

Does Fleeing the Police in a Car Qualify as a Violent Felony to Trigger the Severe Federal Sentencing Provisions of the Armed Career Criminal Act?

CASE AT A GLANCE

The federal Armed Career Criminal Act (ACCA) significantly increases the minimum and maximum sentences for any felon who illegally possess a firearm if he has “three previous convictions by any court ... for a violent felony or a serious drug offense, or both.” 18 U.S.C. § 924(e). Though ACCA provisions elaborate on what previous convictions can qualify as a “violent felony” or a “serious drug offense,” lower federal courts have struggled to determine which prior state offenses trigger ACCA’s severe sentencing terms. In this case, the Supreme Court will resolve a circuit split over whether using a vehicle while intentionally fleeing from a law enforcement officer after being ordered to stop constitutes an ACCA violent felony.

Sykes v. United States
Docket No. 09-11311

Argument Date: January 12, 2011
From: The Seventh Circuit

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ISSUE

Does Marcus Sykes’s Indiana conviction for resisting law enforcement—which was based on his use of a vehicle while intentionally fleeing from a law enforcement officer after being ordered to stop—qualify as violent felony under 18 U.S.C. § 924(e) to trigger the ACCA’s severe sentencing terms?

FACTS

On March 11, 2008, Marcus Sykes brandished a firearm in the course of an aborted attempt to rob two people in a parked car outside a liquor store in Indianapolis, Indiana. Sykes was identified to police officers, and as officers approached Sykes, he tossed a revolver from his pocket onto the ground. Officers then arrested Sykes, and a few months later, following a federal indictment, he pleaded guilty to one count of being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g).

Sykes was subject to a mandatory minimum sentence of 15 years under the Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. § 924(e), if he had “three previous convictions ... for a violent felony or a serious drug offense.” 18 U.S.C. § 924(e)(1). At his sentencing hearing, Sykes did not dispute that two prior Indiana robbery convictions qualified as violent felonies for ACCA purposes. But Sykes did dispute that a prior conviction for intentional vehicular flight from a law enforcement officer under Indiana Code § 35-44-3-3(b)(1) qualified as a third ACCA predicate violent felony.

Sykes acknowledged before the district court that, under binding Seventh Circuit precedent, his prior Indiana conviction for intentional

vehicular flight qualified as a violent felony. Sykes argued, however, that this circuit precedent was contrary to current Supreme Court law. The district court overruled the objection, finding that Sykes’s conviction qualified as a violent felony. The court sentenced Sykes to 188 months of incarceration pursuant to the enhanced penalty provisions of the ACCA and applicable guidelines provisions.

On appeal, a panel of the Seventh Circuit affirmed, holding that “the act of fleeing an officer in a vehicle involves a ‘serious potential risk of physical injury’ to others” (quoting 18 U.S.C. § 924(e)(2)(B)(ii)). The panel further explained that “resisting law enforcement in a vehicle under Indiana law typically involves conduct that is purposeful, violent[,] and aggressive such that there is an increased likelihood that the offender is the kind of person who would deliberately point [a] gun and pull the trigger” (internal quotes omitted). The panel reasoned that “besides daring a cop to endanger himself by giving chase, the act of fleeing police in a vehicle typically creates a risk of harm to other drivers and pedestrians, reflecting a degree of callousness that might lead a person to later pull the trigger on a gun.” The panel noted a conflict among the circuits, though stressed that a majority of circuits had concluded that vehicular flight from law enforcement is a violent felony under the ACCA.

CASE ANALYSIS

The Armed Career Criminal Act significantly increases both the minimum and maximum sentences faced by defendants convicted of possessing a firearm as a felon. Consequently, the application of the ACCA can have a profound impact on the imprisonment terms given to repeat offenders sentenced for firearm offenses in federal court.

Notably, ten years of imprisonment is the *maximum* a defendant convicted of felon-in-possession can receive if the ACCA is not applicable, but that same defendant faces of *minimum* sentence of 15 years of imprisonment if the ACCA is triggered.

Predicate offenses triggering ACCA's severe sentences are described in the statute using deceptively simple terms: a defendant simply needs to have "three previous convictions by any court . . . for a violent felony or a serious drug offense, or both." But because state offenses can be so varied in their particulars, and because the ACCA also sets forth a complicated exposition of what can constitute a "violent felony" or a "serious drug offense," many lower federal courts have struggled to determine ACCA's applicability in a variety of settings. And, due in part to many circuit splits over what sorts of offenses trigger ACCA's severe sentences, the Supreme Court has recently taken up a large number of ACCA cases. In the last half-decade alone, the Supreme Court has taken up over a half-dozen ACCA application cases; in one recent ACCA case, Justice Alito wrote separately to urge Congress to rewrite ACCA in order to "rescue the federal courts from the mire into which ACCA's draftsmanship" has pushed the jurisprudence. *Chambers v. United States*, 129 S. Ct. 687, 694 (2009) (Alito, J., concurring).

This particular case concerns the application of the ACCA's definition of "violent felony" as an offense punishable by more than one year of imprisonment that is "burglary, arson, or extortion, involves the use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another." 18 U.S.C. § 924(e)(2)(B)(ii). In his argument to the Supreme Court, the defendant, Sykes, stresses that according to the Court's recent jurisprudence the "otherwise" clause of § 924(e)(2)(B)(ii) "looks back to the enumerated violent crimes in the definition—burglary, arson, extortion, and explosives offenses—and encompasses 'only similar crimes, rather than every crime that presents a serious potential risk of physical injury to another'" (quoting *Begay v. United States*, 553 U.S. 137, 142 (2008)). Under *Begay*, crimes that qualify as similar under the "otherwise" clause "all typically involve purposeful, 'violent' and 'aggressive' conduct." In turn, continues the defendant, the "Indiana offense of which Sykes was convicted did not involve violent, aggressive conduct," as the elements of Sykes's offense "require only that one who is driving decline to heed an order to stop—no more." In the defendant's view, "these elements plainly do not encompass violent or aggressive conduct [and] this is confirmed by the existence of a separate provision under the same Indiana statute punishing flight from a law enforcement officer that creates a substantial risk of bodily injury to another person. Ind. Code § 35-44-3-3(b)(1)(B)."

Sykes further asserts that the Seventh Circuit ruling is in conflict with the Supreme Court's teachings: "Instead of looking to see if the conduct encompassed by the statute was purposeful, violent, and aggressive, as *Begay* instructs, the Seventh Circuit conflated violence and aggressiveness with mere purposefulness, concluding that a defendant's 'purposeful decision to do something that is inherently likely to lead to violent confrontation is an aggressive, violent act.'" According to the defendant, the Seventh Circuit panel wrongfully "engaged in conjecture about what might happen after the occurrence of the statutorily required conduct" and mistakenly evaluated Sykes's Indiana flight offense "as if the elements of the different Indiana offense of flight creating a substantial risk of injury applied." The defendant claims that the Supreme Court's ACCA jurisprudence "does

not permit speculation beyond the actual offense of conviction." Sykes further asserts that "such speculation invites the sort of extra-element fact-finding that . . . would raise serious constitutional concerns under the Sixth Amendment."

The government in response does not dispute that a violent felony under ACCA must create a potential risk of physical injury to others that is comparable in degree to the risk created by the ACCA's enumerated crimes and must be similar in kind to the enumerated crimes in involving purposeful, violent, and aggressive conduct. But the government contends that vehicular flight from police creates a risk of injury to others that is comparable in degree to the risk created by the ACCA's enumerated crimes. According to the government, Sykes's offense is comparable to a burglary offense because "vehicular flight creates a serious potential risk of a violent confrontation [and] the risk is even greater because the flight necessarily occurs in the presence of a law enforcement officer who is likely to be armed and to take quick action to pursue and detain the offender." The government further claims that "[c]ase law, media reports, and statistical data all confirm that, faced with the prospect of pursuit, a fleeing offender typically uses violent force to elude police."

In its argument, the government stresses that vehicular flight "places the lives and safety of law enforcement officers, innocent passengers, other motorists, and pedestrians in serious danger." It also asserts that vehicular flight also is similar to the ACCA's enumerated crimes because it involves purposeful, aggressive, and violent conduct. Seeking to distinguish cases in which the Supreme Court ruled crimes were not covered by ACCA, the government asserts that "[e]vasion of police is violent both in nature (because it inherently involves a confrontation with police) and in practice (because offenders typically endanger others as they flee)." The government concludes by defending the ruling of the Seventh Circuit: "The court of appeals correctly determined that the conduct encompassed by the Indiana offense of vehicular flight, in the ordinary case, creates a serious potential risk of injury to others. As part of that determination, the court properly considered potential violence that occurs during pursuit or capture, because vehicular flight is a continuing offense that is ongoing so long as the offender is in flight from police." According to the government, it is inconsequential that Indiana has elected "to create greater or additional offenses for different types of vehicular flight [because the pertinent] inquiry is into the potential risks typically created by conduct that constitutes vehicular flight, regardless of whether that conduct in some circumstances could be prosecuted as a greater or different offense."

SIGNIFICANCE

Though there are many intricate and severe components of federal sentencing law, the provisions of the ACCA may be the most intricate and severe. Application of the ACCA turns on the precise nature of a defendant's various prior crimes—specifically, whether they qualify "a violent felony or a serious drug offense"—and application of the ACCA can lead to a huge increase in the mandated federal sentence. Consequently, many repeat offenders prosecuted in federal courts for firearm offenses contest the application of the ACCA when invoked by the government, and lower federal courts are regularly required to determine in diverse factual and legal settings which past state crimes trigger the ACCA's severe sentencing terms.

As highlighted by divergent circuit court rulings and the parties' arguments in this case, many ACCA disputes have no obvious textual or policy-based solution. Lower court judgments in this arena often turn—implicitly, if not explicitly—on judges' views as to whether Congress sought to have ACCA's severe sentence enhancements apply very broadly or relatively narrowly. As the arguments in this case reveal, textual and policy arguments can be readily developed for both a broad reading and a narrow reading of ACCA. The underlying facts in this case further spotlight how competing textual and policy arguments play out in specific factual contexts. The defendant in this case has an extended criminal history that might readily justify “throwing the book” at him for his latest federal firearm offenses. Yet, neither his current offense nor his (relatively minor) prior offenses suggests that this defendant was the prototypical serious, violent recidivist that Congress had in mind when it created severe mandatory minimum prison terms for “Armed Career” criminals.

Though technically raising pure issues of statutory interpretation, this latest ACCA case again implicates a number of cross-cutting jurisprudential and policy considerations. On the statutory construction front, the justices frequently debate and disagree about whether to focus only on the express text enacted by Congress or broader legislative purposes and history that might help inform the text. Also, in the criminal justice context, some justices (including some perceived to be conservative) regularly invoke various due process and fairness principles to reject expansive interpretations of federal criminal statutes urged by the Department of Justice. In addition, many justices have expressed concerns in opinions and speeches about rigid mandatory sentencing terms that sometimes unduly limit district judges' discretion to achieve case-specific justice at sentencing. Further, in a series of (technically unrelated) recent constitutional rulings, a majority of justices have held that the Sixth Amendment's jury trial right prevents district judges from making certain factual findings that increase the defendant's maximum available sentence term.

Perhaps because of this mélange of jurisprudential and policy considerations, the Supreme Court has not produced a clear jurisprudential approach or an obvious pattern of results in all of its recent ACCA cases. Moreover, the mix of considerations has produced unusual alignments of justices in some ACCA cases, with some justices perceived to be more liberal sometimes voting for an expansive interpretation of ACCA's severe sentencing provisions and some justices perceived to be more conservative sometimes voting for a restrictive interpretation of ACCA's severe sentencing provisions.

Though *Sykes* will not conclusively clarify all the intricate questions that ACCA raises, this case presents the Supreme Court with yet another opportunity to decide whether ACCA's severe sentencing terms should be applied very broadly or relatively narrowly. The specific outcome in this particular case will be, of course, very consequential to the fates of the defendant involved; if the justices rule broadly for either the government or the defendants in this case, the dicta and symbolism of the ruling concerning the reach and application of the ACCA may have the greatest long-term import.

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PREVIEW of United States Supreme Court Cases, pages 167–169.
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