

A Resource Guide to Crimes of Violence in the Fourth Circuit

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Understanding which offenses qualify as “crimes of violence” is critical to navigating many federal cases, particularly at sentencing. The Supreme Court’s 2015 decision in *Johnson v. United States* opened the door to challenging numerous predicates. This resource guide takes you step-by-step through the process of determining which predicates qualify under the different federal crime of violence definitions, followed by a citation list of Fourth Circuit decisions addressing many common offenses. Given the evolving nature of the law in this area, this guide should be a starting point—not the final word—on whether a predicate qualifies. I encourage you to do your own research and be creative; the next “*Johnson*” case could be yours!

IDENTIFYING CRIMES OF VIOLENCE: FOUR STEPS

The steps are:

- (1) Identify the specific “crime of violence” definition at issue
- (2) Identify the specific offense in question
- (3) Determine which approach should be used to compare the offense with the definition (categorical or modified categorical)
- (4) Categorically compare the specific offense with the specific crime of violence definition to determine whether the offense satisfies the definition

STEP ONE: Identify the specific “crime of violence” definition at issue.

The first task in determining whether an offense qualifies as a crime of violence is to identify the specific crime of violence definition at issue. Although we often refer to crimes of violence interchangeably, it’s important to keep in mind that the Armed Career Criminal Act (ACCA), U.S.S.G. § 4B1.2, 18 U.S.C. § 16(a), and 18 U.S.C. § 924(c) each has its own crime of violence definition. And although these definitions are largely similar, they are not necessarily identical. Below is a description of these four definitions and their requirements.

ARMED CAREER CRIMINAL ACT (ACCA), 18 U.S.C. § 924(e)

Instead of “crime of violence,” the ACCA uses the term “violent felony.” 18 U.S.C. § 924(e)(2)(B) defines a “violent felony” as:

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 use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another[.]

Subsection (i) is known as the “force” clause or the “elements” clause, while Subsection (ii) is the “enumerated offenses” clause. The latter portion of Subsection (ii) (“otherwise involves conduct that presents a serious potential risk of physical injury to another”) is known as the “residual clause,” which the Supreme Court struck down as unconstitutionally vague in *Johnson v. United States*, 135 S. Ct. 2551 (2015).

Subsection (i)’s Force Clause: ACCA’s force clause has multiple requirements. To fall within the force clause, the force involved must (1) be violent; (2) intentional; (3) must be directed against a person; (4) must be directed against the person of another; and involve (5) affirmative force (not acts of omission); and (6) actual threat of force (not attempted threat).

Force Clause Requirements:

- (1) **Violent** physical force: The phrase “physical force” means “*violent* force—that is, force capable of causing physical pain or injury to another person.” *Johnson v. United States*, 559 U.S. 133, 140 (2010). The Supreme Court’s interpretation of “physical force” specifically excludes from consideration “the slightest offensive touching.” *Id.* Thus, if an offense can be committed by mere touching, i.e., without physical force, the offense does not fall within the force clause. The Fourth Circuit has extended this definition of physical force to the Guidelines, see *United States v. Aparicio-Soria*, 740 F.3d 152, 155 (4th Cir. 2014) (en banc), as well as to 18 U.S.C. § 924(c)’s force clause, *United States v. Evans*, 848 F.3d 242, 245 (4th Cir. 2017), and 18 U.S.C. § 16(a)’s force clause, *Karimi v. Holder*, 715 F.3d 561, 566 (4th Cir. 2013). The same requirement of “violent force” thus applies to these four federal force clauses.¹

¹ This does not mean, however, that the four force clauses are identical. They are not. The force clauses of ACCA and U.S.S.G. § 4B1.2 include only force against persons, while the force clauses of § 924(c) and § 16(b) encompass force against persons *and* property.

- (2) **Intentional** use of physical force: The force clause also requires that any use of force be intentional; the reckless use of force (or anything less than recklessness, such as the “culpable negligence” standard that applies to many North Carolina assault offenses) does not suffice. *Borden v. United States*, 141 S. Ct. 1817 (2021) (holding that Tennessee aggravated assault categorically fails to qualify under ACCA’s force clause because the offense can be committed recklessly).

The Fourth Circuit, like most other circuits, has held that crimes with a mens rea higher than recklessness, such as extreme recklessness, qualify under the force clause. *United States v. Manley*, 52 F.4th 143 (4th Cir. 2022) (holding that VICAR assault premised on Virginia unlawful wounding and VICAR murder premised on Virginia second-degree murder satisfy the force clause of § 924(c)).

- (3) Force must be directed **against a person**: Thus, if an offense may be committed through physical force against *property*, it does not fall within ACCA’s force clause. For example, because Hobbs Act robbery can be committed through force directed at property rather than persons, it does not fall within any force clause that is limited to force against persons. *United States v. Green*, 996 F.3d 176, 180 (4th Cir. 2021) (holding that Hobbs Act robbery is not a crime of violence under the force clause of U.S.S.G. § 4B1.2).
- (4) Force must be directed against person **of another**: In other words, if the offense can be committed by inflicting (or threatening to inflict) self-harm, the offense does not fall within ACCA’s force clause. For example, federal aggravated sexual abuse, as proscribed under 18 U.S.C. § 2241(a)(2), can be committed by threatening to commit suicide if the victim does not provide sex, *see United States v. Rojas*, 520 F.3d 876 (8th Cir. 2008), and thus would not qualify as a violent felony. If a statute uses the words “force against *any* person” – rather than the person of another – do the research to see if there are any cases interpreting the statute to include self-harm or threat of self-harm.
- (5) Force must be **affirmative**: Acts of omission—such as failing to provide care, as is common for many child abuse offenses—should not qualify. Note, however, there is a circuit split on this issue. *Compare, e.g., United States v. Mayo*, 901 F.3d 218 (3d Cir. 2018) (holding that Pennsylvania aggravated assault is not a violent felony because it can be committed through “the deliberate failure to provide food or medical care”) *with United States v. Scott*, 990 F.3d 94 (2d Cir. 2020) (rejecting argument that New York first-degree manslaughter is not a violent felony because it can be committed through acts of omission). **Be aware**: in *United States v. Rumley*, 952 F.3d 538 (4th Cir. 2020), the Fourth Circuit in dicta noted

that acts of omission *do* qualify under the force clause. In addition to being dicta, *Rumley*'s reasoning on this point was based on the "realistic probability" test, which the Supreme Court has since disavowed for federal offenses in *United States v. Taylor*, 142 S. Ct. 2015 (2022).

- (6) **Actual threat of force** required: "Attempted threats" do not suffice. In *United States v. Taylor*, 142 S. Ct. 2015 (2022), the Supreme Court affirmed the Fourth Circuit's holding that attempted Hobbs Act robbery is not a crime of violence under the force clause because it can be committed by an *attempted threat* of force (by, for example, doing everything necessary to prepare to rob a store by threatened use of force, i.e., by writing a "stick-up note," only to be arrested before the robbery occurs), which is insufficient to qualify as the use, attempted use, or threatened use of physical force. **Note that** in the Fourth Circuit's underlying *Taylor* decision, the Court says that the same reasoning applies to **attempted carjacking** and **attempted bank robbery**. *Taylor*'s reasoning will also disqualify any other offense that can be committed through the attempted threat of force, like witness tampering (18 U.S.C. § 1512(a)(2)) and witness retaliation (18 U.S.C. § 1513(b)).

Subsection (ii)'s Enumerated Offenses Clause: An offense may also qualify as a violent felony under ACCA if it is "burglary, arson, or extortion" or "involves use of explosives." A prior offense only qualifies as one of these four enumerated offenses if it satisfies the **generic definition** of these offenses. Remember, the label given to the offense is not determinative. *Taylor v. United States*, 495 U.S. 575, 591-92 (1990). In other words, just because an offense is called "burglary" doesn't necessarily mean that the offense qualifies as generic "burglary" under the ACCA. Also, the enumerated offenses are completed offenses, so an inchoate version of the offense does not satisfy the generic definition. For example, attempted burglary is not generic burglary and thus does not fall within the enumerated offenses clause. *See James v. United States*, 550 U.S. 192 (2007); *see also United States v. Lee*, 658 F. App'x 185 (4th Cir. 2016) (attempted arson is not generic arson).

- (1) **Burglary:** The Supreme Court has defined generic burglary as "an unlawful or unprivileged entry into, or remaining in, a building or other structure with intent to commit a crime." *United States v. Stitt*, 139 S. Ct. 399, 405-406 (2018). Although generic burglary does not include breaking into nontypical structures such as vehicles, *Taylor*, 495 U.S. at 599, it does include breaking into vehicles designed or adapted for overnight use, *Stitt*, 139 S. Ct. at 407. The intent to commit a crime need not be contemporaneous with the unlawful entry or unlawful remaining. *See Quarles v. United States*, 139 S. Ct. 1872 (2019).

- (2) **Arson:** generic arson is the intentional burning of real or personal property. *United States v. Knight*, 606 F.3d 171, 174 (4th Cir. 2010). The Eighth Circuit has specified that generic arson “has as elements the malicious burning of real or personal property of another,” *United States v. Whaley*, 552 F.3d 904 (8th Cir. 2009), which would *not* include federal arson (or most state arsons) to the extent these laws encompass destruction of one’s own property. *United States v. Davis*, 53 F.4th 168, 171 (4th Cir. 2022).
- (3) **Extortion:** generic extortion is defined as “obtaining something of value from another with his consent induced by the wrongful use of force, fear, or threats.” *Scheidler v. Nat’l Org. for Women, Inc.*, 537 U.S. 393, 409 (2003); accord *United States v. Gardner*, 823 F.3d 793, 802 n.5 (4th Cir. 2016), *abrogated in part by United States v. Dinkins*, 928 F.3d 349 (4th Cir. 2019). In *Gardner*, the Fourth Circuit explained that North Carolina common law robbery is not generic extortion because robbery has an element requiring lack of consent but extortion requires consent. *Gardner*, 823 F.3d at 802 n.5; *see also Ocasio v. United States*, 136 S. Ct. 1423 (2016) (Hobbs Act extortion is not same as Hobbs Act robbery because robbery requires lack of consent, but extortion requires consent).
- (4) **Involves the use of explosives:** There is little guidance on this particular enumerated offense. The Tenth Circuit has held that to qualify under this provision, the offense in question requires “active employment” of explosives. For this reason, the defendant’s bomb threat conviction under 18 U.S.C. § 844(e) was not a violent felony. *United States v. Wilfong*, 733 F. App’x 920, 928 (10th Cir. 2018).

CAREER OFFENDER

Of the four “crime of violence” definitions, the career offender definition is the most expansive. Section 4B1.2(a) of the Guidelines defines a crime of violence as:

- (a) The term “crime of violence” means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that—
- (1) has as an element the use, attempted use, or threatened use of physical force against the person of another, or
 - (2) is murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or the use or unlawful possession of a firearm described in 26 U.S.C. § 5845(a) or explosive material as defined in 18 U.S.C. § 841(c).

Much like ACCA, Subsection (a)(1) is known as the “force clause” and Subsection (a)(2) is the “enumerated offenses” clause. In 2016, the Commission

removed the residual clause from § 4B1.2, along with several enumerated offenses. Note that the career offender definition of “crime of violence” under § 4B1.2 is incorporated into other sections of the Guidelines, like § 2K2.1 and § 7B1.1, so the arguments that apply to § 4B1.2 apply to those sections as well.

§ 4B1.2(a)(1)’s Force Clause: Like ACCA’s force clause, § 4B1.2(a)(1)’s force clause is limited to force directed against *persons*. Thus, just like ACCA, if an offense may be committed by force directed at property, it will not fall within the career offender force clause. Because ACCA’s force clause is “substantively identical” to the career offender force clause, the Fourth Circuit “treats precedents evaluating them interchangeably.” *United States v. Flores-Granados*, 783 F.3d 487, 490 (4th Cir. 2015). Thus, an offense that falls outside ACCA’s force clause will fall outside § 4B1.2’s force clause and vice versa.

§ 4B1.2(a)(2)’s Enumerated Offenses Clause: Unlike ACCA’s enumerated offense clause, the enumerated offense clause of § 4B1.2(a)(2) does *not* include burglary. But it enumerates many other offenses, including “murder, voluntary manslaughter [but *not* involuntary manslaughter], kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or the use or unlawful possession of a firearm described in 26 U.S.C. § 5845(a) or explosive material as defined in 18 U.S.C. § 841(c).” The Guidelines specifically define some of these offenses, while others are defined according to their generic definition. The **six generic offenses** are murder, robbery, arson, aggravated assault, kidnapping, and voluntary manslaughter. The **four defined offenses** are extortion, forcible sex offense, use or unlawful possession of explosive material described in 18 U.S.C. § 841(c), and possession of a firearm described in 25 U.S.C. § 5845(a).

Generic murder: (1) causing the death of another person (2) either (a) intentionally, (b) during the commission of a dangerous felony, or (c) through conducting evincing reckless and depraved indifference to serious dangers posed to human life. *United States v. Marrero*, 743 F.3d 389 (3d Cir. 2014); *United States v. Vederoff*, 914 F.3d 1238 (9th Cir. 2019) (felony murder statute that does not require dangerous felony is not generic).

Generic robbery: (1) misappropriation of property (2) under circumstances involving immediate danger to the person of another. *United States v. Gattis*, 877 F.3d 150 (4th Cir. 2017); *United States v. Fluker*, 891 F.3d 541 (4th Cir. 2017).

Note: Hobbs Act robbery is not generic robbery because it can be violated by threatening property. *United States v. Green*, 996 F.3d 176 (4th Cir. 2021). **BUT note** that, effective November 1, 2023, the Commission has amended the Guidelines to specifically define robbery and to include Hobbs Act robbery.

Generic arson: see above for ACCA discussion of generic arson

Generic aggravated assault: (1) criminal assault (2) plus, at a minimum, the aggravating factors of either (a) intent to cause serious bodily injury to the victim, or (b) the use of a deadly weapon. *United States v. Palomino Garcia*, 606 F.3d 1317 (11th Cir. 2010) (surveyed state law, Model Penal Code, and treatises); *United States v. Simmons*, 917 F.3d 312 (4th Cir. 2019) (generic aggravated assault requires mens rea greater than extreme indifference recklessness).

Generic kidnapping: (1) unlawful restraint or confinement of the victim (2) by force, threat, or deception, or the case of a minor or incompetent individual without the consent of a parent or guardian, (3) (a) for a specific nefarious purpose or with a similar element of heightened intent, or (b) in a manner that constitutes a substantial interference with the victim's identity. *United States v. Flores-Granados*, 783 F.3d 487 (4th Cir. 2015).

Generic voluntary manslaughter: (1) intentional (2) homicide (3) committed under extenuating circumstances which mitigate, though they do not justify, or excuse, the killing. *United States v. Bonilla*, 524 F.3d 647 (5th Cir. 2008).

Extortion as defined by § 4B1.2: “obtaining something of value from another by the wrongful use of (A) force, (B) fear of physical injury, or (C) threat of physical injury.” Note that this definition excludes any threat of force/injury to property or reputation. North Carolina extortion, for example, does not qualify under this definition, because North Carolina extortion includes reputational injury. *See State v. Bowen*, 871 S.E.2d 547, 555 (N.C. App. 2022) (affirming extortion conviction of defendant who threatened to expose victim's “sugar daddy” relationship absent purchase of a confidentiality agreement); *see also Tryco Trucking Co. v. Belk Stores Services*, 634 F. Supp. 1327 1333-34 (W.D.N.C. 1986) (“Fear of economic harm satisfies the definition that extortion is the obtaining of property from another with his consent induced by wrongful use of fear.”). **Note:** Hobbs Act robbery does not equal extortion because it criminalizes threats to property. *See United States v. Green*, 996 F.3d 176 (4th Cir. 2021).

Forcible sex offense as defined by § 4B1.2: “Includes” offenses that have as an element “where consent to the conduct is not given or is not legally valid, such as where consent to the conduct is involuntary, incompetent, or coerced.” But sexual abuse of a minor and statutory rape are included only if the sexual abuse of a minor or statutory rape was “(A) an offense described in 18 U.S.C. § 2241(c) or (B) an offense under state law that would have been an offense under section 2241(c) if the offense had occurred within the special maritime and territorial jurisdiction of the United States.” For sexual abuse of a minor or statutory rape, “force” means “actual force,” i.e., “restraint sufficient that the other person could not escape the sexual contact.” *United States v. Fire Thunder*, 908 F.2d 272 (8th Cir. 1990); *accord United States v. Lauck*, 905 F.2d 15 (2d Cir. 1990); *United States v. H.B.*, 695 F.3d 931 (9th Cir. 2012). Locking or barricading a door does not meet this test. *United States v.*

Serdahl, 316 F. Supp. 2d 859 (D.N.D. 2008). “Sexual act,” as defined in 2246(2), does not include touching through the clothing. *See United States v. Gieswein*, 887 F.3d 1054 (10th Cir. 2018) (Oklahoma lewd molestation statute fails to qualify as forcible sex offense because it can be violated by 1) sexual contact with victim under 16, and 2) broadly encompasses touching on top of clothing.

Use or unlawful possession of explosive material defined in 18 U.S.C. § 841(c): § 841(c) authorizes the Attorney General to publish a list of “explosive material” each year.

Possession of a firearm described in 26 U.S.C. § 5845(a): This is a narrow list – sawed-off shotgun, short-barreled rifle, machine-gun, silencer, or destructive device.

Inchoate offenses: The term “crime of violence” includes “the offenses of **aiding and abetting, attempting to commit, or conspiring** to commit any such offense.” U.S.S.G. § 4B1.2 cmt. n.1. However, **most conspiracy offenses do not qualify**. This is because conspiracy offenses never include physical force as an element, so they do not fall within the force clause, and they cannot fall within the enumerated offenses clause unless they satisfy the definition of **generic conspiracy**. **Generic conspiracy** requires an agreement to commit a crime, **plus an overt act** in furtherance of that agreement. *United States v. McCollum*, 885 F.3d 300 (4th Cir. 2018). Most conspiracy offenses, including North Carolina conspiracy, lack the overt act element and thus can never qualify as crimes of violence.

Effective November 1, 2023, many of these enumerated offenses are now defined under the text, rather than the commentary, of § 4B1.2. The 2023 amendments also move inchoate crimes from the commentary to the text. This move from the commentary to the text will abrogate decisions like *United States v. Campbell*, 22 F.4th 438 (4th Cir. 2022), which held that the commentary could not expand the text of the Guidelines. **BUT note** that the 2023 amendments do not define “conspiracy,” so the Fourth Circuit’s decision in *McCollum* defining generic conspiracy as requiring an overt act will continue to be good law.

Don’t forget!: To be a career offender, the **instant federal offense** must also qualify as a career offender predicate. If the instant offense does not qualify, the defendant cannot be a career offender, no matter how many prior qualifying convictions he has. So, for example, if the instant offense is a non-generic conspiracy (like 21 U.S.C. § 846, for example), the defendant cannot be a career offender, regardless of the predicates. *United States v. Norman*, 935 F.3d 232 (4th Cir. 2019).

18 U.S.C. § 16

Section 16 provides the general “crime of violence” definition for Title 18 of the United States Code. It is the default crime of violence definition that applies if not otherwise specified.²

The term “crime of violence” means—

- (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
- (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

Subsection (b), the residual clause, was struck down in *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018); thus, only Subsection (a), the force clause, remains.

§ 16(a)’s Force Clause: Note that unlike ACCA and § 4B1.2, § 16(a)’s force clause, like the force clause of § 924(c), includes force directed against *property*, not just persons. Thus, a property offense that does not qualify as a crime of violence under ACCA’s force clause (for example, Hobbs Act robbery) may qualify as a crime of violence under § 16(a). In addition, unlike the other force clauses, § 16(a)’s force clause is not limited to felony offenses, but also includes misdemeanors. But like all other force clauses, § 16(a)’s force clause still requires violent physical force (economic harm and de minimis force do not suffice), and the force involved must be directed against the person or property of another (force or threat of force against one’s own property does not suffice). *See, e.g., United States v. Diaz*, 865 F.3d 168 (4th Cir. 2017) (interference with flight crew members, in violation of 49 U.S.C. §

² For example, the following statutes incorporate § 16’s crime of violence definition: Bail Reform Act (18 U.S.C. § 3156(a)(4)(B)); Extradition (18 U.S.C. § 3181); Failure to register under SORNA (18 U.S.C. § 2250(c)); Money laundering (18 U.S.C. § 1956(c)(7)(B)(ii)); Violent crime in aid of racketeering (18 U.S.C. § 1959); Body armor (18 U.S.C. § 931(a)(1)); Use of minors in crimes of violence (18 U.S.C. § 25); Armor-piercing ammunition enhancement (18 U.S.C. § 929(a)(1)); Protection of individuals performing certain duties (18 U.S.C. § 119(b)(3)); Explosive materials (18 U.S.C. § 844(o) and 18 U.S.C. § 842(p)); Interstate domestic violence (18 U.S.C. § 2261); Aggravated felony enhancements under unlawful re-entry (18 U.S.C. § 1326(b)(2)); Juvenile delinquency proceedings (18 U.S.C. § 5032); Mandatory Victims Restitution Act (18 U.S.C. § 3663A(c)(1)(A)(i)); Travel Act (18 U.S.C. § 1952).

46504, not a crime of violence under § 16(a) because it can be accomplished with only de minimis force).

18 U.S.C. § 924(c)

§ 924(c)(3) defines a “crime of violence” as a felony offense that:

- (A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
- (B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

Like the other residual clauses, § 924(c)(B)’s residual clause is void for vagueness, leaving only § 924(c)(A)’s force clause intact. *United States v. Davis*, 139 S. Ct. 2319 (2019). **Note that § 924(c)’s force clause includes force directed at property.** Because the force clauses of § 16(a) and § 924(c) are identical, cases interpreting them are interchangeable. For example, because Hobbs Act robbery is a crime of violence under § 924(c)’s force clause (because it includes force directed at persons), see *United States v. Mathis*, 932 F.3d 242 (4th Cir. 2019), it will be a crime of violence under § 16(a). But offenses that do not include intentional physical force as an element will not qualify. See, e.g., *United States v. Simms*, 914 F.3d 229 (4th Cir. 2019) (en banc) (Hobbs Act conspiracy not a crime of violence under § 924(c)’s force clause); *United States v. Simmons*, 11 F.4th 239 (4th Cir. 2021) (aggravated RICO conspiracy not a crime of violence).

Now that we’ve covered the four main federal crimes of violence definitions, it’s time for Step Two—identifying the predicate offense.

STEP TWO: Identify the specific offense in question

After you know which “crime of violence” definition you will be applying, the next step is to identify the specific offense at issue. Again, keep in mind that the label of the offense does not matter—it’s the elements of the offense that are critical. The “elements” of an offense “are the ‘constituent parts’ of a crime’s legal definition—the things the ‘prosecution must prove to sustain a conviction.’” *Mathis v. United States*, 136 S. Ct. 2243, 2248 (2016). At a trial, the elements “are what the jury must find beyond a reasonable doubt to convict the defendant” and at a plea hearing, “they are what the defendant necessarily admits when he pleads guilty.” *Id.*; accord *Descamps v. United States*, 570 U.S. 254, 270 (2013) (elements are the factual circumstances of the offense on which the jury must unanimously agree).

To determine the elements, you must pull the statute. If it’s a common law offense, jury instructions are often a good resource. Verify that the statute/jury

instructions have not changed over time, and that the statute/jury instructions you review are the same ones in effect at the time the predicate offense was committed. If the offense in question is a state crime, you will want to research how the state courts (preferably the state's highest court) have interpreted or applied the offense, because the federal courts are bound by the state court's interpretation. *See, e.g., United States v. Helton*, 944 F.3d 198 (4th Cir. 2019).

Whether a federal or a state offense, your purpose in researching the offense is to determine the **minimum conduct** required to sustain a conviction for the crime. Once you know the minimum conduct, i.e., the “most innocent” version of the crime, you can move to Step Three—determining which approach applies to evaluate the offense on question.

STEP THREE: Determine which approach should be used to compare the offense with the crime of violence definition: categorical or modified categorical approach

There are two approaches to comparing the predicate offense with the crime of violence definition: the categorical approach and the modified categorical approach.

(1) The Categorical Approach: Facts Don't Matter

Under the categorical approach, the court compares the elements of the offense in question with the federal definition. *Descamps v. United States*, 133 S. Ct. 2276, 2283 (2013); *Taylor v. United States*, 495 U.S. 575, 599-600 (1990). Under this approach, the actual facts of the prior conviction do not matter. The prior conviction serves as a predicate if it is defined more narrowly than, or has the same elements as, the federal definition. *Taylor*, 495 U.S. at 599. In such cases, the prior conviction “necessarily implies” that the individual is “guilty of all the elements” of the federal definition. *Id.* If, however, the statute defining the prior offense “sweeps more broadly than the generic crime,” the resulting mismatch in elements will prevent the prior conviction from fitting within the federal definition. *Id.*

Again, the “key” to this comparison is “elements, not facts.” *Descamps*, 133 S. Ct. at 2283. A sentencing court may not consult “extra-statutory materials,” *id.* at 2287, “even if [the materials show that] the defendant actually committed the [predicate] offense in its generic form,” *id.* at 2283. “What matters for the categorical approach is how the law defines the offense generically, and not the particulars of how an individual might have committed the offense on a given occasion.” *United States v. Shell*, 789 F.3d 335, 338 (4th Cir. 2015).

The “elements” of an offense “are the ‘constituent parts’ of a crime’s legal definition—the things the ‘prosecution must prove to sustain a conviction.’” *Mathis v. United States*, 136 S. Ct. 2243, 2248 (2016). At a trial, the elements “are what the jury must find beyond a reasonable doubt to convict the defendant” and at a plea hearing, “they are what the defendant necessarily admits when he pleads guilty.” *Id.*

(2) The Modified Categorical Approach: Facts Still Don't Matter

The courts employ a variant of the categorical approach—“labeled (not very inventively) the ‘modified categorical approach’—when a prior conviction is for violating a so-called ‘divisible statute.’” *Descamps v. United States*, 570 U.S. 254, 257 (2013). Just like the categorical approach, the modified categorical approach “focuses on elements rather than facts.” *United States v. Price*, 777 F.3d 700, 705 (4th Cir. 2015). “The modified approach comes into play if the defendant was previously convicted under a divisible statute, meaning that the offense contains a set of alternative elements,” effectively listing different crimes. *Id.* (citing *Descamps*). In such circumstances, the court may consult “limited” documents from the underlying case to learn “which alternative element formed the basis of conviction.” *Id.* (citing *Shepard v. United States*, 544 U.S. 13, 19-20 (2005)). These documents, known as “*Shepard* documents” include: “the indictment or information; the plea agreement or transcript of the plea colloquy; the court’s formal legal rulings and factual findings of a bench trial; and jury instructions.” *Id.* (citing *Shepard*, 544 U.S. at 20, 26). The court may *not* consult police reports or other investigative material. *United States v. Flores-Granados*, 783 F.3d 487, 491 (4th Cir. 2015) (cautioning that “[a] police report, untested and unproven, is not a legitimate source of factual information for courts to rely on even under the modified categorical approach of *Taylor* and *Shepard*”). Instead, “[t]he focus of the modified categorical approach remains squarely on the elements of the prior conviction . . . and the reviewing court is not entitled to assess whether the defendant’s actual conduct matches the federal statute.” *Price*, 777 F.3d at 705. If the *Shepard* documents do not conclusively establish that the defendant was convicted of the version of the offense that corresponds to the federal definition, the conviction cannot serve as a crime of violence. *United States v. McLeod*, 808 F.3d 972, 977 (4th Cir. 2015) (because *Shepard* documents did not reveal whether defendant pleaded guilty to generic or nongeneric burglary, the conviction could not qualify as ACCA predicate).

Once the court determines which alternative formed the basis of the prior conviction, the court then applies the garden-variety categorical approach to the specific alternative that served as the basis for the prior conviction. *Descamps*, 570 U.S. at 257. If the statute is divisible but the court is unable to discern which alternative served as the basis for the defendant’s prior conviction, the court assumes that the conviction was for the “least serious” conduct encompassed by the statute and applies the categorical approach to that alternative. *United States v. Vann*, 660 F.3d 771, 775 (4th Cir. 2011) (en banc).

(3) Divisibility is key

The question then becomes whether the offense is “divisible.”

An offense is divisible when it has “multiple alternative elements.” *United States v. Covington*, 880 F.3d 129, 132 (4th Cir. 2018). Remember, elements are those essential parts of the crime that the jury must find beyond a reasonable doubt. If the jury is never asked to determine whether the crime is violent or non-

violent, then the offense is not divisible. *See Fuertes*, 805 F.3d at 498 (“A statute is indivisible when the jury need not agree on anything past the fact that the statute was violated.”). Instead, whether the offense is committed violently or non-violently are simply different factual means by which the offense can be committed. *Mathis*, 136 S. Ct. at 2249. For example, in *Fuertes*, the Fourth Circuit determined that sex trafficking by force, fraud or coercion is an indivisible offense because jurors are never asked to unanimously agree on whether the defendant used force or fraud to commit sex trafficking. Instead, force or fraud are simply different means by which sex trafficking can be committed. Because the offense does not contain alternative elements, sex trafficking by force, fraud or coercion is not divisible.

Watch out for the word “or” when determining divisibility. The use of disjunctive language does not mean that a statute is divisible. *Omargharib v. Holder*, 775 F.3d 192, 194 (4th Cir.2014) (“[M]ere use of the disjunctive ‘or’ in the definition of a crime does not automatically render it divisible.”). “Any statutory phrase that—explicitly or implicitly—refers to multiple, alternative means of commission must still be regarded as indivisible if the jurors need not agree on which method of committing the offense the defendant used.” *Fuertes*, 805 F.3d at 498. Rather, if a statute merely contains alternative means of satisfying a single element, and not alternative elements, the statute is not divisible. *See, e.g., United States v. Royal*, 731 F.3d 333,341 (4th Cir.2013) (finding that “offensive physical contact” and “physical harm” were not alternative elements but were merely alternative means of determining the first element of assault under Maryland state law and therefore did not render the offense divisible).

Once again, jury instructions are helpful when determining divisibility. Another good clue for determining divisibility is whether different punishments apply. If the offense carries different levels of punishment, the offense is divisible. *See Mathis*, 136 S. Ct. at 2256 (“If statutory alternatives carry different punishments, then under *Apprendi* they must be elements.”).

STEP FOUR: Categorically compare the specific offense with the crime of violence definition

Once you identify the specific crime of violence definition and the specific offense, it’s time to categorically compare the two. Remember, it does not matter how the offense was actually committed, only how it could be committed. Make sure that the “most innocent” version of the offense in question satisfies every aspect of the definition in question. For example, does the offense include violent physical force as an element? Can the offense be committed recklessly? Can the offense be committed through self-harm? If the offense is categorically broader than the crime of violence definition, the offense is not a crime of violence.

Watch out for the realistic probability test: The government often argues that if the defendant can’t point to a specific case on a prior offense in which one has been prosecuted for actual conduct that does not satisfy the crime of violence definition, then no realistic probability exists that the prior offense will be

prosecuted for non-violent conduct, and that the defendant’s proposed “most innocent” version of the offense should be disregarded. The realistic probability test comes from the Supreme Court’s decision in *Gonzalez v. Duenas-Alvarez*. But recently in *Taylor*, the Supreme Court **significantly narrowed the test**:

First, the *Duenas-Alvarez* realistic probability test **only applies** when determining whether a prior **state** offense qualifies as a federal recidivist predicate because *Duenas-Alvarez* only arose out of federalism concerns. So that means the realistic probability test **never applies** when determining whether a **federal** offense qualifies as a “crime of violence” under the § 924(c) force clause or any federal recidivist sentencing enhancement. *See, e.g., United States v. McDaniel*, __ F.4th at __ n.13 (noting that “the Supreme Court recently clarified that a defendant is not required to “present evidence of how his [federal] crime of conviction is normally committed or usually prosecuted.” Rather, the “realistic probability” test only applies when a federal court is interpreting state law.”) (quoting *Taylor*, 142 S. Ct. at 2024-25).

Second, the Court in *Taylor* held that the *Duenas-Alvarez* realistic probability test **only applies for state offenses when “the elements of the relevant state and federal offenses clearly overlap[],”** i.e., match. Only then does the defendant have to come up with a case in which the state court applied the statute in a special way – i.e., by permitting a conviction based on conduct that does not match the federal definition. *See United States v. Jenkins*, 68 F.4th148, 154 (3d Cir. 2023) (explaining that under *Taylor*, the realistic probability test was not implicated because there is not a clear match between Pennsylvania aggravated assault, which criminalizes acts of omission, and the force clause, which does not).

FOURTH CIRCUIT CRIMES OF VIOLENCE: CITATION LIST

FEDERAL OFFENSES

18 U.S.C. § 111(a): (felony assault): *United States v. McDaniel*, __ F.4th __ (4th Cir. 2023) (“Because § 111(a) can be violated with the use of any amount of force against a federal officer, it can be violated with less than violent force. As a result, the felony assault provision of § 111(a) is not categorically a crime of violence” under the force clause of § 924(c)).

18 U.S.C. § 111(b): (enhanced felony assault): *United States v. McDaniel*, __ F.4th __ (4th Cir. 2023) (holding that § 111(b) “requires and intention greater than recklessness” as well as “violent force” and thus qualifies as a crime of violence under the force clause of § 924(c)).

18 U.S.C. § 844(i) (arson): *United States v. Wilder*, 834 F. App’x 782 (4th Cir. 2020) (federal arson not a crime of violence under the force clause of § 924(c))

because it can be committed through destruction of one's own property); *accord United States v. Salas*, 889 F.3d 681 (10th Cir. 2018).

18 U.S.C. § 1111(a): premeditated first-degree murder, felony murder: *United States v. Jackson*, 32 F.4th 278 (4th Cir. 2022) (noting that although “felony murder cannot qualify as a ‘crime of violence’ under § 924(c)’s force clause, holding that § 1111(a) is a divisible statute and that the defendant was convicted of premeditated murder, which does fall within the force clause).

18 U.S.C. § 249(a)(1)(i) (federal hate crime with death resulting): *United States v. Roof*, 10 F.4th 314 (4th Cir. 2021) (holding that the “death results” offense under 18 U.S.C. § 249 requires the use of intentional physical force).

18 U.S.C. § 1361 (willfully injuring or committing depredation against government property): *United States v. Melaku*, 41 F.4th 386 (4th Cir. 2022) (holding that because this property offense can be committed in a non-violent manner, it does not qualify as a crime of violence under 18 U.S.C. § 924(c)).

49 U.S.C. § 46504 (Interference with a flight crew): *United States v. Diaz*, 865 F.3d 168 (4th Cir. 2017) (holding that the offense is not a crime of violence under §16(a)’s force clause because it can be accomplished with only de minimis force).

18 U.S.C. § 1201(a) (Kidnapping): Kidnapping lacks physical force as an element and therefore does not qualify under any force clause. *United States v. Walker*, 934 F.3d 375 (4th Cir. 2019) (federal kidnapping not a crime of violence under § 924(c)); *United States v. Mathis*, 932 F.3d 242 (4th Cir. 2019) (Virginia kidnapping not a crime of violence under § 924(c)). But because kidnapping is one of the crimes enumerated in the Guidelines, a kidnapping offense will be a COV under § 4B1.2’s enumerated offenses clause if it is “generic kidnapping.” *See United States v. Harris*, 890 F.3d 480 (4th Cir. 2018) (NC second-degree kidnapping a COV under Guidelines because it is generic kidnapping).

18 U.S.C. § 2113(d) (Armed Bank Robbery): *United States v. McNeal*, 818 F.3d 141 (4th Cir. 2016) (offense includes physical force as an element and is therefore a crime of violence under the force clause of § 924(c)). For this reason, would also qualify as predicate for ACCA, § 4B1.2, and § 16(a). But **attempted bank robbery** is *not* a crime of violence under the reasoning of *United States v. Taylor*, 142 S. Ct. 2015 (2022), because it can be committed through an attempted threat of force. *See United States v. Taylor*, 979 F.3d 203, 208 (4th Cir. 2020) (“[A]s we have repeatedly held, certain crimes of violence — like Hobbs Act robbery, federal bank robbery, and carjacking — may be committed without the use or attempted use of physical force because they may be committed merely by means of threats.”).

18 U.S.C. § 2119 (Carjacking): *United States v. Evans*, 848 F.3d 242 (4th Cir. 2017) (holding that carjacking is a crime of violence under § 924(c)’s force clause). But **attempted carjacking** is *not* a crime of violence under the reasoning of *United States v. Taylor*, 142 S. Ct. 2015 (2022), because it can be committed through an attempted threat of force. *See United States v. Taylor*, 979 F.3d 203, 208 (4th Cir. 2020) (“[A]s we have repeatedly held, certain crimes of violence — like Hobbs Act robbery, federal bank robbery, and carjacking — may be committed without the use or attempted use of physical force because they may be committed merely by means of threats.”).

18 U.S.C. § 1591(a) (Sex trafficking by fraud, force or coercion): *United States v. Fuertes*, 805 F.3d 485 (4th Cir. 2015) (holding that the offense lacks physical force as an element and is therefore not a COV under § 924(c)). For this reason, the offense would not qualify under any force clause.

18 U.S.C. § 1951(b)(1) (Hobbs Act robbery): *United States v. Green*, 996 F.3d 176, 180 (4th Cir. 2021) (holding that Hobbs Act robbery is not a crime of violence under the force clause of U.S.S.G. § 4B1.2 because it is not limited to force directed against property). Because Hobbs Act robbery is not limited to force directed at persons, it does not qualify as an ACCA predicate. However, because § 924(c)’s and § 16(a)’s force clauses expressly include force against property, the offense qualifies under these force clauses. *See United States v. Mathis*, 932 F.3d 242 (4th Cir. 2019) (Hobbs Act robbery is a crime of violence under § 924(c)).

Attempted Hobbs Act robbery: *United States v. Taylor*, 142 S. Ct. 2015 (2022) (attempted Hobbs Act robbery not a crime of violence under § 924(c)’s force clause because it can be committed by an “attempted threat” of force, which is not the same as the “use, attempted use, or threatened use” of force). *Taylor*’s reasoning disqualifies other offenses that can be committed through “attempted threat,” such as attempted carjacking and attempted bank robbery.

Hobbs Act conspiracy: *United States v. Simms*, 914 F.3d 229 (4th Cir. 2019) (Hobbs Act conspiracy not a crime of violence under § 924(c)’s force clause).

MARYLAND OFFENSES

Maryland Robbery: is an ACCA crime of violence predicate: “In sum, Maryland robbery may be committed by force or threat of force, and each way satisfies the ACCA’s force clause. Thus, Maryland robbery constitutes a violent felony under the ACCA.” *United States v. Johnson*, 945 F.3d 174, 181 (4th Cir. 2019).

Maryland first-degree assault: *United States v. Redd*, __ F.4th __ (4th Cir. Oct. 19, 2023) (holding that Maryland first-degree assault is not a violent felony under

ACCA's force clause because the statute is indivisible and includes reckless assault).

Maryland second-degree assault: *United States v. Royal*, 731 F.3d 333 (4th Cir. 2013) (holding that Maryland second-degree assault is not a violent felony under ACCA's force clause because it can be committed through "offensive physical contact," without physical force).

Maryland fourth-degree burglary: *United States v. Martin*, 753 F.3d 485 (4th Cir. 2014) (holding that the offense does not constitute generic burglary because it because does not require any intent to commit a crime).

VIRGINIA OFFENSES

Virginia common law robbery: *United States v. White*, 24 F.4th 378 (4th Cir. 2022) (offense not a violent felony under ACCA's force clause because it can be committed by threatening to accuse the victim of having committed a crime against nature)

Virginia unlawful wounding: *United States v. Rumley*, 952 F.3d 538 (4th Cir. 2020) (holding that offense qualifies as a violent felony under ACCA's force clause)

Virginia kidnapping: *United States v. Mathis*, 932 F.3d 242 (4th Cir. 2019) (Virginia kidnapping not a crime of violence under § 924(c)).

Virginia attempted rape and Virginia burglary with intent to murder: *United States v. Al-Muwwakkil*, 983 F.3d 748 (4th Cir. 2020) (holding that neither offense requires physical force and thus do not fall within ACCA's force clause).

Virginia second-degree murder: *United States v. Manley*, 52 F.4th 143 (4th Cir. 2022) (holding that VICAR murder premised on Virginia second-degree murder satisfies the force clause of § 924(c)).

WEST VIRGINIA OFFENSES

West Virginia Aggravated Robbery: *United States v. Salmons*, 873 F.3d 446 (4th Cir. 2017) (holding that the offense falls within § 4B1.2's force clause).

West Virginia Unlawful Wounding: *United States v. Covington*, 880 F.3d 129 (4th Cir. 2018) (offense is a crime of violence under § 4B1.2's force clause).

NORTH CAROLINA OFFENSES

NC Common Law Robbery: *United States v. Gattis*, 877 F.3d 150 (4th Cir. 2017) (NC common law robbery is generic robbery under the Guidelines); *United States v. Dinkins*, 928 F.3d 349 (4th Cir. 2019) (holding that NC common law robbery is an ACCA offense because physical force is an element of the crime) (overruling *United States v. Gardner*, 823 F.3d 793 (4th Cir. 2016) in light of *Stokeling v. United States*, 139 S. Ct. 544 (2019)). Attempted common law robbery

NC Robbery with Dangerous Weapon: *United States v. Burns-Johnson*, 864 F.3d 313 (4th Cir. 2017) (offense includes physical force as an element, so qualifies as ACCA offense under the force clause).

NC Discharge of a Firearm into Occupied Property: *United States v. Parral-Dominguez*, 794 F.3d 440 (4th Cir. 2015) (offense lacks physical force against a person as an element, so not a crime of violence under § 4B1.2's force clause).

NC B&E: *United States v. Mungro*, 754 F.3d 267 (4th Cir. 2014) (offense qualifies as generic burglary under ACCA's enumerated offenses clause). Despite our repeated efforts to challenge *Mungro*'s holding in light of more recent Supreme Court decisions interpreting burglary, the Fourth Circuit has thus far shown no interest in revisiting *Mungro*. See, e.g., *United States v. Dodge*, 963 F.3d 379, 384-85 (4th Cir. 2020) (acknowledging that although *Mungro* "could be read as being in tension with intervening Supreme Court reasoning," *Mungro* remains binding, as it is not contradicted by any "directly applicable Supreme Court holding"). In better news, because the Guidelines no longer list burglary as an offense, B&E is not a crime of violence under § 4B1.2. And because B&E does not include physical force as an element of the crime, it does not fall under the force clauses of § 16(a) or § 924(c).

NC Involuntary Manslaughter: *United States v. Peterson*, 629 F.3d 432 (4th Cir. 2011) (NC involuntary manslaughter not generic manslaughter under the Guidelines, so not a COV); *United States v. Middleton*, 883 F.3d 485 (4th Cir. 2018) (South Carolina involuntary manslaughter not an ACCA offense because lacks physical force as an element). Because offense can be committed without physical force and with mens rea of culpable negligence, see *Peterson*, offense also does not qualify under § 924(c) or § 16(a).

NC Voluntary manslaughter: *United States v. Smith*, 882 F.3d 460 (4th Cir. 2018) (holding that offense requires intentional use of force and thus falls within the force clause of ACCA).

North Carolina Second-Degree Rape: *United States v. Shell*, 789 F.3d 335 (4th Cir. 2015) (offense lacks physical force and is not generic forcible sex offense, so not a crime of violence under Guidelines). BUT *Shell*'s holding that second-degree rape

is not a “forcible sex offense” under the Guidelines is no longer good law, because the Guidelines have now amended the definition of “forcible sex offense.” *Shell*’s holding that the offense lacks physical force remains valid. Because the offense does not include physical force as an element, it does not fall under the force clauses of ACCA, § 924(c), or § 16(a).

NC Burglary: *United States v. Linney*, 819 F.3d 747 (4th Cir. 2016) (holding that NC burglary is an ACCA predicate because it satisfies the definition of generic burglary). **Attempted burglary**, however, is *not* generic burglary. *See James v. United States*, 550 U.S. 192 (2007). The Guidelines have removed burglary as an offense, so the offense is no longer a crime of violence under § 4B1.2’s enumerated offenses clause. Burglary does not include violent physical force as an element, so it is not a COV under any force clause.

NC Indecent Liberties: *United States v. Vann*, 660 F.3d 771 (4th Cir. 2011) (offense not an ACCA predicate). Because offense lacks physical force as an element, it does not qualify under any other force clause.

NC Fleeing to Elude: *United States v. Barlow*, 811 F.3d 133 (4th Cir. 2015) (lacks force as an element so therefore not ACCA predicate). Also would not qualify under the force clauses of § 4B1.2, § 16(a), or § 924(c).

NC Larceny From the Person: *United States v. Taste*, 627 F. App’x 241 (4th Cir. 2015) (no longer an ACCA offense after *Johnson*, because only qualified under residual clause); *United States v. Jarmon*, 596 F.3d 228, 230-33 (4th Cir. 2010) (holding that the North Carolina crime of larceny from the person is a crime of violence but only under the now-defunct residual clause). Because offense lacks physical force as an element, it is not a COV under any force clause.

NC Conspiracy: *United States v. Melvin*, 621 F. App’x 226 (4th Cir. 2015) (NC conspiracy to commit robbery with a dangerous weapon lacks physical force and therefore not an ACCA offense); *United States v. McCollum*, 885 F.3d 300 (4th Cir. 2018) (conspiracy to commit murder in aid of racketeering lacks overt act and therefore is not generic conspiracy under the Guidelines); *see also United States v. Norman*, 935 F.3d 232 (4th Cir. 2019) (federal drug conspiracy lacks overt act and is therefore not a controlled substance offense under Guidelines). North Carolina conspiracy likewise lacks an overt act. *See United States v. White*, 571 F.3d 365, 371 (4th Cir. 2009) (“[T]he commission of an overt act is not an essential element of a North Carolina criminal conspiracy.”). Under the reasoning of *McCollum* and *Norman*, then, North Carolina conspiracy is not “generic conspiracy” under the Guidelines. And because physical force is not an element of conspiracy, it is not fall within the force clauses of § 16(a) or § 924(c). *White*, 571 F.3d at 369 (North Carolina conspiracy to commit armed robbery “does not have as an element the use, attempted use, or threatened use of physical force against the person of another”).

NC Assault on a Female: *United States v. Vinson*, 805 F.3d 120 (4th Cir. 2015) (North Carolina assault on a female can be committed through culpable negligence and is therefore not a misdemeanor crime of domestic violence under § 922(j)). Because it lacks intentional force, the offense does not qualify under any force clause.

NC Assault With Intent to Kill: *United States v. Townsend*, 886 F.3d 441 (4th Cir. 2018) (element of specific intent to kill removes offense from culpable negligence standard; the offense therefore involves the intentional application of force and thus falls within ACCA's force clause). Would therefore also qualify under all other force clauses.

NC Assault by Strangulation: *United States v. Rice*, 36 F.4th 578 (4th Cir. 2022) (holding that offense falls within the force clause of § 4B1.2 because strangulation element required intentional application of physical force).

NC Assault (most others): *United States v. Simmons*, 917 F.3d 312 (4th Cir. 2019) (North Carolina assault with a deadly weapon on a government official is not a crime of violence under § 4B1.2's force clause because it can be committed without intentional use of force); *United States v. Vinson*, 805 F.3d 120 (4th Cir. 2015) (North Carolina assault offenses can be committed through culpable negligence). Any North Carolina assault offense that can be committed through culpable negligence lacks intentional force and thus falls outside any force clause.

NC Second-degree kidnapping: *United States v. Harris*, 890 F.3d 480 (4th Cir. 2018) (NC 2nd degree kidnapping is a COV under § 4B1.2 because it is generic kidnapping). However, because kidnapping does not include physical force as an element of the offense, kidnapping is not a COV under ACCA, § 16, or § 924(c).

SOUTH CAROLINA OFFENSES

SC Second-Degree Burglary: *United States v. McLeod*, 808 F.3d 972 (4th Cir. 2015) (SC burglary broader than generic burglary and therefore not an ACCA offense). The Guidelines have removed burglary as an offense, so no longer a crime of violence under § 4B1.2. Does not include physical force as an element, so not a COV under § 16(a) or § 924(c).

South Carolina involuntary manslaughter: *United States v. Middleton*, 883 F.3d 485 (4th Cir. 2018) (not an ACCA offense because the offense lacks physical force as an element).

South Carolina Aggravated Assault/Battery: *United States v. Montes-Flores*, 736 F.3d 357 (4th Cir. 2013) (holding that the offense is indivisible and overbroad, since it can be committed with or without force, and is thus not a crime of violence under the Guidelines).

SC Assault, Beating or Wounding a Police Officer While Resisting Arrest: *United States v. Jones*, 914 F.3d 893 (4th Cir. 2019) (holding that the offense is not a violent felony under ACCA's force clause because the offense may be committed without force, by, for example, spitting in an officer's face).

South Carolina criminal domestic violence: *United States v. Drummond*, 925 F.3d 681 (4th Cir. 2019) holds that South Carolina offense of criminal domestic violence (which makes it unlawful for a person to (1) "cause physical harm or injury to a person's own household member" or to (2) "offer or attempt to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril") includes force as an element and therefore qualifies as an ACCA predicate.

South Carolina strong arm robbery: *United States v. Doctor*, 842 F.3d 306 (4th Cir. 2016) (offense is a violent felony under ACCA's force clause).

MISCELLANEOUS OFFENSES

Georgia robbery: *United States v. Fluker*, 891 F.3d 541 (4th Cir. 2018) (holding that Georgia robbery, Ga. Code § 16-8-40(a), is not a crime of violence under the Guidelines because it may be committed through "sudden snatching," which does not require violent force and does not equate to generic robbery).

New York statutory robbery: *United States v. Hammond*, 912 F.3d 658 (4th Cir. 2019): The Fourth Circuit concludes that "New York statutory robbery, irrespective of the degree of the offense, is a crime of violence, because it necessarily involves the 'use, attempted use, or threatened use of physical force against the person of another.'" Because physical force is an element of the offense, New York statutory robbery qualifies as a crime of violence under any force clause.

Georgia arson: *United States v. Furlow*, 928 F.3d 311 (4th Cir. 2019) holds that first-degree Georgia arson qualifies as "generic arson" and is therefore an ACCA predicate as well a career offender predicate.

Texas Aggravated Assault: *United States v. Barcenas-Yanez*, 826 F.3d 752 (4th Cir. 2016) (Texas aggravated assault not a crime of violence under the Guidelines, because offense can be committed recklessly and is therefore broader than federal generic aggravated assault).

Tennessee aggravated statutory rape: *United States v. Rangel-Castaneda*, 709 F.3d 373 (4th Cir. 2013) (holding that the offense does not require physical force and is broader than the generic offense, so not a crime of violence under the Guidelines).

CURRENTLY PENDING BEFORE THE FOURTH CIRCUIT

US v. Antonio Lightfoot: Whether Michigan bank robbery, Mich. Comp. Laws section 750.531, qualifies as a serious violent felony under 18 U.S.C. § 3559(c) (argued September 20, 2023)

US v. Martin Hamilton: Whether attempt to commit North Carolina robbery with a dangerous weapon is a violent felony under the Armed Career Criminal Act (argued September 20, 2023)

US v. Cesar Castillo: Whether the offense of violent crime in aid of racketeering, in violation of 18 U.S.C. § 1959(a)(3) (VICAR), specifically by committing assault with a dangerous weapon under N.C. Gen. Stat. § 14-32, qualifies as a crime of violence for purposes of 18 U.S.C. § 924 (argued October 24, 2023)

US v. Dearnta Thomas: Whether the offense of violent crime in aid of racketeering, in violation of 18 U.S.C. § 1959(a)(3) (VICAR), specifically by committing brandishing of a firearm, in violation of Virginia Code § 18.2-282 or using or displaying a firearm, in violation of Virginia Code § 18.2-53.1, qualifies as a crime of violence for purposes of 18 U.S.C. § 924 (argued October 24, 2023)

US v. Malek Lassiter: Whether VICAR attempted murder is § 924(c) predicate after Supreme Court's *Taylor* decision (argued October 25, 2023)

US v. Carlos Kinard: Whether assault under 18 U.S.C. § 1959(a)(3) or under N.C. Gen Stat. § 14.33(c)(1) is a crime of violence under 18 U.S.C. § 924(c)(3)(A) (argued October 25, 2023)

US v. Robert Barnes: Whether Maryland robbery qualifies as a crime of violence under § 4B1.2 for career offender purposes (argued October 27, 2023)