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Recent Developments: United States v. Coleman: Maryland Conviction for Common-Law Assault May Constitute "Violent Felony" under the Armed Career Criminal Act

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United States v. Coleman

In *United States v. Coleman*, 158 F.3d 199 (4th Cir. 1998)(en banc), the United States Court of Appeals for the Fourth Circuit held that a Maryland conviction for common-law assault may constitute a violent felony under the Armed Career Criminal Act of 1984 (“ACCA”), 18 U.S.C.A. § 924(e)(West Supp. 1998). A Maryland common-law assault will be considered a violent felony for purposes of the ACCA when it has as an element the use, attempted use, or threatened use of physical force and the crime is punishable by imprisonment for a term exceeding one year.

In 1996, Sidney R. Coleman (“Coleman”) was charged with felony possession of a firearm in violation of 18 U.S.C.A. section 922. Coleman pled guilty to this charge. Pursuant to the ACCA, the Government sought sentencing enhancement which requires three prior violent felony convictions. The Government asserted that Coleman had been previously convicted in Maryland of robbery with a deadly weapon in 1983, assault in 1988, and attempted murder in 1990. The Government claimed that the three convictions satisfied the requisite violent felony conviction element of the ACCA. Coleman contended, however, that the 1988 conviction for assault did not fall within the scope of the ACCA because it did not have as an element the use, attempted use, or threatened use of

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By Natasha Wrae

physical force, and was not punishable by imprisonment greater than one year.

The United States District Court for the District of Maryland rejected Coleman’s contention and concluded after a review of the charging documents of the 1988 assault conviction that the offense was a “violent felony,” placing it within the scope of the ACCA. Finding that Coleman was an armed career criminal, the district court enhanced his sentence to the mandatory fifteen year imprisonment as required by the ACCA. Coleman appealed to the United States Court of Appeals for the Fourth Circuit which affirmed.

To begin its analysis, the court of appeals looked to the language of the ACCA. *Coleman*, 158 F.3d at 201 (citing 18 U.S.C.A. § 924(e)(West Supp. 1998)). A fifteen year minimum sentence is mandated by the ACCA for “individuals convicted pursuant to

18 U.S.C.A. § 922(g) who have ‘three previous convictions . . . for a violent felony or a serious drug offense, or both, committed on occasions different from one another.’” *Id.* (quoting 18 U.S.C.A. § 924 (e)(1)(West Supp. 1998)). The ACCA defines a “violent felony,” in pertinent part, as “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.” *Id.* (quoting 18 U.S.C.A. § 924 (e)(2)(B)).

The court of appeals then considered Coleman’s contention that under Maryland law, common-law assault does not necessarily have as an element the use, attempted use, or threatened use of physical force against someone’s person. *Id.* The court recognized that “[a] Maryland conviction for common-law assault presents the unusual situation in which an offense may be committed in one of two ways-- one of which requires the use, attempted use, or threatened use of physical force and one of which does not.” *Id.* at 202 (citing *United States v. Kirksey*, 138 F.3d 120, 125 (4th Cir. 1998)). As a result, the court declined to find that within the meaning of 18 U.S.C.A. section 924 (e)(2)(B)(I), a Maryland common-law assault constitutes a per se violent felony. *Id.*

The court explained that in determining whether a conviction constitutes a violent felony, “a court generally must ‘look only to the fact of conviction and the statutory definition of the prior offense.’” *Id.* at 201 (citing *Taylor v. United States*, 495 U.S. 575 (1990)). However, “in a certain limited number of situations it is appropriate for a court to look beyond the fact of conviction and the elements of the offense in deciding whether an offense constitutes a violent felony.” *Coleman*, 158 F.3d at 202. Where an offense could be either committed with or without physical force, the court explained, a district court may look to other evidence. Accordingly, the court of appeals found the district court’s approach to be proper when it consulted the charging papers and “looked beyond the fact of conviction and the elements of the offense to determine whether the particular offense of which Coleman was convicted was a violent felony.” *Id.*

As a basis for its determination, the court looked to the language of Maryland Rule 4-201(b) which governs charging documents. *Id.* at 202-03. In essence, the Maryland charging document rule requires a statement of charges supported by affidavit setting forth probable cause that the defendant committed the offense charged. *Id.* at 203. The language in the charging papers against Coleman asserted that “Coleman ‘did make an assault on P/O Reedy.’” *Id.* at 202. Finding

this statement of the formal charge to be insufficient to make a determination, the district court looked to the statement of charges containing the affidavit setting forth the probable cause. *Id.* The statement of charges “revealed that Coleman had pointed a handgun in the direction of the officer.” *Id.* at 203. As a result, the court found that the district court’s reliance on the charging papers and statement of charges was sufficient to establish that Coleman’s assault conviction involved the use, attempted use, or threatened use of physical force against another. *Id.*

The final contention by Coleman formed the basis for the en banc consideration of the appeal by the court of appeals. *Id.* Coleman contended that his Maryland conviction for common-law assault did not fit within the ACCA because “it [did] not constitute a ‘crime punishable by imprisonment for a term exceeding one year.’” *Id.* (quoting 18 U.S.C.A. § 924 (e)(2)(B)(West Supp. 1998)). Coleman relied on the decision in *United States v. Schultheis*, 486 F.2d 1331 (4th Cir. 1973) in which the court of appeals determined that the seriousness of the crime is determined by the “actual sentence imposed.” *Coleman*, 158 F.3d at 203. Accordingly, Coleman asserted that since his sentence for the assault was eighteen months, with all but six months suspended, the conviction should fall under the misdemeanor exception of 18 U.S.C.A. section 921(a)(20)(B) which excludes “any

State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.” *Id.* The Government, on the other hand, argued the more recent case, *United States v. Hassan El*, 5 F.3d 726 (4th Cir. 1993), established “the common-law offense of assault in Maryland is a violent felony because it ‘clearly is punishable by more than two years imprisonment.’” *Coleman*, 158 F.3d at 203. The court noted that although the reasoning of the two opinions conflicted, the results reached in each did not. *Id.* at 203 n.5. Based on the statutory language of section 921(a)(20)(B), the court determined the critical inquiry to be “whether the offense was ‘punishable’ by a term of imprisonment greater than two years--not whether the offense ‘was punished’ by such a term of imprisonment.” *Id.* at 203-04. The court therefore concluded that Coleman’s 1988 Maryland common-law assault conviction fit within the violent felony definition of the ACCA. *Id.* at 204.

In the instant case, the United States Court of Appeals for the Fourth Circuit delineated the standard by which Maryland common-law assault convictions are to be assessed pursuant to the Armed Career Criminal Act of 1984. Although classified as a misdemeanor by the State of Maryland, whether common-law assault is a violent felony is based on the element of use, attempted use, or threatened use of physical force and the potential length of

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imprisonment. Further, to establish the physical force element, the court is permitted to review the charging documents of the offense and the affidavit establishing probable cause. This decision may prove detrimental to those individuals previously convicted of what they believed to be a misdemeanor, but who may now be facing enhanced penalties in the federal courts. Most importantly, the subjective physical force element permits judges to impose the mandatory fifteen year sentence in federal proceedings. With this decision, a defendant's constitutional right to counsel becomes all the more critical to ensure that any action taken at trial, specifically plea bargaining, is entered into knowingly and intelligently with the possibility of future ramifications fully explained.