PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4434

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

MARTIN WILLIAM LUTHER HAMILTON,

Defendant – Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Loretta C. Biggs, District Judge. (1:20-cr-00310-LCB-1)

Argued: September 20, 2023 Decided: March 6, 2024

Amended: March 6, 2024

Before THACKER and QUATTLEBAUM, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by published opinion. Senior Judge Traxler wrote the opinion in which Judge Thacker and Judge Quattlebaum joined.

ARGUED: Kathleen Ann Gleason, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Greensboro, North Carolina, for Appellant. Craig Matthew Principe, OFFICE OF THE UNITED STATES ATTORNEY, Greensboro, North Carolina, for Appellee. **ON BRIEF:** Louis C. Allen, Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Greensboro, North Carolina, for Appellant. Sandra J. Hairston, United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Greensboro, North Carolina, for Appellee.

TRAXLER, Senior Circuit Judge:

This case presents another permutation of a question we frequently face: whether a prior conviction—here, a North Carolina conviction for attempted robbery with a dangerous weapon—qualifies as a violent felony under the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e). As we will explain, we agree with the district court that the prior offense qualifies as a violent felony, and we therefore affirm the 180-month sentence imposed by the district court.

I.

Martin William Luther Hamilton pleaded guilty under a written plea agreement to one count of possession with intent to distribute fentanyl, *see* 21 U.S.C. § 841(a)(1), and one count of unlawful possession of a firearm by a felon, *see* 18 U.S.C. §§ 922(g)(1). The probation agent preparing Hamilton's presentence report (PSR) determined that three of Hamilton's prior North Carolina convictions qualified as violent felonies under the ACCA: assault with a deadly weapon with intent to kill; common law robbery; and attempted robbery with a dangerous weapon. Hamilton objected to the ACCA classification. While he did not dispute that the first two convictions met the requirements of the ACCA, he contended that attempted robbery with a dangerous weapon under North Carolina law does not amount to a violent felony under the ACCA.

When considering Hamilton's objection, the district court recognized the somewhat confusing and sometimes contradictory body of North Carolina law addressing the elements of attempted robbery with a dangerous weapon and determined that it should follow this court's unpublished decision in *United States v. Hinton*, 789 F. App'x 956 (4th

Cir. 2019) (No. 18-4612), which held that a North Carolina conviction for attempted robbery with a dangerous weapon qualifies as a crime of violence for purposes of the career-offender provisions of the Sentencing Guidelines.[1] The district court therefore concluded that Hamilton qualified as an armed career criminal and sentenced Hamilton to 180 months' imprisonment, the minimum sentence required by the ACCA. *See* 18 U.S.C. § 924(e)(1). Hamilton appeals, challenging only the district court's determination that the attempted robbery conviction was a predicate offense under the ACCA.

II.

A.

While violations of 18 U.S.C. § 922(g) typically carry a *maximum* sentence of fifteen years, *see* 18 U.S.C. § 924(a)(8),[2] the ACCA mandates a *minimum* fifteen-year sentence for defendants who have three prior convictions for offenses that qualify as a "violent felony or a serious drug offense." 18 U.S.C. § 924(e). As is relevant to this case, the ACCA defines "violent felony" as "any crime 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." *Id.* § 924(e)(2). As used in the ACCA,

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[1] Because the Guidelines' definition of a crime of violence and the ACCA's definition of a violent felony are "substantively identical," we rely on ACCA and Guidelines precedents interchangeably. *United States v. Mack*, 56 F.4th 303, 305-06 n.1 (4th Cir. 2022).

[2] In 2022, the maximum sentence for § 922(g) increased from ten years to fifteen years. *See* Bipartisan Safer Communities Act, Pub. L. No. 117-159, § 12004(c), 136 Stat. 1313, 1329 (2022).

"'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).

To determine whether a prior offense satisfies the requirements of the ACCA's force clause, we apply the categorical approach, which examines the *elements* of the offense only, not the defendant's conduct when committing the offense. *See, e.g., United States v. Dozier*, 848 F.3d 180, 183 (4th Cir. 2017). Focusing on the minimum conduct required to commit the offense, we must determine whether the "statutory elements *necessarily* require the use, attempted use, or threatened use of physical force." *United States v. Mack*, 56 F.4th 303, 305 (4th Cir. 2022) (cleaned up) (emphasis added). "If there is a realistic probability that the state would apply the statute to conduct that does not involve the use, attempted use, or threatened use of violent physical force against another, then the offense is not categorically a 'violent felony' under the ACCA's force clause . . . ." *United States v. Jones*, 914 F.3d 893, 901 (4th Cir. 2019).

When applying the categorical approach to a state-law offense, we are "bound by the interpretation of such offense articulated by that state's courts." *United States v. Winston*, 850 F.3d 677, 684 (4th Cir. 2017); *see Johnson*, 559 U.S. at 138. We focus on the decisions of "the state's highest court" when determining the elements of the offense. *United States v. Aparicio–Soria*, 740 F.3d 152, 154 (4th Cir. 2014) (en banc). If the state's highest court has not addressed the elements of the criminal offense at issue, the "state's intermediate appellate court decisions constitute the next best indicia of what state law is." *Castillo v. Holder*, 776 F.3d 262, 268 n.3 (4th Cir. 2015) (cleaned up). We may nonetheless

disregard the decisions of an intermediate court if we are "convinced by other persuasive data that the highest court of the state would decide otherwise." *Id.* (cleaned up).

B.

The offense at issue in this case is North Carolina's statutory offense entitled "Robbery with firearms or other dangerous weapons." N.C. Gen. Stat. § 14-87(a). The statute provides:

> Any person or persons who, having in possession or with the use or threatened use of any firearms or other dangerous weapon, implement or means, whereby the life of a person is endangered or threatened, unlawfully takes or attempts to take personal property from another or from any place of business, residence or banking institution or any other place where there is a person or persons in attendance, at any time, either day or night, or who aids or abets any such person or persons in the commission of such crime, shall be guilty of a Class D felony.

Id. Conviction under § 14-87(a) thus requires proof of "(1) an unlawful taking or an attempt to take personal property from the person or in the presence of another, (2) by use or threatened use of a firearm or other dangerous weapon, (3) whereby the life of a person is endangered or threatened." *State v. Kemmerlin*, 573 S.E.2d 870, 889 (N.C. 2002); *see State v. Oldroyd*, 869 S.E.2d 193, 197 (N.C. 2022) ("A person is guilty of the offense of robbery with a dangerous weapon, or an attempt to commit the crime, if he or she (1) takes or attempts to take personal property from another, (2) while possessing, using, or threatening to use a firearm or other dangerous weapon, (3) whereby the life of a person is endangered or threatened.") (cleaned up); *accord State v. Murrell*, 804 S.E.2d 504, 509 (N.C. 2017); *State v. Williams*, 438 S.E.2d 727, 728 (N.C. 1994).

These elements appear to meet all the requirements of a violent felony. The use of a firearm or other dangerous weapon is a use of force within the meaning of the ACCA, and the requirement of a taking or attempted taking "from the person or in the presence of another" ensures that the force is directed at another person. *See Borden v. United States*, 141 S. Ct. 1817, 1825 (2021) ("The phrase 'against another,' when modifying the 'use of force,' demands that the perpetrator direct his action at, or target, another individual. Reckless conduct is not aimed in that prescribed manner."). And because the state statute requires that the use of the dangerous weapon must endanger the life of another, the level of force required by the statute is violent force. *See Johnson*, 559 U.S. at 140. Indeed, this court has already concluded that armed robbery under N.C. Gen. Stat. § 14-87(a) is a violent felony under the ACCA. *See United States v. Burns-Johnson*, 864 F.3d 313, 320 (4th Cir. 2017)

Hamilton, however, insists that the analysis is different when the underlying crime is *attempted* armed robbery rather than *completed* armed robbery. In making this argument, Hamilton points to various North Carolina cases that describe attempt offenses as involving only two elements—the intent to commit the substantive offense and an overt act going beyond mere preparation for the offense. *See State v. Davis*, 455 S.E.2d 627, 632 (N.C. 1995) ("The two elements of attempted robbery with a dangerous weapon are: (1) an intent to commit the substantive offense, and (2) an overt act done for that purpose which goes beyond mere preparation but falls short of the completed offense."); *State v. Allison*, 352 S.E.2d 420, 423 (N.C. 1987) ("An attempted robbery with a dangerous weapon occurs when a person, with the specific intent to unlawfully deprive another of personal property

by endangering or threatening his life with a dangerous weapon, does some overt act calculated to bring about this result."); *State v. May*, 235 S.E.2d 178, 182 (N.C. 1977) ("An attempted armed robbery occurs when a defendant with the requisite intent to rob, does some overt act calculated and designed to bring about the robbery, thereby endangering or threatening the life of a person.") (cleaned up). Under this formulation, Hamilton contends attempted armed robbery does not qualify as a violent felony because a perpetrator could take an overt action that does not involve the use or threatened use of force. We disagree.

Under North Carolina law, a defendant under indictment "may be convicted of the crime charged therein or of a less degree of the same crime, or of an attempt to commit the crime so charged, or of an attempt to commit a less degree of the same crime." N.C. Gen. Stat. § 15-170. If the defendant is convicted of an attempt to commit the indicted offense, the attempt offense generally "is punishable under the next lower classification as the offense which the offender attempted to commit." N.C. Gen. Stat. § 14-2.5. As to this inchoate type of attempt offense, the intent-plus-overt-act formulation is the standard formulation of the elements of that offense. *See, e.g., State v. Surles*, 52 S.E.2d 880, 882 (N.C. 1949) ("An attempt to commit a crime is an act done with intent to commit that crime, carried beyond mere preparation to commit it, but falling short of its actual commission. An indictable attempt, therefore, consists of two important elements: (1) an intent to commit the crime, and (2) a direct ineffectual act done towards its commission.") (cleaned up).

The statute at issue here, however, does not create an inchoate attempt offense. Instead, N.C. Gen. Stat. § 14-87(a) defines the crime of robbery with a firearm or other

dangerous weapon and includes within that definition of robbery cases where the defendant attempted but did not succeed in taking personal property. *See State v. White*, 369 S.E.2d 813, 817 (N.C. 1988) ("The purpose of the statute was to increase the punishment for common law robbery when firearms or other dangerous weapons were used to commit a robbery, whether or not the robber succeeded in the effort to take personal property. The statute's thrust was not to redefine robbery by eliminating the element of a taking from the offense, but rather to provide that an attempted taking with a dangerous weapon be punished as severely as a completed taking under the same circumstances. . . .") (cleaned up); *May*, 235 S.E.2d at 182 ("By the terms of G.S. 14-87, the offense is complete if there is an attempt to take personal property by use of firearms or other dangerous weapons. The attempt itself is a violation of the statute and is a felony."); *State v. Evans*, 183 S.E.2d 540, 544 (1971) ("The offense is complete if there is either a taking or an attempt to take the personal property of another by the means and in the manner prescribed by the statute, but there must be one or the other.").

That the offense detailed in § 14-87(a) is not an inchoate attempt offense is evident from the language and structure of the statute itself. Subsection (a) of the statute sets out the elements of the offense, including the elements of a taking or attempted taking. Subsection (a1), however, states that "[a]ttempted robbery with a dangerous weapon shall constitute a lesser included offense of robbery with a dangerous weapon, and evidence sufficient to prove robbery with a dangerous weapon shall be sufficient to support a conviction of attempted robbery with a dangerous weapon." N.C. Gen. Stat. § 14-87(a1). The inclusion of subsection (a1) shows that the North Carolina legislature distinguished

the offense of robbery premised on an attempted taking under subsection (a) from the inchoate offense of "attempted robbery" under subsection (a1). Thus, an armed perpetrator who is stopped before making his way inside the bank may be guilty of the inchoate offense of "attempted robbery with a dangerous weapon," but he would not be guilty of *statutory* robbery with a dangerous weapon under § 14-87(a) because he was stopped before he could engage in the conduct necessary to satisfy the other elements of the offense spelled out in the statute, such as using or threatening to use force against another person. *See Evans*, 183 S.E.2d at 544 ("Proof of the defendant's presence in a place of business, his possession therein of a firearm and his intent to commit the offense of robbery is not sufficient to support a conviction of the offense described in G.S. § 14-87, for it omits the essential elements of (1) a taking or attempt to take personal property, and (2) the endangering or threatening of the life of a person.").

North Carolina cases, however, often refer to robbery premised on an attempted taking under § 14-87(a) as "attempted robbery," *see, e.g., White*, 369 S.E.2d at 818 ("N.C.G.S. § 14–87(a) defines two crimes: armed robbery, which requires an actual taking, and attempted armed robbery, which requires an attempted taking. An attempted taking is not, therefore, an essential element of armed robbery."), which can make it difficult to determine whether a given case is addressing the inchoate attempt offense or the statutory offense of armed robbery involving an attempted taking.

In cases where it is clear that the defendant was charged with robbery with a dangerous weapon under § 14-87(a), North Carolina courts sometimes refer exclusively to the elements as spelled out in the statute, *see Kemmerlin*, 573 S.E.2d at 889; *Murrell*, 804

S.E.2d at 509, but in other cases refer exclusively to the two standard elements of the general, inchoate attempt offense when describing the elements of the statutory offense, *see Allison*, 353 S.E.2d at 423 ("Defendant was charged with attempted robbery with a dangerous weapon in violation of N.C.G.S. § 14-87. One of the elements of an attempt to commit a crime is that defendant have the intent to commit the substantive offense. An attempted robbery with a dangerous weapon occurs when a person, with the specific intent to unlawfully deprive another of personal property by endangering or threatening his life with a dangerous weapon, does some overt act calculated to bring about this result."). And in some cases, the courts refer to *both* the statutorily derived elements *and* the two-element formulation used for inchoate attempt offenses. *See White*, 369 S.E.2d at 818; *May*, 235 S.E.2d at 182. Nonetheless, despite the confusing case law, we conclude that the district court properly sentenced Hamilton as an armed career criminal.

We first note that the crime at issue in this case is a statutory offense, not a common-law offense. Under North Carolina law, "the legislative intent controls the interpretation of a criminal statute," *State v. Jones*, 598 S.E.2d 125, 128 (N.C. 2004), and the elements of a statutory offense are thus established through the language of the statute itself, *see State v. Hales*, 122 S.E.2d 768, 771 (N.C. 1961) ("Whether a criminal intent is a necessary element of a statutory offense *is a matter of construction to be determined from the language of the statute* in view of its manifest purpose and design.") (emphasis added). The elements of the offense spelled out by the Supreme Court of North Carolina in *Oldroyd, Kemmerlin*, and *Murrell* faithfully follow the language of § 14-87(a) and fully explain the elements the State must prove in order to obtain a conviction under the statute. Hamilton's preferred

intent-plus-overt-act formulation, by contrast, is entirely untethered from the language of § 14-87(a) and therefore cannot be considered a correct formulation of the elements of the statutory offense. *See Jones*, 598 S.E.2d at 128 ("When the language of a statute is clear and unambiguous, there is no room for judicial construction, and the courts must give it its plain and definite meaning.") (cleaned up).

While the North Carolina courts' occasional commingling of the statutory elements and the standard elements of a common-law attempt offense can be confusing, we believe those references must be understood as a sort of shorthand summary of what is generally required in cases involving attempts rather than a fully developed and articulated list of the elements of the offense created by § 14-87(a). To conclude otherwise would mean that the state courts ignored the plain language of the statute and the holdings of *Oldroyd, Kemmerlin*, and *Murrell* in order to craft their own version of an attempted-taking robbery, and that the courts did so without even an acknowledgment of their extraordinary departure from their obligation to apply the statute in accordance with its plain language.

Moreover, as previously noted, this court in *Burns-Johnson* held that offenses under G.S. § 14-87(a) categorically qualify as violent felonies. The court determined that § 14-87(a) was an indivisible statute[3] for purposes of the ACCA inquiry and that the offense

[3] When a statute "comprises multiple, alternative versions of the crime," it is considered a "divisible" statute for purposes of the violent-felony/crime-of-violence analysis under the ACCA and the Sentencing Guidelines. *Descamps v. United States*, 570 U.S 254, 262 (2013). When considering the status of an offense under a divisible statute, we apply a *modified* categorical approach which permits us to look to "a restricted set of materials"—for example, the indictment—to determine which of the multiple crimes contained within the statute was the crime of conviction. *Id.* at 262.

created by § 14-87(a) categorically qualified as a violent felony under the ACCA's force clause. *Burns-Johnson*, 864 F.3d at 315. Although neither the defendant's challenges to his ACCA designation nor the court's analysis in *Burns-Johnson* addressed the attempted-taking language of the statute, the holding would appear to be binding on this panel. *See Mentavlos v. Anderson*, 249 F.3d 301, 312 n.4 (4th Cir. 2001) ("[A] panel of this court cannot overrule, explicitly or implicitly, the precedent set by a prior panel of this court. Only the Supreme Court or this court sitting *en banc* can do that."); *United States v. Dodge*, 963 F.3d 379, 383 (4th Cir. 2020) (concluding that the panel was bound by a prior panel opinion holding that a state offense qualifies as an ACCA predicate offense despite the fact that the prior opinion "did not explicitly consider" the particular issue raised in *Dodge*). But even if we are not bound by *Burns-Johnson*, we would reach the same conclusion.

As Hamilton points out, the fact that a criminal offense qualifies as a violent felony does not necessarily mean that an attempt to commit that offense also qualifies as a violent

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The determination in *Burns-Johnson* that N.C.G.S. § 14-87(a) is an indivisible statute setting out one crime (robbery with a dangerous weapon) that can be committed through the different means (an actual taking or an attempted taking of personal property) is arguably in tension with the state courts' understanding of the statute. *See State v. White*, 369 S.E.2d 813, 818 (N.C. 1988) ("Attempted armed robbery, although defined in N.C.G.S. § 14–87 along with armed robbery, is clearly a separate offense."). Our decision in this case, however, does not turn on the divisibility *vel non* of § 14-87(a). Even if we were to assume that the statute is divisible, the PSR adequately establishes that Hamilton was convicted of the attempted-taking form of the offense. *See United States v. Thompson*, 421 F.3d 278, 285 (4th Cir. 2005) (holding that a district court may rely on the PSR's description of prior convictions where the PSR "bears the earmarks of derivation from *Shepard*-approved sources such as the indictments and state-court judgments" and the defendant does not object). Accordingly, whether the statute is divisible or indivisible, the question we must answer is whether the attempted-taking language prevents the offense from qualifying as a violent felony.

felony, particularly if the case involves the generic, inchoate offense of attempting to commit another crime. For example, the Supreme Court in *United States v. Taylor*, 142 S. Ct. 2015 (2022), held that while a completed Hobbs Act robbery categorically qualifies as a violent felony, attempted Hobbs Act robbery does not. The Court explained that

> [T]o win a conviction for a *completed* [Hobbs Act] robbery the government must show that the defendant engaged in the "unlawful taking or obtaining of personal property from the person of another, against his will, by means of actual or threatened force." § 1951(b). From this, it follows that to win a case for *attempted* Hobbs Act robbery the government must prove two things: (1) The defendant intended to unlawfully take or obtain personal property by means of actual or threatened force, and (2) he completed a "substantial step" toward that end. . . .
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> . . . . Whatever one might say about *completed* Hobbs Act robbery, *attempted* Hobbs Act robbery does not satisfy the elements clause. Yes, to secure a conviction the government must show an intention to take property by force or threat, along with a substantial step toward achieving that object. But an intention is just that, no more. And whatever a substantial step requires, it does not require the government to prove that the defendant used, attempted to use, or even threatened to use force against another person or his property.

Id. at 2020-21 (cleaned up) (underscored emphasis added).

As this portion of the decision makes clear, the outcome in *Taylor* turned on the elements of attempted Hobbs Act robbery—intent to commit Hobbs Act robbery plus a substantial step. As we have already discussed, however, the offense at issue in this case is an offense fully and carefully delineated in the statute with explicit elements that go beyond the common-law formulation of the elements required to prove an attempt to commit a crime. And for the reasons explained in *Hinton*, those carefully delineated elements establish that robbery premised on an attempted taking under § 14–87(a) categorically qualifies as a violent felony:

> Like the completed offense of robbery with a dangerous weapon, attempted robbery with a dangerous weapon is defined in N.C. Gen. Stat. § 14-87 and actually requires as an element the use or threatened use of a firearm or other dangerous weapon. The "attempt" portion of attempted robbery with a dangerous weapon refers to the taking of property, not to the use or threat of force. To prove attempted robbery with a dangerous weapon, the State must "prove beyond a reasonable doubt that the defendant possessed a firearm or other dangerous weapon at the time of the attempted robbery and that the victim's life was in danger or threatened." *State v. Williams*, 335 N.C. 518, 438 S.E.2d 727, 728 (1994). Accordingly, our conclusion in *Burns-Johnson* that robbery with a dangerous weapon "necessarily entails the use, attempted use, or threatened use of violent physical force," 864 F.3d at 318, similarly applies to the force necessary for a conviction of attempted robbery with a dangerous weapon . . . .

789 F. App'x at 958 (cleaned up).

Hamilton nonetheless insists that North Carolina courts have in fact upheld convictions under § 14-87(a) for conduct that does not involve the use or threatened use of violent force. *See Jones*, 914 F.3d at 901 ("If there is a realistic probability that the state would apply the statute to conduct that does not involve the use, attempted use, or threatened use of violent physical force against another, then the offense is not categorically a 'violent felony' under the ACCA's force clause. . . ."). To support this argument, Hamilton relies primarily on *State v. Lawrence*, 723 S.E.2d 326 (N.C. 2012), and *State v. Everett*, 633 S.E.2d 891 (N.C. Ct. App. 2006) (unpublished).[4]

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[4] Hamilton also contends that his argument is (indirectly) supported by the state court of appeals' opinion in *State v. Oldroyd*, 843 S.E.2d 478 (N.C. Ct. App. 2020), which held that an indictment for attempted armed robbery is fatally defective if it does not include the name of the victim. *See id.* at 551. After the briefs were filed in this case, however, the North Carolina Supreme Court overruled the court of appeals and held that there is no requirement that an indictment for attempted armed robbery include the name of the victim. *See State v. Oldroyd*, 869 S.E.2d 193, 198-99 (N.C. 2022). As previously noted, the *Oldroyd* court used the three-element, statutory-language-based formulation when listing the elements of armed robbery under N.C. Gen. Stat. § 14-87(a). *See id.* at 197

In *Lawrence*, David Lawrence and some of his friends planned to use firearms to rob Charlise Curtis. The group twice went to Curtis's home while armed and intending to rob her, but they failed both times. The first attempt was thwarted by the arrival of the police, who had been alerted to suspicious activity by neighbors. The second attempt was thwarted by a neighbor who saw two members of the group sneak around the back of Curtis's house. The neighbor called the police, retrieved his pistol, and went out to confront the backyard bandits, who then fled the scene. *See Lawrence*, 723 S.E.2d at 328. Lawrence was convicted of eight counts, including two counts of attempted robbery with a dangerous weapon. The state court of appeals found the evidence sufficient to support the attempted robbery convictions but concluded that the defendant was entitled to a new trial on a conspiracy count because of a plain error in the instructions for that count. *See State v. Lawrence*, 706 S.E.2d 822, 836 (N.C. Ct. App. 2011). The state supreme court granted review to consider only the question of plain error in the conspiracy instructions. On that issue, the court held that the defendant was not prejudiced by the erroneous jury instruction, and the court therefore reversed the decision of the court of appeals *See Lawrence*, 723 S.E.2d at 329-30, 335.

In *Everett*, a group of friends planned to use firearms to rob a drug dealer named Diane. The group drove to Diane's house, but she was not home. The group adjusted their plans on the fly and decided to instead rob Micah Anderson. They drove to the street where

("A person is guilty of the offense of robbery with a dangerous weapon, or an attempt to commit the crime, if he or she (1) takes or attempts to take personal property from another, (2) while possessing, using, or threatening to use a firearm or other dangerous weapon, (3) whereby the life of a person is endangered or threatened.") (cleaned up).

they believed (incorrectly) that Anderson lived. Two of the friends—Dennis Everett and Jontavan Moore—got out of the car, armed with a loaded assault rifle. Sheltonia Everett (Dennis's wife), remained in the car. After some period of time, Sheltonia heard gunshots. Dennis Everett returned to the car in a panicked state and drove away, telling Sheltonia that he had shot Moore. Moore's dead body was found the next day, and the surviving members of the group were subsequently arrested. *See Everett*, 633 S.E.2d 891, at *1-2. Based on her involvement, Sheltonia Everett was convicted of conspiracy to commit robbery with a dangerous weapon and attempted robbery with a dangerous weapon. Those convictions were affirmed by the court of appeals. *See id*. at *4-6.

Because the defendants in *Lawrence* and *Everett* were never in the presence of their intended victims, Hamilton contends that the cases establish that defendants may be convicted in North Carolina of attempted robbery with a dangerous weapon under facts that did not involve a use or threatened use of force directed against another person. We disagree.

First of all, it appears that the defendant in *Everett* was convicted of the common-law inchoate attempted-robbery offense, not the statutory robbery-by-attempted-taking offense at issue here. As discussed above, a defendant can be convicted of the inchoate offense of attempted robbery under facts that would not support a conviction under § 14-87(a). And while the opinion of the *court of appeals* in *Lawrence* may provide some support for Hamilton's argument, the only issue considered by the *supreme court* in *Lawrence* was the application of the plain error standard to erroneous jury instructions on the charge of conspiring to commit robbery with a dangerous weapon; the court expressly declined to

consider the court of appeals' resolution of the challenges to the attempted robbery convictions. *See Lawrence*, 723 S.E.2d at 329. As we have already discussed, this court is bound by the state *supreme court's* interpretation of the relevant statute, not that of an intermediate appellate court. *See Aparicio–Soria*, 740 F.3d at 154 (directing courts to focus on the decisions of "the state's highest court" when determining the elements of the offense). Because nothing in the *supreme court's* decision in *Lawrence* undermines *that court's* previous explications of the elements of the statutory offense of the attempted-taking form of robbery with a dangerous weapon, we do not believe that *Lawrence* undermines our determination that the North Carolina offense of armed robbery premised on an attempted taking qualifies as a violent felony under the ACCA.

III.

For the reasons set forth above, we find no error in the district court's determination that Hamiton's conviction under N.C. Gen. Stat. 14-87(a) qualifies as a violent felony for purposes of the ACCA. We therefore affirm the decision of the district court.

AFFIRMED