court should decide if bank robbery can serve as a crime of violence for purpose of 18 U.S.C. 924(c) at all times.

Section 924(c)(3)(A) defines a crime of violence as:

- (3) An offense that is a felony and-
- (A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another

An offense is a crime of violence if its elements are the same as, or narrower than those of 924(c)(3)'s force clause. But if the crime of conviction cover anymore conduct than the elements clause than the elements clause then it can not apply to a 924(c) statue, see Descamps 133 S.Ct.2276,2283(2013).

O'Conner,874 f.3d 1147(10th Cir.2017) the court stated,"Because Hobbs Act robbery includes threats to property, it is broader than generic robbery and extortion under the United States Sentencing Guidelines section 4B1.2(a)(2) which are limited to threats to a person." The Court found that Hobbs Act Robbery was not categorically a crime of violence under that clause. The same applies here where 2113(a) includes "...takes from the person or presence of another. Shropahire, supra. Explain clearly that intimidation do not apply as a crime of violence. Making any statute that has antimimidation unable to serveas a crime of violence.

Bank Robbery 2113(a) states:

(1) Whoever, By force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another, or obtains or attempts to obtain by extortion any property or money or any other thing of value belonging to, or in the care, custody, management, or possession of any bank credit union, or savings and loan association, or whoever enters or attempts to enter any bank, credit union, or any savings and loan association, or any building used in whole or in part as a bank, credit union, or as a savings and loan association, with intent to commit in such bank, credit union, or in such savings and loan association, or building, or part thereof, so used, any felony affecting such bank, credit union, or such saving and loan association and an violation of any statue of the United States, or any larceny shall be fined under this title or imprisoned not more than twenty years or both.

Conclusion

THE Court should grant the petition for certiorari. The Court shall decide between courts to avoid dichotomy and provide consistency and fairness to defendants.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

J. Van Dorn

Date: January 28 2022