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SCOTUS: Borden v. United States

By **Daigle Law Group**

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DAIGLE LAW GROUP

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On June 10, 2021, the United States Supreme Court (SCOTUS), in *Borden v. United States*, examined whether, under the Armed Career Criminal Act (ACCA), 18 U.S. §924(e), crimes involving recklessness constitute “violent felonies” for sentence enhancement purposes. A fractured court ruled that it does not.

Facts

This case involved a provision of ACCA that imposed a 15-year minimum on anyone convicted of being a felon in possession of firearm when that person has three or more prior “violent felony” convictions. The term “violent felony” is defined, in pertinent part, as any felony that “has an element the use, attempted use, or threatened use of physical force against the person of another.”

The defendant, Charles Borden Jr., was arrested and pleaded guilty to being a felon-in-possession of a firearm and opposed the sentencing enhancements raised under ACCA by the government. One of the prior convictions relied upon by the government was Borden’s conviction for Reckless Aggravated Assault in Tennessee. Borden argued that this conviction did not constitute a “violent felony” under ACCA because the Tennessee law could result from reckless conduct – a less culpable legal standard than knowingly or purposefully causing physical injury. The defendant further argued that mere recklessness does not qualify and, therefore, the sentence enhancements could not be imposed.

The district court disagreed and sentenced Borden as a career criminal. The U.S. Court of Appeals for the 6th Circuit affirmed, ruling that crimes involving reckless conduct fall under the definition of a “violent felony” that triggers ACCA’s sentencing enhancement. The defendant appealed to SCOTUS.

SCOTUS Opinion

In a fractured decision, SCOTUS held that offenses with a *mens rea* (mental state) of recklessness do not qualify as “violent felonies” under ACCA. The court noted that such conduct “does not require, as ACCA does, the active employment of force against another person.”

Kagan’s opinion for a four-justice plurality focused on the phrase “against the person of another” in ACCA’s definition. That language, she concluded, encompasses only purposeful or knowing crimes, not reckless ones. “The phrase ‘against another,’ when modifying the ‘use of force,’ demands that the perpetrator direct his action at, or target, another individual. Reckless conduct is not aimed in that

prescribed manner,” Kagan wrote.

Thomas, in a solo concurrence, reluctantly agreed with the result. He agreed with Kagan that Borden’s Tennessee reckless-assault conviction does not count as a crime that “has as an element the use, attempted use, or threatened use of physical force against the person of another.” But his reasoning was different. Rather than rely on the phrase “against the person of another,” Thomas focused on the phrase “use of physical force.” That phrase, Thomas said, is limited to intentional acts designed to cause harm.

Kavanaugh’s lengthy dissent accuses Kagan of adopting a tortured reading of the phrase “against the person of another” to limit the reach of the statute. “The Court’s decision overrides Congress’s judgment about the danger posed by recidivist violent felons who unlawfully possess firearms and threaten further violence,” Kavanaugh wrote.

Takeaways

SCOUTS narrowed the scope of the phrase “against the person of another” in ACCA’s definition to encompass only purposeful or knowing crimes, not reckless ones. Therefore, crimes involving recklessness do not qualify as a “violent felony” under ACCA and such convictions cannot be used for sentence enhancement purposes.

***Borden v. United States*, 593 U.S. __ (2021)**

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