

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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November 29, 2016

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 15-10351-U
Case Style: USA v. Eddy Vail-Bailon
District Court Docket No: 9:14-cr-80117-KLR-1

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause.

For the purpose of the upcoming en banc rehearing in the above referenced case, the court desires for counsel to focus on their briefs the following issues:

1. Does Florida felony battery, Fla. Stat. § 784.041, categorically qualify as a “crime of violence” under the “element” clause of § 2L1.2’s definition of “crime of violence,” U.S. Sentencing Guidelines Manual § 2L1.2 cmt. n.1(B)(iii)?
2. Does State v. Hearns, 961 So. 2d 211, 219 (Fla. 2007); Dominguez v. State, 98 So. 3d 198, 200 (Fla. 2d DCA 2012); Brooks v. State, 93 So. 3d 402, 403 (Fla. 2d DCA 2012); State v. Williams, 9 So. 3d 658, 660 (Fla. 4th DCA 2009), or any other Florida decision resolve the question whether Fla. Stat. § 784.041 requires the use of physical force or violence under Florida law? If so, is Florida’s definition of “physical force or violence” consistent with the definition of that term in federal law?
3. Does the federal definition of “physical force,” see United States v. Curtis Johnson, 559 U.S. 133, 140 (2010), require that a qualifying crime involve some type of intent to harm or knowledge of likely harm?
4. Can Florida felony battery, Fla. Stat. § 784.041, be committed by a touching that causes bodily harm where there is no intent to harm and it is unlikely that harm will result?

APPELLANT’S EN BANC BRIEF SHALL BE SERVED AND ELECTRONICALLY FILED ON OR BEFORE DECEMBER 29, 2016. APPELLEE’S EN BANC BRIEF SHALL BE SERVED AND ELECTRONICALLY FILED ON OR BEFORE JANUARY 19, 2017. Any en

banc reply brief shall be electronically filed on or before January 27, 2017. NO EXTENSIONS WILL BE GRANTED. 20 hard copies of the en banc briefs should be received by the next business day (appellants in blue covers, appellees in red covers and any reply briefs in gray covers). The parties are expected to insure that all other parties receive a copy of their briefs before the close of business on the day of filing. The filing of an en banc amicus brief is governed by 11th Cir.R.35-8.

All counsel are requested to submit 20 copies of their original panel briefs, appendix and supplemental authorities prior to 5:00 p.m. December 29, 2016.

Oral argument will be conducted the week of February 6, 2017 in Atlanta, Georgia. Each party will be allotted 20 minutes of oral argument.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Jenifer L. Tubbs
Phone #: 404-335-6166

BR-1 Criminal appeal briefing ntc issued