

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Joshua Ward v. United States

No. No. 17-35563, United States Court of Appeals for the Ninth Circuit (September 3, 2019)

SUMMARY

The Ninth Circuit held that a Minnesota conviction for aiding and abetting simple robbery qualifies as a predicate violent felony under the Armed Career Criminal Act's force clause, because the minimum force required includes the amount necessary to overcome a victim's resistance. The court found that its prior distinction between "substantial" and "minimal" force in the ACCA robbery context is irreconcilable with the Supreme Court's holding in *Stokeling v. United States*, 139 S. Ct. 544 (2019). This case applies *Stokeling* to Minnesota's simple robbery statute, which is virtually indistinguishable from the Florida statute at issue in *Stokeling*.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Richard A. Paez; Carlos T. Bea; C. Ashley Royal
JURISDICTION	Federal
DECIDED	September 3, 2019
DOCKET	No. 17-35563
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the United States District Court for the District of Idaho, Edward J. Lodge, District Judge
STANDARD OF REVIEW	de novo
PRECEDENTIAL VALUE	Published
PARTIES	Joshua Allen Ward v. United States of America

TOPICS

- sentencing
- criminal procedure
- habeas corpus
- statutory interpretation

PRACTICE AREAS

- Criminal Law
- Sentencing
- Habeas Corpus

QUESTIONS PRESENTED

1. Whether Ward's Minnesota conviction for aiding and abetting simple robbery under Minn. Stat. Ann. § 609.24 qualifies as a predicate violent felony under the ACCA's force clause, 18 U.S.C. § 924(e)(2)(B) (i).

HOLDINGS

1. Minnesota simple robbery qualifies as a violent felony under the ACCA's force clause because the minimum force required to sustain the offense includes the amount of force necessary to overcome a victim's resistance, as defined by *Stokeling v. United States*.

KEY QUOTATIONS

“Because the minimum force required to sustain a Minnesota simple robbery ‘includes the amount of force necessary to overcome a victim's resistance,’ Stokeling v. United States, 139 S. Ct. 544, 555 (2019), we affirm.”

“Minnesota simple robbery is defined as the use or threatened use of force ‘to overcome the person's resistance or powers of resistance’”

FACTUAL BACKGROUND

Ward was convicted of unlawful possession of a firearm in violation of 18 U.S.C. § 922(g)(1). The district court designated him an armed career criminal and imposed a 15-year mandatory minimum sentence under the ACCA, based in part on a prior Minnesota conviction for aiding and abetting simple robbery. After the Supreme Court invalidated the ACCA's residual clause, Ward filed a collateral attack on his sentence.

PROCEDURAL HISTORY

Ward was convicted in 2012 of unlawful possession of a firearm and sentenced to the 15-year mandatory minimum under the ACCA. After *Johnson v. United States* (2015) and *Welch v. United States* (2016), Ward filed a 28 U.S.C. § 2255 motion to vacate his sentence, arguing that his prior convictions for burglary, aiding and abetting simple robbery, second-degree assault, and aggravated assault fell under the invalidated residual clause. The government conceded two burglary convictions but maintained three others. The district court denied the motion, and Ward appealed.

DISPOSITION

affirmed

CASES CITED

- *Stokeling v. United States*, 139 S. Ct. 544 (2019)
- *Johnson v. United States*, 559 U.S. 133 (2010) (Johnson I)
- *Johnson v. United States*, 135 S. Ct. 2551 (2015) (Johnson II)
- *Welch v. United States*, 136 S. Ct. 1257 (2016)
- *Taylor v. United States*, 495 U.S. 575 (1990)

- United States v. Parnell, 818 F.3d 974 (9th Cir. 2016)
- United States v. Geozos, 870 F.3d 890 (9th Cir. 2017)
- United States v. Molinar, 876 F.3d 953 (9th Cir. 2017), amended, 881 F.3d 1064 (9th Cir. 2018)
- United States v. Walton, 881 F.3d 768 (9th Cir. 2018)
- United States v. Jennings, 860 F.3d 450 (7th Cir. 2017)
- United States v. Pettis, 888 F.3d 962 (8th Cir. 2018)
- State v. Kvale, 302 N.W.2d 650 (Minn. 1981)
- State v. Slaughter, 691 N.W.2d 70 (Minn. 2005)
- State v. Nash, 339 N.W.2d 554 (Minn. 1983)
- Taylor v. United States, 926 F.3d 939 (8th Cir. 2019)
- United States v. Libby, 880 F.3d 1011 (8th Cir. 2018)
- United States v. Lawrence, 627 F.3d 1281 (9th Cir. 2010)
- United States v. Dixon, 805 F.3d 1193 (9th Cir. 2015)
- Miller v. Gammie, 335 F.3d 889 (9th Cir. 2003) (en banc)
- United States v. Fultz, 923 F.3d 1192 (9th Cir. 2019)
- United States v. Lawrence, 758 F. App'x 624 (9th Cir. 2019)
- Torres v. Whitaker, 752 F. App'x 512 (9th Cir. 2019)
- United States v. Castleman, 572 U.S. 157 (2014)
- Thompson v. Runnels, 705 F.3d 1089 (9th Cir. 2013)
- Lebron v. Nat'l R.R. Passenger Corp., 513 U.S. 374 (1995)
- United States v. Pallares-Galan, 359 F.3d 1088 (9th Cir. 2004)
- Fernandez-Ruiz v. Gonzales, 466 F.3d 1121 (9th Cir. 2006) (en banc)
- Descamps v. United States, 570 U.S. 254 (2013)
- United States v. Strickland, 860 F.3d 1224 (9th Cir. 2017)