

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

United States v. Harbert

No. 17-6246, United States Court of Appeals for the Tenth Circuit (June 14, 2019)

SUMMARY

The Tenth Circuit held that an Oklahoma first-degree robbery conviction qualifies as a "violent felony" under the Armed Career Criminal Act's (ACCA) elements clause, applying **Stokeling v. United States**, 139 S. Ct. 544 (2019). The court concluded that the force required to overcome a victim's resistance—even if minimal—constitutes "violent force" capable of causing physical pain or injury. The decision affirmed the district court's ACCA-enhanced sentence and rejected the defendant's argument that the degree of force was immaterial. This unpublished opinion is persuasive but not binding precedent.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	Per Curiam; Jerome A. Holmes; Robert E. Bacharach; Carolyn B. McHugh
JURISDICTION	Federal
DECIDED	June 14, 2019
DOCKET	17-6246
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from district court's determination that Oklahoma first-degree robbery conviction qualifies as a violent felony under ACCA.
STANDARD OF REVIEW	De novo review of whether a prior conviction qualifies as a violent felony under ACCA.
PRECEDENTIAL VALUE	Unpublished
PARTIES	Harold Lee Harbert v. United States of America

TOPICS

- criminal procedure
- sentencing
- statutory interpretation
- standard of review

PRACTICE AREAS

- Criminal Law
- Federal Sentencing

QUESTIONS PRESENTED

1. Whether an Oklahoma first-degree robbery conviction is a 'violent felony' under ACCA's elements clause.

HOLDINGS

1. Oklahoma first-degree robbery qualifies as a violent felony under ACCA because it requires the use of force sufficient to overcome a victim's resistance, which constitutes 'violent force' as defined in *Johnson v. United States* and *Stokeling v. United States*.

KEY QUOTATIONS

"'[P]hysical force,' or 'force capable of causing physical pain or injury' includes the amount of force necessary to overcome a victim's resistance." (at 3)

"physical force under ACCA 'means violent force—that is, force capable of causing physical pain or injury to another person.'" (at 3)

FACTUAL BACKGROUND

Harold Lee Harbert pleaded guilty to one count of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). The probation department recommended an enhanced sentence under ACCA because Harbert had three prior convictions: two for possession with intent to distribute a controlled substance and one for Oklahoma first-degree robbery in 1995. The district court overruled Harbert's objection that the robbery conviction was not a violent felony and sentenced him to 188 months' imprisonment.

PROCEDURAL HISTORY

Harold Lee Harbert pleaded guilty to being a felon in possession of a firearm. The district court sentenced him as an armed career criminal under ACCA based on three prior convictions, including an Oklahoma first-degree robbery conviction. Harbert appealed, challenging the classification of the robbery conviction as a violent felony.

DISPOSITION

affirmed

CASES CITED

- *United States v. Ridens*, 792 F.3d 1270 (10th Cir. 2015)
- *United States v. Harris*, 844 F.3d 1260 (10th Cir. 2017), cert. denied, 138 S. Ct. 1438 (2018)
- *Moncrieffe v. Holder*, 569 U.S. 184 (2013)
- *Johnson v. United States*, 559 U.S. 133 (2010)
- *Stokeling v. United States*, 139 S. Ct. 544 (2019)