No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2018

JAMES PINKNEY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

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Date: November 5, 2018

QUESTION PRESENTED FOR REVIEW

Whether the Illinois robbery statute categorically requires the use of force called for by this Court so as to qualify as a "violent felony" under the Armed Career Criminal Act, (ACCA) 18 U.S.C. §924(e)(2)(B)(i)?

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PETITION FOR WRIT OF *CERTIORARI*

Petitioner James Pinkney respectfully petitions this Court for a writ of *certiorari* to review the judgment of the United States Court of Appeals for the Seventh Circuit.

ORDERS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit affirming the district court's denial of relief is reprinted in the appendix to this petition at A. 1.[1] The district court's opinion is reprinted in the appendix at A. 6.

JURISDICTION

Mr. Pinkney sought post-conviction relief under 28 U.S.C. § 2255. The district court denied relief. A. 6. Mr. Pinkney filed a timely appeal. The Seventh Circuit Court of Appeals affirmed the district court's denial of relief, and entered judgment thereon, on August 21, 2018. A. 1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

[1] "A. __" indicates a reference to the Appendix to this petition.

STATUTES INVOLVED

18 U.S.C. § 924(e)

(e)(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title 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, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

(2) As used in this subsection-

(A) the term "serious drug offense" means-

(i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46 for which a maximum term of imprisonment of ten years or more is prescribed by law; or

(ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law;

(B) the term "violent felony" means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, 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; and

(C) the term "conviction" includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.

Ill. Rev. Stat. Ch 38, § 18-1(a)

(a) Robbery. A person commits robbery when he or she knowingly takes property, except a motor vehicle covered by Section 18-3 or 18-4, from the person or presence of another by the use of force or by threatening the imminent use of force.

INTRODUCTION

Mr. Pinkney was sentenced as an armed career criminal based, in part, on his two prior convictions for Illinois robbery. This Court recently granted *certiorari* in *Stokeling v. United States*, No. 17-5554, *cert. granted* April 2, 2018, (oral argument, October 9, 2018), to consider whether Florida robbery is a violent felony and counts as a predicate for armed career sentencing. Because Illinois's robbery law is essentially the same as Florida's statute, Mr. Pinkney's petition presents the same issue as that presented in *Stokeling*. The Illinois robbery statute does not require force above the level of force that is required for a violent felony for armed career criminal sentencing, contrary to the Seventh Circuit's decision below. A. 1.

This Court has granted *certiorari* to consider basically same question, but in the context of Florida's robbery statute. *Stoekling v. United States*, No. 17-5554, *cert. granted* April 2, 2018, (oral argument October 9, 2018). The Court also has pending petitions raising this issue under the Illinois robbery statute. *Klikno v. United States*, No. 17-5018, *cert. filed* June 22, 2017; *Van Sach v. United States*, No. 17-8740, *cert. filed* April 26, 2018; and *Shields v. United States*, No. 17- 9399, *cert. filed* June 15, 2018).

Therefore, Mr. Pinkney respectfully requests that this Court hold his petition for resolution in light of the Court's anticipated decision in *Stokeling*.

STATEMENT OF THE CASE

LEGAL BACKGROUND

18 U.S.C. § 924(a)(2) provides for a range of imprisonment ranging from zero to 120 months for the offense of unlawful possession of a firearm after a prior felony conviction. The Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. § 924(e)(1), increases that penalty to a term ranging from 15 years to life imprisonment if the defendant has "three previous convictions . . . for a violent felony or a serious drug offense." The ACCA defines a "violent felony to include any crime punishable by more than one year that is burglary, arson, or extortion, [or] involves use of explosives, [the "enumerated offenses"], or otherwise involves conduct that presents a serious potential risk of physical injury to another." 18 U.S.C. § 924(e)(2)(B)(ii). The last clause in this §924(e)(2)(B)(ii) is referred to as the ACCA's "residual clause."

The ACCA also includes an alternative definition of violent felony under its "force" clause which requires that the predicate conviction "has

as an element the use, attempted use, or threatened use of physical force against the person of another." 18 U.S.C. § 924(e)(2)(B)(i). This is referred to as the "force" clause.

On June 26, 2015, in *Samuel Johnson v. United States*, 135 S. Ct. 2551, 2557 (2015)[2] this Court ruled that the ACCA's residual clause violated the Constitution's Due Process Clause, specifically holding that §924(e)(2)(B)(ii)'s definition of a violent felony as a crime involving "conduct that presents a serious potential risk of physical injury to another" is constitutionally vague because it denied fair notice and invited arbitrary enforcement and, is therefore, void. Hence, because Mr. Pinkney's previous robbery convictions do not implicate the enumerated offenses, and Mr. Pinkney's plea agreement cited to the residual clause in one instance, and was unspecific as to the second instance, this petition raises a question about the interpretation of the ACCA's force clause. 18 U.S.C. §924(e)(2)(B)(i).

[2] This petition uses the petitioners' full names in citing to the two "*Johnson*" opinions discussed throughout this appeal in order to distinguish these Supreme Court opinions of *Curtis Johnson*, (2010) and *Samuel Johnson*, (2015).

If Mr. Pinkney's Illinois robbery convictions count as ACCA predicates, they must categorically require "force" as an element of the offense. In determining this, the court looks to the elements of the proposed predicate offense and not the underlying facts of the specific conviction. *Taylor v. United States*, 495 U.S. 575, 600-01 (1990). A previous conviction counts under the force clause only if the offense always, that is categorically, requires the use of force as defined in federal law. *Descamps v. United States*, 570 U.S. 254, 257 (2013).

In *Curtis Johnson v. United States*, 559 U.S. 133 (2010), the Court reviewed a case involving a battery conviction and interpreted the force clause as requiring, not any physical force, but "***violent*** force – that is, force capable of causing physical pain or injury to another person." *Id.* at 140 (emphasis in original). Accordingly, "physical force," as used in the ACCA, means "a degree of power that would not be satisfied by the merest touching." *Id.* at 139. Still, a "slap in the face" could cause enough pain to satisfy the ACCA's force requirement. *Id.* at 143.

The relevant Illinois robbery statute in this case defines robbery as "knowingly tak[ing] property . . . from the person or presence of another by the use of force or by threatening the imminent use of force." Ill. Rev.

Stat. ch 38, § 18-1(a). This language parallels the language of the Florida robbery statute reviewed in *Stokeling*, which similarly prohibits the taking of property when "there is the use of force, violence, assault, or putting in fear." Fla. Stat. § 812.13.

FACTUAL AND PROCEDURAL BACKGROUND

On October 4, 2011, Mr. Pinkney pled guilty pursuant to a plea agreement to being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g) and 924(e)(1). On April 17, 2012, the district court sentenced Mr. Pinkney to 180 months' imprisonment. The district court found Mr. Pinkney to be an armed career criminal after adopting the findings of the presentence report, in part, on the basis of his Illinois convictions for robbery.

On June 26, 2015, the Supreme Court issued its decision in *Samuel Johnson*, wherein the Court overruled *Sykes v. United States*, 131 S. Ct. 2267 (2011) and *James v. United States*, 550 U.S. 192 (2007), and invalidated the ACCA's residual clause because it denied fair notice and invited arbitrary enforcement and was therefore void for vagueness under the Due Process Clause. As a result of *Samuel Johnson* ruling, Mr. Pinkney moved the district court pursuant to 28 U.S.C. § 2255 to vacate his sentence and re-sentence him without

the application of the ACCA because he no longer has the requisite number of prior convictions to qualify as an armed career criminal after *Samuel Johnson*.

The district court denied Mr. Pinkney's motion for relief concluding that "Illinois case law supports the conclusion that robbery contains an element of physical force sufficient under [*Curtis Johnson*]." A. 15. The district court also granted Mr. Pinkney a certificate of appealability, *sua sponte*, "given the importance of the issue and the Court's view that the conclusion it has reached is fairly debatable." A. 12-13.

Mr. Pinkney then appealed the question presented here to the Seventh Circuit, which affirmed the district court's denial of his motion for relief. The Seventh Circuit ruled that the force required to commit simple robbery in Illinois satisfies the definition of "physical force" for purposes of § 18 U.S.C. 924(e)(2)(B)(i). The Seventh Circuit relied upon its decision in *Shields v. United States*, 885 F.3d 1020, 1024 (7th Cir. 2018), *cert. filed* June 15, 2018, No. 17- 9399. *Shields* is a case involving the Illinois armed robbery statute. The Seventh Circuit "concluded that because Illinois simple robbery qualified as a violent felony under the ACCA, Illinois armed robbery did as well" since the force element is the same for both offenses. A. 4.

Mr. Pinkney brings this petition because he will receive relief if the Illinois robbery convictions do not count towards the ACCA sentence enhancement.

REASONS FOR GRANTING THE PETITION

The decision below misapplies this Court's definition of force as that term is used in the ACCA. *Curtis Johnson* defines "force" as "***violent*** force--that is, force capable of causing physical pain or injury to another person." 559 U.S. at 140 (emphasis in original). Although Illinois's robbery law makes force an element of the offense, its definition of force is not equivalent to the federal definition of force. The Illinois robbery statute threshold for force is far less than the degree of force required by this Court in *Curtis Johnson*, and, therefore, disqualifies it as an ACCA predicate. Furthermore, other states have approached the question of the necessary degree of force to commit a robbery similar to Illinois. As a result, there has been a major Circuit split which has led to the grant of *certiorari* by this Court in *Stokeling.* Mr. Pinkney's petition adds to the examples of this continuing problem.

I. Mr. Pinkney's Petition raises the issue now pending before this Court in *Stokeling v. United States*.

The Court has recently granted *certiorari* and heard oral arguments in *Stokeling v. United States*, No. 17-5554, *cert. granted* April 2, 2018, (oral argument, October 9, 2018), to decide the issue of whether Florida's robbery statute categorically requires the degree of force as defined by this Court in *Curtis Johnson*. Because Mr. Pinkney's 180-month imprisonment sentence rests on two previous Illinois robbery convictions, the same essential question is raised as that being reviewed in *Stokeling*. That is, both robbery statutes require "force" leading to the question in both cases as to whether the degree of force required in each statute equates with the degree of "force" called for in the ACCA.

In *Stokeling,* the Florida robbery statute, (Fla. Stat. § 812.13), requires that the defendant use "force." In *McCloud v. State*, 335 So. 2d 257, 258 (Fla. 1976), the Florida Supreme Court ruled that "any degree of force suffices to convert larceny into a robbery." Given that "any degree of force" includes non-violent force, Florida robbery does not categorically call for the degree of force which this Court requires for ACCA as defined in *Curtis Johnson*.

However, the Eleventh Circuit has interpreted the Florida statute to include only violent force as measured under *Curtis Johnson*. *United States v. Lockley*, 632 F.3d 1238 (11th Cir. 2011). Indeed, its decision in *United States v. Stokeling*, Fed. Appx. 870 (11th Cir. 2017), is only one example of the dozens of Eleventh Circuit cases reaching the same conclusion. On the other hand, the Ninth Circuit has come to exactly the opposite conclusion regarding the Florida statute, thereby creating the Circuit conflict to be resolved in *Stokeling*. *United States v. Geozos*, 870 F.3d 890, 901 (9th Cir. 2017).

Mr. Pinkney was convicted under the Illinois robbery statute, which, like the Florida robbery statute, designates "force" as an element of the offense. Ill. Rev. Stat. ch 38, §18-1(a). The Illinois Supreme Court has ruled that the degree of force required to commit a robbery can include yanking an object that is attached to the victim's clothes, such as in the case of a watch on a chain. *People v. Campbell*, 84 N.E. 1035, 1036 (Ill. 1908). Furthermore, Illinois and Florida are not alone in defining the minimum level of force for a robbery in this manner. 3 Wayne R. Lafave, Substantive Criminal Law § 20.3(d)(1) (3d ed. 2018).

Because merely tugging on an object attached to the victim's clothing would not inflict the degree of force on that victim called for by C*urtis*

Johnson, the Illinois robbery statute cannot be a violent felony under the ACCA. Nevertheless, the Seventh Circuit has persistently maintained the view that Illinois robbery is categorically a violent felony, and has done so in this case. *Shields v. United States, 885 F.3d 1020, 1024 (7th Cir. 2018), cert. filed* No. 17- 9399, June 15, 2018); *United States v. Chayoga-Morales*, 859 F.3d 411, 421-22 (7th Cir. 2017); Appendix A. 4.

But the Seventh Circuit's approach below which concludes that "Illinois courts require sufficient force for robbery convictions to be predicate violent felonies" (quoting *Shields*, 885 F.3d at 1024), has been rejected in a number of Circuits regarding statutes similar to the Illinois robbery statute. *E.g., United States v. Walton,* 881 F3d 768 (9th Cir. 2018)(defendant's convictions for second-degree [simple] robbery under California law and first-degree [armed] robbery under Alabama law did not qualify as "violent felonies" under the ACCA's force clause); *United States v. Mulkern*, 854 F.3d 87 (1st Cir. 2017) (Maine robbery); *United States v. Winston*, 850 F.3d 677, 685 (4th Cir. 2017) (Virginia robbery); *United States v. Eason*, 829 F.3d 633, 640-42 (8th Cir. 2016) (Arkansas robbery); *United States v. Gardner*, 823 F.3d 793, 803-04, (4th Cir. 2016) (North Carolina robbery); *United States v. Parnell*, 818 F.3d 974 (9th Cir. 2016) (Massachusetts armed

robbery does not qualify as a violent felony for the ACCA enhancement).

Therefore, this Court should hold Mr. Pinkney's instant petition until it has decided *Stokeling* because that decision will rest on the Court's determination of whether the degree of force required by the ACCA equates with the force required by the Florida robbery statute. Since Mr. Pinkney's case also presents essentially the same statutory language, but comes with its own body of state court decisions, the Court's decision in *Stokeling* should provide the required analysis to the similar Florida robbery statute necessary in determining the Illinois law's violent force status in Mr. Pinkney's case, as well as other similar robbery statutes. Thereafter, the Court should fully consider Mr. Pinkney's petition in light of its *Stokeling* decision.

II. The decision below is incorrect.

The decision below relies, in large part, on two specific Seventh Circuit cases which led the Seventh Circuit to conclude "that the force required to commit simple robbery in Illinois satisfies the definition of 'physical force' for purposes of [the ACCA force clause] – [and] controls the outcome of this appeal." A. 4. However, this assumption of equivalence between the level of force that the Illinois law requires, and

the level of force required by the ACCA, is not supportable.

The issue here is resolved by a comparison of the relevant Illinois state law with the federal definition of violent force; it is not merely about the elements of the Illinois robbery statute. Any misapprehension of that state law renders an inaccurate application of the ACCA and its violent force definition.

Importantly, the Illinois robbery statute provides that force is an element of that offense but does not provide a definition of force. Still, the Illinois Supreme Court has repeatedly reviewed the issue and has provided content to the term of force. The result is that the Illinois courts do not categorically require that the robber inflict, or even threaten, violent force on the victim. The Illinois Supreme Court has declared that snatching an item attached to the victim, such as a watch on a chain, is sufficient force to amount to a robbery. "[I]f the article is so attached to the person or clothes as to create resistance, ***however slight, . . .*** the taking is robbery." *People v. Campbell*, 84 N.E. 1035, 1036 (Ill. 1908) (emphasis added). *Campbell* remains good Illinois law even now, more than a century later.

In *People v. Jones*, 797 N.E.2d 640 (Ill. 2003), the defendant was charged with aggravated battery and robbery arising from a single

incident. Under Illinois law, a battery is committed even by an offensive touching; aggravated battery occurs when the offense of battery is committed on a public way. The *Jones* victim testified that she did not hand over her purse when the robbers demanded it, but while tussling with them for possession of the purse, one of them pulled it from her hand. Although the jury acquitted on the battery charge, it was deadlocked on the robbery charge. Jones then argued that he could not be retried for robbery after being acquitted on battery, but the Illinois Supreme Court disagreed, stating that: "[a] jury could find defendant guilty of robbery if it found that he forcibly pulled her purse away from her. A jury would not have to relitigate whether defendant pushed or struck [her]." *Id.* at 650-51. Accordingly, the Illinois Supreme Court in *Jones* confirms its previous ruling in *Campbell,* that even the slight use of force, such as tussling over a purse, is sufficient force to sustain an Illinois robbery conviction.

Other Illinois cases interpreting the Illinois robbery statute make the same point about the minimal force required to constitute robbery. For example, in *People v. Taylor*, 541 N.E. 2d 677 (Ill. 1989), the Illinois Supreme Court held that it was robbery to snatch a chain from the victim's neck. "Sufficient force to constitute robbery may be found when the article taken

is 'so attached to the person or clothes as to create resistance, however slight.'" 541 N.E.2d at 679 (quoting *People v. Campbell*). *Accord*, *People v. Bowel*, 488 N.E.2d 996 (Ill. 1986) (taking a person's hand and pushing it back while stealing a purse is sufficient force for robbery); and, *People v. Brooks*, 559 N.E.2d 859, (1st Dist. 1990) (abrogated on other grounds, *People v. Williams*, 599 N.E. 2d 913 (Ill. 1994), (taking of a wallet followed by a push on a shoulder and exiting a bus was sufficient force for robbery).

These several examples of minimal force, including "resistance, however slight," illustrate that Illinois robbery does not meet the definition of violent force equivalent to the ACCA's requirement for violent force. The Illinois robbery statute includes robberies that are accomplished with varying degrees of force, some with the level required by *Curtis Johnson,* and some not with that level. Some of these Illinois cases discuss the force component as it relates to property (the chain or clothing), not as force that relates to a person. Therefore, Illinois robbery does not categorically require "*violent* force−that is, force capable of causing physical pain or injury to another person" as required by *Curtis Johnson*. (Court's emphasis). Given this, no Illinois robbery conviction can serve as an ACCA predicate for sentence enhancement.

The federal court's task is to measure the standard established by the Illinois cases against *Curtis Johnson's* definition of force. But the Seventh Circuit has not accurately done so. In rejecting Mr. Pinkney's requested relief, then Seventh Circuit invoked its recent decisions in *Shields v. United States*, 885 F.3d 1020 (7th Cir. 2018), *cert. filed* No. 17- 9399, June 15, 2018) (Illinois armed robbery), and *United States v. Chayoga-Morales*, 859 F.3d 411 (7th Cir. 2017) (Illinois aggravated robbery). In *Shields,* the Seventh Circuit considered the issue of required force in the context of the ACCA, while in *Chayoga-Morales* that issue was reviewed in the context of the career offender guidelines.

In *Shields,* the Seventh Circuit ruled that the Illinois armed robbery statute is a violent felony under the ACCA because the offense results when *both* the force element of the simple robbery statute *and* one of the "additional requirements" listed for the consummation of armed robbery are present. *Shields,* at 885 F.3d 1024. In *Chayoga-Morales* the Seventh Circuit likewise concluded that aggravated robbery is a violent felony under the sentencing guidelines because aggravated robbery first requires the commission of the predicate offense of simple robbery which

"required more force than the threshold described in [*Curtis Johnson*]." *Chayoga-Morales* at 859 F.3d 422. In its comparison of the Illinois use of force element to the federal laws it reviewed, the Seventh Circuit in *Shields* concluded: "That force element is the same for both aggravated and armed robbery." *Shields,* at 885 F.3d 1024.

The Seventh Circuit's decision below similarly rejected Mr. Pinkney's claim for relief on the same basis of its conclusions in *Shields* and *Chayoga-Morales,* namely "that the force required to commit simple robbery in Illinois satisfies the definition of 'physical force' for purposes of [the ACCA] – [and therefore] controls the outcome of this appeal." A. 4. However, this approach continues to ignore any meaningful consideration of the Illinois use of force requirement post-*Curtis Johnson*.

Significantly, *Chayoga-Morales*'s discussion of the Illinois simple robbery statute alone is limited to describing its pre-*Curtis Johnson* review of that law, citing, *United States v. Bedell*, 981 F2d 915, 916 (7th Cir. 1992). There, the Seventh Circuit concluded "that the state's threshold for 'force' was sufficient to constitute a 'crime of violence.'" *Chayoga-Morales*, at 859 F.3d 422 (citing, *Bedell*). However, there was no discussion that *Bedell*

survives post-*Curtis Johnson* scrutiny of Illinois's simple robbery force element standing alone. Moreover, neither does the *Shields* decision provide any discussion relative to the construction of the Illinois force element in the post-*Curtis Johnson* context.

Moreover, in both, the *Shields* and *Chayoga-Morales* decisions, the Seventh Circuit cites its earlier decision in *United States v. Dickerson,* 901 F. 2d 579 (7th Cir. 1990) which held that "force in the Illinois robbery statute had the same meaning as "force" in the ACCA. However, in doing so, Dickerson merely quoted the Illinois statute and the ACCA statutory language while commenting that both laws denounced the use of force:

> . . . Ill. Rev. Stat. ch. 38, Sec. 18-1(a), in effect at the time of Dickerson's arrest and conviction, provided that: "A person commits robbery when he takes property from the person or presence of another by the use of force or by threatening the imminent use of force." The Illinois robbery statute very clearly, then, contains "an element [of] use, attempted use, or threatened use of physical force against the person of another," necessary to qualify as a "violent felony" under 18 U.S.C. Sec. 924(e)(2)(B). . .
>
> . . . .
>
> We agree with the district court that the Illinois robbery statute in its own terms includes the elements of either "use of force or ... threatening the imminent use of force," that clearly come within the

scope of 18 U.S.C. Sec. 924(e)(2)(B).

901 F. 2d at 584. But the *Dickerson* decision, and its progeny, fail to examine the Illinois Supreme Court's construction of the Illinois robbery statute.

Although *Dickerson* considered the facts underlying the defendant's robbery conviction, the Seventh Circuit did not discuss the substance of the statutory elements of the Illinois robbery statute:

> . . . Not only are the elements of the Illinois robbery statute within the scope of 18 U.S.C. Sec. 924(e)(2)(B), the circumstances of Dickerson's own crime reflect elements of use or threatened use of physical force. During his guilty plea hearing Dickerson admitted that he struck the victim, knocked him to the ground, and took $13.00 from the victim's pocket. These activities clearly involved the use of physical force against the victim.

901 F. 2d at 584. This is inconsistent with this Court's decision in *Taylor v. United States,* 495 U.S. 575, 600-01 (1990), which directs that the sentencing court must look at the statutory elements of the offense and not the actual conduct underlying the conviction.

Additionally, *Chayoga-Morales* focused on Illinois's distinction between theft and robbery and concluded that Illinois robbery categorically requires violent force as measured by *Curtis Johnson.* The Seventh Circuit opined that if the defendant employs less than *Curtis Johnson* force, he commits the offense of theft rather than robbery. 859

F.3d at 421-22.

This insufficient comparison of Illinois law to the ACCA's definition of force results in an erroneous application of the ACCA to the Illinois robbery statute. It should be noted that Illinois distinguishes, as do other jurisdictions, between the offenses of robbery and theft; if no force results in a theft, then it is not a robbery. But even where the slightest degree of force is used, a robbery is committed. The Illinois Supreme Court's decision in *People v. Patton,* 389 N.E. 2d 1174 (Ill. 1979), distinguished between the offenses of robbery and the lesser offense of theft from person, (re-codified at 720 ILCS 5/16-1(b)(4)(2013)).

In *Patton,* the offender swiftly grabbed the victim's purse throwing her arm back "a little bit "and fled before the victim realized what had happened. *Id.,* at 389 N.E. 2d 1175. No other evidence of force was offered. *Id.* Still, the Illinois Supreme Court restated its ruling from *People v. Campbell, supra*, that "[i]n the absence of active opposition, if the article is so attached to the person or clothes as to create resistance, however slight, or if there be a struggle to keep it, the taking is robbery." *Patton*, at 389 N.E. 2d 1176 (citing, *Campbell*).

Notably, the *Patton* court also opined that "where an article is taken, [citation omitted], 'without any sensible or material violence to the person, as snatching a hat from the head or a cane or umbrella from the hand' the offense will be held to be theft from the person rather than robbery." 389 N.E. 2d 1177 (citing: *Hall v. People*, 49 N.E. 495, 496 (Ill. 1898)). Hence, *Patton*, continued the Illinois Supreme Court's call for force that is "however slight" in finding robbery over theft, and, further articulated that the force used in a robbery need only be "sensible."

Shortly after its decision in *Patton,* the Illinois Supreme Court in *People v. Bowel*, 488 N.E. 2d 995 (Ill. 1986), confirmed the theft/robbery distinction it declared in *Campbell.* The *Bowel* court ruled that a robbery had occurred under Illinois law because the power of the owner to retain her property was overcome. *Id.*, at 488 N.E. 2d 997. This degree of force should fail as "violent force" because overcoming the owner's power with the least amount of force, or by the threat of the least amount of force, cannot conform to this Court's definition of violent force in *Curtis Johnson*.

Because the Seventh Circuit's commitment to *Dickerson* continues to be reaffirmed (most recently in its decision below), resulting in its failure to correctly compare the Illinois robbery law to the ACCA definition, the

outcomes will continue to adversely affect many defendants until the matter is resolved by this Court.

CONCLUSION

Wherefore, it is respectfully requested that this Court grant a writ of *certiorari* to review the decision below.

Dated November 5, 2018, at Inverness, Illinois.

Respectfully submitted,

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APPENDIX