

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-14868
Non-Argument Calendar

D.C. Docket No. 8:18-cr-00118-SCB-SPF-1

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

CARL GOLDEN,

Defendant - Appellant.

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

(August 26, 2019)

Before TJOFLAT, JORDAN, and NEWSOM, Circuit Judges.

PER CURIAM:

Carl Golden appeals his 180-month enhanced sentence under the Armed Career Criminal Act (ACCA) for being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(e). While he recognizes that his arguments are foreclosed by our precedent, Golden nevertheless asserts (1) that his prior convictions for robbery under Florida Statute § 812.13 and aggravated assault under Florida Statute § 784.021 don't constitute "violent felonies" under the ACCA, and (2) that his convictions for delivery and sale of controlled substances under Florida Statute § 893.13 don't constitute "serious drug offenses" under the ACCA. After careful review, we affirm.

I

As to his "violent felony" convictions, Golden contends (1) that the Florida robbery statute at the time of his conviction—which was prior to the Florida Supreme Court's decision in *Robinson v. State*, 692 So. 2d 883, 886 (Fla. 1997) (holding that robbery required resistance and overpowering of a victim)—doesn't meet the minimal amount of force required to constitute a "violent felony" under the ACCA, and (2) that the Florida aggravated-assault statute allows for a lesser *mens rea*—*i.e.*, recklessness—than is required under the ACCA.

We review *de novo* whether a prior conviction is a violent felony under the ACCA. *United States v. Seabrooks*, 839 F.3d 1326, 1338 (11th Cir. 2016).

Unfortunately for Golden, both of his “violent felony” arguments are directly foreclosed by our precedent. We have held that a pre-*Robinson* felony conviction for robbery under Florida Statute § 812.13(1) constitutes a “violent felony” under the ACCA’s elements clause. *United States v. Fritts*, 841 F.3d 937, 941 (11th Cir. 2016). As the *Fritts* Court explained, rather than announcing a new rule of law, *Robinson* simply stated what the statute “always meant”—i.e., that the Florida robbery statute never included a theft by mere snatching, but rather had always required the use of force. *Id.* at 942–43. The Supreme Court’s decision in *Stokeling v. United States*—which considered pre- and post-*Robinson* periods together in concluding that Florida robbery qualifies as a “violent felony”—supports this conclusion. 139 S. Ct. 544, 550–55 (2019).

We have also held that an aggravated assault conviction under Florida Statute § 784.021 constitutes a “violent felony” under the ACCA’s elements clause. *Turner v. Warden Coleman FCI (Medium)*, 709 F.3d 1328, 1337–39 (11th Cir. 2013). Moreover, we have specifically rejected the argument that Florida’s aggravated assault statute fails as a predicate offense under the ACCA because it could be accomplished with a *mens rea* of recklessness. *United States v. Deshazier*, 882 F.3d 1352, 1355 (11th Cir. 2018), *cert. denied*, 139 S. Ct. 1255 (2019) (citing *Turner*, 709 F.3d at 1337–38).

So in short, the district court correctly followed our precedent in concluding that Golden's Florida robbery and aggravated-assault convictions constitute "violent felonies" under the ACCA. *Fritts*, 841 F.3d at 944; *Turner*, 709 F.3d at 1341.

II

As to his convictions for delivery and sale of a controlled substance under Florida Statute § 893.13, Golden asserts that they don't constitute "serious drug offenses" under the ACCA because (1) these offenses were presumably committed through mere purchase, and (2) they lack the necessary renumeration element to qualify under the ACCA.

Although we generally review *de novo* the question whether a prior conviction is a predicate offense under the ACCA, *Seabrooks*, 839 F.3d at 1338, we review objections or arguments not raised in the district court for plain error. *United States v. Weeks*, 711 F.3d 1255, 1261 (11th Cir. 2013) (per curiam). To prevail under the plainerror standard, an appellant must show, among other things, that an error occurred and that the error was plain. *United States v. Ramirez-Flores*, 743 F.3d 816, 822 (11th Cir. 2014). If a statute fails to specifically resolve an issue, there can be no plain error without precedent from the Supreme Court or this Court directly resolving it.

United States v. Lejarde-Rada, 319 F.3d 1288, 1291 (11th Cir. 2003) (per curiam).

Again, Golden’s arguments are squarely foreclosed by our precedent. We have held that violations of Florida Statute § 893.13(1) constitute “serious drug offenses” under the ACCA, even in the absence of a *mens rea* requirement. *United States v. Smith*, 775 F.3d 1262, 1268 (11th Cir. 2014).

Furthermore, Golden’s remuneration argument isn’t supported by a plain reading of the statutory language. Although the Supreme Court held in *Moncrieffe v. Holder*, 569 U.S. 184, 193–94 (2013), that a conviction under a Georgia statute prohibiting possession of marijuana with intent to distribute—and that doesn’t require remuneration—isn’t necessarily an “aggravated felony” under the Immigration and Nationality Act (INA), the ACCA’s definition of “serious drug offense” differs from the INA’s definition of “aggravated felony” in that the ACCA requires only “an offense under State law,” punishable by at least 10 years in prison, involving the “manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance.” 18 U.S.C. § 924(e)(2)(A)(ii). Florida’s delivery-of-cocaine statute, under which Golden was convicted, satisfies this definition as a state offense punishable by up to 15 years that prohibits the sale, manufacture, delivery, or possession with intent to sell, manufacture, or

deliver cocaine. *See* Fla. Stat. §§ 893.03, 893.13(1)(a) (2019). And in any event, even if Golden could prove that the district court's decision was in error, he couldn't demonstrate plain error because there is no binding precedent from this Court contradicting the district court's conclusion. *See Ramirez-Flores*, 743 F.3d at 822; *Lejarde-Rada*, 319 F.3d at 1291.

* * *

For the foregoing reasons, Golden's sentence is affirmed.

AFFIRMED.

AO 245B (Rev 02/18) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

CASE NUMBER: 8:18-cr-118-T-24SPF
USM NUMBER: 70216-018

v.

CARL GOLDEN

Defendant's Attorney: Nicole Hardin, AFD

THE DEFENDANT:

Pleaded Guilty to Counts of the Indictment.

<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
18 U.S.C. § 922(g)(1) and 924(e)	Felon in possession of a firearm and ammunition	December 21, 2017	One

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in economic circumstances.

Date of Imposition of Sentence: November 13, 2018


SUSAN C. BUCKLEW
UNITED STATES DISTRICT JUDGE
DATE: November 13, 2018

AO 245B (Rev 02/18) Judgment in a Criminal Case
Sheet 2 - Imprisonment

Defendant: **CARL GOLDEN**
Case No.: **8:18-cr-118-T-24SPF**

Judgment - Page 2 of 6

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **ONE EIGHTY (180) MONTHS.**

X The court makes the following recommendations to the Bureau of Prisons: Confinement at FCI, Coleman, Florida or in the alternative FCI Jesup, Georgia to be near his family. The Court recommends the GED program and vocational training. The defendant has numerous medical conditions that should be attended to by the Bureau of Prisons.

X The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By: _____
DEPUTY UNITED STATES MARSHAL

AO 245B (Rev 02/18) Judgment in a Criminal Case
Sheet 3 - Supervised Release

Defendant: **CARL GOLDEN**
Case No.: **8:18-cr-118-T-24SPF**

Judgment - Page 3 of 6

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **THREE (3) YEARS**.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
4. You must cooperate in the collection of DNA as directed by the probation officer.

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

AO 245B (Rev 02/18) Judgment in a Criminal Case
Sheet 3A - Supervised Release

Defendant: **CARL GOLDEN**
Case No.: 8:18-cr-118-T-24SPF

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STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at the www.uscourts.gov.

Defendant's Signature _____

Date _____

AO 245B (Rev 02/18) Judgment in a Criminal Case
Sheet 3D - Supervised Release

Defendant: **CARL GOLDEN**
Case No.: **8:18-cr-118-T-24SPF**

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SPECIAL CONDITIONS OF SUPERVISION

The defendant shall also comply with the following additional conditions of supervised release:

- You must participate, as directed by the Probation Officer, in a substance abuse program (outpatient and/or inpatient) and follow the Probation Officers instructions regarding the implementation of this court directive. Further, you shall be required to contribute to the costs of services for such treatment not to exceed an amount determined reasonable by the Probation Officer's Sliding Scale for Substance Abuse Treatment Services. Upon completion of a drug or alcohol dependency treatment program you are directed to submit to testing for the detection of substance use or abuse not to exceed 104 tests per year.
- You must participate as directed in a program of mental health treatment (outpatient and/or inpatient) and follow the Probation Officer's instructions regarding the implementation of this court directive. Further, the defendant shall be required to contribute to the costs of services for such treatment not to exceed an amount determined reasonable to by Probation Officer based on ability to pay or availability of third party payment and in conformance with the Probation Office's Sliding Scale for Mental Health Treatment Services.
- You must submit to a search of his person, residence, place of business, storage units under your control, or vehicle, conducted by the United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. You shall inform any other residents that the premises may be subject to a search pursuant to this condition. Failure to submit to a search may be grounds for revocation.

AO 245B (Rev 02/18) Judgment in a Criminal Case
Sheet 5/6 - Criminal Monetary Penalties & Schedule of Payments

Defendant: **CARL GOLDEN**
Case No.: **8:18-cr-118-T-24SPF**

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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments.

<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Total Restitution</u>
Totals: \$100.00	N/A	Waived	N/A

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

X Lump sum payment of \$ 100.00 due immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.