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February 2018 Fourth Circuit Case Summaries: Feb. 15 and 16, 2018

North Carolina offense of voluntary manslaughter is a crime of violence under ACCA's force clause

[*U.S. v. Smith*](#), ___ F.3d ___, 2018 WL 891278 (4th Cir. 2018). In this case arising from the middle district of North Carolina, the district court determined that the defendant was subject to an enhanced sentence under the Armed Career Criminal Act ("ACCA") based in part on his prior North Carolina conviction for voluntary manslaughter. The defendant objected to the ACCA designation and argued that voluntary manslaughter did not qualify as a "violent felony" for purposes of the force clause of the ACCA. The Fourth Circuit affirmed. Applying the categorical approach, the court examined the elements of the offense. Voluntary manslaughter in North Carolina is the killing of another person without malice and without premeditation and deliberation. "[G]enerally, voluntary manslaughter occurs when one kills intentionally but does so in the heat of passion suddenly aroused by adequate provocation or in the exercise of self-defense where excessive force is utilized or the defendant is the aggressor." Slip Op. at 3 (internal citations omitted). The defendant argued that the offense could not be a violent felony because, in his view, the crime could be "committed with a *mens rea* of mere negligence or recklessness." *Id.* at 2. The court rejected this view: "Basically, what separates voluntary manslaughter from murder is not an absence of intent but rather the circumstances in which that intent is exercised, namely . . . in the heat of passion or under provocation." *Id.* at 4. The defendant also pointed to the fact that the statute criminalizes use of excessive force in self-defense as evidence that the crime could be committed with merely negligent force (as opposed to intentional force). The court again disagreed:

Even if a defendant acted only negligently in choosing the *amount* of force to use in such a case, the underlying decision to *use* force was still an intentional one. Such a defendant could not say that his use of force was accidental or that it was merely through negligence or recklessness that he used physical force against the person of another. *Id.* at 5.

Thus, because North Carolina's voluntary manslaughter requires the intentional use of force, it meets the minimum *mens rea* requirement of the ACCA's force clause, a result consistent with two sister circuits that considered similar offenses. Because the elements of the offense require an intentional killing, it is categorically a violent felony under the force clause of the ACCA.

Rule 404(b) evidence of previous uses of force by law enforcement officer properly admitted

[*U.S. v. Cowden*](#), ___ F.3d ___, 2018 WL 9100800 (4th Cir. 2018). The defendant was an officer with a sheriff's department in West Virginia and was charged with felony deprivation of civil rights under color

of law for assaulting an arrestee. The arrestee had resisted another officer during his roadside arrest for impaired driving. When brought to the jail, the arrestee was handcuffed with his arms behind his back and was compliant with the officers, if unruly. The arrestee pulled away from an officer at some point during processing. In response, the defendant threw the arrestee into a wall, repeatedly banged his head and face into the wall, and punched him in the back of the head, all while the defendant remained handcuffed and nonviolent. Before trial, the government gave notice of its intent to use 404(b) evidence of previous instances of questionable uses of force by the defendant in his capacity as an officer, which the trial court allowed over the defendant's objection. The defendant was convicted at trial and sentenced to 18 months in prison. On appeal, he argued that the district court erred in admitting the 404(b) evidence. The Fourth Circuit disagreed. Admission of 404(b) evidence is reviewed for abuse of discretion, and the court analyzes four factors in deciding the issue:

(1) The evidence must be relevant to an issue, such as an element of an offense, and must not be offered to establish the general character of the defendant. In this regard, the more similar the prior act is (in terms of physical similarity or mental state) to the act being proved, the more relevant it becomes. (2) The act must be necessary in the sense that it is more probative of an essential claim or an element of the offense. (3) The evidence must be reliable. And (4) the evidence's probative value must not be substantially outweighed by confusion or unfair prejudice in the sense that it tends to subordinate reason to emotion in the factfinding process. Slip Op. at 10 (internal citations omitted).

Here, both prior instances involved use of force by the defendant against suspects that presented no actual threat but apparently made the defendant feel disrespected. This, the court found, was relevant to show the defendant's state of mind. The defendant denied having the requisite intent to harm the victim, and he testified at trial to the same. In light of the conflicting evidence on this point, the prior bad acts were necessary to the government's case, satisfying the second prong. The evidence was reliable and the prejudice to the defendant in admitting this evidence did not "substantially outweigh" its probative value. The district court gave a limiting instructions on the use of the 404(b) evidence at the time of its admission and again as a part of the final jury instructions, further mitigating any prejudice to the defendant. Therefore, the district court did not abuse its discretion in admitting the evidence. The defendant's other arguments on appeal regarding the sufficiency of the evidence, jury instructions, and a restitution issue were all rejected by the panel as well, and the conviction was affirmed in all respects.