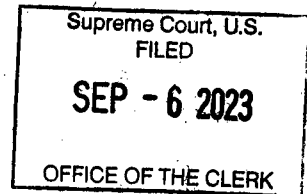


No. 23-6531 **ORIGINAL**

IN THE
SUPREME COURT OF THE UNITED STATES



Terrance Brown — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Seventh Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Terrance Brown
(Your Name)

P.O. Box 2068
(Address)

Inez, KY 41224
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Whether the district court erred in finding that Brown is a career offender under U.S.S.G 4B1.1 and 4B1.2, where one of Brown's predicate convictions only required a mens rea of recklessness at the relevant time of conviction, and thus did not qualify as a "crime of violence" pursuant to *Borden v. United States* 141 S. Ct. 1817 (2021), and where the district court judge specifically stated that he almost certainly would have chosen a lower sentence if the career offender designation does not apply.

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:

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- United States v. Sineneng-Smith, 590 U.S., 140 S. Ct. 1575 (2020)
- United States v. Strickland, 860 F.3d 1224 (9th cir. 2017)
- United States v. White, 58 F. 4th 899 (6th cir.)
- United States v. Yates, 866 F.3d 723 (6th cir. 2017)

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix C to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 21st, 2023.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 22nd, 2023, and a copy of the order denying rehearing appears at Appendix D.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including February 8th, 2024 (date) on December 8th, 2023 (date) in Application No. USAP-22-1192

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

720 ILCS 5/18-4-3(2010)(a) A person commits aggravated vehicular hijacking when he or she violates section 18-3; and (3) he or she carries on or about his or her person, or is otherwise armed with a dangerous weapon, other than a firearm.

720 ILCS 5/18-3(2010)(a) A person commits vehicular hijacking when he or she takes a motor vehicle from the person or the immediate presence of another by the use of force or by threatening the imminent use of force.

720 ILCS 5/18-3(2013)(a) A person commits vehicular hijacking when he or she knowingly takes a motor vehicle from the person or the immediate presence of another by the use of force or by threatening the imminent use of force.

STATEMENT OF THE CASE

On September 18th, 2020, the First Midwest Bank in Griffith, Indiana was robbed. A masked man announced he was robbing the bank, jumped over the teller counter, took money totaling \$12,724 from a cash machine and drawers. Days later fingerprint analysis identified the prints left in the bank on surfaces of one bare hand as belonging to Terrance Brown. Days later, Brown was arrested preceding the Indiana State Police identification. On October 21st 2020 a one count indictment was filed charging Brown with bank robbery, in violation of U.S.C 2113(a). Brown waived his right to a jury trial due to a not well established attorney-client relationship and was convicted, post a three-day bench trial.

The PSR recommended that Brown's adjusted offense level was 22 and his criminal-history category was IV, which would have resulted in a guidelines range of 63-78 months imprisonment. However, the PSR also recommended that Brown was a career offender under U.S.S.G 4B1.1(b) and 4B1.2(a), which increased his offense level to 32 and his criminal-history category to VI, resulting in a guidelines range of 210-240 months. The PSR identified two prior convictions as career-offender predicates: (1) a 2010 (Illinois) conviction for aggravated vehicular hijacking in which Brown was sentenced to 8 years IDOC, a one year increase of the minimum for such offense; and (2) a 2019 (Indiana) conviction for strangulation, in which Brown was sentenced to 30 months adult probation. Brown objected to the career offender designation, arguing that the convictions did not qualify as predicate offenses after the Supreme Court's decision in *Borden v. United States*, 141 S. Ct. 1817 (2021).

At sentencing, the district court rejected Brown's objection to the career-offender designation. The court concluded that, if *Borden* (2021) affected analysis then that would be a matter for the circuit to address. The district court imposed a below-guidelines sentence of 180 months imprisonment, two years of supervised release, and \$12,724 in restitution.

The Judge lamented the dramatic increase in Brown's Guidelines range because of the career offender provision's dual enhancement to both the offense level and criminal-history category stating, (What never has made sense to me is why there is the concomitant increase in the offense level, which is really what drives the sentence in a case like this.) In addition, the judge expressly noted that the career offender designation did affect his chosen sentence also stating: Ordinarily, at this point, when I have some difficult guideline issues, Sometimes if I think it's appropriate, I will say that this is the sentence that I would have otherwise given notwithstanding the decision I made on the guidelines. This isn't one of those cases. So if I am incorrect on how the guidelines have been computed, in all likelihood, I would have given a different sentence. Just so it's clear to the circuit.

The only predicate offense that got reviewed de novo in the Seventh Circuit is the aggravated vehicular hijacking so for that reason, is the only predicate for review in this petition and court.

REASONS FOR GRANTING THE PETITION

In light to argument to the above header of this section the similar contradicting effects, questionable decisions/indifferences, and criteria for relief merited with lenity in favor of United States defendant(s). Pursuant to *Borden v. United States*, 141 S. Ct. 1817-1821-22 (2021) a crime is not a "crime of violence" if it only required a mens rea of recklessness. Recklessness is a less culpable state of mind than purpose or knowledge. Reckless conduct is not directed or targeted, it is not the use of force against the person or another. A Illinois trial court acknowledges a relevant fact upheld thru a federal petition for relief; "to take" something means to get the object into one's possession, power, or control; the court observed that a person "can get a vehicle into one's power or control without emptying the vehicle of all occupants." *Turner v. Roekeman* Civil no. 11-cv-892-DRH-CJP (2013). "Something" defined thoroughly as "objective property" realistically could be conquered without the use of any force eliminating element factors as stipulated in U.S.S.G 4B1.1, and ACCA 924(e)(2)(B)(i). A perpetrator could very well (negligently or recklessly) disregard his own safety by entering the interior of a occupied or unoccupied vehicle; idling, displaying no active employment of force against another person. Seemingly similar to objective property of Hobbs Act Robbery. At that very moment the vehicle is hijacked due to being in the immediate presence of another, recklessly avoiding all force element insinuation of the offense/statute, Zeroing in on the least culpable of the acts criminalized in the statute for it to categorically not match the federal standard of a crime of violence.

Borden v. United States 141 S. Ct. 1817, 1822 (2021). When a statute defines an offense using a single, indivisible set of elements that allows for both violent and nonviolent means of commission, the offense is not a categorical crime of violence. United States v. Royal, 731 F.3d 333, 341-42 (4th cir. 2013). The text of a statute should never be divorced from context. Depending on the phrase, context can mean both the immediate clause and the broader context of the statute as a whole. Statutory history, the record of enacted changes congress made to the relevant statutory text over time can also provide helpful context. Statutory language and interpretation, however broad the meaning of "waive or modify" could not authorize the kind of exhaustive rewriting of the statute that had taken place within the three year period of Brown's 2010 conviction. Emphasizing, Sentencing Guidelines for the United States Courts; Chapter 4 Criminal History and Criminal Livelihood; 4A1.1 Background, referencing context for national importance stating "There are jurisdictional variations in offense definitions". Proclaiming this could occur at any time and a specific offense is not binding precedential throughout these jurisdictions due to definitions and statutes. Considering mens rea, the categorical approach denominating culpability, and the overbroad term of force; indistinctive frequently in offenses involving or subjected to property. I ask that the court take judicial notice of the statutory provisions in this petition. Also observe Johnson v. United States 135 S. Ct. 2551 (2015) in a similar way to this subject of mens rea being tranquil in meaning inducing discernment.

The syntactic construction of 720 ILCS 5/18-4-3 presents "or" as a noun, used to connect clauses representing alternatives of commission for the noun clause of "the immediate presence". Producing a non-violent, enactment implying no elements of force; e.g., a person in the presence of their vehicle at a fuel pump, a person at a service air machine, a person placing items in a trunk or backseat, also a person at a curbside mailbox; these realistic aspects would be considered hijacking not satisfying the force clause against the person or another, neither the active employment of a dangerous weapon visible. (See *United States v. Bain* 925 F.3d 1172 (9th cir. 2019). Demonstrating governmental charging habits.) However there is excruciating conflict with this linguistic statute and how it is settled questionably with 4B1.2. The central feature of statutory language is a focus on the elements of committing the offense, the comparison of elements that the categorical approach requires under the armed career criminal act is straightforward when a statute sets out a single or indivisible set of elements to define a single crime.

Asking the court to take judicial notice for a substantially relevant question: How is a offense classified as a "crime of violence" due to statute elements, expelling crimes considered enumerated offenses without those particular statute elements?

I bring to the court's attention 18 U.S.C 1201 Kidnapping. The Kidnapping statute must have as an element the use, attempted use, or threatened use of physical force; because of the statutory language it is irrelevant whether a defendant actually used force in the commission of the crime.

See *United States v. Brazier* 933 F.3d 796, 798-801 (7th cir. 2019) (Despite victim being bound, gagged, tortured, and shot); *Bufkin v. United States*, 800 Fed. Appx. 436, 437, 439 (7th cir. 2020) (defendants threatened the victim at gunpoint, robbed, bound and gagged him, and drove him around in the trunk of the car for four hours before releasing him.) *United States v. Sanford*, 779 Fed. Appx. 568, 570 (10th cir. 2019) (vacating 924(c) convictions even when the underlying conduct involved Kidnapping, threatening, and robbing a family, all at gunpoint.)

These instances clearly exert light to the force clause being overbroad with respect to a offense occurring without any at all, due to statutory language and excluding indirect interpretation of specific words outside the force elements.

Hobbs Act Robbery is the act of threatening physical violence against any "person or property". The generic definition of robbery does not include threats of force against property narrowing it to the broader definition of Hobbs Act Robbery under Guideline amendment 798 leaving it to stand outside being a crime of violence not encompassing 18 U.S.C 924(e)(2)(B)(i) nor U.S.S.G 4B1.2 Section one or two.

Once again bringing relevant attention to *Johnson v. United States* 135 S. Ct. 2551 (2015), and relevantly the catch all provision which is very similar to the residual clause structuring mens rea to the arbitrary unfairness seemingly on invisible statute context in this matter, which amends unsupportingly the force.

Hobbs Act Robbery is defined as the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his or her person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining. 18 U.S.C 1951(b)

Following Amendment 798, every federal appellate court to address the issue squarely has concluded that Hobbs Act Robbery does not fall within the definition of "crime of violence".

United States v. O'Connor, 874 F.3d 1147 (10th cir. 2017)

United States v. Camp, 903 F.3d 594 (6th cir. 2018)

United States v. Eason, 953 F.3d 1184 (11th cir. 2020)

United States v. Rodriguez, 770 F. App'x 18 (3rd cir. 2019) (non precedential)

United States v. Edling, 895 F.3d 1153 (9th cir. 2018) (recognizing impact of Amendment 798 on similar Nevada robbery statute)

United States v. Andrews, 768 F. App'x 189 (5th cir. 2019) (non-precedential)

United States v. Jerry, 996 F.3d 495 (7th cir. 2021)

Now illuminating Mr. Brown's aggravated vehicular hijacking w/ a dangerous weapon statute of conviction and the mens rea of it.

720 ILCS 5/18-3(2010)(a)-A person commits vehicular hijacking when he or she takes a motor vehicle from the person or the immediate presence of another by the use of force or by threatening the imminent use of force.

This statute states no mens rea applicable delivered from congress, that doesn't mean imply a catch all provision of injunction silently modifying the base construction of the statute in question provoking context forfeiture because of the amended statute.

The least culpability of intent, is no specified or stated mens rea in the statute context diminishing offense commission. The taking of property; a motor vehicle from the immediate presence of another. (Presence is broad and property is not a individual.) This construction extends outside the elements clause simply because there is no statute describing the commission of this offense implying no force used at all, and that is where the context is inflated with complexity outside the elements clause. This petition is in the immediate presence of a person and only requires the force against property in possession of the courts, to simply turn the pages, throw on the floor, or to wave in the air.

Furthermore, the Illinois statute on mental state reads as followed:

- (a) A person is not guilty of an offense, other than an offense which involves absolute liability, unless, with respect to each element described by the statute defining the offense, he acts while having one of the mental states described in sections 4-4 through 4-7.
- (b) If the statute defining an offense prescribed a particular mental state with respect to the offense as a whole, without distinguishing among the elements thereof, the prescribed mental state applies to each such element. If the statute does not prescribe a particular mental state applicable to an element of an offense any mental state defined sections 4-4, 4-5, 4-6 is applicable.

Referencing the Borden case statute in question; the Tennessee state statute of conviction (Tenn. 39-13-101), states, intentionally or knowingly conduct in the very first article of the statute; then reckless conduct is stated in the second article. Aggravated assault is also in the second article of 4B1.2, enumerated offenses with these offenses unduly countering 4A1.1 Background context "jurisdictional variations in offense definitions."

Mr. Brown's state statute of conviction expresses no set forth mens rea, slightly delegating "Courts have no authority to strike down statutory text."

United States v. Sineng-Smith, 590 U.S. 140 S. Ct. 1575 (2020) and reverting back to Ocasio v. United States 136 S. Ct. 1423 (2016); how ambiguous statutes should be interpreted in the criminal defendant's favor. Also serious reference to arbitrary punishment, Johnson v. United States 135 S. Ct. 2551 (2015)

The Illinois Supreme Court expressly has held that a statute of conviction directly parallel to Brown's only required a mental state of recklessness.

People v. Lewis, 285 Ill. App. 3d 653, 673 N.E. 2d 1105 (Ill. App. Ct. 1996);

People v. Merch, 361 Ill. App 3d 69, 73-74, 836 N.E. 2d 820 (Ill. App. Ct. 2005)

This decidedly is not the purposeful use of force that Borden requires. In United States v. Butts, 40 F. 4th 766, 772 (6th cir. 2022), the sixth circuit held that there was a realistic probability that Ohio would convict a defendant of robbery based on reckless use of force. Consequently, the sixth circuit held that Ohio robbery is not a crime of violence under 4B1.2, along with other binding precedent. See; United States v. Yates 866 F.3d 723, (6th cir. 2017);

United States v. White, 58 F. 4th 899 (6th cir.);

United States v. Porter IV, no. 22-3529 (6th cir. 2023);

United States v. Jackson Jr., 713 Fed. Appx. 172 (4th cir. 2017);

United States v. Bell, 840 F.3d 963 (8th cir. 2016);

United States v. Strickland, 860 F.3d 1224 (9th cir. 2017);

United States v. Shelby, 939 F.3d 975 (9th cir. 2019);

United States v. Edling, 895 F.3d 1153 (9th cir. 2018); and concluding with Paul v. Superintendent, W/L 3043526 (7th cir. 2022)

The force clause in 4B1.2 demands that the perpetrator direct his action at, or target, another individual. Reckless conduct is not aimed in that prescribed manner and no force should be disciplinary miscarried due to statute interpretation subjected to offenses involving property. The vehicular hijacking is set aside from the robbery statute primarily because it is property of a specific kind; a motor vehicle, which according to Hobbs Act Robbery is "property in a persons custody or possession and a use of force or a threat of force against property" is insufficient to meet the U.S.S.G 4B1.2 force clause riveted in application. This offense against/involving property, stating that a person be present or in the vicinity of a person (immediate presence) of which it occurs completely magnitudes the crime itself because offense commission with a vehicle in the vicinity of a person is a hijacking, brandishing or not. Coincidentally such as a person walking into the cockpit of a airplane, and complacing (simply taking a seat) in a unattended pilot's seat; no force occurred but entry in the immediate presence "of" was obtained, A highjacking of property. In closing, the 2010 Illinois statute of conviction Mr. Brown was sentenced under is a reckless offense, initial to the elements also implying any force used at all post offense commission and beforehand mens rea relevant to the term "instant offense", this crime with applicable Statute does not qualify as a crime of violence. Brown is entitled to relief from the court to regain his substantial rights of this career offender error.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Herrance Brown

Date: January 7th, 2024