No. 17-5554

In The Supreme Court of the United States

DENARD STOKELING,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

JOINT APPENDIX

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Petition For Certiorari Filed August 4, 2017
Certiorari Granted April 2, 2018

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RELEVANT DOCKET ENTRIES

U.S. District Court
Southern District of Florida (Miami)
CRIMINAL DOCKET FOR CASE #:
1:15-cr-20815-JLK All Defendants

Case title: USA v. Stokeling Date Filed: 10/20/2015

Assigned to: Senior Judge James Lawrence King
Referred to: Magistrate Judge Edwin G. Torres

Date Filed	#	Docket Text
10/20/2015	1	INDICTMENT as to Denard Stokeling (1) count(s) 1 and the FORFEITURE. (ra) (Entered: 10/20/2015)
		* * * *
03/02/2016	30	FACTUAL PROFFER STATEMENT as to Denard Stokeling (dgj) (Entered: 03/02/2016)
03/02/2016	31	Minute Order for proceedings held before Magistrate Judge Barry L. Garber: Change of Plea Hearing as to Denard Stokeling held on 3/2/2016 Denard Stokeling (1) Guilty Count 1. Defendant remanded into USM custody. Court Reporter: Glenda Powers, 305-523-5022 / Glenda_Powers@flsd.uscourts.gov. Signed by Magistrate Judge Barry L. Garber on 3/2/2016. (dgj) (Entered: 03/02/2016)
03/03/2016	32	REPORT AND RECOMMENDATIONS on Plea of Guilty as to Denard Stokeling. Signed by Sr. Magistrate Judge

Barry L. Garber on 3/3/2016. (km01) (Entered: 03/03/2016)

* * * *

04/20/2016 36 OBJECTIONS TO PRESENTENCE INVESTIGATION REPORT by Denard Stokeling (Abrams, Stewart) (Entered: 04/20/2016)

* * * *

04/26/2016 38 FINAL Addendum 2 Disclosure of Presentence Investigation Report of Denard Stokeling. This is a limited access document. Report access provided to attorneys Daya Nathan, Stewart Glenn Abrams by USPO (Attachments: # 1 Addendum, # 2 Addendum-Second)(dms) (Entered: 04/26/2016)

04/26/2016 39 RESPONSE to 36 Objections to Presentence Investigation Report by USA as to Denard Stokeling (Nathan, Daya) (Entered: 04/26/2016)

04/27/2016 40 NOTICE *of Filing Prior Convictions* by USA as to Denard Stokeling re 39 Response to Objections to Presentence Investigation Report, 36 Objections to Presentence Investigation Report (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B, # 3 Exhibit Exhibit C)(Nathan, Daya) (Entered: 04/27/2016)

04/28/2016 41 Minute Entry for proceedings held before Senior Judge James Lawrence King: Sentencing held on 4/28/2016

as to Denard Stokeling Court Reporter: Glenda Powers, 305-523-5022 /Glenda_Powers@flsd.uscourts.gov. (jw) (Entered: 04/28/2016)

* * * *

04/28/2016 44 JUDGMENT as to Denard Stokeling (1), Count(s) 1, Imprisonment 73 months to run concurrent with State case no. F15017823; Supervised Release 24 months; Assessment: $100.00; Closing Case for Defendant. – Motions terminated: 32 REPORT AND RECOMMENDATIONS on Plea of Guilty as to Denard Stokeling. Signed by Senior Judge James Lawrence King on 4/28/2016. (ls)

NOTICE: If there are sealed documents in this case, they may be unsealed after 1 year or as directed by Court Order, unless they have been designated to be permanently sealed. See Local Rule 5.4 and Administrative Order 2014-69. (Entered: 04/28/2016)

05/19/2016 45 TRANSCRIPT of Sentencing Hearing as to Denard Stokeling held on April 28, 2016 before Senior Judge James Lawrence King, 1-27 pages, Court Reporter: Glenda Powers, 305-523-5022 /Glenda_Powers@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by

contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 6/13/2016. Redacted Transcript Deadline set for 6/23/2016. Release of Transcript Restriction set for 8/22/2016. (gps) (Entered: 05/19/2016)

05/23/2016 46 NOTICE OF APPEAL by USA as to Denard Stokeling Re: 44 Judgment,,. Filing fee $ 505.00.. USA/FPD Filer – No Filing Fee Required. Within fourteen days of the filing date of a Notice of Appeal, the appellant must complete the Eleventh Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under Transcript Information. (Nathan, Daya) (Entered: 05/23/2016)

* * * *

06/01/2016 50 TRANSCRIPT of Change of Plea Hearing as to Denard Stokeling held on March 2, 2016 before Magistrate Judge Barry L. Garber, 1-15 pages, Court Reporter: Glenda Powers, 305-523-5022 / Glenda_Powers@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After

		that date it may be obtained through PACER. Redaction Request due 6/27/2016. Redacted Transcript Deadline set for 7/8/2016. Release of Transcript Restriction set for 9/2/2016. (gps) (Entered: 06/01/2016)
		* * * *
05/05/2017	57	MANDATE of USCA, We VACATE Stokelings sentence and REMAND for resentencing. as to Denard Stokeling re 46 Notice of Appeal – Final Judgment,; Date Issued: 5/5/17; USCA Case Number: 16-12951-CC (hh) (Entered: 05/05/2017)
05/09/2017	58	ORDER as to Denard Stokeling re 57 USCA Mandate, as to 57 USCA Mandate and Setting Re-Sentencing Hearing. (Re-Sentencing set for 8/1/2017 10:00 AM in Miami Division before Senior Judge James Lawrence King in Courtroom II, Eleventh Floor.) Signed by Senior Judge James Lawrence King on 5/9/2017. (jw) (Entered: 05/09/2017)
		* * * *
07/25/2017	68	FINAL Addendum 3 Disclosure of ACCA Presentence Investigation Report of Denard Stokeling. This is a limited access document. Report access provided to attorneys Daya Nathan, Stewart Glenn Abrams by USPO (Attachments: # 1 Addendum-First, # 2 Addendum-Second, # 3 Addendum-Third)(fmi) (Entered: 07/25/2017)

* * * *

03/12/2018	76	ORDER Granting Request to Postpone Re-Sentencing as to Denard Stokeling Signed by Senior Judge James Lawrence King on 3/12/2018. (jw) (Entered: 03/12/2018)
04/06/2018	77	STATUS REPORT *(Joint)* by USA as to Denard Stokeling (Nathan, Daya) (Entered: 04/06/2018)

RELEVANT DOCKET ENTRIES

United States Court of Appeals for the Eleventh Circuit

Court of Appeals **Docketed:** 05/24/2016
Docket #: 16-12951 **Termed:** 04/06/2017
USA v. Denard Stokeling
Appeal From:
Southern District of Florida

05/24/2016	CRIMINAL APPEAL DOCKETED. Notice of appeal filed by Appellant USA on 05/23/2016.
08/18/2016	Appellant-Cross Appellee's Brief filed by Appellant USA.
08/18/2016	Appendix filed [1 VOLUMES] by Appellant USA.
10/17/2016	Appellee's Brief filed by Appellee Denard Stokeling.
10/27/2016	Reply Brief filed by Appellant USA.
11/09/2016	Supplemental Authority filed by Appellant USA.
02/06/2017	Supplemental Authority filed by Appellant USA.
03/20/2017	Supplemental Authority filed by Appellee Denard Stokeling.
04/06/2017	Submitted on the briefs without oral argument.
04/06/2017	Opinion issued by court as to Appellant USA. Decision: Vacated and Remanded.

04/06/2017	Judgment entered as to Appellant USA.
05/05/2017	Mandate issued as to Appellant USA.
06/15/2017	Extension for filing certiorari GRANTED by U.S. Supreme Court as to Appellee Denard Stokeling.
08/09/2017	Notice of Writ of Certiorari filed as to Appellant USA. SC# 17-5554.
04/02/2018	Writ of Certiorari filed as to Appellee Denard Stokeling is GRANTED. SC# 17-5554.

Case 1:15-cr-20815-JLK
Document 40-1
Entered on FLSD Docket 04/27/2016

EXHIBIT A

☒ IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA. ☐ IN THE COUNTY COURT IN AND FOR DADE COUNTY FLORIDA.		
DIVISION ☒ CRIMINAL ☐ OTHER	**JUDGMENT** ☐ Probation Violator ☐ Community Control Violator ☐ Retrial ☐ Resentence	**CASE NUMBER** 96-11220
THE STATE OF FLORIDA VS. DENARD STOKELING **PLAINTIFF DEFENDANT**		**CLOCK IN** [FILED OCT 07 1997 PANEQUE CLERK]

The Defendant, DENARD STOKELING, being personally before this court represented by I. ORTA-RODRIGUEZ, his attorney of record, and the State represented by S. DEMOS, Assistant State's Attorney, and having:

☐ been tried and found guilty ☐ entered a plea of guilty ☒ entered a plea of nolo contendere

to the following crime(s):

COUNT	CRIME	OFFENSE STATUTE NO.	DEGREE OF CRIME	OBTS NO.
1	ROBBERY	812.13(2)(c)	2F	

and no cause being shown why the Defendant should not be adjudicated guilty, IT IS ORDERED THAT the

Defendant is hereby ADJUDICATED GUILTY of the above crime(s).

[Recorded Stamp Omitted]

[Certification Stamp Omitted]

Standard B

Defendant Denard Stokeling Case Number F96-11220

CHARGES/COSTS

The Defendant is hereby ordered to pay the following sum if checked:

☒ Fifty dollars ($50.00) pursuant to F.S. 960.20 (Crimes Compensation Trust Fund).

☒ Five dollars ($5.00) as a court cost pursuant to F.S. 943.25(3) $3.00, F.S. 943.25(13) $2.00 (Criminal Justice Trust & Education Funds).

☐ A fine in the sum of $ _____ pursuant to F.S. 775.0835. (This provision refers to the optional fine for the Crimes Compensation Trust Fund, and is not applicable unless checked and completed. Fines imposed as a part of a sentence to F.S. 775.083 are to be recorded on the Sentence page(s)).

☐ Twenty dollars ($20.00) pursuant to F.S. 939.015 (Handicapped and Elderly Security Assistance Trust Fund).

☐ A 10 percent surcharge in the sum of $ _____ pursuant to 775.0836 (Handicapped and Elderly Security Assistance Trust Fund).

☒ A sum of $ 200.00 pursuant to 27.3455 (Local Government Criminal Justice Trust Fund).

☐ Restitution in accordance with attached order.

☒ Three dollars ($3.00) Juvenile Assessment Center pursuant to Dade County Ordinance 96-182, F.S. incorporating F.S. 775.0833. ☒ A sum of $ WAIVED pursuant to F.S. 27.52 (Public Defender Application Fee). ☐ Other _____
[Fingerprints And Social Security Number Of Defendant Omitted]
I HEREBY CERTIFY that the above and foregoing are the fingerprints of the Defendant, TRUE COPY CERTIFICATION ON LAST PAGE and that they were placed thereon by said Defendant in my presence in Open Court this date, and that the defendant either ☐ provided the above-mentioned social security number OR ☐ was unable or unwilling to provide his/her social security number.
DONE AND ORDERED in Open Court in Dade County, Florida this 26th day of SEPTEMBER, 1997. [Signature]_____ JUDGE ROBERTO M. PINEIRO

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA.			
CRIMINAL DIVISION	**SENTENCE (AS TO COUNT 1)**		**CASE NUMBER** 96-11220 **OBTS NUMBER** _____
THE STATE OF FLORIDA PLAINTIFF **VS.** DENARD STOKELING **DEFENDANT**			**CLOCK IN** [FILED OCT 07 1997 PANEQUE CLERK]

The defendant, being personally before this Court, accompanied by his attorney, I. ORTA-RODRIGUEZ and having been adjudicated guilty herein, and the Court having given the defendant an opportunity to be heard and offer matters in mitigation of sentence, and to show cause why he should not be sentenced as provided by law, and no cause being shown and the Court having:

(Check one)
- ☐ on _____ deferred imposition of sentence until this date.
- ☐ previously entered a judgment in this case on the defendant now resentences the defendant.
- ☐ placed the defendant on Probation/ Community Control and having subsequently revoked the defendant's Probation/ Community Control.

IT IS THE SENTENCE OF THE COURT that the defendant:

- ☐ pay a fine of $ _____, pursuant to F.S. 775.083, plus $ _____ as the 5% surcharge required by F.S. 960.25.
- ☒ is hereby committed to the custody of the Department of Corrections.
- ☐ is hereby committed to the custody of the Sheriff of Dade County, Florida.
- ☐ is sentenced as a youthful offender in accordance with F.S. 958.04.

TO BE IMPRISONED (check one; unmarked sections are inapplicable)

- ☐ for a term of Natural Life.
- ☒ for a term of TWELVE (12) YEARS.
- ☐ said SENTENCE IS SUSPENDED for a period of _____ subject to conditions set forth in this Order.
- ☐ IT IS FURTHER ORDERED that the entry of sentence be suspended as to count(s) of this case.

	Defendant DENARD STOKELING
OTHER PROVISIONS	Case Number 96-11220

RETENTION OF JURISDICTION

_____ The Court retains jurisdiction over the defendant pursuant to Florida Statutes 947.16(3).

JAIL CREDIT

__X__ It is further ordered that the Defendant shall be allowed a total of 471 days as credit for time incarcerated prior to imposition of this sentence.

PRISON CREDIT

_____ It is further ordered that the Defendant be allowed credit for all time previously served on this count in the Department of Corrections prior to resentencing.

CONSECUTIVE/
CONCURRENT AS TO
OTHER COUNTS

_____ It is further ordered that the sentence imposed for count(s) _____ shall run (check one) ☐ consecutive to ☐ concurrent with the sentence set forth in count(s) _____ of this case.

CONSECUTIVE/
CONCURRENT AS TO
OTHER CONVICTIONS

__X__ It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run ☐ consecutive to ☒ concurrent with the following:

_____ Any active sentence being served.

__X__ Specific sentences: 97-1221 & 97-14434

_____

_____

BLOOD SAMPLE
REQUIRED

_____ It is further ordered, pursuant to section 943.325, Florida Statutes, that the defendant, having been convicted of an attempt or offense under section 794 (sexual battery), 800 (lewdness or indecent exposure), 782.04 (murder), 784.045 (aggravated battery), 812.133 (car jacking), or 812.135 (home invasion robbery) shall be required to submit blood specimens.

In the event the above sentence is to the Department of Corrections, the Sheriff of Dade County, Florida, is hereby ordered and directed to deliver the defendant to the Department of Corrections at the facility designated by the department together with a copy of this Judgment and Sentence and any other documents specified by Florida Statutes.

The defendant in Open Court was advised of his right to appeal from this sentence by filing notice of appeal within thirty days from this date with the Clerk of this Court, and the defendant's right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigence.

In imposing the above sentence, the Court further recommends TRUE COPY CERTIFICATION ON LAST PAGE

DONE AND ORDERED in Open Court at Dade County, Florida, this 26th day of SEPTEMBER, 1997.

[Signature]
JUDGE ROBERTO M. PINEIRO

[Official Record Book/Page(s) Omitted]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

F007
F96-11220

(Filed Apr. 11, 1996)

THE STATE OF FLORIDA v.	**INFORMATION FOR**
DENARD STOKELING	1. ROBBERY 812.13(2)(c) Fel. 2D
Defendant	

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA:

JOAN HOLTZ, Assistant State Attorney of the Eleventh Judicial Circuit, on the authority of **KATHERINE FERNANDEZ RUNDLE**, State Attorney, prosecuting for the state of Florida, in the County of Dade, under oath, information makes that:

jh:jh 04/03/96
Juvenile Direct File
Do Not Issue Capias EXTRADITION 3
(A) Court Case #: J94013755B,
Police Case #: 366301R,B /M, DOB: [redacted],
SS#[redacted],
Case No: [F96-11220
J/ Judge Maynard Gross
Levine (J014) 5/2 @ 9:00 AM.]

COUNT 1

DENARD STOKELING, on or about JULY 17, 1994, in the County and State aforesaid, did unlawfully, by force, violence, assault, or putting in fear, take certain property, to wit: JEWELRY, said property being the subject of larceny, and of the value of less than THREE HUNDRED DOLLARS ($300.00), the property of KIMBERLY HENDRICKSON, as owner or custodian, from the person or custody of KIMBERLY HENDRICKSON, with the intent to temporarily or permanently deprive the above-named owner(s) or custodian(s) of the said property, in violation of s. 812.13(2)(c), Fla. Stat., contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Florida.

STATE OF FLORIDA, COUNTY OF DADE:

Personally known to me and appeared before me, the Assistant State Attorney of the Eleventh Judicial Circuit of Florida whose signature appears below, being first duly sworn, says that the allegations set forth in this Information are based upon facts which have been sworn to as true by a material witness or witnesses, and which if true, would constitute the offenses therein charged, and that this prosecution is instituted in good faith.

/s/ Joan Holtz
Assistant State Attorney
Florida Bar # [327328]
1350 NW 12 Ave.,
Miami, FL (305) 547-0100

Sworn to and subscribed before me this 4 day of April, 1996

By: /s/ Beverly Radley
Deputy Clerk for Clerk of
the Courts, or
Notary Public

[Notary Stamp]

[SEAL]

United States District Court
Southern District of Florida
MIAMI DIVISION

UNITED STATES OF AMERICA	**JUDGMENT IN A CRIMINAL CASE**
v.	**Case Number – 1:15-20815-CR-KING-001**
DENARD STOKELING	USM Number: 08673-104
	Counsel For Defendant: Stewart G. Abrams, AFPD Counsel For The United States: Daya Nathan, AUSA Court Reporter: Glenda Powers

The defendant pleaded guilty to Count One of the Indictment.

The defendant is adjudicated guilty of the following offense:

TITLE/ SECTION NUMBER	NATURE OF OFFENSE	OFFENSE ENDED	COUNT
18 U.S.C. § 922(g)(1) and 924(e)	Possession of a firearm and ammunition by a convicted felon	August 27, 2015	1

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 any material changes in economic circumstances.

Date of Imposition of Sentence:
4/28/2016

James Lawrence King
JAMES LAWRENCE KING
United States District Judge

April 28, 2016

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **SEVENTY-THREE (73) Months to run concurrent with State case no. F15017823**.

The Court makes the following recommendations to the Bureau of Prisons:

That the defendant be designated to a State of Florida facility.

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 U.S. Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **TWO (2) 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.

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 a 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 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;
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 (10) days prior** to any change in residence or employment;

7. The defendant shall refrain from the 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 contraband observed in plain view by the probation officer;

11. The defendant shall notify the probation officer within **seventy-two (72) 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

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

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.

Substance Abuse Treatment – The defendant shall participate in an approved treatment program for drug and/or alcohol abuse and abide by all supplemental conditions of treatment. 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.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on the Schedule of Payments sheet.

Total Assessment	**Total Fine**	**Total Restitution**
$100.00		

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

SCHEDULE OF PAYMENTS

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

A. Lump sum payment of **$100.00** due immediately, balance due

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.

The 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 8N09
MIAMI, FLORIDA 33128-7716

The assessment 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.

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.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

[DO NOT PUBLISH]

No. 16-12951

D.C. Docket No. 1:15-cr-20815-JLK-1

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

versus

DENARD STOKELING,

Defendant-Appellee.

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

(April 6, 2017)

Before WILLIAM PRYOR, MARTIN, and BOGGS,* Circuit Judges.

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* Honorable Danny J. Boggs, United States Circuit Judge for the Sixth Circuit, sitting by designation.

PER CURIAM:

This appeal presents the question whether a conviction for Florida robbery, Fla. Stat. § 812.13, from before Florida passed a "robbery by sudden snatching" statute in 1999, Fla. Stat. § 812.131, categorically qualifies as a violent felony under the elements clause of the Armed Career Criminal Act, 18 U.S.C. § 924(e). The district court did not enhance the sentence of Denard Stokeling under the Act because it held that his robbery conviction was not a violent felony. The United States appealed. Stokeling argues that before 1999, Florida robbery included robbery by sudden snatching, so it did not always require sufficient force to constitute a violent felony. But this argument is foreclosed by our precedents. *E.g.*, *United States v. Fritts*, 841 F.3d 937, 943-44 (11th Cir. 2016). We vacate and remand.

We have held many times that a conviction under the Florida robbery statute categorically qualifies as a violent felony under the elements clause of the Act, even if it occurred before 1999. *See, e.g.*, *id.* at 938, 943-44 (conviction from 1989); *United States v. Dowd*, 451 F.3d 1244, 1255 (11th Cir. 2006) (conviction from 1974). And in *Fritts*, we specifically rejected the argument that the sudden-snatching statute changed the elements of Florida robbery. 841 F.3d at 942-44. We explained that the Florida Supreme Court has held that Florida robbery "has *never* included a theft or taking by mere snatching because snatching is theft only and does not involve the degree of physical force needed to

sustain a robbery conviction." *Id.* at 942. "Th[e] new sudden snatching statute was apparently needed *because* . . . [ ]robbery [ ] did not cover sudden snatching where there was no resistance by the victim and no physical force to overcome it." *Id.* at 942 n.7 (emphasis added).

Our precedents apply to Florida robbery as well as armed robbery because the elements are identical, differing only in what "the offender carried" "in the course of committing the robbery." Fla. Stat. § 812.13. Our precedents rely on the shared force element in section 812.13(1) and do not mention the additional requirements for armed robbery in section 812.13(2). For example, this Court is bound by *United States v. Lockley*, 632 F.3d 1238, 1245 (11th Cir. 2011), which held that "Florida robbery is categorically a crime of violence under the elements of even the least culpable of these acts criminalized by Florida Statutes § 812.13(1)." *Fritts*, 841 F.3d at 941. Stokeling cannot circumvent this holding, even if he presents arguments the prior panel did not consider. *See Tippitt v. Reliance Standard Life Ins. Co.*, 457 F.3d 1227, 1234 (11th Cir. 2006).

The district court also applied the incorrect method to determine whether a conviction is a violent felony under the Act. The parties agree that the district court erroneously looked to the underlying facts of Stokeling's crime. But the district court should have applied the "categorical approach," which "look[s] only to the elements of the crime, not the underlying facts of the conduct," *United States v. Braun*, 801 F.3d 1301, 1304-05 (11th Cir. 2015).

The force element of Florida robbery satisfies the elements clause of the Act. The Act defines a violent felony as any 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). An element of Florida robbery is "the use of force, violence, assault, or putting in fear," Fla. Stat. § 812.13, which requires "resistance by the victim that is overcome by the physical force of the offender." *Robinson v. State*, 692 So. 2d 883, 886 (Fla. 1997).

We **VACATE** Stokeling's sentence and **REMAND** for resentencing.

MARTIN, Circuit Judge, concurring:

I agree with the majority that our Circuit precedent dictates that Mr. Stokeling's prior robbery conviction under Fla. Stat. § 812.13 qualifies as a violent felony as that term is defined by the elements clause of the Armed Career Criminal Act ("ACCA"). 18 U.S.C. § 924(e). *See United States v. Fritts*, 841 F.3d 937, 943-44 (11th Cir. 2016). However, I believe *Fritts* was wrongly decided.

The *Fritts* panel did not engage in the categorical analysis the Supreme Court instructed us to use when deciding whether a person's prior conviction requires a longer sentence under ACCA. When it turned its back on the required categorical approach, the *Fritts* panel failed to give proper deference to *McCloud v. State*, 335 So. 2d 257 (Fla. 1976), the controlling Florida Supreme

Court case interpreting § 812.13 from 1976 to 1997. In *McCloud*, Florida's highest court held that taking by "*any degree of force*" was sufficient to justify a robbery conviction. *Id.* at 258-59 (emphasis added). The result of the mistakes in *Fritts* is that people like Mr. Fritts will serve longer prison sentences that are not authorized by law. Although Mr. Stokeling is not one of those people (he was convicted after the Florida Supreme Court decided *Robinson v. State*, 692 So. 2d 883 (Fla. 1997), which abrogated *McCloud*'s "any degree of force" holding), our reliance on *Fritts* here gives me the opportunity to talk about what went wrong in that case and why it matters.

I.

The ACCA caps a federal prison sentence for a felon in possession of a firearm at ten years. 18 U.S.C. § 924(a)(2). That is except when the felon has three or more felony convictions, *and* those felonies are violent or are otherwise serious crimes, his sentence cannot be less than fifteen years. *Id.* § 924(e). The ACCA defines "violent felony" in more than one way. *Id.* § 924(e)(2)(B). The Supreme Court has told us that one of those definitions – the "residual clause" – is unconstitutionally vague. *Johnson v. United States*, 576 U.S. ___, 135 S.Ct. 2551, 2557-58 (2015). As a result, a person's prior robbery conviction can serve as a basis for an ACCA sentence enhancement only if it meets another definition of "violent felony" from what is known as ACCA's "elements clause." 18 U.S.C. § 924(e)(2)(B)(i) ("As used in this subsection . . . the term 'violent

felony' means 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."). So a prior robbery conviction can serve as an ACCA predicate only if it has "as an element the use, attempted use, or threatened use of physical force against the person of another." *Id.*

When deciding whether a person's prior conviction qualifies as one requiring a longer sentence under ACCA, courts must first apply what is called the formal categorical approach. Under this approach, we do not look at the facts that resulted in the earlier conviction. *Descamps v. United States*, 570 U.S. ___, 133 S.Ct. 2276, 2283 (2013). Instead, Supreme Court precedent requires us to look only to the elements of the statute under which the person was convicted. *See Mathis v. United States*, 579 U.S. ___, 136 S.Ct. 2243, 2251 (2016). We must decide whether, in order to be convicted under a given statute, a person was required to use, attempt to use, or threaten to use physical force against another person.

In keeping with this, I will apply the formal categorical approach to decide whether a conviction under § 812.13 counts as a violent felony under the ACCA. If a defendant could have been convicted under § 812.13 without the use, attempted use, or threatened use of "*violent* force," *Curtis Johnson v. United States*, 559 U.S. 133, 140, 130 S.Ct. 1265, 1271 (2010) (interpreting "physical force" in the elements clause), or a "substantial degree of force," *United States v. Owens*, 672 F.3d

966, 971 (11th Cir. 2012) (holding that second-degree rape in Alabama doesn't require "physical force" as defined by *Curtis Johnson*), against another person, then that defendant's prior conviction under § 812.13 can't be a "violent felony" under the ACCA's elements clause.

In recent years, the Supreme Court has clarified the analytical steps that make up the formal categorical approach. In taking that approach, we must first "presume that the conviction rested upon nothing more than the least of the acts criminalized" by the state statute. *Moncrieffe v. Holder*, 569 U.S. 184, 133 S.Ct. 1678, 1684 (2013) (alterations adopted and quotation omitted). This is often referred to as the "least culpable conduct." *See Donawa v. U.S. Att'y Gen.*, 735 F.3d 1275, 1283 (11th Cir. 2013) (citing *Moncrieffe*, 133 S.Ct. at 1685). To identify the least culpable conduct criminalized by the statute, we look to the state courts' interpretations of the statute. *See Curtis Johnson*, 559 U.S. at 138, 130 S.Ct. 1265 ("We are [] bound by the Florida Supreme Court's interpretation of state law . . . in determining whether a felony conviction for battery under Fla. Stat. § 784.03(2) meets the definition of 'violent felony' in 18 U.S.C. § 924(e)(2)(B)(i)."); *see also United States v. Rosales-Bruno*, 676 F.3d 1017, 1021 (11th Cir. 2012) ("[W]e look to Florida case law to determine whether a conviction under § 787.02 necessarily involves the employment of 'physical force' as that term is defined by federal law."). And as part of this step, we have to analyze "the version of state law that the defendant was actually convicted of violating."

McNeill v. United States, 563 U.S. 816, 821, 131 S.Ct. 2218, 2222 (2011).

Second, after identifying the least culpable conduct, we then have to figure out whether "those acts are encompassed by the generic federal offense." *Moncrieffe*, 133 S.Ct. at 1684 (alteration adopted). In the elements clause context, this means we examine whether the least culpable conduct involved the use, attempted use, or threatened use of violent force or a substantial degree of force. If it didn't, then under the formal categorical approach, the defendant's earlier conviction is *not* a violent felony.

II.

These recent Supreme Court cases tell us that a § 812.13 unarmed robbery conviction sustained while *McCloud* was controlling Florida law does not fall within the ACCA's elements clause. First, heeding the Supreme Court's instruction that we should "turn[] to the version" of § 812.13 that a defendant was "actually convicted of violating," *McNeill*, 563 U.S. at 821, 131 S.Ct. at 2222, we must look to what the Florida state courts said about the conduct that could support a robbery conviction under § 812.13 at the time the defendant was convicted. More to the point, we must look to how Florida courts defined the least culpable conduct – in this case, the smallest degree of force – sufficient to support a § 812.13 robbery conviction at that time.

Section 812.13 defines robbery as the taking of money or property with intent to deprive when "in the

course of the taking there is the use of force, violence, assault, or putting in fear." From 1976 to 1997, the controlling precedent from the Florida Supreme Court held that "[*a*]*ny* degree of force suffices to convert larceny into a robbery." *McCloud*, 335 So. 2d at 258 (emphasis added). So during that time period, Florida law was clear that conduct involving "any degree of force," like sudden snatching, was enough to justify a robbery conviction.

In keeping with the deference federal courts owe states' interpretations of their own criminal statutes, this Court has recognized and accepted Florida's view of what it took to sustain a conviction under the Florida robbery statute when *McCloud* was the controlling precedent. In *United States v. Welch*, 683 F.3d 1304 (11th Cir. 2012), this Court used the formal categorical approach to determine that sudden snatching was the least culpable conduct that could support a 1996 Florida robbery conviction. *Id.* at 1311-12. This decision was necessary to *Welch*'s holding that the 1996 Florida robbery conviction was categorically a violent felony under the residual clause. *Id.* at 1313-14. Our precedent therefore binds us to *Welch*'s conclusion that sudden snatching was the least culpable conduct covered by § 812.13 when *McCloud* was the controlling Florida case defining that statute.

Having identified the least culpable conduct, we are next required to decide whether this conduct necessarily involves the use, attempted use, or threatened use of violent force or a substantial degree of force. It doesn't. Sudden snatching with "any degree of force,"

McCloud, 335 So. 2d at 258, plainly does not require the use of "a substantial degree of force." *Owens*, 672 F.3d at 971. Neither does it necessarily entail "*violent* force – that is, force capable of causing physical pain or injury to another person." *Curtis Johnson*, 559 U.S. at 140, 130 S.Ct. at 1271. This means a conviction for Florida unarmed robbery during the time *McCloud* was controlling should not count as a violent felony within the meaning of the elements clause.

III.

In reaching its (erroneous) conclusion that a 1989 armed robbery conviction under § 812.13 falls within the elements clause under the formal categorical approach, the *Fritts* panel sidestepped *McCloud*'s "any degree of force" holding by looking instead to our own court's previous decision in *United States v. Lockley*, 632 F.3d 1238 (11th Cir. 2011). *See Fritts*, 841 F.3d at 940-42. And when it did, that panel stretched *Lockley* well past its limits.

Lockley held that a 2001 Florida attempted robbery conviction under § 812.13(1) categorically counts as a "crime of violence" within the meaning of the identically-worded elements clause of the Sentencing Guidelines. *See* 632 F.3d at 1240-41, 1244-45. But *Lockley* looked to Florida law as it existed in 2001, when Mr. Lockley was convicted, and not as it existed in 1989, when Mr. Fritts was convicted. *Id.* at 1240 n.1, 1242. Again, the year of conviction matters because the least culpable conduct sufficient to support a robbery

conviction under Fla. Stat. § 812.13 changed in 1997. As I've set out above, the controlling Florida Supreme Court case from 1976 to 1997 (*McCloud*) held that conduct involving "any degree of force," was enough for a robbery conviction. 335 So. 2d at 258. However, in 1997 the Florida Supreme Court shifted course and held that robbery requires the perpetrator to use "more than the force necessary to remove the property from the person" – that is, "physical force" that "overcome[s]" the "resistance [of] the victim." *Robinson*, 692 So. 2d at 886.

A Florida robbery conviction could no longer be supported by "any degree of force" after the Florida Supreme Court decided *Robinson* in 1997. For that reason, the *Lockley* court correctly identified "[p]utting in fear" – and not sudden snatching – as the least culpable conduct in its categorical analysis of Mr. Lockley's 2001 attempted robbery conviction. 632 F.3d at 1244. But again, the Supreme Court has told us to look at what state courts required for a conviction at the time of that conviction. *See McNeill*, 563 U.S. at 821, 131 S.Ct. at 2222. And our 2011 federal court ruling doesn't change the fact that before the 1997 Florida Supreme Court ruling in *Robinson* the least culpable conduct for which someone could be convicted of robbery in Florida was sudden snatching with *any* degree of force. *Lockley* looked, as it should have, to a different time, so it did not apply to Mr. Fritts's appeal and has no bearing on any robbery convictions sustained while the Florida Supreme Court's 1976 ruling in *McCloud* was still good law.

The *Fritts* panel insisted that *Lockley* isn't limited to post-*Robinson* robberies – but instead applies to all Florida robberies – because § 812.13 has never included sudden snatching. *Fritts*, 841 F.3d at 943. As support, it pointed to language in *Robinson* suggesting that § 812.13 has always required more than sudden snatching. *Id.* It also emphasized that when the Florida Supreme Court interprets a Florida statute, "it tells us what that statute always meant." *Id.* But again, this reasoning ignores what the Supreme Court told us about how to conduct the categorical analysis.[1] *See McNeill*, 563 U.S. at 821, 131 S.Ct. at 2222 ("The only way to answer this backward-looking question is to consult the law that applied at the time of that conviction."). *McCloud* was controlling Florida Supreme Court law from 1976 to 1997, and it said "any degree of force" could support a robbery conviction. 335 So. 2d at 258. Regardless of how the Florida Supreme Court characterized *McCloud* in its *Robinson* decision, there is no erasing the fact that conduct involving minimal force was prosecuted as robbery when *McCloud* was the controlling precedent. *See, e.g.*, *Santiago v. State*, 497 So. 2d 975, 976 (Fla. 4th DCA 1986) (upholding a robbery conviction because robbery required only "ever so little" force).

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[1] It's generally true that when a court interprets a statute it tells us what the statute has always meant. But here our interest is not in divining the true meaning of § 812.13. Rather, our interest is in understanding what conduct could have resulted in convictions under the statute between 1976 and 1997, even if Florida courts were misinterpreting the statute during that time.

Another problem with *Fritts*'s reliance on *Robinson* for the proposition that § 812.13 has never included sudden snatching is that it was plainly foreclosed by our own decision in *Welch*. In looking to the version of § 812.13 under which Mr. Welch was convicted, the *Welch* panel acknowledged and even discussed *Robinson*, but it did not adopt *Robinson*'s suggestion that sudden snatching had never been sufficient to support a conviction under § 812.13. *Welch*, 683 F.3d at 1311-12. Rather, it identified sudden snatching as the least culpable conduct for which a person could be convicted under the statute because Mr. Welch pleaded guilty in 1996 – before *Robinson* was decided. *Id.* And 1996 was "a time when the controlling Florida Supreme Court authority held that 'any degree of force' would convert larceny into a robbery." *Id.* at 1311 (quoting *McCloud*, 335 So. 2d at 258-59).

* * *

Fritts was wrong to suggest that *all* unarmed robbery convictions under Fla. Stat. § 812.13 are violent felonies as defined by ACCA's elements clause because use of "any degree of force" could support a § 812.13 conviction from 1976 to 1997. This mistake will continue to have enormous consequences for many criminal defendants who come before our Court. For that reason, and even though *Fritts*'s mistakes do not affect Mr. Stokeling, I feel compelled to explain the error in *Fritts*'s statement, relied on here by the majority, that § 812.13 "has *never* included a theft or taking by mere [sudden] snatching." *Fritts*, 841 F.3d at 942.