

United States Court of Appeals
For the Eighth Circuit

No. 25-2394

United States of America,

Plaintiff - Appellee,

v.

Rodney O. McIntosh,

Defendant - Appellant.

Appeal from United States District Court
for the Eastern District of Missouri - St. Louis

Submitted: June 12, 2026
Filed: August 26, 2026

Before COLLOTON, Chief Judge, ERICKSON and GRASZ, Circuit Judges.

COLLOTON, Chief Judge.

Rodney McIntosh appeals his sentence for unlawful possession of a firearm. He argues that the district court procedurally erred in designating his prior convictions for the assault of a government employee as “crimes of violence” under the sentencing guidelines. We conclude that McIntosh’s prior convictions are not

categorically crimes of violence, so we vacate the sentence and remand the case for resentencing.

McIntosh pleaded guilty to unlawful possession of a firearm as a felon. *See* 18 U.S.C. § 922(g). At sentencing, in calculating an advisory guideline sentencing range, the district court was required to consider whether McIntosh’s prior convictions for assault of a government employee under 18 U.S.C. § 111(a)(1) qualified as a “crime of violence.” If so, then the applicable base offense level was 20; if not, then the base offense level was 14. *See* USSG § 2K2.1(a)(4)(A), (6). The district court concluded that the assault offenses qualified, calculated an advisory range of 84 to 105 months’ imprisonment, and sentenced McIntosh to a term of 84 months.

On appeal, McIntosh maintains that the court miscalculated the advisory range, because his prior assault offenses were not crimes of violence. We review the district court’s determination *de novo*. *United States v. Gordon*, 69 F.4th 932, 933 (8th Cir. 2023).

The sentencing guidelines define “crime of violence” to include “any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that . . . has as an element the use, attempted use, or threatened use of physical force against the person of another.” USSG § 4B1.2(a)(1). 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).

We must apply the categorical approach to determine whether a prior conviction is for a crime of violence based on the “force” clause of USSG § 4B1.2(a)(1). *Mathis v. United States*, 579 U.S. 500, 504 (2016). Under the categorical approach, we compare the elements of the offense of conviction with the requirements of the “force” clause. *McCoy v. United States*, 960 F.3d 487, 489 (8th

Cir. 2020). If the offense has as an element the use, attempted use, or threatened use of physical force as defined in USSG § 4B1.2(a)(1), then the prior conviction is a crime of violence. If a statute is divisible because it defines multiple crimes, then we apply a modified categorical approach, and consider only the particular offense of conviction under the divisible statute. *Mathis*, 579 U.S. at 517-18.

The parties agree that § 111(a) is divisible between simple assault and felonious assault, and that McIntosh was convicted of the felony offense. Section 111(a)(1) provides:

Whoever — *forcibly assaults*, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of official duties . . . shall, where the acts in violation of this section constitute only simple assault, be fined under this title or imprisoned not more than one year, or both, and *where such acts involve physical contact with the victim of that assault or the intent to commit another felony, be fined under this title or imprisoned not more than 8 years*, or both.

18 U.S.C. § 111(a)(1) (emphases added). McIntosh was convicted of eight counts of felony assault under § 111(a)(1) for forcibly assaulting multiple officers. His prior convictions involved the “physical contact” element of the statute.

McIntosh contends that a felony conviction under § 111(a)(1) does not require proof of the use, attempted use, or threatened use of violent force, so his conviction is not categorically a crime of violence. The government counters that a felony conviction under § 111(a)(1) always requires the use of violent force, because the term “forcibly assault” necessarily requires “physical contact” that is violent.

The government was required to prove in the assault cases that McIntosh “forcibly assaulted” an officer. Consistent with the statute, the jury instructions

explained that “the phrase ‘forcibly assaulted’ means that defendant intentionally caused physical contact with the individual and a reasonable person would be offended by the physical contact.” Thus, the government was required to prove only intentional and “offensive” physical contact, not that McIntosh used “*violent* force—that is, force capable of causing physical pain or injury to another person.” *Johnson*, 559 U.S. at 140. An offense requiring only unwanted or offensive physical contact does not qualify as a crime of violence under § 4B1.2(a)(1). *See id.* at 139-40; *see United States v. Ossana*, 638 F.3d 895, 900 (8th Cir. 2011). It follows that McIntosh’s convictions under § 111(a)(1) are not categorically crimes of violence under the guideline.

The government contends that a felonious assault under § 111(a)(1) satisfies the force clause because the offense requires physical contact that puts another in fear of bodily harm. *See Jones v. United States*, 922 F.3d 864, 867 (8th Cir. 2019). It is true that offenses involving the threatened use of force are crimes of violence when they require “knowingly placing another person in fear of imminent bodily harm.” *Id.* (internal quotation omitted). But § 111(a)(1) does not require that a defendant’s conduct put an officer in fear of bodily harm. The statute requires *either* “proof of actual physical contact . . . *or* . . . proof of such a threat or display of physical aggression toward the officer as to inspire fear of pain, bodily harm, or death.” *United States v. Shedlock*, 62 F.3d 214, 220 (8th Cir. 1995) (second omission in original) (emphasis added) (quoting *United States v. Schrader*, 10 F.3d 1345, 1348 (8th Cir. 1993)). Thus, proof that the defendant “made physical contact” with an officer is sufficient to sustain a conviction, even if the defendant’s conduct did not inspire fear in the officer. *United States v. Martinez*, 486 F.3d 1239, 1245-47 (11th Cir. 2007) (per curiam); *see United States v. LaRoche*, 83 F.4th 682, 689 (8th Cir. 2023).

The government also argues that this court’s decision in *United States v. Schneider*, 178 F.4th 437 (8th Cir. 2026), confirms that felony assault under

§ 111(a)(1) requires the “threatened use of force” as defined in *Johnson*. In *Schneider*, this court explained that “[t]o be guilty of simple assault under § 111, a defendant must ‘threat[en] or display . . . physical aggression toward [an] officer as to inspire fear of pain, bodily harm, or death.’” *Id.* at 442 (quoting *United States v. Wilkins*, 25 F.4th 596, 599 (8th Cir. 2022)) (omission and alterations added in *Schneider*).

The government contends that misdemeanor assault as discussed in *Schneider* requires the threatened use of physical force, so it must follow that felony assault involving physical contact also requires the threatened use of physical force. But simple assault and felony assault under § 111(a) are separate offenses with different elements. Simple assault is limited to assaults without physical contact. *United States v. Yates*, 304 F.3d 818, 822 (8th Cir. 2002). Any assault involving physical contact constitutes a felony, so *Schneider*’s discussion of a misdemeanor assault applies only to an assault committed by threat or display of physical aggression. Offensive physical contact remains a sufficient, alternative means of committing felony assault under § 111(a), and offensive physical contact does not rise to the level of “violent force” as defined in *Johnson*. We must conclude, therefore, that a felony conviction under § 111(a)(1) is not categorically a crime of violence.

For these reasons, we conclude that the district court made a procedural error in calculating the advisory guideline range. We therefore vacate the sentence and remand for resentencing in light of a corrected advisory guideline range and 18 U.S.C. § 3553(a).
