No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

_____

TROY BENNETT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

_____

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

_____

PETITION FOR WRIT OF CERTIORARI

_____

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QUESTIONS PRESENTED

I. Whether this Court should resolve the circuit split concerning whether a Florida conviction for resisting with violence under Florida Statutes § 843.01 is a "violent felony" under the elements clause of the Armed Career Criminal Act.

II. Whether a Florida conviction for possession with intent to sell cocaine under Florida Statutes § 893.13 is a "serious drug offense" under the Armed Career Criminal Act. This issue is currently pending before the Court in *Shular v. United States*, No. 18-6662.

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PETITION FOR A WRIT OF CERTIORARI

Troy Bennett respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINION AND ORDER BELOW

The Eleventh Circuit's opinion is provided in Appendix A. *See also United States v. Bennett*, 770 F. App'x 547 (11th Cir. 2019). The order denying rehearing is found in Appendix B.

JURISDICTION

The United States District Court for the Middle District of Florida had original jurisdiction over Mr. Bennett's criminal case under 18 U.S.C. § 3231. Mr. Bennett appealed to the Eleventh Circuit Court of Appeals, which affirmed his sentence on May 10, 2019. Appendix A. On July 25, 2019, the Eleventh Circuit denied Mr. Bennett's petition for rehearing en banc. Appendix B. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

The Armed Career Criminal Act (ACCA) defines a "violent felony," in relevant part, as "any crime punishable by imprisonment for a term exceeding one year" 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).

Florida Statutes § 843.01 proscribes "Resisting officer with violence to his or her person" and provides, in relevant part: "Whoever knowingly and willfully resists, obstructs, or opposes

any officer . . . by offering or doing violence to the person of such officer . . . is guilty of a felony of the third degree . . . ."

Florida Statutes § 893.13 makes it unlawful for any person to "sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance."

Effective May 13, 2002, Florida Statute § 893.101 provides:

> (1) The Legislature finds that the cases of *Scott v. State*, Slip Opinion No. SC94701 (Fla. 2002) and *Chicone v. State*, 684 So.2d 736 (Fla. 1996), holding that the state must prove that the defendant knew of the illicit nature of a controlled substance found in his or her actual or constructive possession, were contrary to legislative intent.
>
> (2) The Legislature finds that knowledge of the illicit nature of a controlled substance is not an element of any offense under this chapter. Lack of knowledge of the illicit nature of a controlled substance is an affirmative defense to the offenses of this chapter.
>
> (3) In those instances in which a defendant asserts the affirmative defense described in this section, the possession of a controlled substance, whether actual or constructive, shall give rise to a permissive presumption that the possessor knew of the illicit nature of the substance. It is the intent of the Legislature that, in those cases where such an affirmative defense is raised, the jury shall be instructed on the permissive presumption provided in this subsection.

STATEMENT OF THE CASE

Mr. Bennett was charged with possessing a firearm and ammunition after having been convicted of a felony, in violation of 18 U.S.C. §§ 922(g)(1) and 924(e), and with possession of an unregistered short-barreled rifle, in violation of 26 U.S.C. §§ 5861(d) and 5871. A jury found him guilty on both counts. The probation office thereafter prepared a Presentence Investigation Report, which stated Mr. Bennett was subject to the ACCA based on three prior convictions for a violent felony or serious drug offense:

a) Possession of Cocaine With Intent to Sell or Deliver, Orange County Circuit Court, Case No. 2006-CF-6252, a serious drug offense, committed on May 4, 2006;

b) Resisting Officer With Violence, Orange County Circuit Court, Case No. 2006-CF-12366, a violent felony offense, committed on August 25, 2006; and

c) Possession of Cocaine With Intent to Sell or Deliver, Orange County Circuit Court, Case No. 2010-CF-17120, a serious drug offense, committed on December 3, 2010.

The government supplied the *Shepard*-documents[1] for each prior conviction.

Before the district court, Mr. Bennett objected that the possession of cocaine with intent to sell or deliver offenses were not "serious drug offense[s]" because the statute, Florida Statutes § 893.13, is a non-generic drug offense that does not require proof that the defendant knew the illicit nature of the substance. He acknowledged, however, Eleventh Circuit binding authority to the contrary in *United States v. Smith*, 775 F.3d 1262 (11th Cir. 2014).

Mr. Bennett also objected that resisting an officer with violence, in violation of Florida Statutes § 843.01, was not a "violent felony." He acknowledged, however, Eleventh Circuit binding contrary authority in *United States v. Hill*, 799 F.3d 1318 (11th Cir. 2015).

At sentencing, Mr. Bennett maintained his objections to being sentenced under the ACCA. The district court overruled the objections, relying on Eleventh Circuit precedent. The court thus determined Mr. Bennett's offense level was 34, criminal history category VI, and the resulting advisory guideline imprisonment range was 262 to 327 months.

The district court sentenced Mr. Bennett to 300 months' imprisonment. Mr. Bennett renewed his previous objections.

In affirming the sentence, the Eleventh Circuit "recognized Mr. Bennett's arguments that cases like *Hill* and *Smith* were incorrectly decided, but we are nevertheless bound to follow them" Appendix A at 2.

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[1] *See Shepard v. United States*, 544 U.S. 13, 26 (2005).

REASONS FOR GRANTING THE WRIT

Mr. Bennett's sentence was enhanced under the ACCA based on his prior Florida convictions for resisting with violence and possession with intent to sell or deliver cocaine. He requests certiorari review to resolve the circuit conflict regarding Florida's resisting-with-violence offense. Had he been sentenced in the Tenth Circuit, he would not have been subject to the ACCA's mandatory-minimum sentence or an enhanced guideline range because the Tenth Circuit has held that the Florida offense of resisting with violence is not a "violent felony." *See United States v. Lee*, 701 F. App'x 697 (10th Cir. 2017). Also, because the Eleventh Circuit's decision conflicts with this Court's holdings regarding the mens rea required to establish the use of physical force, he requests certiorari review to resolve the conflict between the precedents of the court below and this Court in *Leocal v. Ashcroft*, 543 U.S. 1 (2004).

Mr. Bennett further requests certiorari review of whether a Florida conviction for possession with intent to sell or deliver cocaine under § 893.13 is a "serious drug offense." This issue is currently being heard by this Court. *See Shular v. United States*, *Shular v. United States*, 139 S. Ct. 2773 (2019) (No. 18-6662) (granting certiorari to review the Eleventh Circuit decision that § 893.13 qualifies as a "serious drug offense").

I. The circuits are divided over whether resisting with violence under Florida Statutes § 843.01 is a "violent felony."

The Florida offense of resisting with violence, Florida Statutes § 843.01, can qualify as a "violent felony" only if it has "as an element" the use, attempted use, or threatened use of physical force, that is, "*violent* force . . . force capable of causing physical pain or injury to another person." *Johnson v. United States*, 559 U.S. 133 140 (2010); *see also Stokeling v. United States*, 139 S. Ct. 544, 554 (2019) (reiterating that nominal physical contact, such as the touching conduct in Florida's battery statute, is different from the "violent" force contemplated in *Johnson*). As set

forth below, resisting with violence does not require "physical force." Moreover, its mens rea requirement does not amount to the "use" of such force. *See Leocal*, 543 U.S. at 9.

A. The circuits are divided over whether Florida Statutes § 843.01 has as an element the use, attempted use, or threatened use of physical force against the person of another.

A prior conviction under Florida Statutes § 843.01 is a violent felony in the Eleventh Circuit, but not in the Tenth Circuit. *See Lee*, 701 F. App'x at 700 & n.1. The two circuits have taken different approaches to determine whether the offense is a violent felony. Employing the analysis used in *Moncrieffe v. Holder*, 569 U.S. 184, 191 (2013), the Tenth Circuit considered the minimum conduct criminalized by § 843.01 as defined by the Florida Supreme Court. But through rote application of its prior panel precedent rule, the Eleventh Circuit improperly analyzed the typical conduct punished, rather than the minimum conduct criminalized. Mr. Bennett's case provides the opportunity to resolve this circuit split.

The Eleventh Circuit reflexively held that Mr. Bennett's argument was foreclosed by the prior panel precedents of *United States v. Romo-Villalobos*, 674 F.3d 1246 (11th Cir. 2012), and *United States v. Hill*, 799 F.3d 1318 (11th Cir. 2015). *See* Appendix A. These precedents, however, failed to consider the Florida Supreme Court's definition of the minimum conduct criminalized by the offense as required by *Moncrieffe*. In *Romo-Villalobos*, which pre-dated *Moncrieffe*, the Eleventh Circuit failed to presume that the conviction under Florida Statutes § 843.01 "rested upon nothing more than the least of the acts criminalized." *Moncrieffe*, 564 U.S at 191 (internal brackets and quotation marks omitted). Instead, the Eleventh Circuit "emphasized . . . Florida [intermediate appellate court] cases where defendants had engaged in more substantial, and more violent, conduct," thereby ignoring the controlling Florida Supreme Court case and other

intermediate appellate cases describing the least culpable conduct under the statute. *Lee*, 701 F. App'x at 700 & n.1.

The minimum conduct required by the Florida Supreme Court to satisfy the "violence" element of § 843.01 is the use of "unlawful" force. *See I.N. Johnson v. State*, 50 So. 529 (Fla. 1909). "Unlawful" force in Florida can be as minor as the unwanted touch proscribed by the simple battery statute addressed by this Court in *Johnson*, 559 U.S. at 140.

Florida case law confirms that point. In *I.N. Johnson*, the state charged the defendant with "knowingly and willfully resisting, obstructing or opposing the execution of legal process, by offering or doing violence" to an officer. 50 So. at 529.[2] 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.

Such a touch, while sufficient to sustain a conviction under § 784.03 or § 843.01, does not contain the degree of force necessary—violent force or strong physical force—to be a violent felony or a crime of violence. Indeed, this Court has now confirmed twice that touching does not

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

have the force necessary—violent force or strong physical force—to be an ACCA predicate. *Johnson*, 559 U.S. at 140; *Stokeling*, 139 S. Ct. at 553.

The Florida Supreme Court's decision in *I.N. Johnson* has not been abrogated or overruled. Federal sentencing courts are bound by the state supreme court's interpretation of state law, including its determination of the elements of a state criminal offense. *See Johnson*, 559 U.S. at 138. "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." *Johnson v. Fankell*, 520 U.S. 911, 916 (1997).

More recent cases from Florida's intermediate courts of appeal show that, like the gripping of the officer's hand in *I.N. Johnson*, the force required by "offering or doing violence" under § 843.01 is not violent force or strong physical force. In particular, the State of Florida established a "prima facie case" for resisting an officer with violence where the State alleged 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). In another case, 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 Cir. DCA 1996).

The Eleventh Circuit in *Romo-Villalobos* discounted, overlooked, or ignored these Florida cases demonstrating the minimum conduct constituting the offense and instead focused on other Florida intermediate appellate cases describing something more than the least culpable conduct. This approach contradicts *Moncrieffe*'s clear instruction to presume that a defendant's conviction under Florida Statutes § 843.01 "rested upon nothing more than the least of the acts criminalized." *Moncrieffe*, 564 U.S. at 191.

The panel in *Romo-Villalobos* did not have the benefit of *Moncrieffe* at the time it issued its decision. Although the Eleventh Circuit had an opportunity in *Hill*, to revisit the issue after *Moncrieffe* and consider the minimum conduct criminalized by Florida Statute § 843.01, the Eleventh Circuit failed to cite *Moncrieffe* or incorporate the analysis. Mr. Bennett argued to the court below that the proper application of the categorical approach—as informed by *Moncrieffe*—would result in a finding that a conviction under § 843.01 is not a violent felony. The Eleventh Circuit, however, refused to consider this argument in light of its prior precedent rule. *See* Appendix A.

Indeed, application of the approach mandated by *Moncrieffe* and urged by Mr. Bennett has led the Tenth Circuit to a different result and created the current conflict between the circuits. Considering the minimum conduct criminalized by Florida Statutes § 843.01 as described by the Florida Supreme Court, the Tenth Circuit held that a conviction for the offense does not qualify as a violent felony. Expressly disagreeing with the Eleventh Circuit, the Tenth Circuit explained that "our job is not to find what kind of conduct is most routinely prosecuted, and evaluate *that*. Under the categorical approach, we consider only the 'minimum conduct criminalized,' not the typical conduct punished." *Lee*, 701 F. App'x at 700 n.1 (citing *Moncrieffe*, 133 S. Ct. at 1685).

Adding to the tension between the circuits, the Fourth Circuit recently held that a similar South Carolina conviction for assaulting, beating, or wounding a law enforcement officer while resisting arrest is not a "violent felony" because it can be committed by an attempt to touch an officer in a rude or angry manner while resisting arrest. *United States v. Jones*, 914 F.3d 893, 903 (4th Cir. 2019).[3] The Fourth Circuit noted that *Stokeling* "reaffirmed [*Johnson*'s] definition of

[3] *See also United States v. Bennett*, 863 F.3d 679, 681-82 (7th Cir. 2017) (holding that Indiana statute proscribing "inflict[ing] bodily injury on or otherwise caus[ing] bodily injury to another person" in the course of resisting arrest is not a violent felony); *United States v. Faust*, 853

physical force, and nothing therein supports the proposition that an offense that can be committed by an attempt to touch another in a rude or angry manner" can satisfy the elements clause. 914 F.3d at 905–06. And the Fourth Circuit noted that the South Carolina resisting offense and similar offenses do not share the same "statutory or textual connection" to the ACCA as robbery offenses like the one in *Stokeling*. *Id.* Likewise, the Florida resisting offense does not share that same connection to the ACCA and can be committed through an unwanted touch.

Mr. Bennett thus requests that this Court grant certiorari to resolve the circuit conflict regarding Florida's resisting-with-violence offense, as well as the tension regarding similar resisting offenses.

B. The decision below conflicts with this Court's precedent regarding the mens rea required to qualify as "use" of physical force.

The word "use" in the elements clause requires an "active employment" of force, which "most naturally suggests a higher degree of intent than negligent or merely accidental conduct." *Leocal*, 543 U.S. at 9 (interpreting the elements clause of 18 U.S.C. § 16). The Eleventh Circuit's invocation of prior precedent to reject Petitioner's argument that the mens rea required by Florida law for resisting with violence does not meet the federal "use" of physical force definition conflicts with this Court's precedent in *Leocal*.

The court below affirmed because Mr. Bennett's argument was squarely foreclosed by the circuit precedent of *Romo-Villalobos*, which held that resisting an officer with violence under Florida Statutes § 843.01 categorically qualifies as a crime of violence under the sentencing

F.3d 39 (1st Cir. 2017) (ruling Massachusetts statute proscribing resisting arrest—"knowingly prevent[ing] or attempt[ing] to prevent a police officer . . . from effecting an arrest . . . by . . . using any other means which creates a substantial risk of causing bodily injury to such police officer or another"—is not a "violent felony" in that it "could be accomplished by merely stiffening one's arm to avoid being handcuffed").

guidelines. In *Romo-Villalobos*, the Eleventh Circuit required proof of "general intent" as to all elements of the Florida offense – not only "resist[ing], obstruct[ing], or oppos[ing] any officer," but also the final "doing violence" element. 674 F.3d at 1250, n.3.

As an initial matter, the Florida Supreme Court has established that a general intent is required only for the first elements of the statute, "resist[ing], obstruct[ing], or oppos[ing] any officer," and that no intent is required as to the final doing violence element, which makes the crime "akin" to a strict liability crime. *See Frey v. State*, 708 So. 2d 918 (Fla. 1998); *see also Polite v. State*, 973 So. 2d 1107 (Fla. 2007). The Florida Supreme Court's construction of § 843.01 in *Frey* remains the law of Florida, and that construction is binding on all federal courts. *See Johnson*, 559 U.S. at 138. The Eleventh Circuit's determination of the mens rea in *Romo-Villalobos* conflicts with the Florida Supreme Court's determination of the mens rea in *Frey* and thus rests upon an incorrect premise.

But even if, *arguendo*, a conviction under § 843.01 requires proof of "general intent" as to all elements of the offense, the Eleventh Circuit's conclusion in *Romo-Villalobos* that general intent crimes "are not exempted from the 'crime of violence' definition," *id.* at 1251, contradicts this Court's controlling precedent of *Leocal*, which the court in *Romo-Villalobos* neither cited nor considered. As indicated by *Leocal*, the federal elements clause requires a specific intent to apply violent force; it is not satisfied by a mere general intent to commit the *actus reus* of the crime (here, "resist[ing], obstruct[ing], or oppos[ing]" an officer). *See Leocal*, 543 U.S. at 9.

Other circuits have found that general intent crimes are "overbroad" by comparison to an offense that "has as an element the use, intended use, or threatened use of physical force against the person of another." *See, e.g., United States v. Sahagun-Gallegos*, 782 F.3d 1094, 1099 n.4 (9th Cir. 2015) (stating that if, as the government argued, the state aggravated assault statute at issue in

that case "were a general intent crime, application of the enhancement would fail because the statute would be overbroad"); *United States v. Rico-Mendoza*, 548 F. App'x 210, 212-14 (5th Cir. 2013) (stating that when the least culpable act of the predicate offense was "the defendant '[i]ntentionally point[ing] any firearm toward another, or display[ing] in a threatening manner any dangerous weapon toward another,'" such crime did not qualify as the "use of force" under the elements clause because no "intent to harm or apprehension by the victim of potential harm," was required; the offense could include "an accidental or jesting pointing of the weapon"). Consistent with the mens rea analysis in *Leocal* and these other circuit decisions, a conviction for resisting with violence in violation of § 843.01, a general intent crime, is categorically "overbroad" by comparison to an offense that has the "use" of physical force as an element. It is thus not a "crime of violence" within the elements clause.

Accordingly, Mr. Bennett asks this Court to review the conflict between the circuit court below and this Court's precedent regarding the mens rea required to qualify as the use of force under the elements clause.

II. The circuits are divided over how to apply the categorical approach to the "serious drug offense" definition.

Mr. Bennett's convictions under Florida Statutes § 893.13 do not qualify as a "serious drug offense" under the ACCA. The courts below, however, relied on Eleventh Circuit precedent holding that § 893.13 is an ACCA predicate regardless of its lack of a mens rea requirement. *See United States v. Smith*, 775 F.3d 1262 (11th Cir. 2014).[4] In *Shular*, the courts below relied on the

[4] Similar to the enumerated offenses in the "violent felony" definition of the ACCA, the "serious drug offense" definition provides a list of enumerated drug offenses that qualify—those that "involv[e]" manufacturing, distributing, or possession with intent to manufacture or distribute. According to the Ninth and Sixth Circuits, the same type of categorical analysis should apply to both definitions. Thus, the elements of Mr. Bennett's § 893.13 offense must be compared to the elements of generic manufacturing, generic distributing, and generic possession with intent to

same precedent. *See United States v. Shular*, 736 F. App'x 876 (11th Cir. 2018). The defendant/petitioner and the Solicitor General asked this Court for review of this issue because of the circuit split regarding how to apply the categorical approach in the context of the "serious drug offense" definition—specifically, what it means for an offense to "involve[e]" manufacturing, distributing, or possession with intent to manufacture or distribute. This Court granted certiorari on June 28, 2019. *Shular v. United States*, 139 S. Ct. 2773 (2019).

Mr. Bennett's ACCA sentence, like Mr. Shular's ACCA sentence, is based on post-May 2002 convictions under § 893.13, in which the prosecution did not have to prove that the defendant knew the illicit nature of the substance. *See* Fla. Stat. § 893.101; Petition for a Writ of Certiorari at 3-9, *Shular v. United States*, No. 18-6662 (U.S. Nov. 8, 2018). Should the Court decide in *Shular* that such prior convictions do not qualify as serious drug offenses, Mr. Bennett will be ineligible for the ACCA's 15-year mandatory-minimum sentence. Should the Court, however, disagree with the petitioner in *Shular*, Mr. Bennett's case still warrants review to address the circuit split on the important and recurring issue of whether resisting with violence constitutes a violent felony under the ACCA.

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manufacture or distribute. *See United States v. Franklin*, 904 F.3d 793, 800–803 (9th Cir. 2018) (holding that an offense is not a "serious drug offense" if it is broader than its generic federal analogues); *United States v. Goldston*, 906 F.3d 390, 396–397 (6th Cir. 2018) (comparing the defendant's delivery offense to the "generic definition of 'distribute'" under the ACCA).

Contrary to Eleventh Circuit precedent, a § 893.13 conviction does not qualify as a "serious drug offense" because it is broader than these generic drug analogue offenses, which require a mens rea element. *See McFadden v. United States*, 135 S. Ct. 2298 (2015); *State v. Adkins*, 96 So. 3d 412, 429–430 (Fla. 2012) (surveying case law nationwide). In May 2002, the Florida legislature enacted Florida Statutes § 893.101, which states that "knowledge of the illicit nature of a controlled substance is not an element" of a Florida drug offense. *See Shelton v. Secretary, Dep't of Corr.*, 691 F.3d 1348, 1349–51 (11th Cir. 2012); *State v. Adkins*, 96 So. 3d at 414–16. Thus, Florida's drug offenses do not require the prosecution to prove that a defendant knew the nature of the substance in his possession—that it was, for example, cocaine. By removing that knowledge requirement, the Florida legislature made § 893.13 a non-generic drug offense. Therefore, it cannot qualify as a "serious drug offense" under the ACCA.

CONCLUSION

Because the issue presented by this petition divides the circuits, Mr. Bennett respectfully requests that this Court grant his petition. Alternatively, Mr. Bennett requests that his petition be held pending *Shular*.

Respectfully submitted,

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October 22, 2019

APPENDIX A

OPINION OF THE ELEVENTH CIRCUIT COURT OF APPEALS

AFFIRMING SENTENCE

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-10897
Non-Argument Calendar

D.C. Docket No. 6:16-cr-00256-CEM-TBS-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

TROY BENNETT,

Defendant-Appellant.

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

(May 10, 2019)

Before, TJOFLAT, JORDAN, and FAY, Circuit Judges.

PER CURIAM:

Troy Bennett appeals his 300-month sentence, which the district court imposed pursuant to the Armed Career Criminal Act, 18 U.S.C. § 924(e). We affirm because both of Mr. Bennett's arguments are foreclosed by Eleventh Circuit precedent. *See United States v. Hill*, 799 F.3d 1318, 1323 (11th Cir. 2015) (holding that a conviction for resisting an officer with violence pursuant to Fla. Stat. §843.01 is a violent felony under the ACCA's elements clause); *United States v. Smith*, 775 F.3d 1262, 1267-68 (11th Cir. 2014) (holding that a conviction for possession of cocaine with the intent to distribute pursuant to Fla. Stat. §893.13 is a serious drug offense under the ACCA). We recognize Mr. Bennett's arguments that cases like *Hill* and *Smith* were incorrectly decided, but we are nevertheless bound to follow them. *See, e.g.*, *Smith v. GTE Corp.*, 236 F.3d 1292, 1303 (11th Cir. 2001).

AFFIRMED.

APPENDIX B

ORDER OF ELEVENTH CIRCUIT COURT OF APPEALS

DENYING PETITION FOR REHEARING

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-10897-EE

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

TROY BENNETT,

Defendant - Appellant.

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

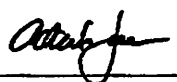
ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: TJOFLAT, JORDAN, and FAY, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:



UNITED STATES CIRCUIT JUDGE

ORD-42