

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2017

ERNEST D. SHIELDS,

PETITIONER,

VS.

UNITED STATES OF AMERICA,

RESPONDENT.

**ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

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June 12, 2018

QUESTIONS PRESENTED

1. Does burglary of nonpermanent or mobile vehicles, namely mobile homes, trailers, or other living quarters, exceed generic burglary and fail to qualify as "burglary" under the Armed Career Criminal Act?

This Court has granted certiorari on essentially the same issue in United States v. Stitt, No. 17-765, cert. granted April 23, 2018, and United States v. Sims, No. 17-766, cert. granted April 23, 2018, where the issue arose under, respectively, Tennessee's aggravated burglary and Arkansas residential burglary statutes. The Court also has a pending petition raising this issue under the Illinois residential burglary statute. Smith v. United States, No. 17-7517, cert. filed January 17, 2018.

2. Does the Illinois armed robbery statute categorically require the use of "violent force" and therefor qualify as a violent felony under the Armed Career Criminal Act?

This Court has granted certiorari on essentially the same issue in Stokeling v. United States, No. 17-5554, cert. granted April 2, 2018, where the issue arose under Florida's robbery statute. The Court also has two pending petitions raising this issue under the Illinois robbery statute. Klikno v. United States, No. 17-5018, cert. filed June 22, 2017 and Van Sach v. United States, No. 17-8740, cert. filed April 26, 2018.

TABLE OF CONTENTS

| | |
|--------------------------------------|-----|
| QUESTION PRESENTED..... | i |
| TABLE OF CONTENTS..... | ii |
| TABLE OF AUTHORITIES..... | iii |
| PETITION FOR WRIT OF CERTIORARI..... | 1 |
| OPINION BELOW..... | 1 |
| JURISDICTION..... | 1 |
| STATUTES INVOLVED..... | 2 |
| INTRODUCTION..... | 5 |
| STATEMENT OF THE CASE..... | 7 |
| STATEMENT OF FACTS..... | 9 |

REASONS FOR GRANTING THE WRIT.....12

I. **Burglary of nonpermanent or mobile vehicles, namely mobile homes, trailers, or other living quarters, exceeds generic burglary and fails to qualify as “burglary” under the Armed Career Criminal Act.....13**

II. **The Illinois armed robbery statute does not categorically require the use of “violent force” and therefor does not qualify as a violent felony under the Armed Career Criminal Act.....22**

CONCLUSION.....30

APPENDIX

Shields v. United States, No. 17-1929 (7th Cir. 2018)..A.1

Grant of Certificate of Appealability.....A.9

TABLE OF AUTHORITIES

CASES

| | |
|--|--------------------------------|
| <u>Deschamps v. United States</u> , 133 S.Ct. 2276 (2013)..... | 16 |
| <u>Gonzales v. Duenas-Alvarez</u> , 127 S.Ct. 815 (2007)..... | 18 |
| <u>Johnson v. United States</u> , 130 S.Ct. 1265 (2010)..... | 23, 25, 26, 29 |
| <u>Johnson v. United States</u> , 135 S.Ct. 2551 (2015)..... | 15, 16, 24, 25 |
| <u>Mathis v. United States</u> , 136 S.Ct. 2243 (2016)..... | 13, 14, 16, 18, 21, 22, 26, 27 |
| <u>People v. Bowels</u> , 111 Ill.2d 58, 488 N.E.2d 995 (1986)..... | 28 |
| <u>People v. Patton</u> , 76 Ill.2d 45, 389 N.E.2d 1174 (1979)..... | 28 |
| <u>People v. Torres</u> , 327 Ill.App.3d 106, 764 N.E.2d 1206 (5 th Dist. 2002)..... | 17 |
| <u>Shepard v. United States</u> , <u>Shepard v. United States</u> , 544 U.S. 13, 125 S.Ct. 1254 (2005)..... | 18, 27 |
| <u>Smith v. United States</u> , 877 F.3d 720 (7 th Cir. 2017)..... | 13, 14, 15, 21 |
| <u>Taylor v. United States</u> , 110 S.Ct. 2143 (1990).... | 16, 17 |
| <u>United States v. Bedell</u> , 981 F.2d 915 (7 th Cir. 1992)..... | 28 |

| | |
|--|--------|
| <u>United States v. Castro-Vasquez</u> , 802 F.3d 28 (1 st Cir. 2015) | 23 |
| <u>United States v. Dickerson</u> , 901 F.2d 579 (7 th Cir. 1990) | 25, 26 |
| <u>United States v. Gardner</u> , 823 F.3d 793 (4 th Cir. 2016) | 24 |
| <u>United States v. Parnell</u> , 818 F.3d 974 (9 th Cir. 2016) | 24 |
| <u>United States v. Sims</u> , 854 F.3d 1037, 1040 (8 th Cir. 2017), cert. granted, No. 17-766 | 19 |
| <u>United States v. Stitt</u> , 860 F.3d 854 (6 th Cir. 2017), cert. granted, No. 17-765 | 18 |

STATUTES

| | |
|--|--------|
| 18 U.S.C. sec. 924(e) (1) | 15 |
| 18 U.S.C. sec. 924(e) (2) (B) | 15, 24 |
| 720 ILCS 5/18-1 (1999) | 23 |
| 720 ILCS 5/18-2 (2000) | 23 |
| Ill.Rev.Stat. 1985, ch. 38, par. 19-3(a) | 19 |
| Ill.Rev.Stat. 1987, ch. 38, par. 2-6 | 20 |

PETITION FOR A WRIT OF CERTIORARI

Petitioner Ernest D. Shields respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

OPINION BELOW

The opinion of the United States Court of Appeals appears in the Appendix to this Petition at page 1.

JURISDICTION

Shields sought post-conviction relief under 28 U.S.C. sec. 2255. The District Court denied relief and denied a Certificate of Appealability. The Appellate Court granted a Certificate of Appealability on July 25, 2017. Shields filed a timely appeal, and the Court of Appeals affirmed on March 21, 2018. By a *pro se* motion, Shields obtained an extension of time to file a petition for rehearing, to May 21, 2018. On May 21, 2018, no petition for rehearing being filed, the Appellate Court issued its certified copy of the judgment and mandate. This Court has jurisdiction under 28 U.S.C. Sec. 1254(1).

STATUTES INVOLVED

18 U.S.C. Sec. 924 (e)

(e) (1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

(2) As used in this subsection-

(A) the term "serious drug offense" means-

(i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq/), or chapter 705 of title 46, for which a maximum term of imprisonment of ten years or more is prescribed by law; or

(ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), for which a maximum term of imprisonment of ten years or more is prescribed by law;

(B) the term "violent felony" means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that-

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

(ii) is burglary, arson, or extortion, involves the use of explosives, or otherwise involves conduct that presents a serious

potential risk of physical injury to another;
and

(C) the term "conviction" includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.

Ill.Rev.Stat. 1982, ch. 38, par. 19-1(a)

A person commits burglary when without authority he knowingly enters or without authority remains within a building, housetrailer, watercraft, aircraft, motor vehicle as defined in The Illinois Vehicle Code, railroad car, or any part thereof, with intent to commit therein a felony or theft. This offense shall not include the offenses set out in section 4-102 of The Illinois Vehicle Code, nor the offense of residential burglary as defined in Section 19-3 hereof.

Ill.Rev.Stat. 1985, ch. 38, par. 19-3(a)

A person commits residential burglary who knowingly and without authority enters the dwelling place of another with the intent to commit therein a felony or theft.

Ill.Rev.Stat. 1987, ch. 38, par. 2-6

Sec. 2-6. "Dwelling". (a) Except as otherwise provided in subsection (b) of this Section, "dwelling" means a building or portion thereof, a tent, a vehicle, or other enclosed space which is used or intended for use as a human habitation, home or residence."

(b) For the purposes of Section 19-3 of this Code, "dwelling" means a house, apartment, mobile home, trailer, or other living quarters in which at the time of the alleged offense the owners or occupants actually reside or in their absence intend within a reasonable period of time to reside.

720 ILCS 5/18-1 and 18-2

5/18-1. Robbery. (a) A person commits robbery when he or she knowingly takes property, except a motor vehicle covered by Section 18-3 or 18-4, from the person or presence of another by the use of force or by threatening the imminent use of force. 720 ILCS 5/18-1 (1999).

5/18-2. Armed robbery. (a) A person commits armed robbery when he or she violates Section 18-1; and

(1) he or she carries on or about his or her person or is otherwise armed with a dangerous weapon other than a firearm; or

(2) he or she carries on or about his or her person or is otherwise armed with a firearm; or

(3) he or she, during the commission of the offense, personally discharges a firearm; or

(4) he or she, during the commission of the offense, personally discharges a firearm that proximately causes great bodily harm, permanent disability, permanent disfigurement, or death to another person. 720 ILCS 5/18-2 (2000).

INTRODUCTION

Shields was sentenced as an armed career criminal based upon his prior convictions of residential burglary and armed robbery. He asserts that neither is a violent felony for purposes of the armed career criminal act.

On the burglary issue, certiorari has been granted in United States v. Stitt, No. 17-765, cert. granted April 23, 2018, on the issue of whether Tennessee's aggravated burglary statute fit the definition of generic burglary. The Illinois residential burglary statute is similar to the Tennessee aggravated burglary statute. The argument is that the Illinois burglary statute is overbroad and does not fit the definition of generic burglary. Also, certiorari was granted in United States v. Simms, No. 17-766, cert. granted April 23, 2018, and the case consolidated with United States v. Stitt. Ernest Shields respectfully requests that this Court hold his petition for resolution in light of the Court's expected decision in United States v. Stitt and United States v. Simms.

On the robbery issue, certiorari has been granted in Stokeling v. United States, No. 17-5554, cert. granted April 2, 2018, on the issue of whether Florida robbery is a violent felony for purposes of the armed career criminal act. The Illinois armed robbery statute is essentially the same as the Florida robbery statute. The argument is that Illinois armed robbery does not require "violent force". Shields respectfully requests that this Court hold his petition for resolution in light of the Court's expected decision in Stokeling v. United States. The Court also has two pending petitions raising this same issue under the Illinois robbery statute - Klikno v. United States, No. 17-5018, cert. filed June 22, 2017; and Van Sach v. United States, No. 17-8740, cert. filed April 26, 2018.

STATEMENT OF THE CASE

In the district court, Shields stood trial in Case No. 11 CR 440 on a charge of unlawful possession of a firearm by a felon. At sentencing Shields proceeded *pro se*. His prior felonies for aggravated battery, residential burglary, and armed robbery were found to be "violent felonies" that qualified him for sentencing under the Armed Career Criminal Act. He was sentenced to the fifteen year mandatory minimum.

On appeal from the jury conviction, reported at 789 F.3d 733 (7th Cir. 2015) Shields alleged error in the denial of his motion to suppress, denial of his Brady violation motion, denial of his motion to continue trial to file replies in support of pending motions and to locate two witnesses, error in consideration of two prior convictions for aggravated battery and residential burglary because his civil rights had been restored, and challenged the constitutionality of Sec. 922(g)(1) under the Second Amendment right to bear arms. The judgment of the district court was affirmed.

On September 11, 2015, Shields caused a Petition for Writ of Certiorari to be filed in this Court. The issues presented were (1) whether prior convictions must be proven to a jury, under Alleyne v. United States, 133 S.Ct. 2151 (2013); (2) whether Brady v. Maryland, 83 S.Ct. 1194 (1963) applies to suppression hearings, and (3) whether the prior convictions of Shields were "violent felonies" under the Armed Career Criminal Act. The petition was denied on November 2, 2015.

On November 1, 2016 Shields' Motion for Relief under 28 U.S.C. Sec. 2255 was filed, and docketed as Case No. 16 CV 10265. Shields challenged his sentencing under the ACCA. Shields alleged that none of the felonies found to be "violent felonies" - aggravated battery, residential burglary, and armed robbery - qualified as predicate felonies for application of the ACCA. More specifically, Shields argued that the Illinois statute for residential burglary did not meet the generic definition of burglary and that the armed robbery statute did not require the necessary degree of force. The court denied both his Section 2255 motion and a certificate of appealability.

Direct Appeal and Decision

On July 25, 2017 Shields obtained a certificate of appealability from the appellate court, and the appeal was docketed as No. 17-1929. On appeal from the denial of his Section 2255 motion, he continued to challenge his ACCA sentence, pursuing the issue of whether the district court erred in holding that his prior convictions of residential burglary and armed robbery were qualifying felonies. The appellate court affirmed the district court's denial of Shields' Sec. 2255 motion.

STATEMENT OF FACTS

Shields stood trial in Case No. 11 CR 440 on a charge of unlawful possession of a firearm by a felon. He was found guilty and sentenced to 15 years imprisonment under the Armed Career Criminal Act.

At the sentencing hearing, the prior convictions offered against him were:

- a) on December 1, 1994, Shields was convicted of aggravated battery that occurred on December 15, 1991, case number 93 CR 403801, in

the Circuit Court of Cook County, Illinois and sentenced to ten years imprisonment.

b) on March 30, 1995, Shields was convicted of residential burglary that occurred on August 21, 1994, case number 94 CR 2911401, in the Circuit Court of Cook County, Illinois and sentenced to six years imprisonment.

c) on October 5, 2005 Shields was convicted of armed robbery that occurred on November 17, 2003, case number 03 CR 2788801, in the Circuit Court of Cook County, Illinois and sentenced to eleven years imprisonment.

These three prior offenses were found to be "violent felonies" and were the basis for application of the ACCA.

Sentencing was on February 25, 2014. At the sentencing hearing, Shields represented himself, though at trial he was represented by counsel. On October 5, 2005 he pled guilty to the armed robbery. The residential burglary and aggravated battery were noted. The armed robbery was verbally described as being of a 78 year old woman at gunpoint. The source of the

information is not stated. Shields was sentenced to the 15 year mandatory minimum. On June 15, 2015 the conviction was affirmed on appeal in Appeal No. 13-3726.

On November 1, 2016 Shields caused a Motion for Relief under 28 U.S.C. Sec. 2255 to be filed on his behalf, as Case No. 16 CV 10265. On March 31, 2017 the district court denied Shield's Motion for Relief under 28 U.S.C. Sec. 2255.

Shields took an appeal from the denial of relief under his motion. The issues raised on appeal were whether his prior conviction of residential burglary and his prior conviction of armed robbery were qualifying felonies for purpose of the ACCA. The Seventh Circuit Court of Appeals affirmed his conviction under the Armed Career Criminal Act. The decision is Ernest D. Shields v. United States, No. 17-1929 (March 21, 2018 (7th Cir.)).

In this petition, Shields again raises the issues of whether his prior conviction of residential burglary and his prior conviction of armed robbery were qualifying felonies for purpose of the ACCA.

REASONS FOR GRANTING THE WRIT

A writ should be granted because neither Shield's residential burglary conviction nor his armed robbery conviction were qualifying felonies under the Armed Career Criminal Act.

As to the burglary conviction, this Court has granted certiorari on essentially the same issue in United States v. Stitt, No. 17-765, cert. granted April 23, 2018, where the issue arose under Tennessee's aggravated burglary statute; and also with the consolidated case of United States v. Simms, No. 17-766, cert. granted April 23, 2018. The Court also has a pending petition raising this issue under the Illinois residential burglary statute. Smith v. United States, No. 17-7517, cert. filed January 17, 2018.

As to the armed robbery statute, this Court has granted certiorari on essentially the same issue in Stokeling v. United States, No. 17-5554, cert. granted April 2, 2018, where the issue arose under Florida's robbery statute. The Court also has two pending petitions raising this issue under the Illinois robbery

statute. Klikno v. United States, No. 17-5018, cert. filed June 22, 2017 and Van Sach v. United States, No. 17-1824, cert. filed April 26, 2018.

Part I - Burglary

I. Burglary of nonpermanent or mobile vehicles, namely mobile homes, trailers, or other living quarters, exceeds generic burglary and fails to qualify as "burglary" under the Armed Career Criminal Act.

Conflict with Mathis and other Circuits

Ernest Shields argues that the Seventh Circuit wrongly decided Smith v. United States, 877 F.3d 720 (7th Cir. 2017), by expanding the definition of "structures" to include "trailers". It is the argument of Shields that a trailer is a vehicle, and in including trailers in the definition of generic burglary the Seventh Circuit is contrary to the Supreme Court's decision in Mathis. The Iowa burglary statute included "any building, structure, [or] land, water or air vehicle". Mathis v. United States, 136 S.Ct. 2243, 2250 (2016). Mathis held that because the elements of the Iowa burglary statute are broader than generic burglary, it does not satisfy the

definition of generic burglary. Mathis v. United States, 136 S.Ct. at 2250.

The Seventh Circuit seems to argue that a trailer is a structure, and therefore within the limits of Mathis. But by such argument so are land, water or air vehicles, which is a result clearly opposite to Mathis. The Seventh Circuit argues that "almost all states had expanded their definitions of burglary," and implies that therefore Mathis does not mean what it says. See Smith v. United States, 877 F.3d 720. Yet in Mathis, the Court stated, "We have often held, and in no uncertain terms, that a state crime cannot qualify as an ACCA predicate if its elements are broader than those of a listed generic offense." Mathis v. United States, 136 S.Ct. at 2251.

Conflict among the Circuits

The Seventh Circuit itself notes in its decision in Smith, that the Seventh Circuit is in conflict with the decisions of the 4th, 6th, 8th, and 9th districts. It is consistent with the 10th Circuit, and perhaps with the 5th Circuit, in which a rehearing *en banc* is pending. See Smith v. United States, 877 F.3d 720.

The Armed Career Criminal Act

The ACCA provides that a person who violates section 922(g) and has three previous convictions for a violent felony shall be sentenced to at least a mandatory minimum sentence of fifteen years. 18 U.S.C. sec. 924(e)(1).

A "violent felony" is:

"any crime punishable by imprisonment for a term exceeding one year ... that-

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

(ii) is burglary, arson, or extortion, involves the use of explosives... 18 U.S.C. sec. 924(e)(2)(B).

The residual clause was held unconstitutional in Johnson v. United States, 135 S.Ct. 2551 (2015).

Burglary as a "crime of violence"

The Illinois statutory offense of burglary may be a "crime of violence" because it is listed as such in the ACCA. Because burglary is categorized as a "crime of violence" in the ACCA, the characteristics of generic burglary must be considered to determine whether a statute entitled "burglary" of a particular State is

indeed recognized as burglary by the ACCA.

Categorical approach

The Supreme Court stated the principle that courts shall use the "categorical approach" when deciding whether an offense is a violent felony under the listed offenses of the ACCA, looking "only to the fact that the defendant has been convicted of crimes falling within certain categories, and not to the facts underlying the prior convictions." Johnson v. United States, 135 S.Ct. at 2562, citing Taylor v. United States, 495 U.S. at 599-602, 110 S.Ct. 2143 (1990).

In applying the categorical approach, the courts ask whether the elements of the offense forming the basis for the conviction sufficiently matches the elements of the generic version of the crime. Mathis v. United States, 136 S.Ct. at 2248. Only the elements of the statute are considered, provided the statute is indivisible. Deschamps v. United States, 133 S.Ct. 2276 (2013).

The definition of generic burglary

The Supreme Court defined generic burglary as the unlawful entry into a building or other structure, with

intent to commit a crime. Taylor v. United States, 495 U.S. at 598.

Illinois burglary

The Illinois residential burglary statute, which includes mobile homes, trailers, or other living quarters, is broader than generic burglary and therefore is not a qualifying offense under the ACCA.

"Dwelling" includes mobile home or trailer

Under the Illinois residential burglary statute, a "dwelling" includes, among other things, a mobile home or trailer in which at the time of the alleged offense the owners or occupants actually reside or in their absence intend within a reasonable time to reside. People v. Torres, 327 Ill.App.3d 106, 764 N.E.2d 1206, 1210 (5th Dist. 2002).

The scope of "building or other structure"

Although not defined, "building or other structure" does not include vehicles and movable enclosures. For example, in Mathis, Iowa's burglary statute covered more conduct than generic burglary, where it reached 'any building, structure, [or] land, water, or air vehicle.'

Mathis v. United States, 136 S.Ct. at 2250. In Gonzales v. Duenas-Alvarez, a statute fell outside the generic definition of burglary by including a vehicle, "which falls outside the generic definition of 'burglary,' for a car is not a 'building or structure'". Gonzales v. Duenas-Alvarez, 549 U.S. 183, 186-87, 127 S.Ct. 815 (2007), cited in United States v. Stitt, 860 F.3d at 857. Distinction between the movable and immovable

This Court makes burglary a violent felony only if committed in a building or enclosed space, not a boat or motor vehicle. Shepard v. United States, 544 U.S. 13, 15-16, 125 S.Ct. 1254 (2005).

The Sixth Circuit states the distinction it sees in the Supreme Court cases between vehicles/movable enclosures as compared to buildings and structures. It notes that while the term "buildings or other structures" is not defined by the Supreme Court, the Court has repeatedly confirmed that vehicles and movable enclosures fall outside the definitional sweep of "building or other structure." United States v. Stitt, 860 F.3d 854, 857 (6th Cir. 2017), petition for certiorari granted April 23,

2018, No. 17-765.

The Eighth Circuit agrees with this distinction, holding that the Arkansas burglary statute sweeps more broadly than generic burglary, even though it is limited to vehicles in which a person lives or is customarily used for overnight accommodations. United States v. Sims, 854 F.3d 1037, 1040 (8th Cir. 2017) petition for certiorari granted, April 23, 2018, No. 17-766.

The Seventh Circuit, in holding that the Illinois residential burglary statute meets the definition of generic burglary, where it includes trailers, comes to the opposite conclusion and creates a conflict in the circuits.

The Illinois statutes

The 1985 Illinois residential burglary statute provides:

A person commits residential burglary who knowingly and without authority enters the dwelling place of another with the intent to commit therein a felony or theft. Ill.Rev.Stat. 1985, ch. 38, par. 19-3(a).

Illinois defines "dwelling" to include a vehicle, or other enclosed space:

Sec. 2-6. "Dwelling". (a) Except as otherwise provided in subsection (b) of this Section, "dwelling" means a building or portion thereof, a tent, a vehicle, or other enclosed space which is used or intended for use as a human habitation, home or residence.

(b) For the purposes of Section 19-3 of this Code, "dwelling" means a house, apartment, mobile home, trailer, or other living quarters in which at the time of the alleged offense the owners or occupants actually reside or in their absence intend within a reasonable period of time to reside. Ill.Rev.Stat. 1987, ch. 38, par. 2-6.

The definition of dwelling seems to be split between items listed in paragraphs "a" and "b." But with the catch-all in paragraph "b" of "or other living quarters" the statute effectively includes everything listed in paragraph "a" and more.

More specifically, the Illinois residential burglary statute expressly includes trailers. The Illinois statute also includes mobile homes. Mobile homes and trailers are movable. The Illinois statute includes any "living quarters". "Living quarters" can be anything - a structure, any vehicle, any airplane, any boat, so long as somebody lives in it, or lived in it in the past and merely intends to return to it. It is a definition of

burglary that exceeds the generic definition of burglary. This is squarely within the same range as described by the Iowa burglary statute held in Mathis to be too broad for the elements of generic burglary. Mathis v. United States, 136 S.Ct. at 2250.

Reliance on Smith v. United States

The Seventh Circuit rejected Shields' argument, relying on its previous decision of Smith v. United States, 877 F.3d 720, petition for certiorari pending. The appellate court concluded that the Illinois residential burglary statute does not include boats or tents, and the state courts have excluded vehicles other than occupied trailers. Smith v. United States, 877 F.3d at 723.

The Seventh Circuit's decision, in acknowledging that trailers are vehicles, yet holding the Illinois residential burglary statute to be no more encompassing than generic burglary, is in conflict with the Supreme Court precedent of Mathis v. United States, 136 S.Ct. 2243 and with other circuits.

On interpretation of Supreme Court decisions

The Supreme Court has recognized the problem of having the rule on interpretation of the ACCA recognized, and stated, "A good rule of thumb for reading our decisions is that what they say and what they mean are one and the same." Mathis v. United States, 136 S.Ct. at 2254.

Conclusion

The elements of the Illinois residential burglary statute exceed the definition of generic burglary and the statute is not a qualifying enumerated felony under the ACCA. The ACCA sentencing of the defendant cannot stand.

Part II - Robbery

II. The Illinois armed robbery statute does not categorically require the use of "violent force" and therefor does not qualify as a violent felony under the Armed Career Criminal Act.

Certiorari already granted on this issue

This Court has granted certiorari on essentially the same issue in Stokeling v. United States, No. 17-5554, cert. granted April 2, 2018, where the issue arose under Florida's robbery statute. The Florida statute prohibits

the taking of property by "the use of force, violence, assault, or putting in fear" Fla.Stat. Sec. 812.13. The Illinois robbery statute prohibits the taking of property "by the use of force or by threatening the imminent use of force." 720 ILCS 5/18-1 (1999). That Shields was convicted of armed robbery does not change this, as in Illinois, one simply has to have a weapon upon his person for the robbery to become armed robbery, without even communicating the fact to the victim. 720 ILCS 5/18-2 (2000).

The Court also has two pending petitions raising this issue under the Illinois robbery statute. Klikno v. United States, No. 17-5018, cert. filed June 22, 2017 and Van Sach v. United States, No. 17-8740, cert. filed April 26, 2018.

Conflict with other circuits

Because the Seventh Circuit has not re-examined the state robbery predicate felonies under the ACCA in light of the "violent force" requirement stated in Johnson v. United States, 130 S.Ct. 1265, 1274 (2010), it has created a conflict with the First, Fourth and Ninth

Circuits. The First Circuit remanded a case for consideration of whether robbery in Puerto Rico required only the slightest force, noting that if so, the requirement of "violent force" stated in Johnson would not be met. United States v. Castro-Vasquez, 802 F.3d 28, 37-38 (1st Cir. 2015). The Fourth Circuit held that since the North Carolina robbery statute included use of minimal force to satisfy the force requirement, it did not satisfy the "violent force" requirement. United States v. Gardner, 823 F.3d 793 (4th Cir. 2016). The Ninth Circuit held that the Massachusetts robbery statute included robberies requiring only "minimal, nonviolent force" - purse snatchings - and were not sentencing enhancers. United States v. Parnell, 818 F.3d 974 (9th Cir. 2016).

The ACCA definition of a "violent felony"

Armed robbery is not an enumerated offense under the ACCA. The residual clause of the ACCA has been held unconstitutional. Johnson v. United States, 135 S.Ct. at 2563. The applicable provision of the ACCA for determining whether armed robbery is a "violent felony"

is the elements clause:

"any crime punishable by imprisonment for a term exceeding one year ... that-

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; 18 U.S.C. sec. 924(e)(2)(B).

Physical force

Under Johnson, "physical force" means a violent force - that is, one capable of causing physical pain or injury to another person. Johnson v. United States, 130 S.Ct. 1265, 1271 (2010). Whether a crime is a "violent felony" is determined "in terms of how the law defines the offense and not in terms of how an individual offender might have committed it on a particular occasion." Johnson v. United States, 135 S.Ct. at 2557.

Reliance on Dickerson

The Seventh Circuit relies on United States v. Dickerson, 901 F.2d 579, 584 (7th Cir. 1990), decided twenty years before Johnson v. United States, 130 S.Ct. 1265. The Dickerson case held that Illinois robbery was a "violent felony". United States v. Dickerson, 901 F.2d at 584. It did not address the issue of what is "violent

force" under Johnson, because Johnson had not yet been decided. In Dickerson, the court held that "a violation of the Illinois robbery statute per se constitutes a violent felony for purposes of 18 U.S.C. Sec. 924(e)(2)(B)" and also considered the facts of the case, which were that Dickerson struck the victim and knocked him to the ground. United States v. Dickerson, 901 F.2d at 584.

Dickerson does not present the issue considered in Johnson v. United States, 130 S.Ct. 1265 (2010). Dickerson presented the issue of whether the Illinois statute, coupled with the facts of how the defendant committed the offense, met the definition of a "violent felony". Johnson addressed the separate issue of how much force constitutes sufficient force to be "violent force" and therefore the basis of a "violent felony". How the defendant committed the offense is not to be considered. Mathis v. United States, 136 S.Ct. at 2248. By continuing to follow the Dickerson case, the Seventh Circuit is in conflict with the decisions of other circuits, which are applying the Johnson case to their

determinations of whether a state robbery statute requires "violent force".

The modified categorical approach

The United States Supreme Court approved the "modified categorical approach" for use with statutes having multiple alternative elements. See Shepard v. United States, 544 U.S. at 26, 125 S.Ct. 1254. Using this approach, the sentencing court considers limited documents, including the indictment, jury instructions or plea agreement and colloquy to determine both the crime and the elements for which the defendant was convicted. The offense is then compared with the relevant generic offense. Mathis v. United States, 136 S.Ct. at 2249.

Illinois robbery statute does not require "violent force"

While the Illinois robbery statute requires force, it does not require "violent force." Two purse snatching cases, one being theft from person, the other robbery, demonstrate two different levels of force in Illinois offenses. For theft from person, the force of the act is only that force sufficient to overcome the force exerted by a victim in maintaining control over an object held in

the hand. People v. Bowels, 111 Ill.2d 58, 488 N.E.2d 995, 998 (1986), citing People v. Patton, 76 Ill.2d 45, 389 N.E.2d 1174 (1979). For robbery, the force is greater than that for theft from person. In the Bowels case, a purse snatching was held to be robbery, where it involved pushing back and immobilizing the victim's hand, and the victim's body "turned slightly." People v. Bowels, 111 Ill.2d 58, 488 N.E.2d at 998. In Patton, a purse snatching robbery conviction was reversed, with directions to enter judgment on theft from person, where the victim's arm was thrown back "a little bit." People v. Patton, 76 Ill.2d 45, 389 N.E.2d at 1177.

This is an awfully subtle force difference to distinguish between a purse snatching that is a theft from person and a purse snatching that is a robbery. And it is hard to distinguish the difference between taking a cane or umbrella from a hand, which is not robbery, and taking a purse from a hand, which sometimes is a robbery. See United States v. Bedell, 981 F.2d 915, 916 (7th Cir. 1992). But one thing is abundantly clear - neither of the purse snatchings involve "violent force" within the

meaning of Johnson v. United States, 130 S.Ct. 1265.

Conclusion

The Illinois armed robbery statute does not categorically require the use of "violent force" and does not qualify as a violent felony under the ACCA. The ACCA sentencing of the defendant cannot stand.

CONCLUSION

For the foregoing reasons, it is respectfully requested that this Court grant a writ of certiorari to review the decision below.

Respectfully submitted,

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Dated: June 12, 2018

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NO. _____

THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2017

ERNEST D. SHIELDS,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

CERTIFICATE OF SERVICE

I, John T. Kennedy, counsel of record, hereby certify that in this case I have served the Petition for a Writ of Certiorari and Motion to Proceed in Forma Pauperis on the United States of America by mailing on June 12, 2018, in envelope(s) properly stamped and addressed to: Supreme Court of the United States, Office of the Clerk, 1 First Street, NE, Washington, DC 20543; Solicitor General of the United States, 950 Pennsylvania Avenue, N.W., Room 5614, Washington, DC 20530-001; and David E. Bindi, AUSA, 219 Dearborn Street, 5th Floor, Chicago, Illinois 60604 which envelope(s) were deposited in the United States Post Office at Evanston, Illinois 60201.

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