No. _____

IN THE
Supreme Court of the United States

WOODROW PRESSEY, JR.,
***Petitioner*,**

v.

UNITED STATES OF AMERICA,
***Respondent*.**

On Petition for a 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

1. Whether prior convictions under Fla. Stat. §893.13 qualify as "serious drug offenses" for purposes of the ACCA, §924(e)(2)(A)(ii).

2. Whether Florida's resisting with violence offense qualifies as an ACCA predicate, where that offense can be committed by only a minimal degree of force.

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PETITION FOR A WRIT OF CERTIORARI

The Petitioner, Woodrow Pressey, Jr., 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 BELOW

The Eleventh Circuit's order granting summary affirmance is unpublished, and is provided in the Appendix.

JURISDICTION

The Eleventh Circuit issued its opinion on December 7, 2018. *See* Appendix. This petition is timely filed within 90 days of the Eleventh Circuit's order. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

The ACCA defines a "violent felony," in relevant part, as any crime punishable by more than one year in prison that…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)(1) & (e)(2)(B)(i).

The ACCA defines a "serious drug offense," 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 prescribed by law." 18 U.S.C. § 924(e)(2)(A)(ii).

STATEMENT OF THE CASE

1. On September 6, 2017, a federal grand jury in the Middle District of Florida, Tampa Division, returned a two-count Indictment naming Woodrow Pressey, Jr., as the defendant. Doc. 9. Count One charged that on or about June 12, 2017, Mr. Pressey did knowingly and intentionally possess with intent to distribute a mixture and substance containing a detectable amount of cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and 84l(b)(1)(C). Doc. 9. Count Two charged that on or about June 12, 2017, Mr. Pressey, then being a person convicted in a court of a crime punishable by imprisonment for a term exceeding one year, did knowingly possess in and affecting interstate and foreign commerce firearms and ammunition, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). Doc. 9. Mr. Pressey entered a not guilty plea and proceeded to a jury trial. Doc. 11.

2. On February 7, 2018, on the third day of trial, the jury returned a verdict of guilty as to Counts One and Two. Doc. 64. Prior to sentencing, the U.S. Probation Office prepared a pre-sentence investigation report (PSR). The PSR calculated the base offense level at 20. Doc. 70, PSR ¶20. The PSR added two levels because the offense involved more than three firearms and an additional four-level enhancement because one of the firearms involved in the offense had an obliterated serial number. PSR ¶¶21-22. The total adjusted offense level was therefore set at 26. PSR ¶26.

However, the PSR determined that Mr. Pressey was an armed career criminal, as defined at U.S.S.G. §4B1.4, based on his prior convictions for the following offenses:

- Resisting Officer with Violence in Circuit Court of Manatee County, FL; Docket No.: 89CF1753;

- Aggravated Assault in Circuit Court of Manatee County, FL; Docket No.: 91CF2648; and

- Possession of Cocaine with Intent to Sell in Circuit Court of Manatee County, FL; Docket No.: 01CF1776, a serious drug offense.

PSR ¶27. The offense level therefore was set at level 34, and the criminal history category was set at category VI. PSR ¶¶28, 60. Based upon a total offense level of 34 and a criminal history category of VI, the guideline imprisonment range was determined to be 262 months to 327 months, and the mandatory minimum sentence was fifteen years' imprisonment. PSR ¶¶128-29.

Mr. Pressey objected to the PSR's use of three prior Florida convictions - "Resisting Arrest With Violence," "Aggravated Assault," and "Possession of Cocaine with Intent to Sell" - to classify him as an "Armed Career Criminal" under 18 U.S.C. §924(e). PSR Addendum. However, Mr. Pressey acknowledged the adverse Eleventh Circuit precedent on the merits of his Armed Career Criminal Act (ACCA) claim. Nevertheless, Mr. Pressey challenged each of these qualifying predicates to preserve the issue for further appellate review.

At sentencing, the district court granted Mr. Pressey credit for the acceptance of responsibility, recognizing that his basis for proceeding to trial was to preserve his appellate right. Doc. 86 at 6. The court therefore set the advisory guideline range at 210 – 262 months, based on a total offense level of 32 and criminal history category of VI. Doc. 86 at 7.

The defense asked for the mandatory minimum sentence, arguing that between 2001 and Mr. Pressey's current charge, he had no crimes of violence and no offenses that could be considered serious drug offenses under the guidelines and statutes. Doc. 86 at 9. The defense further argued that the firearms that led to Mr. Pressey being labeled and designated an armed career criminal were not being actively used in this case as part of his drug-dealing operations. Doc. 86 at 9-10. The defense explained that all of the firearms were found in a locked shed, and there was no evidence put forward that Mr. Pressey was ever using those firearms, either to protect himself or to engage in violent behavior to protect the illegal drug product that he was alleged and the jury found him to be selling. Doc. 86 at 10. The defense noted that if Mr. Pressey was not an armed career criminal, he would face a base offense level of 24; assuming a total offense level of 24 and a criminal history category of VI, the guideline range would be 100 to 125 months, which is still well below the 180 months that is the mandatory minimum in this case. Doc. 86 at 8.

The district court, having considered the parties' arguments in this case, accepted the defense's arguments and imposed a sentence of a 180 months' imprisonment on counts one and two to run concurrently. Doc. 86 at 13-14; Doc. 76.

3. On appeal, Mr. Pressey 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, 18 U.S.C. § 924(e). Maintaining his challenge on appeal for purposes of appellate

preservation, Mr. Pressey acknowledged that the Eleventh Circuit had already held that resisting an officer with violence, in violation of Fla. Stat. § 843.01, qualifies as a violent felony under the ACCA. *See United States v. Hill*, 799 F.3d 1318, 1322–23 (11th Cir. 2015). And he acknowledged that the Eleventh Circuit had held that section 893.13 offenses qualify as serious drug offenses. *See United States v. Smith*, 775 F.3d 1262, 1266–68 (11th Cir. 2014). Recognizing that binding precedent foreclosed Mr. Pressey's challenge, the Eleventh Circuit granted the government's motion for summary affirmance of Mr. Pressey's judgment and conviction. *See* Appendix.

REASONS FOR GRANTING THE WRIT

I. The Court should grant the writ to decide whether prior convictions under Fla. Stat. §893.13 qualify as "serious drug offenses" for purposes of the ACCA, §924(e)(2)(A)(ii).

The Court should grant the writ to decide the question of whether a Florida drug offense constitutes a serious drug offense under the ACCA, 18 U.S.C. §924(e)(A)(ii). This question has divided the court of appeals, and thus this Court's review is warranted. The ACCA defines a "serious drug offense" as either:

> (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.

18 U.S.C. §924(e)(2)(A).

The Eleventh Circuit has determined that a conviction under Fla. Stat. §893.13 (1) (A) (1) (2012) is a conviction for an offense that "involv[es] manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance." 18 U.S.C. §924(e)(2)(A)(ii); s*ee United States v. Smith*, 775 F.3d 1262, 1267-1268 (2014). In addition to the Eleventh Circuit, at least seven other circuits have adopted similar constructions of the ACCA's "serious drug offense" definition. *See United States v. McKenney*, 450 F.3d 39, 42-43 (1st Cir. 2006); *United States v. King*, 325 F.3d 110, 113-114 (2d Cir. 2003); *United States v. Gibbs*, 656 F.3d 180, 185-

186 (3d Cir. 2011); *United States v. Brandon*, 247 F.3d 186, 190-191 (4th Cir. 2001); *United States v. Winbush*, 407 F. 3d 703, 707-708 (5th Cir. 2005); *United States v. Bynum*, 669 F.3d 880, 886 (8th Cir. 2012); *United States v. Williams*, 488 F.3d 1004, 1009 (D.C. Cir. 2007).

By contrast, the Ninth Circuit held in *United States v. Franklin*, 904 F.3d 793, 800 - 802 (9th Cir. 2018), that the state-law drug offense must categorically match the elements of a federal analogue offense in order to qualify as a "serious drug offense" under the ACCA. *See id.* In the Ninth Circuit's view, §924(e)(2)(A)(ii) lists full "crimes," rather than conduct that can form part of a crime, and courts must "give content to the listed Crimes…and determine whether elements of the state crime…match the elements" of a generic federal crime. *Id.* at 802. On that basis, the court concluded that because "Washington's accomplice liability statute" was "broader than generic federal drug trafficking laws," a Washington drug offense was "thus not categorically a 'serious drug offense' under the ACCA." *Id.* at 803.

In light of the circuit conflict, the petition should be granted or held in abeyance until the Court resolves this question. Indeed, the question presented is important because state drug offenses are frequently recurring ACCA predicates. In addition, the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, incorporated the definition of "serious drug offense" at issue here into the Controlled Substances Act for purposes of identifying prior convictions that will trigger recidivism enhancements for various drug crimes. Tit. IV, §401(a)(1).

Moreover, Mr. Pressey's case presents a suitable vehicle to address the question presented because, at sentencing, he adequately objected to all three predicates that rendered him an Armed Career Criminal. Doc. 86 at 5. Specifically, he argued that under Florida state legislature's enactment of Fla. Stat. §893.101 in May 2002, knowledge of the illicit nature of the substance no longer required for a defendant to be convicted under Fla. Stat. §893.13. *See Shelton v. Secretary, Dep't of Corr.*, 691 F.3d 1348, 1349-51 (11th Cir. 2012); *State v. Adkins*, 96 So. 3d 412, 414-16 (Fla. 2012). Thus, any §893.13 convictions (PSR ¶¶33 (a)-(f), 51, 53, 56–59) would not have required proof of intent to sustain a conviction in Florida. Anyone convicted under §893.13 during those years may have engaged in conduct broader than that intended by the ACCA's definition of a "serious drug offense."

Without a qualifying Florida drug offense under §893.13, Mr. Pressey would not be an armed career criminal. Therefore, the Court's resolution of the question presented will be outcome determinative in Mr. Pressey's case.

II. The Court should alternatively grant the writ to decide whether Florida's resisting with violence offense qualifies as an ACCA predicate.

Additionally, and alternatively, the Court should grant the writ to decide whether Florida's resisting with violence offense qualifies as an ACCA predicate. Apart from a serious drug offense, a conviction constitutes an ACCA predicate if it is a "violent felony," which, as relevant here, is if the crime has "as an element the use, attempted use, or threatened use of physical force against the person of another." §924(e)(2)(B)(i).

Section 843.01 of the Florida Statutes provides: "Whoever knowingly and willfully resists, obstructs, or opposes any officer . . . in the lawful execution of any legal duty, by offering or doing violence to the person of such officer" commits a felony of the third degree. Whether a prior §843.01 conviction qualifies as an ACCA predicate is determined by the categorical approach, which focuses on the elements of the crime.

"Under the categorical approach, a court must confine its consideration only to the facts of conviction and the statutory definition of the offense." *Donawa v. U.S. Att'y General*, 735 F.3d 1275, 1280 (11th Cir. 2013). The focus of the categorical approach under the elements clause is on "whether in every case a conviction under the statute '*necessarily* involves' proof of the element" at issue. *United States v. Estrella*, 758 F.3d 1239, 1245 (11th Cir. 2014). In making this determination, the sentencing court must assume that the state conviction "rested upon nothing more

than the least of the acts criminalized." *Moncrieffe v. Holder*, 564 U.S. 184, 191 (2013) (internal brackets and quotation marks omitted).

The question, then, is whether §843.01 requires "*violent* force" or "strong physical force" as an element of conviction. It does not. The lead case is *I.N. Johnson v. State*, 50 So. 529 (Fla. 1909), where the defendant was charged with the offense of "knowingly and willfully resisting, obstructing or opposing the execution of legal process, by offering or doing violence" to an officer. *Id*. at 529.[1] The charging document alleged "a knowing and willful resistance . . . by gripping the hand of the officer and forcibly preventing him from opening the door of the room . . . thereby obstructing the officer in entering the room to make the arrest." *Id*. at 529-30. The Florida Supreme Court found that this allegation met the "violence" element of the statute:

> The allegation that the defendant gripped the hand of the officer, and forcibly prevented him from opening the door for the purpose of making the arrest under the capias, necessarily involves resistance, and an act of violence to the person of the officer while engaged in the execution of legal process. The force alleged is unlawful, and as such is synonymous with violence.

Id. at 530.

As authoritatively interpreted by the Florida Supreme Court, then, the "violence" element of §843.01 is satisfied by the use of unlawful force. "Unlawful" force in Florida can be as minor as an unwanted touch, a simple battery proscribed by Fla. Stat. §784.03. Such a touch, while sufficient to sustain a conviction under

[1] The charge was brought under Section 3500 of the General Statutes of 1906, a predecessor to today's §843.01.

§784.03 or §843.01, does not contain the degree of force necessary – *violent* force or strong physical force – to be an ACCA predicate. *Curtis Johnson v. United*, 559 U.S. 133, 140 (2010).

The Florida Supreme Court's decision in *I.N. Johnson* has not been abrogated or overruled. It thus remains good law and must be followed when determining the least culpable conduct that satisfies the elements of a §843.01 offense. "Sentencing courts . . . are bound to follow any state court decisions that define or interpret the statute's substantive elements because state law is what the state supreme court says it is." *United States v. Howard*, 742 F.3d 1334, 1346 (11th Cir. 2014). "Neither this Court nor any other federal tribunal has any authority to place a construction on a state statute different from the one rendered by the highest court of the State." *Marian Johnson v. Fankell*, 520 U.S. 911, 916 (1997).

More recent cases from Florida's district courts of appeal show that, like the gripping of the officer's hand in *I.N. Johnson*, the force involved in "offering or doing violence" under §843.01 does not meet the degree of force necessary to be considered a "*violent* felony" under the ACCA. Thus, a "prima facie case" for resisting an officer with violence was established by allegations that the defendant was holding onto a doorknob and "wiggling and struggling" to free himself. *State v. Green*, 400 So. 2d 1322, 1323-24 (Fla. 5th DCA 1981).[2] A conviction for resisting with violence was

[2] The Tenth Circuit has observed: "Even construing the facts in favor of the State, there are only so many reasonable inferences 'wiggling and struggling' can be read to support. A reasonable jury could not, for example, construe 'wiggling and struggling' to mean that there was a brawl." *United States v. Lee*, 701 F. App'x 697, 700 (10th Cir. 2017). *Lee* was cited with approval by the Ninth Circuit in a case

sustained where the evidence showed the defendant "struggled, kicked, and flailed his arms and legs," even though he never actually struck an officer. *Wright v. State*, 681 So. 2d 852, 853-54 (Fla. 5th DCA 1996). In another case, a driver terminated a consensual encounter with police by speeding off, hitting the officer's hand with the truck's rearview mirror in the process. *Yarusso v. State*, 942 So. 2d 939, 941 (Fla. 2d DCA 2006). It was "undisputed that an act of violence occurred" when the truck's mirror hit the officer's hand. *Id.* at 942. In still another case, the evidence supporting the §843.01 conviction was that the defendant "scuffled" with police *after* being handcuffed. *Miller v. State*, 636 So. 2d 144, 151 (Fla. 1st DCA 1994); *see also Kaiser v. State*, 328 So. 2d 570, 571 (Fla. 3d DCA 1976) (conviction for resisting with violence based on "a scuffle" with the officer).

The "violence" element of Florida's crime of resisting an officer with violence can thus be committed by conduct as slight as gripping the officer's hand (*I.N. Johnson)* or "wiggling or struggling" while holding onto a doorknob (*Green)* or "scuffl[ing]" with police *after* being handcuffed (*Miller).* The force needed to commit the crime of resisting an officer with violence is thus much less than the "*violent* force" needed to qualify as a "violent felony" under the ACCA.

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holding that Alabama robbery is not a violent felony because it can be committed by a shove that causes a person to briefly lose his balance or to step backward, which is "not sufficiently violent to render that crime a violent felony under ACCA." *United States v. Walton*, 881 F.3d 768, 774 (9th Cir. 2018).

CONCLUSION

For the foregoing reasons, the petition should be granted.

Respectfully submitted,

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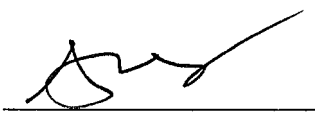

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Decision Below

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.