

United States Court of Appeals
For the Eighth Circuit

No. 25-3271

United States of America

Plaintiff - Appellee

v.

Bryce Marquan Banks

Defendant - Appellant

Appeal from United States District Court
for the Western District of Missouri - Jefferson City

Submitted: April 17, 2026

Filed: October 22, 2026

[Unpublished]

Before LOKEN, SHEPHERD, and STRAS, Circuit Judges.

PER CURIAM.

Is third-degree domestic assault in Missouri a “crime of violence”? U.S.S.G.
§ 2K2.1(a)(2). We have all but said it is, so we affirm.

The district court¹ counted it based on what the presentence investigation report said about the underlying state indictment. *See United States v. Schneider*, 905 F.3d 1088, 1091 (8th Cir. 2018) (explaining that, under the modified categorical approach, a court may look to the “charging instrument,” among other documents, “to see if it lists the particular form of assault to which the defendant pleaded guilty”); *United States v. Farris*, 449 F.3d 822, 823 (8th Cir. 2006) (per curiam) (noting that there is no need to introduce the document itself if the defendant does not object to the report’s description of it). It alleged that the defendant, Bryce Banks, “attempted to cause physical injury to and knowingly caused pain to [the victim] by pulling her hair and kicking her.” *See* Mo. Rev. Stat. § 565.074(1) (2017) (“A person commits the offense of domestic assault in the third degree if he or she attempts to cause physical injury or knowingly causes physical pain or illness to a domestic victim . . .”). We must assume that he was convicted of an attempt because it was “the least of the acts criminalized.” *Schneider*, 905 F.3d at 1091 (quoting *Moncrieffe v. Holder*, 569 U.S. 184, 190–91 (2013)).

As Banks acknowledges, we have already held that it is a “violent felony” under the Armed Career Criminal Act. 18 U.S.C. § 924(e)(1); *see United States v. Porter*, 142 F.4th 1140, 1144 (8th Cir. 2025). “The same analysis applies [in] determin[ing] . . . whether it is a crime of violence” under the Sentencing Guidelines. *United States v. Furqueron*, 605 F.3d 612, 614 (8th Cir. 2010); *see United States v. Lopez-Castillo*, 24 F.4th 1216, 1219 n.2 (8th Cir. 2022) (treating the two as “interchangeable” (citation omitted)). *Porter* tells us, in other words, that the attempted version of third-degree domestic assault is a “crime of violence.” U.S.S.G. § 2K2.1(a)(2).

Banks disagrees because he believes Missouri criminalizes attempts based on “reckless conduct.” *Borden v. United States*, 593 U.S. 420, 432 (2021) (plurality opinion); *see id.* at 445 (ruling out crimes with “a *mens rea* of recklessness” under

¹The Honorable Stephen R. Bough, United States District Judge for the Western District of Missouri.

the Armed Career Criminal Act). *Compare State v. Ransburg*, 504 S.W.3d 721, 723 (Mo. banc 2016) (explaining that one of the elements of an attempt crime is “the purpose to commit the underlying offense”), *with Int. of J.M.W.*, 676 S.W.3d 81, 88–89 (Mo. Ct. App. 2023) (requiring no more than recklessness for an attempt conviction if the completed crime can be committed recklessly). He never raised this argument before the district court, however, so our review is for plain error. *See United States v. Ellis*, 127 F.4th 1122, 1126 (8th Cir. 2025).

Applying it forecloses relief. In *Porter*, we concluded that the attempted version of the crime—the precise one he challenges—qualifies as a “violent felony.” 142 F.4th at 1144. Given our holding *there*, any error made by the district court *here* could not have been “clear or obvious.” *United States v. Nunez-Hernandez*, 43 F.4th 857, 861 (8th Cir. 2022) (citation omitted).

We accordingly affirm the judgment of the district court.
