

IN THE SUPREME COURT OF THE UNITED STATES

CHARLES ANTHONY WALKER, JR., PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether courts are categorically barred from applying the four-level enhancement under Section 2B3.1(b)(4)(A) of the Sentencing Guidelines for abduction -- defined by the Sentencing Commission as forcing someone to accompany the defendant during the crime or escape -- when a victim is forcibly moved within a store.

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No. 22-5404

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-37a) is reported at 32 F.4th 377.

JURISDICTION

The judgment of the court of appeals was entered on April 27, 2022. A petition for rehearing en banc was denied on May 24, 2022 (Pet. App. 48a). The petition for a writ of certiorari was filed on August 17, 2022. 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 North Carolina, petitioner was convicted on one count of conspiring to commit Hobbs Act robbery, in violation of 18 U.S.C. 1951; two counts of aiding and abetting Hobbs Act robbery, in violation of 18 U.S.C. 1951 and 2; one count of aiding and abetting the brandishing of a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(ii) and 2; and one count of aiding and abetting witness tampering, in violation of 18 U.S.C. 1512(b) and 2. Judgment 1-2. The district court sentenced petitioner to 411 months of imprisonment, to be followed by five years of supervised release. Judgment 3-4. The court of appeals affirmed. Pet. App. 1a-37a.

1. On July 28 and October 11, 2018, petitioner and several coconspirators robbed two Kay Jewelers stores in the Eastern District of North Carolina. See Pet. App. 3a-13a; Presentence Investigation Report (PSR) ¶¶ 17-46. The robbers stole a total of \$581,765.60 worth of jewelry in the two robberies. PSR ¶¶ 52-54, 134-135.

In the first robbery, petitioner entered a Kay Jewelers in Elizabeth City, North Carolina, feigned interest in jewelry, and then signaled his two accomplices to initiate the robbery. See Pet. App. 5a-7a; PSR ¶ 18. Petitioner's accomplices entered the store with handguns. PSR ¶ 18. One of them pressed the muzzle of his gun into an employee's back, directed her to the back room of

the store, and handcuffed her. Ibid. The second showed a different employee his handgun and then forced that employee to accompany him to the back of the store to obtain diamonds from a safe. PSR ¶¶ 18, 42.

In the second robbery, on October 11, 2018, petitioner directed the same two accomplices to rob a Kay Jewelers in Garner, North Carolina. See Pet. App. 10a-11a; PSR ¶¶ 29-30. He gave them reflective orange vests, one real gun and one prop gun, and brown pillowcases to store the stolen merchandise. Pet. App. 11a; PSR ¶ 30.

Between January and March 2020, while in pretrial custody, petitioner wrote a letter directing that documents regarding a coconspirator's cooperation be sent to known gang members. See Pet. App. 14a-15a; PSR ¶ 48. On March 30, 2020, jail officials intercepted another letter written by petitioner referring to the coconspirator as a "rat" and "snitch," stating that he was cooperating against petitioner and other gang members, and directing that a copy of the coconspirator's interview with federal authorities, along with the coconspirator's picture and Facebook profile, be sent to a known gang leader. See ibid.

2. A grand jury in the Eastern District of North Carolina returned a superseding indictment charging petitioner with one count of conspiring to commit Hobbs Act robbery, in violation of 18 U.S.C. 1951; two counts of aiding and abetting Hobbs Act robbery, in violation of 18 U.S.C. 1951 and 2; one count of aiding

and abetting the brandishing of a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(ii) and 2; and one count of aiding and abetting witness tampering, in violation of 18 U.S.C. 1512(b) and 2. Superseding Indictment 1-6. Following a five-day jury trial, the jury found petitioner guilty on all charges. Pet. App. 2a.

The Probation Office determined petitioner's total offense level based, in part, on application of a four-level enhancement under Section 2B3.1(b)(4)(A) of the Sentencing Guidelines, which applies if "any person was abducted to facilitate commission of the offense or to facilitate escape." Sentencing Guidelines § 2B3.1(b)(4)(A) (2018); see PSR ¶ 99; Addendum to PSR (PSR Add.) ¶ 14.¹ Comments in the Guidelines explain that a victim is "abducted" if he is "forced to accompany an offender to a different location." Sentencing Guidelines §§ 1B1.1, comment. (n.1 (A)), 2B3.1, comment. (n.6). Petitioner objected, arguing that the victims were moved only within the store, but the Probation Office explained that the "movement of multiple employees throughout the business, including the backroom, at gunpoint is 'abduction' within the meaning of case law and the guidelines." PSR Add. ¶ 14. The district court overruled petitioner's objection, 5/4/2021 Tr. 6, adopted the Presentence Report, C.A. App. 953, and

¹ All references to the Sentencing Guidelines are to the 2018 edition.

sentenced petitioner to 411 months of imprisonment, to be followed by five years of supervised release. Judgment 3-4.

3. The court of appeals affirmed. Pet. App. 1a-37a.

Petitioner contended, inter alia, that the four-level enhancement in Sentencing Guidelines § 2B3.1(b)(4)(A) should be categorically inapplicable to "moving a victim within a store." Pet. C.A. Br. 46. Petitioner acknowledged, however, that the court of appeals' prior decision in United States v. Osborne, 514 F.3d 377 (4th Cir.), cert. denied, 553 U.S. 1075 (2008), permitted application of the enhancement in such circumstances, and the court of appeals affirmed on that basis. Pet. App. 2a n.1.

ARGUMENT

Petitioner renews his contention (Pet. 2-4) that the abduction enhancement in Section 2B3.1(b)(4)(A) of the Sentencing Guidelines should never apply when a victim is moved within a building. The court of appeals correctly rejected such a categorical bar, and its decision does not conflict with the decision of any other court of appeals or otherwise warrant review of a Sentencing Guidelines issue that the Sentencing Commission could itself address if necessary. This Court has previously denied petitions for writs of certiorari raising similar claims. See Buck v. United States, 138 S. Ct. 149 (2017) (No. 16-9520); Whatley v. United States, 571 U.S. 965 (2013) (No. 13-6170); Osborne v. United States, 553 U.S. 1075 (2008) (No. 07-10594);

Hawkins v. United States, 519 U.S. 974 (1996) (No. 96-6179). The Court should do the same here.²

1. The court of appeals correctly affirmed the district court's application of the enhancement in Section 2B3.1(b)(4)(A) of the Sentencing Guidelines to conduct occurring within or between the rooms of a structure where, as here, the circumstances of the case warrant that treatment. See Pet. App. 2a n.1; cf. Whitfield v. United States, 574 U.S. 265, 269-270 (2015) ("We hold that a bank robber 'forces [a] person to accompany him,' for purposes of § 2113(e), when he forces that person to go somewhere with him, even if the movement occurs entirely within a single building or over a short distance.") (citation omitted; brackets in original).

The term "a different location" in the commentary definition of Sentencing Guideline § 1B1.1, comment. (n.1(a)), is most appropriately "applied case by case to the particular facts under scrutiny, not mechanically based on the presence or absence of doorways, lot lines, thresholds, and the like." United States v. Hawkins, 87 F.3d 722, 727-728 (5th Cir.) (per curiam), cert. denied 519 U.S. 974 (1996). That "flexible, case by case approach to determining when movement 'to a different location' has occurred" can permissibly result in application of the enhancement where "movement [occurred] within the confines of a single building," if the circumstances warrant. United States v. Osborne, 514 F.3d

² The pending petition for a writ of certiorari in Carter v. United States, No. 21-8247 (filed June 23, 2022), presents a similar question.

377, 389-390 (4th Cir.), cert. denied, 553 U.S. 1075 (2008); see United States v. Johnson, 619 F.3d 469, 472 (5th Cir. 2010) (explaining that courts should apply the abduction enhancement flexibly on a "case by case basis"); United States v. Reynos, 680 F.3d 283, 290 (3d Cir. 2012) (endorsing "a flexible definition"), reh'g en banc granted, opinion vacated, 682 F.3d 1053 (3d Cir. 2012), and opinion reinstated, 700 F.3d 690 (3d Cir. 2012); United States v. Archuleta, 865 F.3d 1280, 1288 (10th Cir. 2017) (adopting the Third Circuit's approach). Petitioner does not suggest -- and did not suggest below -- that such an approach was improperly applied here, and a claim of that nature would not warrant certiorari. See Sup. Ct. R. 10.

2. Petitioner errs in asserting (Pet. 2-4) that the decision below conflicts with a decision of the Sixth Circuit in a manner warranting this Court's review.³

In United States v. Hill, 963 F.3d 528 (2020), the Sixth Circuit explored possible meanings for the words "different" and "location" and concluded that "the phrase * * * in this context generally should refer to a place other than the store being robbed, not to a separate area or spot within that store." Id. at 533 (emphasis added); see id. at 532-536. The court recognized,

³ The petition in Carter alleges a conflict involving a broader group of circuits. See Pet. at 2, Carter, supra (No. 21-8247). For the reasons stated in the brief in opposition to that petition, no conflict exists that would warrant this Court's intervention. See Br. in Opp. at 6-8, Carter, supra (No. 21-8247).

however, that the phrase is "context-dependent," and emphasized that its decision did "not foreclose the 'case-by-case approach' that other courts have taken to this abduction enhancement." Id. at 536 (citing United States v. Whatley, 719 F.3d 1206, 1222-1223 (11th Cir.), cert. denied, 571 U.S. 965 (2013); and Osborne, 514 F.3d at 389-390). Thus, as the Sixth Circuit itself recognized, the approach followed in Hill is not in conflict with the circumstance-specific approach applied in the decision below.

3. In any event, review of this case is unwarranted because whether the enhancement under Section 2B3.1(b)(4)(A) applies to petitioner involves an interpretation of the advisory Sentencing Guidelines. This Court ordinarily does not review decisions interpreting the Sentencing Guidelines because the United States Sentencing Commission can amend the Sentencing Guidelines and accompanying commentary to eliminate a conflict or correct an error. See Braxton v. United States, 500 U.S. 344, 347-349 (1991). The Sentencing Commission is charged by Congress with "periodically review[ing] the work of the courts" and making "whatever clarifying revisions to the Guidelines conflicting judicial decisions might suggest." Id. at 348 (citing 28 U.S.C. 994(o) and (u)). Congress's conferral of that authority on the Sentencing Commission indicates that it expected the Commission, not this Court, "to play [the] primary role in resolving conflicts" involving the interpretation of the Guidelines. Buford v. United States, 532 U.S. 59, 66 (2001).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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