

No. \_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES

LITTLETON WILLIAM CLARK,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent,

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI

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Respectfully submitted,

STOWERS & NELSEN, PLC

JAMES NELSEN

COUNSEL OF RECORD

West Glen Town Center

650 South Prairie View Drive, Suite 130

West Des Moines, IA 50266

Phone: (515) 224-7446

Fax: (515) 225-6215

Email: james@stowersnelsen.com

### **QUESTION PRESENTED**

Whether the District Court erred in interpreting Note 14(c) of §2K2.1(b)(6)(B) when it applied a four-level enhancement pursuant to §2K2.1(b)(6)(B) for “another felony offense” where the other felony offense is necessarily either the same possessory offense for which Clark was convicted, or not a felony.

## **LIST OF PARTIES**

[X] All parties appear in the caption of the case on the cover page.

## **RELATED CASES**

- *United States v. Clark*, No. 4:19-cr-00223-001, U.S. District Court for the Southern District of Iowa. Judgment entered April 25, 2022.
- *United States v. Clark*, No. 22-1875, U.S. Court of Appeals for the Eighth Circuit. Judgment entered May 8, 2023.

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner, Littleton Clark, respectfully prays that a writ of certiorari issue to review the judgment below.

## **OPINIONS BELOW**

The opinion of the United States Court of Appeals for the Eighth Circuit appears at Appendix A to the Petition and is unpublished.

The judgment of the United States District Court for the Southern District of Iowa appears at Appendix B to the Petition.

## **JURISDICTION**

The Eighth Circuit entered judgment on May 8, 2023. This court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### **18 U.S.C. § 1254 – Court of Appeals; Certiorari; Certified Questions**

Cases in the court of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

### **U.S.S.G. § 2K2.1(b)(6)(B) –**

(6) If the Defendant –

(B) used or possessed any firearm or ammunition in connection with another felony offense; or possessed or transferred any firearm or ammunition with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony offense.

Note (14)

(C) Definitions—

"Another felony offense", for purposes of subsection (b)(6)(B), means any federal, state, or local offense, other than the explosive or firearms possession or trafficking offense, punishable by imprisonment for a term exceeding one year, regardless of whether a criminal charge was brought, or a conviction obtained.



## STATEMENT OF THE CASE

On December 8, 2019, a Des Moines, Iowa, Police Department Officer followed a vehicle with a malfunctioning license plate lamp. (P.S.R. ¶ 6). The car pulled to the side of the road and stopped at an angle blocking a driveway. *Id.* The officer then activated his lights. *Id.* Littleton William Clark (“Clark”) exited the vehicle from the front passenger seat and left the scene. *Id.* The officer pursued Clark on foot while ordering him to stop. (P.S.R. ¶ 7). An additional officer arrived, and the officers apprehended Clark. *Id.* Prior to the officers apprehending Clark, one of the officers observed Clark discard something. *Id.* On a nearby sidewalk, officers recovered a Springfield, XD40 .40 caliber pistol (serial number MG313395). *Id.* The pistol was loaded with 7 rounds of ammunition in the magazine and one round in the chamber. *Id.* Clark admitted the firearm was his. (P.S.R. ¶ 8).

A one-count Indictment was filed on December 17, 2019, in the Southern District of Iowa, charging Clark with Felon in Possession of a Firearm, (Count One), in violation of 18 U.S.C. §§ 922(g)(1), and 924(a)(2). (P.S.R. ¶ 1). On December 22, 2021, the defendant pled guilty to Count One of the Indictment without a plea agreement. (P.S.R. ¶ 2& 3). On January 12, 2022, the Court accepted the defendant’s plea and adjudicated him guilty. *Id.*

The Presentence Investigation Report calculated Clark’s base offense level as 24. (P.S.R. ¶ 15). Clark was also attributed a four-level

enhancement under § 2K2.1(b)(6)(B) for possessing a firearm in connection with another felony. (P.S.R. ¶ 16). The felony offense the court relied upon for the enhancement was Interference with Official Acts in violation of Iowa Code §719.1. (P.S.R. ¶ 16). After a three-level reduction for acceptance of responsibility, the P.S.R. calculated his Total Offense Level as 25. (P.S.R. ¶ 24). With a criminal history score of 18, Clark's criminal history category was VI. (P.S.R. ¶ 37). This resulted in an advisory guideline range of 110 to 120 months (due to the statutorily authorized maximum sentence of 120 months). (P.S.R. ¶ 92).

Prior to sentencing, Clark objected to the application of a four (4) level enhancement pursuant to §2K2.1(b)(6)(B). Clark maintained that the allegations contained in the P.S.R. did not constitute the offense of Interference with Official Acts. Clark argued that the information contained in paragraphs 6, 7 and 8 of the P.S.R. did not support a finding that Clark violated the provisions of Iowa Code Section 719.1, Interference with Official Acts, as the information in the P.S.R. did not support a finding that Clark obstructed or resisted any officer engaged in any official act. Clark further objected to the enhancement pursuant to §2K2.1(b)(6)(B) and maintained the 4 levels should not be applied contending that, but for the possession of the firearm which was the substantive offense of possession for which Clark was convicted, Interference with Official Acts is a non-felony offense and thus

does not qualify as ‘another felony.’ Based on these objections he argued his guideline range should have been calculated as 77 to 96 months.

Clark maintained his objections at sentencing. The district court concluded paragraphs 6, 7, and 8 supported a finding Clark committed Interference with Official Acts and overruled Clark’s objections. The district court further determined the enhancement pursuant to §2K2.1(b)(6)(B) applied. The district court thus calculated the Guidelines range based upon a total offense level of 25 and criminal history category of VI resulting in a total guideline range of 100 to 120 months. (Sent. Tr. pp. 8). The court sentenced Clark to a sentence of 110 months for count one. (Sent. Tr. pp. 20). Clark appealed to the United States Court of Appeals for the Eighth Circuit which affirmed the District Court’s ruling. Clark now appeals that decision.

## REASONS FOR GRANTING THE PETITION

1. **The Circuit courts have interpreted the meaning of Application Note 14(c) in a manner that has created a lack of consistency in sentences relating to enhancements pursuant to §2K2.1(b)(6)(B).**

This Court should grant review in this case to provide guidance to lower courts regarding the application of §2K2.1 Note 14 and the applicability to ‘other felony offenses’ which encompasses the offense conduct as an element. Specifically, as it relates to Mr. Clark, the court should grant review to provide guidance regarding the application of note 14(c) relating to the district court’s reliance upon conduct which would otherwise constitute a misdemeanor state offense but for the offense conduct underlying the offense of conviction in this matter. The district court enhanced an otherwise simple misdemeanor to ‘another felony’ based upon Mr. Clark’s possession of the firearm in this offense, then applied a 4-level enhancement. The Eighth Circuit has routinely held simultaneous possession which supports a state possessory offense is sufficient for an enhancement. *See United States v. Walker*, 771 F.3d 449 (8<sup>th</sup> Cir. 2014); *United States v. Hunt*, 812 Fed.Appx. 390 (8<sup>th</sup> Cir. 2020); *United States v. Roberts*, 958 F.3d 675 (8<sup>th</sup> Cir. 2020); *United States v. Odem*, 804 Fed.Appx. 418 (8<sup>th</sup> Cir. 2020); *United States v. Maldonado*, 864 F.3d 893 (8<sup>th</sup> Cir. 2017); *United States v. Thigpen*, 848 F.3d 841 (8<sup>th</sup> Cir. 2017); *United States v. Parrow*, 844 F.3d 801 (8<sup>th</sup> Cir. 2016); *United States v. Davis*, 825 F.3d 359 (8<sup>th</sup> Cir. 2016); *United States v. Terrell*, 822 F.3d 467 (8<sup>th</sup> 2016). In this matter, the Eighth Circuit has now gone a

step further, and extended the application of Note 14 to conduct which otherwise constitutes a simple misdemeanor which is subsequently enhanced by the offense conduct to a felony. Other circuits have held that more is required to establish facilitation than simultaneous, coincidental possession, and held separation by time is a factor. *See United States v. Cissom*, 35 F.4<sup>th</sup> 185 (4<sup>th</sup> Cir. 2022); *United States v. Ingram*, 40 F.4<sup>th</sup> 792 (7<sup>th</sup> Cir. 2022); *United States v. Ryan*, 935 F.3d 40 (2d Cir. 2019) *United States v. Head*, 845 Fed.Appx. 421 (6<sup>th</sup> Cir. 2021).

The possession which accompanied the state offense of Interference with Official Acts which was relied upon by the court in applying the four-level enhancement in this matter was part of Clark's offense conduct and the exact basis for the possession offense. Clark was found to have disembarked from a vehicle, fled on foot, and discarded a firearm at the time he was arrested for a violation of 18 U.S.C. §922(g). Had Clark simply fled on foot without possessing the firearm, his conduct in violation of state law would have been a simple misdemeanor. Iowa Code 719.1 (Iowa 2019).

Clark admitted to having possessed the firearm and plead guilty. The court concluded that Clark's possession of the firearm in this matter, in conjunction with conduct which would otherwise be a simple misdemeanor but for the possession of the firearm in this matter, constituted an additional felony. Thus, Clark's violation of 18 U.S.C. §922(g), possession of a firearm by a prohibited person, was the basis for enhancing the otherwise

misdemeanor conduct of Interference with Official Acts to a felony. The court then relied upon that ‘felony’ and enhanced Clark’s guideline by four levels.

The exception found in Note 14(c) states that, for purposes of a §2K2.1(b)(6)(B) four-level enhancement, “another felony offense” is any federal, state, or local offense other than *the* explosive or firearms possession or trafficking offense, which is punishable by a term of imprisonment exceeding one year. U.S.S.G. § 2K2.1 Note 14(c) (emphasis added). The Court should conclude that the application of the four-level enhancement was incorrectly applied as it is necessarily the same possessory offense for which Clark was convicted. But for the violation of 18 U.S.C. §922(g), the possession offense conduct in this matter, there was no felony offense of Interference with Official Acts.

An interpretation and conclusion relating to application of 14(c) of 2K2.1(b)(6)(B) that defines ‘another felony’ and distinguishes ‘the’ possession offense language would allow lower courts to appropriately apply the enhancement and provide a reasonable, consistent interpretation of the enhancement. Currently, the split in circuits, and the approach of the Eighth Circuit, creates more inconsistency and results in a lack of definite parameters which were intended by Note 14(c). Whereas the Petitioner’s proposed interpretation is consistent with the language of the guideline provisions and consistent with other circuits which have concluded the

language disallows an enhancement for offenses which are *the* possessory offense.

### **CONCLUSION**

This case presents a good opportunity for the Court to address a definite interpretation of U.S.S.G. 2K2.1(b)(6)(B) Note 14: 1. does ‘another felony’ require a separate act from ‘the’ possession which is the conduct constituting the offense of conviction; and 2. Can the possession which is the offense of conviction be used to enhance an otherwise non-felonious offense to a felony and subject a defendant to an enhancement based upon the same possession. Therefore, Mr. Clark asks this court to grant certiorari.

STOWERS & NELSEN PLC  
West Glen Town Center  
650 South Prairie View Drive, Suite 130  
West Des Moines, IA 50266  
Phone: (515) 224-7446  
Fax: (515) 225-6215  
Email: james@stowersnelsen.com

By: /s/ James S. Nelsen  
James Nelsen  
ATTORNEY FOR PETITIONER  
LITTLETON CLARK

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