

IN THE SUPREME COURT OF THE UNITED STATES

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STACY WINTERS, PETITIONER

v.

UNITED STATES OF AMERICA

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

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BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether voluntary manslaughter, in violation of 18 U.S.C. 1112(a), is a "crime of violence" under 18 U.S.C. 924(c)(1)(A).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A2) is not published in the Federal Reporter but is available at 2017 WL 2644335. The order of the district court (Pet. App. B1-B6) is not published in the Federal Supplement but is available at 2016 WL 4703651.

JURISDICTION

The judgment of the court of appeals was entered on June 20, 2017. The petition for a writ of certiorari was filed on August 2, 2017. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT

Following a guilty plea in the United States District Court for the District of South Dakota, petitioner was convicted of voluntary manslaughter, in violation of 18 U.S.C 1112 (2000), and using or carrying a firearm during and in relation to a "crime of violence," in violation of 18 U.S.C. 924(c)(1)(A). Am. Judgment 1. The district court sentenced petitioner to 240 months of imprisonment, to be followed by five years of supervised release. Id. at 2-3. The court of appeals affirmed. 416 F.3d 856. Petitioner subsequently filed a motion for postconviction relief under 28 U.S.C. 2255, in which he argued that his conviction and sentence under Section 924(c) should be vacated. The district court denied petitioner's motion but granted a certificate of appealability. Pet. App. B1-B6. The court of appeals affirmed. Id. at A1-A2.

1. In January 2003, petitioner and his brothers were consuming alcohol and driving through the Pine Ridge Indian Reservation when they encountered Lucien Janis. 416 F.3d at 857. Petitioner and Janis, who were affiliated with different gangs, "exchanged unpleasantries." Ibid. Petitioner left the area and obtained a Colt .45 semi-automatic pistol and a loaded magazine. Ibid. After consuming more alcohol, petitioner and his brothers returned to the scene of the earlier confrontation and again

accosted Janis. Ibid. Petitioner shot Janis in the head at close range; Janis died instantly. Ibid.

A federal grand jury charged petitioner with voluntary manslaughter in Indian country, in violation of 18 U.S.C. 1112; and using or carrying a firearm during and in relation to a crime of violence (namely, the voluntary manslaughter), in violation of 18 U.S.C. 924(c)(1)(A). Superseding Information 1-2. Petitioner pleaded guilty to both counts. Plea Agreement 2. The district court sentenced petitioner to 240 months of imprisonment (including 120 months on the voluntary manslaughter offense and a consecutive sentence of 120 months on the Section 924(c) offense), to be followed by five years of supervised release. Am. Judgment 2-3.

2. In 2015, this Court held in Johnson v. United States, 135 S. Ct. 2551, that the "residual clause" of the Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e)(2)(B)(ii), is unconstitutionally vague. 135 S. Ct. at 2257. The ACCA's residual clause defines a "violent felony" to include an offense that "otherwise involves conduct that presents a serious potential risk of physical injury to another." 18 U.S.C. 924(e)(2)(B)(ii).

In 2016, petitioner filed a motion for postconviction relief under 28 U.S.C. 2255, in which he argued that voluntary manslaughter does not qualify as a "crime of violence" under Section 924(c) and thus his conviction and sentence on the Section

924(c) count should be vacated. See D. Ct. Doc. 1, at 2 (June 15, 2016). Section 924(c) defines a "crime of violence" as a felony that either "has as an element the use, attempted use, or threatened use of physical force against the person or property of another," 18 U.S.C. 924(c)(3)(A), or, "by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense," 18 U.S.C. 924(c)(3)(B). Petitioner argued that Johnson's holding with respect to the ACCA's residual clause "equally invalidates" Section 924(c)(3)(B), and that his Section 924(c) conviction rested "solely" on Section 924(c)(3)(B). D. Ct. Doc. 1, at 1.

The district court denied petitioner's motion. Pet. App. B1-B6. The court observed that controlling circuit precedent foreclosed petitioner's claim that Johnson's invalidation of the ACCA's residual clause extended to Section 924(c)(3)(B). Id. at B3-B4 (citing United States v. Prickett, 830 F.3d 760 (8th Cir.) (per curiam), modified on reh'g, 839 F.3d 697 (8th Cir. 2016) (per curiam), petition for cert. pending, No. 16-7373 (filed Dec. 28, 2016)). The court did, however, grant petitioner a certificate of appealability. Id. at B5.

3. The court of appeals affirmed in an unpublished decision. Pet. App. A1-A2. After "carefully reviewing" both the record and the parties' "arguments and suggestions," the court

followed existing circuit precedent. Id. at A2 (citing Prickett, 839 F.3d 697).

#### ARGUMENT

Petitioner contends (Pet. 4-8) that the lower courts erred in rejecting his claim that the definition of a "crime of violence" in 18 U.S.C. 924(c)(3)(B) is unconstitutionally vague in light of Johnson v. United States, 135 S. Ct. 2551 (2015). He notes (Pet. 8-10) that a circuit conflict exists over whether Section 924(c)(3)(B) is constitutional and that this Court has granted review in Sessions v. Dimaya, No. 15-1498 (reargued Oct. 2, 2017), to decide whether the similarly worded definition of a "crime of violence" in 18 U.S.C. 16(b), as incorporated into the Immigration and Nationality Act's definition of the term "aggravated felony," 8 U.S.C. 1101(a)(43), is unconstitutionally vague. Petitioner therefore suggests that the Court should hold his petition for a writ of certiorari pending the decision in Dimaya.

Contrary to petitioner's suggestion, his petition should be denied, because the resolution of Dimaya will have no effect on the validity of his Section 924(c) conviction. Petitioner contends that his "conviction rested on the residual clause of 18 U.S.C. 924(c)(3)(B)," Pet. 4, and that Section 924(c)(3)(B) is unconstitutional in light of Johnson, Pet. 7-8. But petitioner's predicate offense for the Section 924(c) conviction has "as an element the use, attempted use, or threatened use of physical force

against the person or property of another," and thus it independently qualifies as a "crime of violence" under 18 U.S.C. 924(c)(3)(A).<sup>1</sup> Petitioner's Section 924(c) conviction is therefore lawful irrespective of the outcome of Dimaya or the constitutionality of Section 924(c)(3)(B).

The "crime of violence" underlying petitioner's Section 924(c) conviction -- voluntary manslaughter, in violation of 18 U.S.C. 1112(a) -- requires "unlawful killing of a human being without malice \* \* \* [u]pon a sudden quarrel or heat of passion."<sup>2</sup> The offense requires proof "of the physical act of unlawfully killing another" and that the defendant acted with "either a general intent to kill, intent to do serious bodily injury, or with depraved heart recklessness." United States v. Barrett, 797 F.3d 1207, 1222 (10th Cir. 2015) (quoting United States v. Serawop, 410 F.3d 656, 666 (10th Cir. 2005)), cert. denied, 137 S. Ct. 36 (2016).

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<sup>1</sup> The government did not rely on Section 924(c)(3)(A) in the district court, but instead moved to dismiss petitioner's Section 2255 motion in reliance on circuit precedent addressing Section 924(c)(3)(B). See Pet. App. B3 & n.2. But petitioner's Section 924(c) conviction would be valid so long as voluntary manslaughter is a crime of violence under either provision.

<sup>2</sup> Section 1112 identifies "two kinds" of manslaughter, voluntary and involuntary. Petitioner acknowledges (Pet. 3) that he pleaded guilty to a Section 924(c) offense based on the predicate crime of voluntary manslaughter, not the predicate crime of involuntary manslaughter.

The crime of voluntary manslaughter thus necessarily involves the "use of physical force against the person \* \* \* of another," within the meaning of 18 U.S.C. 924(c)(3)(A). A physical act that kills someone qualifies as the sort of "violent force \* \* \* capable of causing physical pain or injury to another person," Johnson v. United States, 559 U.S. 133, 140 (2010), that this Court has held constitutes "physical force" for purposes of a provision like this one. Ibid. (construing 18 U.S.C. 924(e)(2)(B)(i)); see United States v. Castleman, 134 S. Ct. 1405, 1416-1417 (2014) (Scalia, J., concurring in part and concurring in judgment) (finding it "impossible to cause bodily injury without using force 'capable of' producing that result").

The mens rea element of the offense is likewise consistent with the "use of force." In Voisine v. United States, 136 S. Ct. 2272, 2276, 2277 (2016), this Court held that a Maine offense requiring a similar mental state to petitioner's crime -- "'intentionally, knowingly or recklessly caus[ing] bodily injury or offensive physical contact to another person'" -- qualifies as an offense that "'has, as an element, the use or attempted use of physical force'" under 18 U.S.C. 921(a)(33)(A). Although Voisine's holding did not directly encompass Section 924(c)(3)(A), see 136 S. Ct. at 2280 n.4 (reserving question whether 18 U.S.C. 16(a)'s definition of "crime of violence" includes "reckless behavior"), the Court's reasoning turned on the meaning of the

word "use," which is employed in a similar way in the definition of "crime of violence" in Section 924(c)(3)(A). Moreover, even if recklessly causing injury did not always qualify as the use of force for purposes of Section 924(c)(3)(B), the conduct necessary to constitute voluntary manslaughter -- which requires, at minimum, depraved heart recklessness -- still would.

Because petitioner's predicate offense qualifies as a "crime of violence" under Section 924(c)(3)(A), no reason exists to consider whether it would also qualify under Section 924(c)(3)(B) or to hold this petition for Dimaya.

#### CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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