

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-13796
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

versus

LAWRENCE CLAYTON POLLOCK,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:22-cr-20435-KMW-1

Before JORDAN, KIDD, and ED CARNES, Circuit Judges.

PER CURIAM:

The government appeals Lawrence Pollock's sentence of 86 months imprisonment, contending that the district court erred by not applying an Armed Career Criminal Act (ACCA) mandatory

minimum sentence of 15 years (180 months). The issue is whether Pollock's prior conviction for drug trafficking under Fla. Stat. § 893.135(1)(c)1.a qualifies as "a serious drug offense" under the ACCA. The district court thought it does not, but our precedent establishes that it does. We reverse and remand for resentencing.

I.

Pollock pleaded guilty to one count of possession of a firearm and ammunition as a convicted felon, in violation of 18 U.S.C. § 922(g)(1).¹ Before his plea hearing, he signed a factual proffer in support of his plea. In his proffer Pollock admitted that he had three prior felony convictions for crimes that he had committed on separate occasions from one another, all in violation of Florida law. Those three convictions were: (1) a 2003 conviction for two counts of aggravated assault with a firearm under Fla. Stat. § 784.021(1)(a); (2) a 2005 conviction for aggravated battery with a firearm under Fla. Stat. § 784.045(1)(a); and (3) a 2013 conviction for trafficking in oxycodone under Fla. Stat. §§ 893.135(1)(c)1.a, 893.03(2)(a)1.o.

The government urged the district court to apply the ACCA mandatory minimum sentence of 15 years based on those three prior convictions. The district court declined to do so because of its belief that Pollock's Florida drug trafficking conviction was not

¹ The grand jury had charged Pollock with two counts, but the government moved to dismiss one of them under the terms of the plea agreement.

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a “serious drug offense” under the ACCA.² The government does not share that belief, hence this appeal.

II.

We review *de novo* whether a prior conviction is a predicate offense under the ACCA. *United States v. Harbuck*, 146 F.4th 1073, 1076 (11th Cir. 2025). The government contends that Pollock’s Florida drug trafficking conviction counts as a “serious drug offense” under the ACCA because our precedent in *United States v. James*, 430 F.3d 1150, 1155 (11th Cir. 2005), *overruled in unrelated part for unrelated reasons* by *Johnson v. United States*, 576 U.S. 591 (2015), holds that it does.³ The government is correct.

Our precedent does establish that a conviction under Florida’s drug trafficking statute, Fla. Stat. § 893.135, categorically qualifies as a serious drug offense under the ACCA. *See James*, 430 F.3d at 1155. In *James* we held that the ACCA’s definition of “serious

² Without the ACCA enhancement, the court determined that Pollock’s total offense level was 25, his criminal history category was V, and his recommended guidelines range was 100 to 125 months imprisonment. It varied downward and sentenced him to 86 months imprisonment. That is 94 months below the ACCA mandatory minimum sentence of 180 months.

³ The Supreme Court’s *Johnson* decision struck down as unconstitutionally vague the ACCA’s residual clause, *see Johnson*, 576 U.S. at 606, but it did not call into question the part of our holding in the *James* decision about the meaning of the term “serious drug offense” in the ACCA, *see James*, 430 F.3d at 1155–56.

drug offense” “broadly includes any offense ‘involving’ the manufacture, distribution, or possession with intent to manufacture or distribute” drugs, and “*the Florida [drug trafficking] statute falls within the broad definition of a ‘serious drug offense.’*” *Id.* (emphasis added). We have also relied on the *James* decision to hold that courts may infer the intent to distribute drugs from the amount of drugs possessed. See *United States v. Conage (Conage I)*, 976 F.3d 1244, 1253–54 (11th Cir. 2020). That is relevant because in Florida a defendant in possession of a certain amount of drugs, here 4 grams or more of oxycodone, is deemed to be trafficking it. See *James*, 430 F.3d at 1154–55; Fla. Stat. § 893.135(1)(c)1.a. Just last year, in *United States v. Rowe*, 143 F.4th 1318, 1330–31 (11th Cir. 2025), we relied on our *James* ACCA precedent to hold that cocaine trafficking under Florida law is also a “controlled substance offense” under the career offender guideline.

Pollock attempts to avoid our precedent, contending that Florida’s drug trafficking statute does not qualify as a serious drug offense under the ACCA because it criminalizes the possession of a trafficking amount of drugs without requiring proof of intent, which the ACCA does require. See 18 U.S.C. § 924(e)(2)(A)(ii) (defining a “serious drug offense” as “an offense under State law, involving manufacturing, distributing, or *possessing with intent to manufacture or distribute*, a controlled substance”) (emphasis added). He’s wrong about that.

Pollock acknowledges, as he must, that our precedent in *Conage I* and *James* unequivocally holds that under Florida law intent may be inferred from the quantity of drugs involved. But he contends that since our *Conage I* and *James* decisions were issued, the Supreme Court of Florida has “disavowed” our interpretation of Florida law in those decisions. It did so, he says, in the *Conage II* decision, reported as *Conage v. United States*, 346 So. 3d 594 (Fla. 2022). That is the determinative issue in this appeal.

Pollock’s *Conage II*-disavowal argument hinges on one sentence in the opinion in that case. The case came to the Florida Supreme Court on a certified question from this Court about whether the possession element in the Florida trafficking statute was the same as the possession element required for a “serious drug offense” in the ACCA. *Conage II*, 346 So. 3d at 598. As we phrased it: “How does Florida law define the term ‘purchase’ for purposes of Florida Statutes § 893.135(1)? More specifically, does a completed purchase for purposes of conviction under § 893.135(1) require some form of possession—either actual or constructive—of the drug being purchased?” *Id.* The Florida Supreme Court rephrased the state law issue,⁴ with the same meaning, as: “[W]hether a completed purchase of illegal drugs necessarily entails the defendant

⁴ As we often do, in our opinion certifying the question in *Conage* we stated that our phrasing of the state law issue was “merely suggestive” and invited the Florida Supreme Court to rephrase it as it deemed appropriate in addressing the problem and issues involved and to decide the manner in which the answers are given. *Conage I*, 976 F.3d at 1263.

purchaser’s possession of those drugs, as federal law defines possession. We conclude that it does” *Conage II*, 346 So. 3d at 596. That holding, which resolved the issue in that case, does not support Pollock’s contention on the different issue involved in this case. But he argues that a single sentence in *Conage II* does support him, because he interprets that sentence to mean that Florida’s drug trafficking statute doesn’t require intent to distribute, which is the issue this case turns on.

This is the sentence in the *Conage II* opinion that Pollock seizes on: “Eleventh Circuit precedent says that possession of a trafficking quantity of illegal drugs implies an intent to distribute those drugs.” *Id.* at 597. According to Pollock, that statement from the *Conage II* opinion, coupled with the fact that neither the Supreme Court of Florida nor the Florida legislature has ever explicitly adopted the position that the statute implies an intent requirement, means as a matter of Florida law that there is no intent requirement. Pollock insists that when it acknowledged our holding in *Conage I* that Florida law had an intent requirement that could be met by the quantity of drugs involved, the Supreme Court of Florida in *Conage II* actually “disavowed” our holding about Florida law.

It’s true that when we write about issues of state law, the state supreme court holds absolute eraser power. *See, e.g., LeFrere v. Quezada*, 582 F.3d 1260, 1262 (11th Cir. 2009) (“Because state supreme courts are the final arbiters of state law, when we write to a state law issue, we write in faint and disappearing ink, and once the

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state supreme court speaks the effect of anything we have written vanishes like the proverbial bat in daylight, only faster.”) (quotation marks omitted); *Venn v. St. Paul Fire & Marine Ins. Co.*, 99 F.3d 1058, 1066 (11th Cir. 1996) (“[I]f subsequent decisions of . . . the Florida courts cast doubt on our interpretation of state law, a panel would be free to reinterpret state law in light of the new precedents.”) (quotation marks and emphasis omitted). Absent that, we are bound to follow prior panel precedent on state law issues. *Rowe*, 143 F.4th at 1322; *Zucker for BankUnited Fin. Corp. v. U.S. Specialty Ins. Co.*, 856 F.3d 1343, 1350 n.9 (11th Cir. 2017); *World Harvest Church, Inc. v. Guideone Mut. Ins. Co.*, 586 F.3d 950, 957 (11th Cir. 2009).

The Supreme Court of Florida has not rejected, abrogated, disavowed, undermined, or cast doubt on our prior panel holding in *Conage I* that a conviction for drug trafficking under Florida law requires a finding of intent. The statement from *Conage II* that Pollock relies on does not do it. Here is the full paragraph containing that statement:

Conage’s appeal to the Eleventh Circuit focuses on only one of the statute’s six forms of drug trafficking, trafficking by purchase. Recall that the ACCA defines a “serious drug offense” as one “involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance.” 18 U.S.C. § 924(e)(2)(A)(ii). Relevant here is the definition’s reference to possessing with intent to distribute a controlled substance. *Eleventh Circuit precedent says*

that possession of a trafficking quantity of illegal drugs implies an intent to distribute those drugs. Conage [I], 976 F.3d at 1253 (citing United States v. James, 430 F.3d 1150, 1154 (11th Cir. 2005)). So, trafficking by purchase under section 893.135(1) can meet the ACCA definition of a “serious drug offense” if a completed purchase necessarily entails the defendant’s possession of the purchased drugs. In his federal appeal, Conage has contended that a purchase is complete upon payment by the defendant and that therefore a completed purchase does not require proof that the defendant possessed the purchased drugs.

Conage II, 346 So. 3d at 597 (emphasis added).

The Supreme Court of Florida went on to reject the defendant’s argument in *Conage II* and hold that the purchase element of the drug trafficking crime in Florida does require actual or constructive possession of the drugs, consistent with ACCA. *Id.* at 600. That holding does not come within a country mile of abrogating, undermining, casting doubt on, or otherwise affecting our prior holding in *Conage I* or *James*. A passing reference to our precedent without a hint of disagreement isn’t enough. For all that appears, the Florida Supreme Court’s statement of our holding in *Conage I* was done with approval. At the least, there was no disapproval, not even a hint of it. Pollock’s position rests on the untenable premise that when a court states that another court has held X is the law, it necessarily means the other court was wrong to do so.

The district court erred as a matter of law in concluding that Pollock’s Florida conviction for trafficking in oxycodone is not an

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ACCA predicate offense. *See Lebaron*, 178 F.4th at 658. It is. We vacate Pollock's sentence and remand for resentencing, including application of the ACCA.

VACATED AND REMANDED.