IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-12268-GG

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WOODROW PRESSEY, JR.,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida

Before: MARCUS, WILLIAM PRYOR, and NEWSOM, Circuit Judges.

BY THE COURT:

Woodrow Pressey, Jr., appeals following his convictions for possession with intent to distribute a substance containing a detectable amount of cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C), and possession of a firearm by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(e). He challenges the district court's determination that his Florida convictions for resisting an officer with violence, in violation of Fla. Stat. § 843.01, and possession of cocaine with intent to distribute, in violation of Fla. Stat. § 893.13, qualified as predicate offenses under the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e). In response, the government has moved for summary affirmance and a stay of the briefing schedule.

Summary disposition is appropriate either where time is of the essence, such as "situations where important public policy issues are involved or those where rights delayed are rights denied," or where "the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case, or where, as is more frequently the case, the appeal is frivolous." *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

We review *de novo* whether a prior conviction is a violent felony or serious drug offense within the meaning of the ACCA. *See United States v. Jones*, 906 F.3d 1325, 1327-28 (11th Cir. 2018) (discussing violent felonies); *see United States v. Robinson*, 583 F.3d 1292, 1294 (11th Cir. 2009) (discussing serious drug offenses). Under the prior precedent rule, a prior panel's holding is binding on all subsequent panels of this Court unless the holding is overruled or undermined to the point of abrogation by the Supreme Court or this Court sitting *en banc*. *United States v. Sneed*, 600 F.3d 1326, 1332 (11th Cir. 2010). This is true even if the later panel is "convinced [the earlier holding] is wrong." *United States v. Steele*, 147 F.3d 1316, 1317-18 (11th Cir. 1998) (*en banc*).

The ACCA provides that a defendant who violates 18 U.S.C. § 922(g) and has 3 prior convictions for a violent felony or serious drug offense is subject to a 15-year statutory minimum sentence. 18 U.S.C. § 924(e)(1). The ACCA defines a violent felony as any crime punishable by more than one year in prison that:

> (i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or
>
> (ii) is burglary, arson, or extortion, involves 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)(i), (ii). The first prong of this definition is sometimes referred to as the "elements clause," while the second prong contains the "enumerated crimes" clause and the "residual clause." *United States v. Owens*, 672 F.3d 966, 968 (11th Cir. 2012).[1]

To determine whether a prior state conviction qualifies as a violent felony under the ACCA's "elements" clause, we typically apply the categorical approach, under which we look only to the fact of conviction and the statutory definition of the prior offense. *United States v. Hill*, 799 F.3d 1318, 1322 (11th Cir. 2015). If the statute necessarily requires the state to prove as an element of the offense the use, attempted use, or threatened use of physical force, the offense categorically qualifies as a violent felony under the "elements" clause. *See United States v. Estrella*, 758 F.3d 1239, 1245 (11th Cir. 2014) (applying the categorical approach to determine whether an offense qualified under the elements clause in U.S.S.G. § 4B1.2, which is identical to the elements clause of the ACCA).

Florida law makes it a felony to a felony to "knowingly and willfully resist[], obstruct[], or oppose[] any officer . . . in the execution of legal process or in the lawful execution of any legal duty, by offering or doing violence to the person of such officer." Fla. Stat. § 843.01. In *Hill*, we looked to Florida caselaw, found that violence was a necessary element of a § 843.01 offense, and concluded that the offense categorically qualified as a violent felony under the elements clause of the ACCA. *Hill*, 799 F.3d at 1322.

A "serious drug offense" is defined, in relevant part, as "an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance . . . for which a maximum term of imprisonment of ten years or more is

[1] In 2015, the Supreme Court invalidated the residual clause because it was unconstitutionally vague. *Johnson v. United States*, 135 S. Ct. 2551, 2557-58, 2563 (2015).

prescribed by law." 18 U.S.C. § 924(e)(2)(A)(ii). In determining whether a conviction qualifies as a serious drug offense, courts generally apply a categorical approach, looking no further than the fact of conviction and the statutory definition of the offense. *United States v. Robinson*, 583 F.3d 1292, 1295 (11th Cir. 2009).

Florida law punishes the sale, manufacture, delivery, or possession with intent to sell, manufacture, or deliver cocaine as a second degree felony. *See* Fla. Stat. § 893.13(1)(a)(1). Second-degree felonies are punishable by up to 15 years' imprisonment. *Id.* § 775.082(3)(d). Before 2002, Florida courts interpreted § 893.13 as including a requirement that the defendant knew of the illicit nature of the drugs in his possession. *See Shelton v. Sec'y, Dep't of Corr.*, 691 F.3d 1348, 1349-50 (11th Cir. 2012). In May 2002, the Florida Legislature enacted § 893.101, which eliminated knowledge of the illicit nature of the drugs as an element of controlled substance offenses and created an affirmative defense of lack of such knowledge. *Id.* at 1350-51.

We have noted that the term "serious drug offense" is defined by a federal statute, § 924(e)(2)(A)(ii), and no *mens rea* with respect to the illicit nature of the controlled substance is expressed or implied in the definition. *United States v. Smith*, 775 F.3d 1262, 1267 (11th Cir. 2014). Thus, we held that a violation of § 893.13(1) is a serious drug offense under the ACCA. *Id.* at 1268. We also rejected the argument that the presumption in favor of mental culpability and the rule of lenity required us to imply an element of *mens rea* in the federal definition of serious drug offense. *Id.* at 1267.

Here, the district court did not err when it determined that Pressey's prior convictions qualified as predicate offenses to support an enhancement under the ACCA. *See Jones*, 906 F.3d at 1327-28; *see Robinson*, 583 F.3d at 1294. We have held that a Florida conviction for resisting an officer with violence is a violent felony under the ACCA, and that decision is binding in the

present case, despite Pressey's arguments that the precedent was wrongly decided. *See Hill*, 799 F.3d at 1322; *see Sneed*, 600 F.3d at 1332. Likewise, we have held that a Florida conviction for possession of cocaine with intent to distribute is a serious drug offense, despite the statute's lack of a *mens rea* element, and the ruling is binding. *See Smith*, 775 F.3d at 1267-68; *see Sneed*, 600 F.3d at 1332. Accordingly, summary affirmance is appropriate, as there is no substantial question as to the outcome of Pressey's appeal. *See Groendyke Transp., Inc.*, 406 F.2d at 1162.

The government's motion for summary affirmance is GRANTED, Pressey's convictions and total sentence are AFFIRMED, and the government's motion for a stay of the briefing schedule is DENIED as moot.