

No. _____

In the Supreme Court of the United States

JONATHAN TARVER,

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

In *Curtis Johnson v. United States*, 559 U.S. 133, 140 (2010), this Court defined the term “physical force” in the elements clause of the Armed Career Criminal Act (ACCA) to mean “*violent* force – that is, force capable of causing pain or injury to another person.” In *United States v. Castleman*, 572 U.S. ___, 134 S. Ct. 1405, 1413-14 (2014), the Court expressly left open the question of whether the causation of harm necessarily entails the use of “violent force.” In *Turner v. Warden Coleman FCI*, 709 F.3d 1328, 1341 (2013) the Eleventh Circuit held that a conviction under the Florida aggravated battery statute is a qualifying violent felony for purposes of the ACCA. However, below, the Eleventh Circuit recognized that *Turner* had been abrogated on other grounds by *Samuel Johnson v. United States*, 135 S. Ct. 2551 (2015) and that *Turner*’s validity had been called into question in light of other more recent Supreme Court cases.

The question presented is:

1. Under *Curtis Johnson*, *Samuel Johnson*, *Descampus v. United States*, 133 S. Ct. 2276 (2013) and other cases currently before this Court is the Eleventh Circuit’s holding in *Turner* valid and/or does the causation of great bodily harm necessarily entail the use of “violent force”?

PARTIES TO THE PROCEEDINGS

The caption contains the names of all of the parties to the proceedings.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully seeks a writ of certiorari to review the below decision of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The Eleventh Circuit's panel opinion in *United States v. Turner*, ____ Fed. Appx. ____ (11th Cir. Oct. 28, 2017) is reproduced as Appendix A

JURISDICTION

The court of appeals issued its panel opinion on October 18, 2017. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY AND LEGAL PROVISIONS INVOLVED

The Armed Career Criminal Act defines a “violent felony” as a crime 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)(i).

The Florida aggravated battery statute, Fla. Stat. § 784.045, provides that a defendant commits an aggravated battery when in committing battery the defendant (1) intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or (2) uses a deadly weapon.

STATEMENT OF THE CASE

A. LEGAL BACKGROUND

In *Curtis Johnson v. United States*, 559 U.S. 133 (2010) the Court interpreted the term “physical force,” as used in the ACCA’s elements clause, to mean “*violent* force--that is, force capable of causing physical pain or injury to another person.” *Id.* at 140. Throughout the opinion, the Court repeatedly referred to “violent force” as a “substantial degree of force” involving “strength,” “vigor,” “energy,” “pressure,” and “power.” *Id.* at 139.

The offense at issue in *Curtis Johnson* was a Florida simple battery. A defendant commits a simple battery in Florida where, *inter alia*, he “[a]ctually and intentionally touches or strikes another person against the will of the other.” Fla. Stat. § 784.03(1)(a)l. When a simple battery is a first offense, it is punished as a misdemeanor and, as in *Curtis Johnson*, it is a second offense, it is punished as a felony. In *Curtis Johnson*, the Court assumed that the offense involved a touching rather than a striking because the record did not indicate otherwise, and touching was the least culpable conduct. *Id.* at 137.

In interpreting the touching component, the Court recognized that it was bound by the Florida Supreme Court’s holding that “actually and intentionally touching’ under Florida’s battery law is satisfied by any intentional physical contact, ‘no matter how slight,’” including a “tap on the shoulder without consent.” *Id.* at 138 (quoting *State v. Hearn*, 961 So.2d 211, 218-19 (Fla. 2007)). According to *Curtis Johnson*, such nominal contact did not constitute “violent force,” and the Court

therefore held that a Florida battery by touching did not satisfy the elements clause. In so holding, the Court focused on the degree of force necessary to commit the offense and not the resulting harm which was irrelevant.

The offense at issue here, Florida aggravated battery, is a derivative of Florida simple battery. The first element of Florida aggravated battery is a simple battery offense which was specifically addressed in *Curtis Johnson*. Florida Statute § 784.045, aggravated battery, states as follows:

(1)(a) A person commits aggravated battery who, in committing battery:

1. Intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or
2. Uses a deadly weapon.

Accordingly, under this statute an aggravated battery is a simple battery in which the defendant either (1) “[i]ntentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement,” or (2) “uses a deadly weapon.” Since the requisite element of Florida aggravated battery is a simple battery, an aggravated battery can be committed by (1) nominal contact that causes great bodily harm or (2) nominal contact with a deadly weapon. Neither scenario necessitates “violent force” as defined in *Curtis Johnson*.

B. PROCEDURAL BACKGROUND

In 2016 Petitioner was indicted on two counts of illegally possessing a firearm as a convicted felon in violation of 18 U.S.C. §§ 922(g)(i) and 924(e)(i). On August 24, 2016, Petitioner pled guilty to both counts. Over his objection the district court enhanced the Petitioner's guideline range to 34 levels based on upon: (1) a 2007 Florida aggravated battery conviction in case number F07030649; (2) a 2009 Florida aggravated battery conviction in case number F09013459; and (3) a 2009 Florida aggravated assault conviction with a weapon. The guideline sentencing range was 188–235 months, with a statutory minimum of 15 years and a maximum of life. Petitioner was sentenced to 180 months imprisonment and supervised release for five years.

On appeal, a panel of the Eleventh Circuit affirmed the sentence, concluding that Petitioner's Florida aggravated battery convictions, per its holding in *Turner v. Warden Coleman, FCI*, 709 F.3d 1328, 1341 (11th Cir. 2013), *abrogated on other grounds by Johnson v. United States*, 135 S. Ct. 2551, 91 L. Ed. 2d 569 (2015), did qualify as violent felonies under the elements clause of the ACCA. The panel further stated that it was bound by the *Turner* decision until it is overruled by the Supreme Court.

REASONS FOR GRANTING THE PETITION

I. THE CIRCUITS ARE DIVIDED ON WHETHER THE CAUSATION OF BODILY HARM NECESSARILY ENTAILS VIOLENT FORCE UNDER *CURTIS JOHNSON*

In *Curtis Johnson v. United States*, 559 U.S. 133, 140 (2010), this Court defined “physical force” in the ACCA’s elements clause as “*violent* force--that is, force capable of causing physical pain or injury to another person.” If violent force is measured by its “capability” of causing harm, then all offenses requiring the causation of harm would satisfy the definition. However, on the other hand, if violent force is measured by the degree of force applied, as the entirety of the opinion indicates, then offenses requiring the causation of harm would not necessarily require violent force. For even great bodily harm may be caused by only *de minimis* force.

The Third, Sixth, Seventh, Eighth, Ninth, and Eleventh Circuits have all held that the causation of bodily harm or injury, or the use of a deadly weapon (Eleventh Circuit), necessarily requires the use of violence force. In *Turner v. Warden Coleman FCI*, 709 F. 3d 1328, 1341(11th Cir. 2013) the Eleventh Circuit found that since the Florida aggravated battery statute involves the intentional or knowing causation of great bodily harm, or involves the use of a deadly weapon, the crime has an element of physical force which is violent force as defined in *Curtis Johnson* (force capable of causing physical pain or injury). The Third, Sixth, Seventh, Eighth, and Ninth Circuits also use this “capability test”. *United States v. Anderson*, 695 F.3d 390, 400 (6th Cir. 2012) (“one can knowingly cause

serious physical harm to another only by knowingly using force capable of causing physical pain or injury, i.e. , violent physical force”) (quotations and brackets omitted); *United States v. Jennings*, 860 F.3d 450, 458-59 (7th Cir. 2017) (“a criminal act (like battery) that causes bodily harm to a person necessarily entails the use of physical force to produce the harm”); *Douglas v. United States*, 858 F.3d 1069, 1071 (7th Cir. 2017) (“force that *actually* causes injury necessarily was capable of causing that injury and thus satisfied the federal definition”); *United States v. Winston*, 845 F.3d 876, 878 (8th Cir. 2017) (finding no “daylight between physical injury and physical force,” and rejecting argument “that a defendant might cause physical injury without using physical force”); *United States v. Rice*, 813 F.3d 704, 706 (8th Cir. 2016) (rejecting argument “that a person can cause an injury without using physical force,” and concluding that, because battery offense required the causation of physical injury, the offense was necessarily “capable” of producing that result); *United States v. Calvillo-Palacios*, 860 F.3d 1285, 1290-1291 (9th Cir. 2017) (“bodily injury [necessarily required] the use of violent, physical force,” because “bodily injury” and “physical force” are “synonymous or interchangeable” terms).

In contrast, the First, Second, Fourth, Fifth, and Tenth Circuits have all recognized that causation of harm need not require the use of violent force under *Curtis Johnson*. In their view, violent force is measured by the degree or quantum of force, not the resulting harm. *See, e.g., Whyte v Lynch*, 807 F.3d 463, 469 (1st Cir. 2015) (distinguishing between causation of harm and violent force, and observing that “[c]ommon sense suggests that” the state “can punish conduct that

results in ‘physical injury’ but does not require the ‘use of physical force’); *Chrzanoski v. Ashcroft*, 327 F.3d 188, 193-94 (2nd Cir. 2003) (agreeing that “there is a difference between the causation of an injury and an injury’s causation by the ‘use of physical force,’” and finding a “logical fallacy” in “equat[ing] the use of physical force with harm or injury”) (citations omitted); *United States v. Torres–Miguel*, 701 F.3d 165, 168 (4th Cir. 2012) (recognizing that “a crime may *result* in death or serious injury without involving use of physical force”); *United States v. Vargas–Duran*, 356 F.3d 598, 606 (5th Cir. 2004) (en banc) (“the fact that the statute requires that serious bodily injury result . . . does not mean that the statute requires that the defendant have used the force that caused the injury,” recognizing the “difference between a defendant’s causation of an injury and the defendant’s use of force”);¹ *United States v. Perez–Vargas*, 414 F.3d 1282, 1285 (10th Cir. 2005) (accepting argument that an offense requiring the causation of bodily injury was not necessarily a crime of violence).

In *United States v. Castleman*, 134 S. Ct. 1405, 1414 (2014) this Court indicated that the administration of poison and other indirect applications of force might nonetheless constitute a use of “physical force” in the

¹ *Accord United States v. Villegas–Hernandez*, 468 F.3d 874, 880 (5th Cir. 2006) (rejecting the reasoning that an offense “include[s] the use of force as an element by virtue of its requirement of causation of serious bodily injury”); *United States v. Andino–Ortega*, 608 F.3d 305, 310-11 (5th Cir. 2010) (following *Vargas–Duran* to conclude that offense of intentionally injuring a child by act did not satisfy elements clause); *United States v. Garcia–Perez*, 779 F.3d 278, 283-84 (5th Cir. 2015) (concluding that “Florida manslaughter conviction simply does not require proof of force”).

common law sense. However, it did not address the broader question of whether the causation of harm necessarily requires the use of violent force. Clearly, this Court has distinguished between “physical force” and “violent force” for ACCA cases. The instant case presents this Court with the question of whether there is a difference for ACCA purposes between “physical force” and “violent force”. Since Florida aggravated battery can be committed by a simple touching or a striking (i.e. physical force) such as by poisoning or any other indirect application of nonviolent force with a deadly weapon, it does not satisfy the elements clause of the ACCA under *Curtis Johnson* if there is a difference between “physical force” and violent force”.

The circuits are conflicted about the meaning of the term “physical force” and “violent force” in the elements clause. *Curtis Johnson’s* definition of “physical force” as “*violent* force--that is, force capable of causing physical pain or injury to another person” has only cemented and exacerbated the confusion.

II. THIS QUESTION IS RECURRING AND IMPORTANT

The time is ripe to clarify *Curtis Johnson’s* definition of “violent force.” Indeed, other than reaffirming that definition in *Castleman*, 134 S. Ct. at 1411 n.4, the Court has not clarified *Curtis Johnson* since deciding it over seven years ago. Moreover, the meaning of that decision is now of paramount importance in light *Samuel Johnson v. United States*, 576 U.S. ___, 135 S. Ct. 2551 (2015), which declared the ACCA’s residual clause void for vagueness. The residual clause had previously acted as a broad catchall under which many offenses qualified as violent

felonies. Without the residual clause, however, the elements clause has become the primary battleground. Parties, probation officers, and lower courts are now routinely required to assess whether offenses satisfy that element clause. Its meaning should be uniform across the nation.

The question of whether causation of great bodily harm necessitates “force capable of causing pain or injury to another” cannot be avoided, and should be decided. The rampant uncertainty described above on this question is intractable because it derives from this Court’s opinion in *Curtis Johnson* itself.

III. THIS CASE IS AN IDEAL VEHICLE TO RESOLVE THIS QUESTION

The *Curtis Johnson* question is ideally presented for decision here. The Florida aggravated battery statute crystallizes the dispute because it requires either a simple battery (i.e. touching) and the causation of great bodily harm, permanent disability, or disfigurement (subsection 1) or a simple battery (i.e. touching) with a deadly weapon (subsection 2). If “violent force” is measured by an offense’s capability of causing pain or injury, Florida aggravated battery would satisfy the elements clause, since conduct actually causing great bodily harm is necessarily capable of producing pain or injury. If, however, “violent force” is measured not by the resulting harm but by the degree of force, then Florida aggravated battery, which, by its plain terms, can be committed by a mere touching (i.e. physical yet non-violent force) terms, can be committed by a mere touching (i.e. physical yet non-violent force) which would not satisfy the elements clause. Thus, this is a

case and statute in which to resolve the question presented.

That is particularly true since Florida aggravated battery is derivative of the Florida simple battery statute considered in *Curtis Johnson*. In *Curtis Johnson*, this Court recognized that, under Florida Supreme Court precedent, a battery by touching could be committed by the most nominal contact, such as a tap on the shoulder. 559 U.S. at 138. Thus, the Court has already established the meaning of the touching component under Florida law. The aggravated battery offense here can be committed by the exact same conduct with a deadly weapon. Again, the only difference is that the touching is with a deadly weapon.

IV. THE DECISION BELOW IS WRONG

The Eleventh Circuit incorrectly concluded in *Turner* and subsequently in the case below (*Tarver*) that Florida aggravated battery categorically meets the elements clause. The Eleventh Circuit did not conduct a strict element--by--element comparison and overbreadth analysis now required by this Court. See *Mathis v. United States*, 579 U.S. ___, 136 S. Ct. 2243 (2016). *Descamps v. United States*, 570 U.S. 254, 133 S. Ct. 2276 (2013). In addition, the Eleventh Circuit failed to use the “least culpable conduct” test. Since *Turner* does not comply with the approach now dictated by this Court, the issue must be addressed by this Court. Per this Court’s holding in *Descamps v. United States*, 133 S. Ct. 2276, 2283 (2013), the Florida aggravated battery statute must be examined to determine whether the elements of the least of the acts criminalized has as an element “actual, attempted, or

threatened use of violent force or a substantial degree of force against another person”. *Id.*

Florida Statute § 784.045 defines an aggravated battery, as follows:

- (1)(a) A person commits aggravated battery who, in committing battery:
 - 1. Intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or
 - 2. Uses a deadly weapon.

Per this definition aggravated battery is a simple battery, in which the defendant either (1) “[i]ntentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement,” or (2) “uses a deadly weapon.” Since aggravated battery encompasses simple battery, it can be committed by a nonconsensual and nonviolent “touching.” This is the “least culpable conduct” prohibited by the statute of conviction and it must be presumed that the *Tarver’s* conviction rested on “nothing more” than this conduct. A person can knowingly cause great bodily harm to another with only de *minimis* force – for instance, by touching another person in a nonviolent manner while exposing them to allergens or toxins, knowing it will cause a severe physical reaction. And notably, the second alternative, “using a deadly weapon” during a battery, does not require that the weapon ever “touch” the victim. *See, e.g., Severance v. State*, 972 So.2d 931, 934 (Fla. 4th DCA 2007) (en banc) (clarifying that to “use a deadly weapon” for purposes of the aggravated battery statute “cover[s] *all* uses”. The Legislature “did not intend to limit the manner or method of use”).

In addition, the term “deadly weapon” under Florida Statute § 784.045(1)(a)(2) is itself indeterminate and overbroad. According to Florida’s standard jury instruction for “aggravated battery,” “A weapon is a ‘deadly weapon’ if it is used or threatened to be used in a way likely to produce death or great bodily injury.” That broad definition does not necessitate the use or threat of violent force in every case. Poison is clearly a “deadly weapon” within that definition, and it can be easily administered to another without violent force.

Accordingly, the lower court could not properly conclude that *Tarver*’s aggravated battery convictions necessarily involved “violent force”. It should have held that under the aforementioned “least culpable act”/ “nothing more” rule that it did not necessarily involve, as an element, the use of violent force as required by *Johnson* and its progeny.

A proper analysis would have concluded that the elements of aggravated battery under this specific subsection (§784.045(1)(a)(1)), as stated herein did not necessarily include as an element the “actual, attempted, or threatened use of violent force or a substantial degree of force” required by the ACCA post *Johnson*. This conviction cannot be a predicate offense under ACCA.

The lower court’s decision that *Tarver*’s Florida aggravated battery convictions were crimes of violence as defined by its decision in *Turner*, must be re-examined by this Court. The *Tarver* panel recognized that its decision in both *Turner* and below in *Tarver* was under question by this Court’s rulings but disregarded this Court’s decisions and failed to readdress its decision in *Tarver*. Accordingly, this

Court should review the below case and in the process the *Turner* decision.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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January 16, 2018

APPENDIX

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App. 1

APPENDIX A

[DO NOT PUBLISH]

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

**No. 16-17533
Non-Argument Calendar
D.C. Docket No. 1:16-cr-20286-MGC-1**

[Filed October 18, 2017]

UNITED STATES OF AMERICA,	)
Plaintiff - Appellee,	)
	)
versus	)
	)
JONATHAN ROBERT TARVER,	)
Defendant - Appellant.	)
	)

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

(October 18, 2017)

Before MARTIN, JORDAN, and ANDERSON, Circuit
Judges.

PER CURIAM:

Jonathan Tarver appeals his 180-month sentence, imposed below the applicable advisory guidelines range, after he pled guilty to two counts of being a felon in possession of a firearm in violation of 18 U.S.C.

App. 2

§§ 922(g)(1) and 924(e). Because binding precedent forecloses each of his arguments on appeal, and he has not shown that the district court imposed an unreasonable sentence, we affirm.

I

We review *de novo* whether a defendant's prior conviction qualifies as a violent felony under the Armed Career Criminal Act. *See United States v. Day*, 465 F.3d 1262, 1264 (11th Cir. 2006).

The ACCA carries a mandatory minimum sentence of 15 years' imprisonment for a § 922(g) offense when a defendant has been previously convicted of a violent felony or a serious drug offense on three separate occasions. *See* 18 U.S.C. § 924(e)(1). In this case, Mr. Tarver had three ACCA-qualifying predicate offenses. Although the district court varied slightly below the advisory guidelines range, it sentenced him to the statutory minimum of 15 years' (or 180 months') imprisonment.¹

Mr. Tarver does not challenge his aggravated assault conviction, but contends that his two Florida aggravated battery convictions are not violent felonies under the ACCA. He admits, however, that his argument is foreclosed by binding circuit precedent. *See Turner v. Warden Coleman FCI*, 709 F.3d 1328, 1341 (11th Cir. 2013), *abrogated on other grounds by*

¹ Based on a total offense level of 31 and a criminal history category of VI, the advisory guidelines range was 188 to 235 months' imprisonment. Mr. Tarver's predicate offenses included an aggravated assault with a deadly weapon and two convictions for aggravated battery.

App. 3

Johnson v. United States, 135 S. Ct. 2551 (2015) (holding that a Florida aggravated battery committed by the “intentional or knowing causation of great bodily harm . . . [or] . . . the use of a deadly weapon” qualifies as a violent felony under the elements clause of the ACCA). *See also United States v. Golden*, 854 F.3d 1256, 1256–57 (11th Cir. 2017) (recognizing that *Turner*’s validity has been called into question in light of more recent Supreme Court cases, but that we do not have the authority to disregard it under the prior panel precedent rule), *cert. pet. filed*, No. 17-5050 (U.S. June 21, 2017).²

Mr. Tarver also argues that “the ACCA sentence imposed on him violates his rights under the Fifth and Sixth Amendments,” *see* Appellant’s Br. at 17, but concedes that his argument is foreclosed by Supreme Court precedent, and raises the issue only to preserve it for further review. *See Almendarez-Torres v. United States*, 523 U.S. 224, 226–27 (1998) (holding that, for sentencing purposes, the government does not need to allege a defendant’s prior conviction or prove the fact of a prior conviction where that fact “is not an element of the present crime”). *See also United States v. Weeks*,

² There is no dispute that Mr. Tarver was charged under Fla. Stat. § 784.045(1)(a) for both of the aggravated battery convictions. Mr. Tarver’s primary argument is that it is unclear whether he was charged under subsection (1)(a)(1) or subsection (1)(a)(2) of that statute for one of the convictions. The government correctly points out that this distinction is irrelevant because *Turner* determined that both subsections qualify as violent felonies under the elements clause. *See Turner*, 709 F.3d at 1341. Mr. Tarver, moreover, has not attempted to show that he may have been charged under Fla. Stat. § 784.045(1)(b) (battery of a pregnant woman).

App. 4

711 F.3d 1255, 1259 (11th Cir. 2013) (explaining that *Almendarez-Torres* remains good law and “binding until it is overruled by the Supreme Court”).

Because we are bound by the decisions of prior panels until overruled by this court sitting en banc or by the Supreme Court, see *United States v. Steele*, 147 F.3d 1316, 1317–18 (11th Cir. 1998) (en banc), and by decisions of the Supreme Court, we affirm Mr. Tarver’s classification as an armed career criminal.

II

We review the reasonableness of sentences under a deferential abuse of discretion standard. See *Gall v. United States*, 552 U.S. 38, 41 (2007). We first consider procedural unreasonableness and then determine whether the sentence is substantively reasonable in light of the circumstances. *Id.* at 51.

The party challenging the sentence bears the burden of showing that it is unreasonable in light of the record and the 18 U.S.C. § 3553(a) factors. See *United States v. Tome*, 611 F.3d 1371, 1378 (11th Cir. 2010). We will vacate a sentence only if “we are left with the definite and firm conviction that the district court committed a clear error of judgment in weighing the § 3553(a) factors by arriving at a sentence that lies outside the range of reasonable sentences dictated by the facts of the case.” *United States v. Irej*, 612 F.3d 1160, 1190 (11th Cir. 2010) (en banc) (internal quotation marks and citation omitted). In general, a district court “shall impose a sentence sufficient, but not greater than necessary to comply with the purposes” listed in § 3553(a), including “the nature and circumstances of the offense and the history and

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characteristics of the defendant . . . the kinds of sentences available [and] . . . the sentencing range established.” §§ 3553(a)(1), (a)(3), (a)(4). The § 3553(a) factors, however, do not permit a district court to impose a sentence below an applicable statutory mandatory minimum. *See United States v. Castaing-Sosa*, 530 F.3d 1358, 1362 (11th Cir. 2008).

Here, Mr. Tarver has not attempted to show that the district court committed procedural error or that his sentence is substantively unreasonable in light of the § 3553(a) factors. Instead, he makes a conclusory statement that because his “sentence is based on an improper ACCA enhancement[,]” it is both procedurally and substantively unreasonable. *See Appellant’s Br.* at 19. In any event, the district court considered the nature and circumstances of the offense, the testimony about Mr. Tarver’s characteristics, and varied below the applicable advisory guidelines range. Given that Mr. Tarver had three ACCA-qualifying offenses, the district court was not permitted to vary below the mandatory minimum of 180 months’ imprisonment. *See Castaing-Sosa*, 530 F.3d at 1362.

AFFIRMED.

APPENDIX B

USDC FLSD 245B (Rev. 09/08) -
Judgment in a Criminal Case

**UNITED STATES DISTRICT COURT
Southern District of Florida
Miami Division**

**Case Number: 16-20286-CR-COOKE USM
Number: 13277-104**

[Filed November 29, 2016]

UNITED STATES OF AMERICA	)
	)
v.	)
	)
JONATHAN ROBERT TARVER	)
	)

JUDGMENT IN A CRIMINAL CASE

Counsel For Defendant: **Joel Defabio, Esq.**
Counsel For The United States: **Marianne Curtis,**
AUSA
Court Reporter: **Gizella Baan-Proulx**

**The defendant pleaded guilty to counts 1 and 2 of
the Indictment.**

The defendant is adjudicated guilty of these offenses:

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<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)(1)	Possession of a firearm and ammunition by a convicted felon.	01/15/2015	1 and 2

The defendant is sentenced as provided in the following pages 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 must notify the court and United States attorney of material changes in economic circumstances.

Date of Imposition of Sentence:

11/28/2016

/s/ Marcia G. Cooke
MARCIA G. COOKE
United States District Judge

November 28, 2016

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IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **180 months as to Counts 1 and 2, concurrently. *Sentence to run concurrently with sentence imposed in State Case(s) F15-001425, F16-007587, and F16-007586.**

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

DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **5 years**.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

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The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall 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.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

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

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first fifteen days of each month;

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3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any

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contraband observed in plain view of the probation officer;

11. The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

Anger Control - The defendant shall participate in an approved treatment program for anger control. Participation may include inpatient/outpatient treatment. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

Mental Health Treatment - The defendant shall participate in an approved inpatient/outpatient mental health treatment program. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

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Permissible Search - The defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$200.00	\$0.00	\$0.00

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

**Assessment due immediately unless otherwise ordered by the Court.

SCHEDULE OF PAYMENTS

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

A. Lump sum payment of \$200.00 due immediately.

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Unless the court has expressly ordered otherwise, if this judgment imposes 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.

This assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

**U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 08N09
MIAMI, FLORIDA 33128-7716**

The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

The Government shall file a preliminary order of forfeiture within 3 days.

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) penalties, and (8) costs, including cost of prosecution and court costs.

APPENDIX C

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 16-20286-CR-COOKE/TORRES

18 U.S.C. § 922(g)(1)

18 U.S.C. § 924(e)(1)

18 U.S.C. § 924(d)(1)

[Filed April 28, 2016]

UNITED STATES OF AMERICA	)
	)
vs.	)
	)
JONATHAN ROBERT TARVER,	)
Defendant.	)

INDICTMENT

The Grand Jury charges that:

COUNT 1

**Possession of a Firearm and Ammunition by a
Convicted Felon
(18 U.S.C. § 922(g)(1))**

On or about January 15, 2015, in Miami-Dade
County, in the Southern District of Florida, the
defendant,

JONATHAN ROBERT TARVER,

having been previously convicted of a crime punishable by imprisonment for a term exceeding one year, did knowingly possess a firearm and ammunition in and affecting interstate and foreign commerce, in violation of Title 18, United States Code, Sections 922(g)(1) and 924(e)(1).

It is further specified that the firearm and ammunition are:

1. One (1) .40 caliber JCP Hi Point semiautomatic firearm; and
2. Fifty-three (53) rounds of .40 caliber ammunition.

COUNT 2

**Possession of a Firearm and Ammunition by a
Convicted Felon
(18 U.S.C. § 922(g)(1))**

On or about April 11, 2016, in Miami-Dade County, in the Southern District of Florida, the defendant,

JONATHAN ROBERT TARVER,

having been previously convicted of a crime punishable by imprisonment for a term exceeding one year, did knowingly possess a firearm and ammunition in and affecting interstate and foreign commerce, in violation of Title 18, United States Code, Sections 922(g)(1) and 924(e)(1).

It is further specified that the firearm and ammunition are:

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1. One (1) .380 caliber Cobra semiautomatic firearm; and
2. Five (5) rounds of .380 caliber ammunition.

FORFEITURE ALLEGATIONS

1. The allegations of this Indictment are re-alleged and by this reference fully incorporated herein for the purpose of alleging criminal forfeiture to the United States of America of certain property in which the defendant, **JONATHAN ROBERT TARVER**, has an interest.

2. Upon conviction of a violation of Title 18, United States Code, Section 922(g)(1), as alleged in this Indictment, the defendant shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 924(d)(1), any firearm and/or ammunition involved in or used in the commission of such violation.

All pursuant to Title 18, United States Code, Section 924(d)(1), as made applicable by Title 28, United States Code, Section 2461(c), and the procedures set forth at Title 21, United States Code, Section 853.

A TRUE BILL

/s/

FOREPERSON

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/s/
WIFREDO A. FERRER
UNITED STATES ATTORNEY

/s/
MARIANNE CURTIS
SPECIAL ASSISTANT UNITED STATES ATTORNEY