

United States Court of Appeals
For the Eighth Circuit

No. 25-2497

United States of America

Plaintiff - Appellee

v.

Hector Benavidez

Defendant - Appellant

Appeal from United States District Court
for the Northern District of Iowa - Western

Submitted: April 15, 2026

Filed: September 1, 2026

Before KELLY, GRASZ, and KOBES, Circuit Judges.

KELLY, Circuit Judge.

Hector Benavidez pleaded guilty to possession of a firearm as a felon in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(8) and possession of a stolen firearm in violation of 18 U.S.C. §§ 922(j) and 924(a)(2). On appeal, he challenges his sentence, arguing that the district court miscalculated his Guidelines range because his prior Texas conviction is not a crime of violence under USSG § 4B1.2(a). We agree.

I.

“We review the district court’s application of the Guidelines and imposition of sentencing enhancements de novo.” United States v. Foard, 108 F.4th 729, 736 (8th Cir. 2024) (quoting United States v. Norwood, 774 F.3d 476, 479 (8th Cir. 2014)). And “[w]e review de novo whether a conviction qualifies as a crime of violence.” United States v. McMillan, 863 F.3d 1053, 1055 (8th Cir. 2017) (citing United States v. Rice, 813 F.3d 704, 705 (8th Cir. 2016)).

II.

In 2007, Benavidez was convicted of robbery under Texas Penal Code § 29.02(a). The district court determined that this conviction qualified as a “crime of violence” under the Guidelines, which increased Benavidez’s base offense level by 6 levels. See USSG § 2K2.1(a)(4)(A). The Guidelines define a crime of violence as:

[A]ny offense under federal or state law, punishable by imprisonment for a term exceeding one year, that—

- (1) has as an element the use, attempted use, or threatened use of physical force against the person of another; or
- (2) is murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or the use or unlawful possession of a firearm . . .

USSG § 4B1.2(a). The two clauses are disjunctive, so when a prior conviction meets either the first (force clause) or second (enumerated offenses clause) definition, it is a crime of violence under the Guidelines. See id.

The relevant statute of conviction, Texas Penal Code § 29.02(a), sets forth the following definition of robbery:

(a) A person commits an offense if, in the course of committing theft as defined in Chapter 31 and with intent to obtain or maintain control of the property, he:

(1) intentionally, knowingly, or recklessly causes bodily injury to another; or

(2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

(b) An offense under this section is a felony of the second degree.

As the Fifth Circuit has recognized, the Court of Criminal Appeals of Texas—the highest criminal court in Texas—has held that the Texas robbery statute is indivisible. See Floyd v. State, 714 S.W.3d 9, 10, 15 (Tex. Crim. App. 2024), reh’g denied, (Jan. 22, 2025) (“The robbery by threat to place [the victim] in fear of imminent bodily injury or death or the robbery causing bodily injury to [the victim] were simply alternative methods of committing the same robbery offense.”); United States v. Rose, 127 F.4th 619, 620 (5th Cir. 2025) (per curiam) (noting that Floyd abrogated United States v. Garrett, 24 F.4th 485 (5th Cir. 2022), which held that § 29.02 was divisible). Because the statute may be violated with a reckless mens rea, Texas robbery—an indivisible statute—does not qualify as a crime of violence under the force clause.¹

We turn to the enumerated offenses clause. To determine whether Texas robbery is a crime of violence under this clause, we apply the categorical approach, comparing the Guidelines definition of robbery to the statute of conviction. Mathis v. United States, 579 U.S. 500, 502 (2016); see also Descamps v. United States, 570

¹The parties do not dispute this conclusion. See Borden v. United States, 593 U.S. 420, 429 (2021) (holding that offenses requiring only an intent of recklessness cannot meet the force clause definition of a “crime of violence” under the Armed Career Criminal Act); United States v. Pulley, 75 F.4th 929, 931 (8th Cir. 2023) (“After Borden, the force clause ‘categorically excludes crimes that can be committed recklessly’ under both the ACCA and the Guidelines.”) (citations omitted).

U.S. 254, 261 (2013) (“The key, we emphasized, is elements, not facts.”). The Guidelines definition of robbery is:

[T]he unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining. The phrase “actual or threatened force” refers to force that is sufficient to overcome a victim’s resistance.

USSG § 4B1.2(e)(3). We then compare the elements of Texas robbery to this definition of robbery “and see[] if they match.” Mathis, 579 U.S. at 505. If the Texas statute sweeps more broadly than the Guidelines definition, it cannot be considered a “crime of violence.” Id.

We begin by acknowledging that the Fifth Circuit has held Texas robbery under § 29.02 qualifies as a crime of violence, relying in part on the conclusion that “the Guidelines’ definition of the elements of robbery is the same or broader than § 29.02.” United States v. Wickware, 136 F.4th 591, 595 (5th Cir.), withdrawn and superseded on reh’g, 143 F.4th 670 (5th Cir.), cert. denied, 146 S. Ct. 838 (2025). Respectfully, we disagree.

The Texas statute permits a conviction when injury is inflicted intentionally, knowingly, or recklessly. Tex. Penal Code § 29.02(a)(1). In 2013, the Guidelines were amended to add a definition of robbery. See USSG § 4B1.2(e)(3). The Commission did so because “every Court of Appeals addressing the issue under the [former] guidelines ha[d] held that Hobbs Act robbery is not a ‘crime of violence’ under § 4B1.2,” which the Commission considered “an unintended consequence” of a previous amendment. USSG Supplement to Appendix C, amend. 882, p. 247. The Commission further explained that the newly added definition “mirrors” the definition of Hobbs Act robbery. Id. at 246–47. We therefore grant the Guidelines definition of robbery the same interpretation afforded the term under the Hobbs Act.

Cf. United States v. McIntosh, 236 F.3d 968, 971 n.4 (8th Cir. 2001) (“[W]e fail to see how the [Guidelines] provision could be interpreted differently than the statute; the language is identical.”).

The Hobbs Act, like the Guidelines, does not include an explicit mens rea requirement, but at least four circuits have found that Hobbs Act robbery excludes reckless conduct. See United States v. García-Ortiz, 904 F.3d 102, 108 (1st Cir. 2018) (“The elements of Hobbs Act robbery . . . include ‘an implicit mens rea element of general intent—or knowledge’”); United States v. Gray, 260 F.3d 1267, 1283 (11th Cir. 2001) (“[T]he only mens rea required for a Hobbs Act robbery conviction is that the offense be committed knowingly.”); United States v. Du Bo, 186 F.3d 1177, 1179 (9th Cir. 1999) (“Although not stated in the Hobbs Act itself, criminal intent—acting ‘knowingly or willingly’—is an implied and necessary element that the government must prove for a Hobbs Act conviction.”); United States v. Ivey, 60 F.4th 99, 116 (4th Cir. 2023) (“Hobbs Act robbery cannot be committed recklessly.”).

We have not addressed the issue directly, but our pattern jury instructions list as an element of Hobbs Act robbery that “the defendant *knowingly*” robbed or attempted to rob the place or entity involved. 8th Cir. Crim. Pattern Jury Inst. 6.18.1951A (emphasis added); see also United States v. Harmon, 194 F.3d 890, 892–93 (8th Cir. 1999) (“To establish an offense under the Hobbs Act, the government must prove beyond a reasonable doubt that: (1) the defendant induced someone to part with property, (2) the defendant acted knowingly and willfully by means of extortion, and (3) the extortionate transaction delayed, interrupted, or adversely affected interstate commerce.”). We agree with our sister circuits that Hobbs Act robbery has, at least, a knowing mens rea. Applying that interpretation to the “mirrored” Guidelines definition, we conclude that Guidelines robbery is narrower

than Texas robbery—which includes reckless conduct—and thus is not a crime of violence under the enumerated offenses clause.²

Texas robbery is broader than Guidelines robbery also because Texas robbery includes injuries caused “in the course of committing theft.” In contrast, Guidelines robbery includes only “unlawful takings” “by means of actual or threatened force, or violence.” Compare Tex. Penal Code § 29.02(a)(1), with USSG § 4B1.2(e)(3). The government contends this is a “minor variation[] in terminology” that does not render the Texas statute broader than the Guidelines definition. See Taylor v. United States, 495 U.S. 575, 599 (1990) (explaining that, under the categorical approach, a conviction under a state statute that “corresponds in substance to the generic meaning,” even if there are “minor variations,” qualifies as a conviction under the generic definition); see also Wickware, 143 F.4th at 674 (finding that “in the course of” and “by means of” are mere “minor variations in terminology”). Looking to how courts have interpreted the two statutes, we disagree.

As to the Hobbs Act, other circuits have reversed robbery convictions when injuries were incidental to the theft, rather than inflicted for the purpose of facilitating the theft. See, e.g., United States v. Smith, 156 F.3d 1046, 1056 (10th Cir. 1998) (reversing denial of judgment of acquittal on Hobbs Act robbery because “[t]he fact that . . . [a store employee] was injured by the getaway car[] does not support a finding that [defendant] took the guns by means of force or violence”); United States v. Grable, 162 F.4th 1321, 1327 (11th Cir. 2026) (“[Defendant] used force only after [his co-conspirator] had surreptitiously taken the marijuana and left the apartment with it. As a result, there was no robbery under the Hobbs Act.”).

By contrast, Texas courts have affirmed convictions when the defendant caused an injury *after* the theft. See, e.g., Luna v. State, No. 07-22-00348-CR, 2023

²On rehearing, the Wickware court declined to consider this reasoning after concluding that “Wickware forfeited this argument.” Wickware, 143 F.4th at 674 n.2. Thus, the Fifth Circuit did not “address whether the Guidelines’ definition of robbery includes a narrower mens rea than the Texas Penal Code requires.” Id.

WL 7135886, at *2 (Tex. App. Oct. 30, 2023) (“[E]ven if Appellant and his accomplice did not cause the bodily injury intentionally or knowingly because of the bystander’s choice to give chase, they did it recklessly which still forms the offense of robbery.”); Craver v. State, No. 02-14-00076-CR, 2015 WL 3918057, at *5 (Tex. App. June 25, 2015) (affirming robbery conviction where defendant injured a bystander while jumping over a railing in an attempt to escape with stolen merchandise).

These differences are material—at a minimum, more than a minor variation in terminology—which means the plain language of the Texas statute is broader than the Guidelines definition.

III.

Because Texas robbery is broader than Guidelines robbery, it does not qualify as a “crime of violence” under USSG § 4B1.2(a)(2). We reverse and remand for resentencing.
