

2023 WL 3151106

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United States Court of Appeals, Eleventh Circuit.

UNITED STATES of America, Plaintiff-Appellee,

v.

Dorothy Pearl SMITH, Defendant-Appellant.

No. 19-10946

|

Non-Argument Calendar

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Filed: 04/28/2023

Appeal from the United States District Court for the Middle
District of Florida, D.C. Docket No. 3:17-cr-00246-BJD-
JBT-l

Attorneys and Law Firms

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Public Defender's Office, Jacksonville, FL, for Defendant-
Appellant.

Before Rosenbaum, Newsom, and Black, Circuit Judges.

Opinion

PER CURIAM:

*1 Dorothy Smith appeals her 96-month sentence imposed
after pleading guilty to being a felon in possession of a
firearm, in violation of 18 U.S.C. §§ 922(g)(1) and
924(e). Smith pleaded guilty to possessing a firearm
after being convicted of at least one felony, including
three convictions for aggravated assault, resulting in her

classification as an armed career criminal under the Armed
Career Criminal Act (ACCA), 18 U.S.C. § 924(e). Smith
asserts her prior Florida aggravated assault convictions do
not qualify as violent felonies under the ACCA's elements
clause. Specifically, she contends the Florida aggravated
assault statute criminalized reckless conduct, and thus the
least culpable conduct criminalized was broader than the
language of the ACCA's elements clause.¹

We recently rejected this argument in *Somers v. United States*,
No. 19-11484, 2023 WL 3067033 (11th Cir. Apr. 25, 2023).

After the Supreme Court held in *Borden v. United States*,
141 S. Ct. 1817, 1829-30 n.6 (2021), “that offenses that
can be committed with a *mens rea* of recklessness do not
satisfy the elements clause of the ACCA,” *Somers*, 2023 WL
3067033, at *4, this Court certified questions to the Florida
Supreme Court regarding the *mens rea* required for a Florida
aggravated assault conviction, *id.* at *2. The Florida Supreme
Court held the Florida aggravated assault statute demands
the specific intent to direct a threat at another person and
therefore cannot be violated by a reckless act. *Somers v.*
United States, 355 So. 3d 887, 891 (Fla. 2022). Based on the
Florida Supreme Court's answer to our certified questions that
aggravated assault under Florida law requires a *mens rea* of
at least knowing conduct, we held aggravated assault under
Florida law qualifies as an ACCA predicate offense under
Borden. *Somers*, 2023 WL 3067033, at *1.

After review,² we affirm Smith's sentence. Smith's argument
is foreclosed by our precedent in *Somers*. The district court
did not err in classifying Smith as an armed career criminal
because Smith's Florida aggravated assault convictions
qualify as violent felonies.


AFFIRMED.


All Citations

Not Reported in Fed. Rptr., 2023 WL 3151106

Footnotes

¹ The ACCA defines a “violent felony” 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)(2)(B). “This definition is often referred to as the ‘elements clause.’” *Somers v. United States*, No. 19-11484, 2023 WL 3067033, at *3 (11th Cir. Apr. 25, 2023).

- 2 “We review *de novo* whether a defendant's prior convictions qualify as violent felonies under the ACCA.”  *United States v. Hill*, 799 F.3d 1318, 1321 (11th Cir. 2015).

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