No. _____

IN THE
Supreme Court of the United States

_____

JAMES C. WRIGHT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

_____

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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PETITION FOR WRIT OF CERTIORARI

_____

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QUESTIONS PRESENTED

The broad question presented by this case is whether the Eleventh Circuit Court of Appeals erroneously denied Mr. Wright a certificate of appealability ("COA") on the issue of whether he was sentenced above the statutory maximum for his offense of conviction. More specifically, the narrow question presented is whether reasonable jurists can, at a minimum, debate the issues of whether Florida convictions for robbery and aggravated battery with a deadly weapon qualify as "violent felon[ies]" under the elements clause of the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e).

First, reasonable jurists can debate whether Florida robbery is a "violent felony." Since this Court's decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015) (*Johnson II*), striking down the ACCA's residual clause as unconstitutionally vague, several circuit courts of appeals have reached differing conclusions in published decisions regarding whether various state robbery statutes satisfy the ACCA's elements clause. In Florida, a robbery occurs where an individual commits a taking using only the amount of force necessary to overcome a victim's resistance. Thus, if a victim's resistance is minimal, the force needed to overcome that resistance is also minimal. Two terms ago, in *Welch v. United States*, 136 S. Ct. 1257, 1268 (2016), this Court left open the question of whether a Florida conviction for robbery satisfies the ACCA's elements clause. Since then, the issue has placed the Eleventh and Ninth Circuit at odds. *Compare United States v. Fritts*, 841 F.3d 937 (11th Cir. 2016), *with United States v. Geozos*, 870 F.3d 890 (9th Cir. 2017). Given this split, Mr. Wright should have been granted a COA regarding Florida robbery.

Second, reasonable jurists can debate whether Florida aggravated battery with a deadly weapon is a "violent felony." Aggravated battery may be committed through the same simple battery "touch" that this Court held does not satisfy the elements clause in *Johnson v. United States*,

559 U.S. 133, 140 (2010) (*Johnson I*). The only difference between the respective touches in *Johnson I* and Mr. Wright's conviction is that the latter includes the additional element of the "us[e]" of a "deadly weapon." However, the defendant need only hold the weapon—the weapon does not need to make any physical contact with the victim or be mentioned in a threat. Moreover, the weapon does not need to be a type that administers physical force. Thus, Mr. Wright should also have been granted a COA regarding his Florida aggravated battery conviction.

This Court's resolution of the issues presented by this petition would not only resolve the direct conflict between the Ninth and Eleventh Circuits regarding robbery, but would provide much-needed guidance on how to determine whether a state offense has as an element the use of "physical force," as that term was defined in *Johnson I*. It is respectfully submitted that this petition presents an ideal vehicle to clarify the requirements for the issuance of COAs, as well as the scope of the ACCA's elements clause.

LIST OF PARTIES

Petitioner, James C. Wright, was the movant in the district court and the appellant in the court of appeals. Respondent, the United States of America, was the respondent in the district court and the appellee in the court of appeals.

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PETITION FOR A WRIT OF CERTIORARI

James C. Wright respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINION AND ORDER BELOW

The Eleventh Circuit's denial of Mr. Wright's application for a COA in Appeal No. 17-12222 is provided in Appendix A.

JURISDICTION

The United States District Court for the Middle District of Florida had original jurisdiction over Mr. Wright's case under 18 U.S.C. § 3231. The district court denied Mr. Wright's 28 U.S.C. § 2255 motion and a COA on March 29, 2017. Mr. Wright subsequently filed a notice of appeal and application for a COA in the Eleventh Circuit, which was denied on November 30, 2017. *See* Appendix A. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

This case involves the application of the ACCA, 18 U.S.C. § 924(e). The ACCA's enhanced sentencing provision provides, in relevant part:

> In the case of a person who violates section 922(g) of this title and has three previous convictions . . . for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years[.]

18 U.S.C. § 924(e)(1).

In relevant part, the ACCA defines a "violent felony" as:

> [A]ny crime punishable by imprisonment for a term exceeding one year . . . 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).

The Antiterrorism and Effective Death Penalty Act of 1996 provides, in relevant part:

> (1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—
>
> (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or
>
> (B) the final order in a proceeding under section 2255.
>
> (2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

28 U.S.C. § 2253(c).

The Florida robbery statute in effect at the time of Mr. Wright's convictions provides, in relevant part:

> "Robbery" means the taking of money or other property which may be the subject of larceny from the person or custody of another, with intent to either permanently or temporarily deprive the person or the owner of the money or other property, when in the course of the taking there is the use of force, violence, assault, or putting in fear.
>
> If in the course of committing the robbery the offender carried a firearm or other deadly weapon, then the robbery is a felony of the first degree, punishable by imprisonment for a term of years not exceeding life imprisonment . . . .

Fla. Stat. § 812.13.

The Florida aggravated battery statute provides, in relevant part:

> (1)(a) A person commits aggravated battery who, in committing *battery* – 1. Intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or 2. *Uses a deadly weapon.*

Fla. Stat. § 784.045 (emphasis added).

The Florida battery statute provides, in relevant part:

> The offense of battery occurs when a person:
> 1. Actually and intentionally touches or strikes another person against the will of the other; or
> 2. Intentionally causes bodily harm to another person.

Fla. Stat. § 784.03(1)(a).

STATEMENT OF THE CASE

Mr. Wright pled guilty to conspiracy to possession of a firearm by a convicted felon, and on July 29, 2004, he was sentenced under the ACCA to 180 months' imprisonment and 48 months' supervised release. The ACCA enhancement was based on the following four Florida convictions: (1) aggravated fleeing and eluding; (2) aggravated battery with a deadly weapon; (3) robbery; (4) robbery. Mr. Wright appealed, arguing his convictions did not qualify for ACCA enhancement. His sentence was affirmed by the Eleventh Circuit on May 24, 2008.

On June 17, 2016, Mr. Wright filed a motion to vacate his sentence pursuant to 28 U.S.C. § 2255 based on *Johnson II*, arguing that his ACCA sentence was unconstitutional. Because his right to relief turned, in part, on whether his Florida robbery convictions qualify as "violent felonies" under the ACCA's elements clause, he filed an unopposed motion to stay his § 2255 proceedings pending the Eleventh Circuit's decision in *United States v. Fritts*, Eleventh Circuit Case No. 15-15699.[1] The district court granted the motion.

On November 8, 2016, the Eleventh Circuit issued its decision in *Fritts*, holding that Florida robbery categorically qualifies as a "violent felony." 841 F.3d 937 (11th Cir. 2016).

[1] The parties agreed that Mr. Wright's conviction for aggravated fleeing and eluding no longer qualified as a "violent felony" but disputed whether his convictions for aggravated battery and robbery qualified.

In light of the decision in *Fritts*, Mr. Wright filed an unopposed motion to lift the stay in his case and adopt the arguments set forth in the appellant's briefs in *Fritts*. For the purpose of further review, he maintained that *Fritts* was wrongly decided, and that his robbery offenses do not qualify as "violent felonies." He also requested a briefing schedule regarding his aggravated battery with a deadly weapon conviction. On December 22, 2016, the district court lifted the stay, allowed Mr. Wright to adopt the arguments set forth in *Fritts*, and directed the parties to brief the remaining issues in his § 2255 motion, which followed. On March 29, 2017, the district court denied the § 2255 motion and a COA. On May 16, 2017, Mr. Wright filed a timely notice of appeal.

On June 21, 2017, Mr. Wright filed an application for a COA with the Eleventh Circuit, requesting a COA on the issue of whether he was erroneously sentenced above the statutory maximum for his conviction. In his application, he recognized that the Eleventh Circuit's binding precedent precluded a finding that his robbery and aggravated battery with a deadly weapon convictions were not "violent felonies" but maintained that the court's precedent was incorrect and reasonable jurists could still debate the issue. He also noted that since *Fritts* was rendered, both circuit and district judges in the Eleventh Circuit had granted COAs on the issue. Regarding the merits of the issue, Mr. Wright explained, among other things, that under Florida law, a robbery committed "by force" requires minimal force and therefore cannot qualify as a "violent felony" under the ACCA's elements clause. He also explained why reasonable jurists could debate the merits of the aggravated battery with a deadly weapon issue.

On November 30, 2017, the Eleventh Circuit denied Mr. Middleton's application for a COA, stating that its prior precedent regarding aggravated battery in *Turner v. Warden Coleman, FCI*, 709 F.3d 1328 (11th Cir. 2013), precluded the granting of a COA.

REASONS FOR GRANTING THE WRIT

The Ninth and Eleventh Circuits' conflict about whether a Florida conviction for robbery qualifies as a "violent felony" under the ACCA's elements clause shows that reasonable jurists can debate the issue.

Under Florida's robbery statute, a robbery occurs where a taking is accomplished using enough force to overcome a victim's resistance. *See Robinson v. State*, 692 So. 2d 883 (Fla. 1997). Thus, if a victim's resistance is minimal, the force needed to overcome that resistance is similarly minimal. Indeed, a review of Florida case law clarifies that a defendant may convicted of robbery even if he uses only a *de minimis* amount of force. A conviction may be imposed if a defendant: (1) bumps someone from behind;[2] (2) engages in a tug-of-war over a purse;[3] (3) pushes someone;[4] (4) shakes someone;[5] (5) struggles to escape someone's grasp;[6] (6) peels back someone's fingers;[7]

[2] *Hayes v. State*, 780 So. 2d 918, 919 (Fla. 1st DCA 2001).

[3] *Benitez-Saldana v. State*, 67 So. 3d 320, 323 (Fla. 2d DCA 2011).

[4] *Rumph v. State*, 544 So. 2d 1150, 1151 (Fla. 5th DCA 1989).

[5] *Montsdoca v. State*, 93 So. 157, 159–160 (Fla. 1922).

[6] *Colby v. State*, 46 Fla. 112, 114 (Fla. 1903). In *Colby*, the defendant was caught during an attempted pickpocketing. *Id.* The victim grabbed the defendant's arm, and the defendant struggled to escape. *Id.* Under the robbery statute in effect at the time, the Florida Supreme Court held it was not a robbery because the force was used to escape, rather than secure the money. *Id.* However, the Florida Supreme Court has made clear that this conduct would have qualified as a robbery under the current robbery statute, which is at issue in this case. *See Robinson v. State*, 692 So. 2d 883, 887 n.10 (Fla. 1997) ("Although the crime in *Colby* was held to be larceny, it would be robbery under the current version of the robbery statute because the perpetrator used force to escape the victim's grasp."). Indeed, Florida courts have made clear that if a pickpocket "jostles the owner, or if the owner, catching the pickpocket in the act, struggles to keep possession," a robbery has been committed. *Rigell v. State*, 782 So. 2d 440, 441 (Fla. 4th DCA 2001) (quoting W. LaFave, A. Scott, Jr., *Criminal Law* § 8.11(d), at 781 (2d ed. 1986)); *Fine v. State*, 758 So. 2d 1246, 1248 (Fla. 5th DCA 2000).

[7] *Sanders v. State*, 769 So. 2d 506, 507 (Fla. 5th DCA 2000).

or (7) pulls a scab off someone's finger.[8] Indeed, under Florida law, a robbery conviction may be upheld based on "ever so little" force. *Santiago v. State*, 497 So. 2d 975, 976 (Fla. 4th DCA 1986).[9]

The Ninth Circuit recently recognized this in *Geozos*, where it held that a Florida conviction for robbery, regardless of whether it is armed or unarmed, fails to qualify as a "violent felony" under the elements clause. 870 F.3d at 900–01. In so holding, the Ninth Circuit relied on Florida caselaw which clarified that an individual may violate Florida's robbery statute without using violent force, such as engaging "in a non-violent tug-of-war" over a purse. *Id.* at 900 (citing *Benitez-Saldana v. State*, 67 So. 3d 320, 323 (Fla. 2d DCA 2011)). And while both the Ninth and Eleventh Circuits have recognized the Florida robbery statute requires an individual use enough force to overcome a victim's resistance, the Ninth Circuit, in coming to a decision that it recognized was at "odds" with this Eleventh Circuit's holding in *Fritts*, stated that it believed the Eleventh Circuit "overlooked the fact that, if resistance itself is minimal, then the force used to overcome that resistance is not necessarily violent force." *Id.* at 901.

Florida is not alone in its use of a resistance-based standard. In fact, most states permit robbery convictions where the degree of force used is sufficient to overcome a victim's resistance. Indeed, at least fifteen states use some variation of this standard in the text of their statutes,[10] and

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[8] *Johnson v. State*, 612 So. 2d 689, 690–91 (Fla. 1st DCA 1993).

[9] In *Santiago*, the defendant reached into a car and pulled two gold necklaces from around the victim's neck, causing a few scratch marks and some redness around her neck. *Santiago*, 497 So. 2d at 976.

[10] *See* Ala. Code § 13A-8-43(a)(1); Alaska Stat. § 11.41.510(a)(1); Ariz .Rev. Stat. §§ 13-1901, 1902; Conn. Gen. Stat. § 53a-133(1); Del. Code Ann. tit. 11, § 831(a)(1); Haw. Rev. Stat. § 708-841(1)(a); Me. Rev. Stat. tit. 17-A, § 651(1)(B)(1); Minn. Stat. § 609.24; Mo. Rev. Stat. §§ 570.010(13), 570.025(1); Nev. Stat. § 200.380(1)(b); N.Y. Penal Law § 160.00(1); Okla. Stat. tit. 21, §§ 791, 792, 793; Or. Rev. Stat. § 164.395(1)(a); Wash. Rev. Code § 9A.56.190; Wis. Stat.

several others have adopted it through case law.[11] Since this Court struck down the ACCA residual clause in *Johnson II*, several circuits have had to reevaluate whether these robbery statutes and others still qualify as "violent felon[ies]" under the ACCA's elements clause.[12] These courts have reached differing conclusions, and as a result, significant tension has arisen regarding the degree of force a state robbery statute must require to categorically satisfy the "physical force" prong of the elements clause. *See Johnson I*, 559 U.S. at 140 (defining "physical force" as "*violent* force . . . force capable of causing physical pain or injury to another person.") (emphasis in original). The Fourth Circuit's decisions in *United States v. Gardner*, 823 F.3d 793 (4th Cir. 2016), and *United States v. Winston*, 850 F.3d 677, 683–86 (4th Cir. 2017), are instructive in this regard.

In *Winston*, the Fourth Circuit held that a Virginia conviction for common law robbery committed by "violence" does not categorically require the use of "physical force." *Id.* Such a robbery is committed where a defendant employs "anything which calls out resistance." *Id.* (quoting *Maxwell v. Commonwealth*, 165 Va. 860 (1936)). Indeed, a conviction may be imposed even if a defendant does not "actual[ly] harm" the victim. *Id.* (quoting *Henderson v. Commonwealth*, No. 3017-99-1, 2000 WL 1808487 (Va. Ct. App. Dec. 12, 2000)). Rejecting the

§ 943.32(1)(a).

[11] *See, e.g.*, *Lane v. State*, 763 S.W.2d 785, 787 (Tex. Crim. App. 1989); *State v. Stecker*, 108 N.W.2d 47, 50 (S.D. 1961); *State v. Robertson*, 740 A.2d 330, 334 (R.I. 1999); *State v. Curley*, 939 P.2d 1103, 1105 (N.M. 1997); *West v. State*, 539 A.2d 231, 234 (Md. 1988); *State v. Blunt*, 193 N.W.2d 434, 435 (Neb. 1972); *State v. Sein*, 590 A.2d 665, 668 (N.J. 1991); *Winn v. Commonwealth*, 462 S.E.2d 911, 913 (Va. 1995).

[12] *See United States v. Seabrooks*, 839 F.3d 1326 (11th Cir. 2016); *United States v. Gardner*, 823 F.3d 793 (4th Cir. 2016); *United States v. Bell*, 840 F.3d 963 (8th Cir. 2016); *United States v. Eason*, 829 F.3d 633 (8th Cir. 2016); *United States v. Dixon*, 805 F.3d 1193 (9th Cir. 2015); *United States v. Parnell*, 818 F.3d 974 (9th Cir. 2016); *United States v. Harris*, 844 F.3d 1260 (10th Cir. 2017); *United States v. Doctor*, 843 F.3d 306 (4th Cir. 2016); *United States v. Duncan*, 833 F.3d 751 (7th Cir. 2016); *United States v. Priddy*, 808 F.3d 676 (6th Cir. 2015).

government's argument that overcoming resistance requires violent "physical force," the Fourth Circuit held that the *de minimis* force required under Virginia law does not rise to the level of violent "physical force." *Id.*

In *Gardner*, the Fourth Circuit held that the offense of common law robbery in North Carolina does not qualify as a "violent felony" under the elements clause because it does not categorically require the use of "physical force." 823 F.3d at 803–04. A North Carolina common law robbery may be committed by force so long as the force is "is sufficient to compel a victim to part with his property." *Id.* (quoting *State v. Sawyer*, 29 S.E.2d 34, 37 (N.C. 1944)). "This definition," the Fourth Circuit stated, "suggests that even *de minimis* contact can constitute the 'violence' necessary for a common law robbery conviction under North Carolina law." *Id.* (emphasis in original). The Fourth Circuit then discussed two North Carolina state cases that supported that conclusion. *Id.* (discussing *State v. Chance*, 662 S.E.2d 405 (N.C. Ct. App. 2008), and *State v. Eldridge*, 677 S.E.2d 14 (N.C. Ct. App. 2009)). Based on these decisions, the Fourth Circuit concluded that "the minimum conduct necessary to sustain a conviction for North Carolina common law robbery" does not necessarily require "physical force," and therefore the offense does not categorically qualify as a "violent felony" under the elements clause. *Id.*

Like the Virginia offense described in *Winston* and the North Carolina offense addressed in *Gardner*, a Florida robbery may be committed by force sufficient to overcome a victim's resistance. As the Fourth Circuit recognized, this definition implicitly suggests that so long as a victim's resistance is slight, a defendant need only use *de minimis* force to commit a robbery. And, as explained above, Florida case law confirms this point.

Given the circuit split between the Ninth and Eleventh Circuits, and the tension among the other circuits, reasonable jurists can (and do) debate whether Mr. Wright's convictions for robbery

qualify as "violent felon[ies]" after *Johnson II*. This case presents an ideal vehicle for the Court to resolve the circuit split discussed herein and reinforce what it said in *Johnson I* — that "physical force" requires "a substantial degree of force." 559 U.S. at 140. At a minimum, it requires more than the *de minimis* force required for a robbery conviction under Florida law.

The issue presented by this petition was fully preserved below and is dispositive — if Mr. Wright's prior robbery convictions do not qualify as "violent felon[ies]" under the ACCA's elements clause, then he is ineligible for enhanced sentencing under the ACCA, regardless of whether his aggravated battery with a deadly weapon conviction remains a "violent felony." However, as explained below, reasonable jurists can also debate whether aggravated battery with a deadly weapon satisfies the ACCA's elements clause.

Reasonable jurists can debate whether Florida aggravated battery with a deadly weapon is a "violent felony" under the ACCA's elements clause.

In *Turner*, the Eleventh Circuit held that aggravated battery in violation of Fla. Stat. § 784.045 is categorically a violent felony under the ACCA's elements clause. 709 F.3d at 1341. However, the *Turner* Court's analysis of aggravated battery lacks the strict element-by-element comparison, overbreadth analysis, and examination of Florida caselaw required by *Descamps v. United States*, 133 S. Ct. 2276, 2281 (2013), *Moncrieffe v. Holder*, 133 S. Ct. 1678, 1684 (2013), *United States v. Rosales-Bruno*, 676 F.3d 1017 (11th Cir. 2012), and *Mathis v. United States*, 136 S. Ct. 2243 (2016).

An aggravated battery with a deadly weapon is a simple battery, in which the defendant "uses a deadly weapon." Like any other Florida battery, aggravated battery can be committed by a non-consensual and non-violent "touching." Because the *Shepard* [13] documents do not establish

[13] *Shepard v. United States*, 544 U.S. 13 (2005).

whether Mr. Wright's battery was accomplished through touching, striking, or causing bodily harm, we must presume the battery was accomplished through the least culpable means—touching.[14] *See United States v. Braun*, 801 F.3d 1301, 1305 (11th Cir. 2015) (citing *Moncrieffe*, 133 S. Ct. at 1684) ("We must presume that the conviction rested upon nothing more than the least of the acts criminalized . . . ."). Accordingly, under *Descamps* and *Moncrieffe*, we must presume that Mr. Wright's conviction for aggravated battery must be considered a mere non-consensual "touching" while "using" a deadly weapon.

This Court has held that Florida battery, when committed by actually and intentionally *touching* another against his or her will, does not satisfy the elements clause. *Johnson I* at 139. That the aggravated battery statute requires the additional element of "using" a deadly weapon does not place the touching within the elements clause, because "using" a deadly weapon during a battery does not require that the weapon ever "touch" the victim. A conviction is permissible if the defendant simply holds the weapon while committing a touching. *See, e.g.*, *Severance v. State*, 972 So. 2d 931, 934 (Fla. 4th DCA 2007) (en banc) (clarifying that to "use a deadly weapon" for purposes of the aggravated battery statute "cover[s] *all* uses;" the Legislature "did not intend to limit the manner or method of use; therefore, it is unnecessary that the defendant use the weapon to commit the touching that constitutes the battery; it is sufficient if the defendant simply "hold[s] a deadly weapon without actually touching the victim with the weapon"). Thus, the weapon need not play any part in the offense. Indeed, the defendant need not even threaten to use it. So long as

[14] Arguably, the "touch or strike" components of Florida battery constitute alternative means of committing the offense, which are indivisible. *See Mathis*, 136 S. Ct. at 2256 (stating the modified categorical approach cannot be applied where a statute lists alternative means of committing an offense, and not alternative elements). However, this Court need not address the divisibility of the statute here, because the *Shepard* documents are silent as to which alternative means form the basis for Mr. Wright's conviction.

the weapon is in the defendant's possession during the touching, regardless of its use, the defendant has committed an aggravated battery. *Id.*

Moreover, the term "deadly weapon" in § 784.045(1)(a)(2) is itself indeterminate and overbroad. According to Florida's standard jury instruction for aggravated battery, "a weapon is a 'deadly weapon' if it is used or threatened to be used in a way likely to produce death or great bodily injury." That a deadly weapon may be "likely to produce" death or great bodily injury does not mean that an offense committed with a deadly weapon requires the use or threatened use of violent force. For example, poison is clearly a "deadly weapon" within that definition, and it can be easily administered without violent force.

Thus, the only physical contact required to commit an aggravated battery with a deadly weapon is touching another individual. *Severance*, 972 So. 2d at 937. As explained in *Severance*, the "foundational element" of aggravated battery requires only "that the accused be engaged in the act of committing a simple battery against the victim. The Legislature has added a new element to a simple battery—that a deadly weapon also be used in some way—as a basis for increasing the punishment beyond what a mere simple battery by itself would bring." *Id*. The "element of contact with the victim," i.e., touching, does not require that the deadly weapon be used to make the contact with the victim. *Id*.[15] And merely holding the weapon does not make the touching involve the strong degree of force required by *Johnson I*.

Thus, despite *Turner*'s categorical holding to the contrary, Florida caselaw and post-*Turner*

[15] *See also id*. at 938 ("In punishing a simple battery far more seriously when a deadly weapon is used *in some way* to make it happen—even though the deadly weapon might not actually touch the victim—the Legislature has made a policy decision about using deadly weapons. This policy decision is not about traditional battery, whether simple or aggravated. The critical policy involved in this statute is to extract a much greater price in punishment when a deadly weapon is *any part* of the commission of simple battery.") (emphasis added).

precedent in this Court supports Mr. Wright's position that reasonable jurists can at least debate whether aggravated battery with a deadly weapon through a *touch* qualifies as a violent felony under the elements clause.

CONCLUSION

For the foregoing reasons, the petition should be granted.

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APPENDIX