

INDEX TO APPENDICES

APPENDIX A:	Judgment of the United States District Court for the Southern District of Iowa, 3:19-cr-00027-001 February 26, 2020.....	1
APPENDIX B:	Opinion of the Eighth Circuit Court of Appeals, 20-1506, June 21, 2021	8
APPENDIX C:	Judgment of the Eighth Circuit Court of Appeals, 20-1506, June 21, 2021	15

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA

v.

Zacharia Allen Clark

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:19-cr-00027-001

USM Number: 19083-030

Terence L. McAtee
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) One of the Superseding Indictment filed on August 7, 2019☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §§ 922(g)(1), 924(e)	Felon in Possession of Ammunition	09/23/2018	One

☐ See additional count(s) on page 2

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

February 26, 2020

Date of Imposition of Judgment

Signature of Judge

John A. Jarvey, Chief U.S. District Judge

Name of Judge

Title of Judge

February 27, 2020

Date

DEFENDANT: Zacharia Allen Clark
CASE NUMBER: 3:19-cr-00027-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

200 months as to Count One of the Superseding Indictment filed on August 7, 2019.

☐ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends placement at FCI Oxford, Wisconsin, or FCI Greenville, Illinois, if commensurate with his security classification and needs, or a facility as close as possible to the Davenport Iowa, area to be near family. The Court also recommends that the defendant be made eligible for the 500 hour residential drug abuse program. Additionally, the Court recommends that the defendant be provided the opportunity to participate in vocational and educational programming.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant is remanded to the custody of the United States Marshal for surrender to the ICE detainer.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before _____ on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Zacharia Allen Clark
CASE NUMBER: 3:19-cr-00027-001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :
Five years as to Count One of the Superseding Indictment filed on August 7, 2019.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Zacharia Allen Clark
CASE NUMBER: 3:19-cr-00027-001

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: Zacharia Allen Clark
CASE NUMBER: 3:19-cr-00027-001

SPECIAL CONDITIONS OF SUPERVISION

You must participate in a program of testing and/or treatment for substance abuse, as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Office. At the direction of the probation office, you must receive a substance abuse evaluation and participate in inpatient and/or outpatient treatment, as recommended. Participation may also include compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment. You must not use alcohol and/or other intoxicants during the course of supervision.

You must not patronize business establishments where more than fifty percent of the revenue is derived from the sale of alcoholic beverages.

You must submit to a mental health evaluation. If treatment is recommended, you must participate in an approved treatment program and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment and/or compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

You shall not knowingly associate or communicate with any member of the Low Riders criminal street gang, or any other criminal street gang.

You will submit to a search of your person, property, residence, adjacent structures, office, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), and other electronic communications or data storage devices or media, conducted by a U.S. Probation Officer. Failure to submit to a search may be grounds for revocation. You must warn any other residents or occupants that the premises and/or vehicle may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your release and/or that the area(s) or item(s) to be searched contain evidence of this violation or contain contraband. Any search must be conducted at a reasonable time and in a reasonable manner. This condition may be invoked with or without the assistance of law enforcement, including the U.S. Marshals Service.

AO 245B (Rev. 09/19) Judgment in a Criminal Case
 v1 Sheet 5 — Criminal Monetary Penalties

Judgment Page: 6 of 7

DEFENDANT: Zacharia Allen Clark
 CASE NUMBER: 3:19-cr-00027-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

- ☐ Pursuant to 18 U.S.C. § 3573, upon the motion of the government, the Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 100.00	\$0.00	\$ 0.00	\$ 0.00	\$ 0.00

- ☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
TOTALS	\$0.00	\$0.00	

- ☐ Restitution amount ordered pursuant to plea agreement \$ _____
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

*Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Zacharia Allen Clark
CASE NUMBER: 3:19-cr-00027-001**SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
- All criminal monetary payments are to be made to the Clerk's Office, U.S. District Court, P.O. Box 9344, Des Moines, IA. 50306-9344.
- While on supervised release, you shall cooperate with the Probation Officer in developing a monthly payment plan consistent with a schedule of allowable expenses provided by the Probation Office.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
---	--------------	-----------------------------	--

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

United States Court of Appeals
For the Eighth Circuit

No. 20-1506

United States of America

Plaintiff - Appellee

v.

Zacharia Allen Clark

Defendant - Appellant

Appeal from United States District Court
for the Southern District of Iowa - Eastern

Submitted: January 11, 2021

Filed: June 21, 2021

Before LOKEN, GRASZ, and KOBES, Circuit Judges.

LOKEN, Circuit Judge.

Zacharia Clark pleaded guilty to one count of being a felon in unlawful possession of ammunition. His extensive criminal history includes one felony conviction for aggravated battery of a peace officer in violation of 720 Ill. Comp. Stat. § 5/12-3.05(d)(4) and two separate felony convictions for causing willful injury in violation of Iowa Code § 708.4(2). At sentencing, Clark argued these offenses do not qualify as violent felony convictions under the Armed Career Criminal Act's

(ACCA) “force clause,” 18 U.S.C. § 924(e)(2)(B)(i). The district court¹ disagreed and imposed a 200 month sentence. Clark appeals. Reviewing *de novo* whether these prior convictions are ACCA predicates, we affirm. Boaz v. United States, 884 F.3d 808, 809 (8th Cir.), cert. denied, 138 S. Ct. 2695 (2018) (standard of review).

“Under the ACCA’s force clause, a crime is a violent felony if it is ‘punishable by imprisonment for a term exceeding one year’ and ‘has as an element the use, attempted use, or threatened use of physical force against the person of another.’” Id. at 809, quoting 18 U.S.C. § 924(e)(2)(B)(i). “Physical force means violent force -- that is, force capable of causing physical pain or injury to another person.” Id. (citation omitted). In determining whether a prior conviction qualifies as a “violent felony” under the ACCA:

[C]ourts use a categorical approach that looks to the fact of conviction and the statutory elements of the prior offense. In cases where a [divisible] statute describes alternate ways of committing a crime -- only some of which satisfy the definition of a violent felony -- courts may use a modified categorical approach and examine a limited set of documents to determine whether a defendant was necessarily convicted of a violent felony. These materials include charging documents, jury instructions, plea agreements, transcripts of plea colloquies, or “some comparable judicial record.”

Martin v. United States, 904 F.3d 594, 596 (8th Cir. 2018), quoting Headbird v. United States, 813 F.3d 1092, 1095-96 (8th Cir. 2016).

The modified categorical approach permits us to examine this limited set of documents, known as Shepard documents, to determine which portion of a divisible statute was the basis for the prior conviction. Mathis v. United States, 136 S. Ct.

¹The Honorable John A. Jarvey, Chief Judge of the United States District Court for the Southern District of Iowa.

2243, 2249 (2016) (citation omitted); see United States v. Roman, 917 F.3d 1043, 1046 (8th Cir. 2019). After identifying the relevant statutory provision from these documents, we look to the elements of that offense using the standard categorical approach. Id.

1. Illinois Aggravated Battery Conviction. In September 2011, a five-count Information filed in Illinois state court charged Clark with committing two counts of Aggravated Battery, a class 2 felony, in violation of 720 Ill. Comp. Stat. § 5/12-3.05(d)(4). As relevant here, that subsection provided:

(d) Offense based on status of victim. A person commits aggravated battery when, in committing a battery, other than by discharge of a firearm, he or she knows the individual battered to be . . . (4) [a] peace officer . . . (i) performing his or her official duties; (ii) battered to prevent performance of his or her official duties; or (iii) battered in retaliation for performing his or her official duties.

Clark pleaded guilty to these offenses in December 2011. He was sentenced to three years imprisonment in February 2012. On appeal, Clark argues the district court erred in concluding this was a violent felony conviction under the ACCA's force clause. Applying the modified categorical approach, we disagree.

In United States v. Roman, we reviewed a conviction under the immediately preceding subsection of the aggravated battery statute, 720 Ill. Comp. Stat. § 5/12-3.05(c), which governs an offense “based on location of conduct.” Following the Seventh Circuit’s lead, we noted that the statute applies “in committing a battery,” and that simple battery is defined in a divisible Illinois statute as either “caus[ing] bodily harm” or “physical contact of an insulting or provoking nature.” 917 F.3d at 1046, citing United States v. Lynn, 851 F.3d 786, 797 (7th Cir. 2017). Like the Seventh Circuit in Lynn, we held that a conviction for aggravated battery falling under the first alternative contains a force element and is therefore a crime of violence

under the career offender provision of the Sentencing Guidelines, USSG § 4B1.2(a)(1). Id. at 1047. We treat the terms “violent felony” under the ACCA and “crime of violence” under the Guidelines as interchangeable. See, e.g., United States v. Hataway, 933 F.3d 940, 942 n.2 (8th Cir. 2019) (citation omitted).

We held in Roman that a conviction for aggravated battery in violation of subsection 3.05(c) of the aggravated battery statute is a “crime of violence” under the Guidelines if it was based on the “causes bodily harm” alternative element of Illinois simple battery. 917 F.3d at 1047. Clark was convicted of violating subsection 3.05(d)(4) which, like subsection 3.05(c), applies only to acts committed “in committing a battery.” Therefore, consistent with Roman, which is controlling precedent, we hold that a conviction for aggravated battery of a peace officer in violation of subsection 3.05(d)(4) is an ACCA violent felony if it was based on the “causes bodily harm” alternative element of Illinois simple battery.

Clark’s Presentence Investigation Report noted that his 2012 Illinois conviction was for two counts of aggravated battery of a peace officer in violation of subsection 3.05(d)(4). When Clark objected that this was not a violent felony, the government had the burden to prove at sentencing that it was. United States v. Forrest, 611 F.3d 908, 913 (8th Cir.), cert. denied, 562 U.S. 1053 (2010). To meet its burden, the government submitted copies of the “Information” charging Clark with the aggravated battery offenses and the state court judgment of conviction. The Information charged Clark in Count Two with violating § 3.05(d)(4), alleging that he “committed the offense of aggravated battery [because] in committing a battery . . . [he] knowingly . . . *caused bodily harm* to [a peace officer].” (Emphasis added). This language “satisfied the ACCA force clause” because it “precisely tracked the language of” the “causes bodily harm” alternative. Hataway, 933 F.3d at 944-45. By contrast, Count Three charged that Clark “made physical contact of an insulting nature” with a peace officer, the alternative form of Illinois simple battery that does

not include the requisite element of physical force. Roman, 917 F.3d at 1046. The judgment of conviction confirmed that Clark was convicted of Count Two and Count Three. The government argued that Count Two, but not Count Three, was an ACCA violent felony conviction. The district court agreed.

On appeal, Clark first argues that the district court erred when it relied on impermissible documents in concluding that “causes bodily harm” was the simple battery alternative basis for his Count 2 conviction because the Information was “signed by a law enforcement officer” and is therefore “the kind of document Shepard indicated was improper.” We disagree. Under Illinois law, the Information served as the state’s official charging document. See United States v. Hamilton, 950 F.3d 567, 570 (8th Cir. 2020), citing 725 Ill. Comp. Stat. § 5/111-2. The Supreme Court in Shepard v. United States expressly held that the limited set of documents a court may review in determining whether a defendant pleaded guilty to a violent felony offense includes “the charging document.” 544 U.S. 13, 26 (2005). The Illinois state court judgment of conviction is likewise an official “judicial record.” Id. Clark further argues that, even if the government established he was convicted under the “causes bodily harm” alternative, that language does not necessarily require violent force. This contention is foreclosed by our prior decisions in Roman and in United States v. Rice, 813 F.3d 704, 706 (8th Cir.), cert. denied, 137 S. Ct. 59 (2016). Clark asks us to overrule Rice but as a panel we may not do so.

We conclude the district court did not err in relying on the proffered Shepard documents to conclude that Clark’s Illinois conviction for aggravated battery of a peace officer was based on the “causes bodily harm” alternative and was therefore a violent felony conviction under the ACCA’s force clause.

2. Iowa Willful Injury Convictions. Clark also argues his two prior Class D felony convictions for violating Iowa’s willful injury statute, Iowa Code § 708.4(2),

are not ACCA violent felonies because the offense: (i) does not require the use of violent force, (ii) potentially applies to purely mental injuries, and (iii) includes a failure to act. The statute provides: “Any person who does an act which is not justified and which is intended to cause serious injury to another commits willful injury, which is punishable as . . . [a] Class ‘D’ felony, if the person *causes bodily injury* to another.” (Emphasis added.) Citing several Iowa appellate court decisions, Clark contends that causing bodily injury does not require violent force because “the bar for what constitutes ‘bodily injury’ under Iowa law is low.”

In United States v. Spratt, 735 Fed. App’x 219 (8th Cir. 2018), we considered whether a § 708.4(2) conviction was a “crime of violence” under the Guidelines, a term that is interchangeable with the ACCA’s “violent felony.” We concluded that § 708.4(2) “has as an element the use of physical force” because Iowa law defines “bodily injury” as “physical pain, illness or any impairment of physical condition.” Id. at 220, citing Iowa v. McKee, 312 N.W.2d 907, 913 (Iowa 1981). Although Spratt, an unpublished decision, is not controlling precedent, we agree with its reasoning. Moreover, Spratt’s conclusion was reinforced by a recent published decision holding that a § 708.4(2) conviction is a crime of violence under 18 U.S.C. § 16(a) -- a statute with language nearly identical to the ACCA’s force clause. Jima v. Barr, 942 F.3d 468, 472 (8th Cir. 2019); see also United States v. Scott, 818 F.3d 424, 435 (8th Cir. 2016) (interpreting similar Missouri statute); United States v. Rice, 813 F.3d at 705-06 (interpreting similar Arkansas statute).

Undeterred by Spratt and Jima, Clark argues that Iowa’s willful injury statute does not require violent force because § 708.4 requires that a person intend to cause “serious injury” and the Iowa Supreme Court has held that “serious injury” includes disabling mental illness without regards to physical injury. See Iowa v. White, 668 N.W.2d 850, 857 (Iowa 2003), citing Iowa Code § 702.18(1)(a). But that argument is beside the point in this case. Both of Clark’s willful injury convictions were Class

D felony violations of § 708.4(2), which requires that a person actually “causes bodily injury to another.” Iowa defines *bodily* injury as “*physical* pain, illness or any impairment of *physical* condition.” McKee, 312 N.W.2d at 913 (emphasis added). Thus, Clark was convicted of offenses requiring violent, physical force as an element.

Clark further argues that Iowa’s willful injury statute does not necessarily require an act of violent force because Iowa Code § 702.2 defines an “act” to include “a failure to do any act which the law requires one to perform.” But Spratt explicitly rejected this argument. See 735 Fed. App’x at 220. Citing our rejection of a similar argument in United States v. Peeples, 879 F.3d 282, 286-87 (8th Cir.), cert. denied, 138 S. Ct. 2640 (2018), which itself relied on Rice and United States v. Castleman, 134 S. Ct. 1405 (2014), we concluded that a Class D felony violation of § 708.4(2) includes violent force as an element because, to commit the offense, a defendant must actually cause bodily injury to another person. Moreover, in Jima we held -- in spite of appellant in that case making the same “failure-to-act” argument Clark advances here -- that “[o]ne cannot cause bodily injury to another without using the force capable of producing that injury.” 942 F.3d at 472. Though reasonable judges have disagreed, see Rice, 813 F.3d at 707-08 (Kelly, J., dissenting) (collecting cases), our precedent forecloses Clark’s argument.

For these reasons, we conclude the district court correctly concluded that Clark’s three prior felony convictions are ACCA violent felonies and properly determined his advisory guidelines sentencing range under the ACCA. We therefore affirm the judgment of the district court.

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

SENT TO CLIENT

Jun 22 2021

by: kelly_jensen

No: 20-1506

United States of America

Plaintiff - Appellee

v.

Zacharia Allen Clark

Defendant - Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Eastern
(3:19-cr-00027-JAJ-1)

JUDGMENT

Before LOKEN, GRASZ, and KOBES, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

June 21, 2021

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Revision of Part V of the Eighth Circuit Plan to Implement the Criminal Justice Act of 1964.

V. Duty of Counsel as to Panel Rehearing, Rehearing En Banc, and Certiorari

Where the decision of the court of appeals is adverse to the defendant in whole or in part, the duty of counsel on appeal extends to (1) advising the defendant of the right to file a petition for panel rehearing and a petition for rehearing en banc in the court of appeals and a petition for writ of certiorari in the Supreme Court of the United States, and (2) informing the defendant of counsel's opinion as to the merit and likelihood of the success of those petitions. If the defendant requests that counsel file any of those petitions, counsel must file the petition if counsel determines that there are reasonable grounds to believe that the petition would satisfy the standards of Federal Rule of Appellate Procedure 40, Federal Rule of Appellate Procedure 35(a) or Supreme Court Rule 10, as applicable. *See Austin v. United States*, 513 U.S. 5 (1994) (per curiam); 8th Cir. R. 35A.

If counsel declines to file a petition for panel rehearing or rehearing en banc requested by the defendant based upon counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion to withdraw must be filed on or before the due date for a petition for rehearing, must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for rehearing, and must request an extension of time of 28 days within which to file *pro se* a petition for rehearing. The motion also must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

If counsel declines to file a petition for writ of certiorari requested by the defendant based on counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

A motion to withdraw must be accompanied by counsel's certification that a copy of the motion was furnished to the defendant and to the United States.

Where counsel is granted leave to withdraw pursuant to the procedures of *Anders v. California*, 386 U.S. 738 (1967), and *Penson v. Ohio*, 488 U.S. 75 (1988), counsel's duty of representation is completed, and the clerk's letter transmitting the decision of the court will notify the defendant of the procedures for filing *pro se* a timely petition for panel rehearing, a timely petition for rehearing en banc, and a timely petition for writ of certiorari.