

No. 17-8298

IN THE
Supreme Court of the United States

ALFRED LEWIS PATTERSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

The court of appeals concluded, when it denied Mr. Patterson’s motion for a certificate of appealability, that reasonable jurists could not debate whether the Florida battery statute, Fla. Stat. § 784.03(1), is divisible into three separate offenses. (Pet. App. A1 at 2). According to the Eleventh Circuit, it is. *Id.* The district court arrived at the same conclusion. (Pet. App. A2 at 8 (citing *United States v. Green*, 842 F.3d 1299, 1322 (11th Cir. 2016))). The government now contends, however, that this long standing precedent is in error. (BIO¹ at 13). The mere fact that the government asserts this conclusion was in error is clear evidence that the issue is debatable, and that therefore a certificate of appealability should have issued. The government’s argument that any appeal would not succeed on the merits is irrelevant. *See Welch v. United States*, 136 S. Ct. 1257, 1263-64 (2016) (a motion for a certificate of appealability “does not require a showing that the appeal will succeed.”).

Furthermore, the government alleges that because the *Shepard* documents in Mr. Patterson’s case indicate his victim suffered a minor injury he must have been convicted on the basis of Fla. Stat. § 784.03(1)(a)(2) – intentionally causing bodily harm. But regardless of what factual details the *Shepard* documents allege, Mr. Patterson’s conviction could still have been predicated on a mere touching which did not amount to the “violent force” contemplated by *Curtis Johnson*.

That is because the specific conduct alleged in the police report also supports

¹ “BIO” is used to here to refer to the government’s Brief in Opposition filed in this case on July 20, 2018.

a prior conviction under the theory of “touching or striking.” See *Jomolla v. State*, 990 So.2d 1234 (Fla. 3d DCA 2008) (battery by touching or striking proved by evidence of punching victim in the face and striking victim with cane requiring four stitches over right eye); *State v. Clyatt*, 976 So.2d 1182 (Fla. 5th DCA 2008) (beating victim’s head against car window, slapping and punching her in the face and choking victim constituted *prima facie* evidence of battery by touching or striking); *Byrd v. State*, 789 So.2d 1169 (Fla. 3d DCA 2001) (knocking the defendant to the ground constituted battery by touching or striking). Here, similarly, the evidence of busting of the victim’s lip would equally support a conviction under the “touching or striking” type of battery. It is thus impossible to ascertain whether Mr. Patterson was convicted under “touching or striking” or “causing bodily harm.”

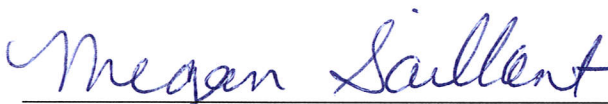
Because it is clear that the touching and striking element does not necessarily involve the level of force contemplated by the force clause of the Armed Career Criminal Act, see *Curtis Johnson v. United States*, 559 U.S. 133, 141-42 (2013), this conviction cannot be considered a predicate “violent felony.” Without consideration of this prior battery conviction, Mr. Patterson does not qualify as an armed career criminal, and his sentence as such is unconstitutional.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted or, alternatively the Court should grant summary reversal and remand to the Court of Appeals with instructions to grant a COA or review Petitioner's application for COA anew.

Respectfully submitted,

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