

No.

IN THE SUPREME COURT OF THE UNITED STATES

DEVON BLEVINS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

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January 24, 2024

QUESTION PRESENTED FOR REVIEW

Whether the court of appeals failed to correctly apply the standard of review for claims of insufficiency of evidence to support conviction of a crime, established in *Jackson v. Virginia*, 443 U.S. 307 (1979), in its opinion finding sufficient evidence to support a jury conviction of First Degree Murder pursuant to 18 U.S.C. § 1111.

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
PREVIOUS OPINIONS AND ORDERS.....	1
JURISDICTION	1
STATUTORY SECTION INVOLVED	2
STATEMENT OF THE CASE.....	2
1. District Court Proceedings	2
2. Evidence Presented At Trial.....	6
3. Direct Appeal	6
REASON FOR GRANTING A WRIT.....	7
CONCLUSION.....	12
ATTACHMENTS TO PETITION:	
ATTACHMENT 1: <i>United States v. Blevins</i> (Order and Judgment of Tenth Circuit)	
ATTACHMENT 2: Judgment in a Criminal Case	

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>Jackson v. Virginia</i> , 443 U.S. 307 (1979).....	7, 8, 12
<i>United States v. Blevins</i> , No. 22-5097, 2023 WL 7039990, 2023 U.S. App. LEXIS 28446 (10th Cir. Oct. 26, 2023) (unpublished).....	1, 6
<i>United States v. Fortier</i> , 180 F.3d 1217, 1226 (10th Cir. 1999)	11
<i>United States v. Wood</i> , 207 F.3d 1222, 1228 (10th Cir. 2000).....	9

<u>Statutes and Federal Rules</u>	<u>Page</u>
18 U.S.C. § 1111(a)	2, 4, 8
28 U.S.C. §1254(1)	1
28 U.S.C. § 1291	1

<u>Supreme Court Rules</u>	<u>Page</u>
S. Ct. R. 10(c).....	7

ATTACHMENT 1:

United States v. Blevins
(Order and Judgment of Tenth Circuit)

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 26, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DEVON BLEVINS, a/k/a “Osage”,

Defendant - Appellant.

No. 22-5097
(D.C. No. 4:21-CR-00207-JFH-1)
(N.D. Okla.)

ORDER AND JUDGMENT*

Before **HARTZ, KELLY**, and **MATHESON**, Circuit Judges.

I. INTRODUCTION

Defendant Devon Blevins appeals his conviction for first-degree murder and causing a death by use of a firearm in relation to a crime of violence. Defendant argues that the evidence presented at trial was insufficient for a rational jury to find beyond a reasonable doubt that he acted with premeditation when he fatally shot Maurice Burgess. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties’ request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. 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.

II. BACKGROUND

Most of the facts of the crime are undisputed. Our summary is based on the trial testimony of Jacob Banks and a video of Defendant's confession, which was played to the jury.

In April 2021, Defendant was being vetted by Jacob Banks for potential membership in the Savage Boys gang. The Savage Boys are known for drug dealing, and its members are expected to "put in work," which, according to Banks, means "do anything they want [you] to do." R. Vol. III at 128. The gang's color is red.

On April 12, while at Defendant's residence in Tulsa, Banks and Defendant noticed a "familiar" vehicle drive by. R. Vol. III at 131. They had seen the vehicle apparently surveilling Defendant's home for several days. Because the home was within the territory of a rival gang, the Crips, they were concerned that the other gang was planning action against them. They decided to try to follow the vehicle and perhaps learn something. Banks drove his girlfriend's car while Defendant sat in the front passenger seat. Defendant brought a revolver. Banks was wearing all red.

As they were driving around looking for the car, Banks said to Defendant, "[D]on't do nothing stupid." R. Vol. III at 131. The pair eventually drove to the Waterstone Apartments. Entering the apartment complex, Banks scraped the bottom of his car on a speed bump, so he decided to make a U-turn and leave. As Banks was pulling out, a man in a blue jacket—later identified as Maurice Burgess—approached the driver's side of the car while riding a bike. Burgess faced Banks and Blevins and

said “You-all some B[itch]es,” R. Vol. III at 135. Banks attributed this comment to his “flying the wrong colors.” R. Vol. III at 152. After making this remark, Burgess made a motion toward his waistband. Banks testified that he thought Burgess was just pulling up his pants; he saw no weapon and did not feel threatened. But Defendant, although acknowledging that Burgess may have just been “hitchin’” his pants, Supp. R. Ex. 19 at 25:09-13, 28:15-34, thought he might be reaching for a weapon. Defendant immediately responded; he climbed through the passenger-side window and, sitting on the window, fired his gun at Burgess. Defendant later admitted to police that he saw Burgess get hit by the first shot and fall over. But he still fired twice more. He said that he was not trying to kill Burgess but just wound him. Banks drove away. Burgess died at a local hospital.

A grand jury for the United States District Court for the Northern District of Oklahoma charged Blevins with first-degree murder in Indian Country, *see* 18 U.S.C. §§ 1151, 1153, 1111 (Count One); causing death by using and discharging a firearm during and in relation to crimes of violence, *see* 18 U.S.C. § 924(j) (Count Two); and assault resulting in serious bodily injury in Indian Country, *see* 18 U.S.C. §§ 1151, 1153, 113(a)(6) (Count Three). The jury convicted him on Counts One and Two, and Blevins was sentenced to concurrent terms of life imprisonment. On appeal he contends that there was insufficient evidence of premeditation, so the conviction on Count One must be reversed and the case remanded for dismissal of that count and resentencing on Count Two.

III. DISCUSSION

We “review the record de novo to determine whether, viewing the evidence in the light most favorable to the government, any rational trier of fact could have found Defendant guilty of the crime beyond a reasonable doubt.” *United States v. Wood*, 207 F.3d 1222, 1228 (10th Cir. 2000). “We must not weigh conflicting evidence or consider the credibility of the witnesses, but simply determine whether the evidence, if believed, would establish each element of the crime.” *United States v. Vallo*, 238 F.3d 1242, 1247 (10th Cir. 2001) (brackets and internal quotation marks omitted). We consider both direct and circumstantial evidence, *see United States v. Grissom*, 44 F.3d 1507, 1510 (10th Cir. 1995), and defer to the jury’s reasonable inferences “from the basic facts to ultimate facts,” *United States v. Nieto*, 60 F.3d 1464, 1469 (10th Cir.1995) (internal quotation marks omitted).

As the district court instructed the jury:

A killing is “premeditated” when it is the result of planning or deliberation. The amount of time needed for premeditation of a killing depends on the person and the circumstances. It must be long enough for the killer, after forming the intent to kill, to be fully conscious of that intent.

R. Vol. I at 71. Defendant’s theory of the case is simple and straightforward.

He contends: “The evidence conclusively proved that [Defendant] acted

immediately in response to Mr. Burgess’s act of reaching for his waist after

Mr. Burgess made a confrontational statement that evoked gang rivalry.

[Defendant] fired in a panic.” Apl’t. Br. at 7. Thus, Defendant’s “actions were a

reflexive reaction to a perceived threat, and he had no opportunity to plan or deliberate before firing his weapon.” *Id.*

The jury could have adopted that view, but it did not have to. The government was not required to show that Defendant “deliberated for any particular length of time.” *United States v. Treas-Wilson*, 3 F.3d 1406, 1409 (10th Cir. 1993) (internal quotation marks omitted). And the jury did not have to believe Defendant’s version of events. There was significant circumstantial evidence that Defendant was looking for an excuse to kill someone. His purpose for being with Banks was to show that he had the right stuff to be admitted to membership in the gang. Banks apparently thought that Defendant looked too eager to show his stuff since he warned him, “[D]on’t do nothing stupid.” R. Vol. III at 131. Banks did not think that Burgess posed a threat. And Defendant admitted that he fired two shots after seeing Burgess fall from the first shot, when the jury could have reasonably concluded there was no longer any possible threat.

In light of this evidence, the jury finding of premeditation was not unreasonable.

IV. CONCLUSION

We AFFIRM Mr. Blevins's convictions and the judgment below.

Entered for the Court

Harris L. Hartz

Circuit Judge

ATTACHMENT 2:

Judgment in a Criminal Case

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

DEVON BLEVINS
a/k/a "Osage"

JUDGMENT IN A CRIMINAL CASE

Case Number: 4:21CR00207-1

USM Number: 41137-509

Jill Webb

Defendant's Attorney

THE DEFENDANT:

- ☐ pleaded guilty to count(s)
- ☐ pleaded nolo contendere to count(s)
which was accepted by the Court.
- ☒ was found guilty on count(s) One and Two of the Indictment
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 1151, 1153, 1111, and 2	First Degree Murder in Indian Country	4/12/21	1
18 U.S.C. §§ 924(j)(1) and 2	Causing Death by Using and Discharging a Firearm During and In Relation to Crimes of Violence	4/12/21	2

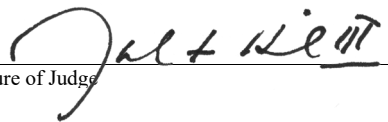
The defendant is sentenced as provided in this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) _____
- ☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant must notify the Court and United States Attorney of material changes in economic circumstances.

October 20, 2022

Date of Imposition of Judgment


 Signature of Judge

John F. Heil, III, Chief United States District Judge

Name and Title of Judge

October 21, 2022

Date

DEFENDANT: Devon Blevins
CASE NUMBER: 4:21CR00207-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: Life, as to each of Counts One and Two. Said counts shall run concurrently, each with the other.

- ☒ The Court makes the following recommendations to the Bureau of Prisons:
The Court recommends that defendant be given the opportunity to complete educational and vocational programming while incarcerated with the Bureau of Prisons. The Court further recommends that Bureau of Prisons evaluate defendant for placement at either the Federal Correctional Institution, Tucson, Arizona, or the Federal Correctional Institution, Terre Haute, Indiana.
- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:
- ☐ at _____ ☐ a.m. ☐ p.m. on _____.
- ☐ as notified by the United States Marshal.
- ☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☐ before 2 p.m. on _____.
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

UNITED STATES MARSHAL

By

DEPUTY UNITED STATES MARSHAL

DEFENDANT: Devon Blevins
CASE NUMBER: 4:21CR00207-1

SUPERVISED RELEASE

Should you be released from imprisonment, you will be on supervised release for a term of: Five years, as to each of Counts One and Two. Said terms shall run concurrently, each with the other.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Devon Blevins
CASE NUMBER: 4:21CR00207-1

STANDARD CONDITIONS OF SUPERVISION

As part of your supervision, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when to report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by the probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person, such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may, after obtaining Court approval, notify the person about the risk or require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

AO 245B (Rev. 10/17) Judgment in a Criminal Case
Sheet 3B — Supervised Release

DEFENDANT: Devon Blevins
CASE NUMBER: 4:21CR00207-1

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall submit his person, residence, office or vehicle to a search, conducted by the United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
2. The defendant shall successfully participate in a program of mental health treatment and follow the rules and regulations of the program. The probation officer, in consultation with the treatment provider, will determine the treatment modality, location, and treatment schedule. The defendant shall waive any right of confidentiality in any records for mental health treatment to allow the probation officer to review the course of treatment and progress with the treatment provider. The defendant must pay the cost of the program or assist (co-payment) in payment of the costs of the program if financially able.
3. The defendant shall successfully participate in a program of testing and treatment, to include inpatient treatment, for drug and alcohol abuse, at a treatment facility and on a schedule determined by the probation officer. The defendant shall abide by the policies and procedures of the testing and treatment program to include directions that the defendant undergo urinalysis or other types of drug testing consisting of no more than eight tests per month if contemplated as part of the testing and treatment program. The defendant shall waive any right of confidentiality in any records for drug and alcohol treatment to allow the probation officer to review the course of testing and treatment and progress with the treatment provider.

U.S. Probation Officer Use Only

A U.S. Probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this Judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: Devon Blevins
CASE NUMBER: 4:21CR00207-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$200	Not Ascertainable	N/A	N/A	N/A

- ☐ The determination of restitution is deferred until
An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS \$ _____ \$ _____

- ☐ Restitution amount ordered pursuant to Plea Agreement \$ _____
- ☐ The defendant must pay interest on any fine or restitution of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the Judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The Court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Devon Blevins
CASE NUMBER: 4:21CR00207-1

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A** ☒ Lump sum payment of \$ 200 due immediately, balance due
- ☐ not later than _____, or
- ☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B** ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C** ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this Judgment; or
- D** ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E** ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 90 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F** ☐ Special instructions regarding the payment of criminal monetary penalties:
- Any monetary payment is due in full immediately, but payable on a schedule to be determined pursuant to the policy provision of the Federal Bureau of Prisons' Inmate Financial Responsibility Program if the defendant voluntarily participates in this program. If a monetary balance remains, payment is to commence no later than 60 days following release from imprisonment to a term of supervised release in equal monthly payments of \$50 or 10% of net income (take home pay), whichever is greater, over the duration of the term of supervised release and thereafter as prescribed by law for as long as some debt remains. Notwithstanding establishment of a payment schedule, nothing shall prohibit the United States from executing or levying upon property of the defendant discovered before or after the date of this Judgment.

Unless the Court has expressly ordered otherwise, if this Judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- ☐ Joint and Several
- Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTa assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.