

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

LITTLETON WILLIAM CLARK

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent,

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

APPENDIX

Respectfully submitted,

STOWERS & NELSEN, PLC
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TABLE OF CONTENTS

| | |
|--|---------------|
| APPENDIX A- OPINION FROM EIGHTH CIRCUIT COURT OF APPEALS DATED MAY 8, 2023..... | Appendix A-1 |
| APPENDIX B- JUDGMENT FROM U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA DATED APRIL 25, 2022..... | Appendix B-6 |
| APPENDIX C- REPORT AND RECOMMENDATION CONCERNING PLEA OF GUILTY DATED DECEMBER 22, 2021..... | Appendix C-13 |

United States Court of Appeals
For the Eighth Circuit

No. 22-1875

United States of America

Plaintiff - Appellee

v.

Littleton William Clark

Defendant - Appellant

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

Submitted: April 10, 2023

Filed: May 8, 2023

[Unpublished]

Before BENTON, ARNOLD, and GRASZ, Circuit Judges.

PER CURIAM.

Littleton William Clark pled guilty to being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). The district court¹ sentenced

¹The Honorable Rebecca Goodgame Ebinger, United States District Court Judge for the Southern District of Iowa.

him to 110 months in prison, applying a four-level enhancement under U.S.S.G. § 2K2.1(b)(6)(B) for possessing the gun in connection with another felony offense. Clark appeals the application of the enhancement. Having jurisdiction under 28 U.S.C. § 1291, this court affirms.

On December 8, 2019, a police officer followed a car with a malfunctioning license plate lamp. The car pulled over. The officer activated the patrol lights. Clark exited the front passenger seat and fled. The officer noticed Clark holding his waist as he ran. The officer ordered him to stop. After a chase, officers apprehended him, finding his gun nearby. Clark argues the district court erred in finding his conduct violated the Iowa felony offense of interference with official acts. *See Iowa Code § 719.1(1)(a), (f) (2019).* This court reviews factual findings for clear error and application of the guidelines *de novo.* *United States v. Paul*, 932 F.3d 1163, 1164 (8th Cir. 2019).

I.

Under Iowa law, interference with official acts occurs when a “person knowingly resists or obstructs anyone known by the person to be a peace officer . . . in the performance of any act which is within the scope of the lawful duty or authority of that officer.” Iowa Code § 719.1(1)(a) (2019). Interference with official acts while “armed with a firearm” is a felony. Iowa Code § 719.1(1)(f) (2019).

The district court found that “the unobjected-to factual information contained in the presentence investigation report shows that the defendant ran away from a traffic stop” and “the officer had to pursue him on foot in order to secure him during the course of the traffic stop.” It said:

That undoubtedly obstructed and hindered the officer’s ability to conduct the traffic stop. The fact that the defendant ran and was observed to appear to have a firearm as running is a huge safety risk for the officer. The—leaving the scene at all is a safety risk because then the officer has to have their attention diverted from being able to

conduct the safe traffic stop, and there's no question as a factual matter that the defendant's actions obstructed and hindered their ability to conduct a traffic stop. The officer had activated his lights. There's no suggestion that it wasn't clear that this was an officer who was, in fact, conducting a traffic stop, and so as a factual matter, it is clear that the defendant did commit the crime of interference with official acts while armed with a firearm.

The officer stopped Clark during the performance of an act within the scope of the officer's lawful duty. *See Iowa Code § 321.388 (2019)* (requiring illuminated plates). As part of the traffic stop, the officer had authority to detain all occupants of the vehicle, including Clark. *See Arizona v. Johnson*, 555 U.S. 323, 327 (2009) (holding that for "the duration of a traffic stop" a police officer seizes "everyone in the vehicle"). Clark admitted "he ran from officers because he possessed a firearm." Iowa courts have found similar conduct is interference with official acts. *See State v. Terry*, 2001 WL 427787, at *4 (Iowa Ct. App. Apr. 27, 2001) (unpublished) ("Terry's decision to disobey an officer's order and flee from the scene impeded the officer's duties."); *State v. Armstrong*, 2000 WL 204051, at *3 (Iowa Ct. App. Feb. 23, 2000) (unpublished) (holding that defendant's "flight and subsequent resistance" supported his conviction for interference with official acts). The district court did not clearly err in finding Clark violated Iowa Code § 719.1(1)(a), (f).

II.

Clark contends the district court erred in applying the four-level enhancement under U.S.S.G. § 2K2.1(b)(6)(B), which applies when a defendant possesses a firearm "in connection with another felony offense." U.S.S.G. § 2K2.1(b)(6)(B). "Another felony offense" means "any federal, state, or local offense, other than the explosive or firearms possession or trafficking offense." U.S.S.G. § 2K2.1(b)(6)(B) cmt. 14(C). Clark believes his conduct is excluded from "another felony offense" because the underlying offense, "absent the firearm possession offense" was not a felony.

This argument is precluded by this court’s precedent. Section 2K2.1(b)(6) “casts a broad net,” and “Application note 14(C) narrows the scope only slightly.” *United States v. Jackson*, 633 F.3d 703, 705 (8th Cir. 2011). “[T]he plain language of application note 14(C) excludes only the underlying firearms possession offense of conviction from the definition of ‘another felony offense.’” *Id.* at 706. Here, the enhancement was not based on Clark’s underlying federal crime of possessing a firearm as a felon. Rather, it was based on his possessing a firearm while committing the Iowa felony offense of interfering with official acts. Clark was not “doomed to automatically commit” an “additional felony when he violated 18 U.S.C. § 922(g) by possessing a firearm as a felon.” *Jackson*, 633 F.3d at 707. As in *Jackson*, Clark had to engage in some “additional affirmative conduct”—here, knowingly resisting or obstructing an officer in the performance of lawful duties—to commit the Iowa offense. *Id.* (distinguishing *United States v. Lindquist*, 421 F.3d 751 (8th Cir. 2005) upon which Clark relies).

Clark asserts that applying the enhancement is impermissible double counting. This argument is also precluded by precedent. *See United States v. Walker*, 771 F.3d 449, 451-53 (8th Cir. 2014) (affirming enhancement based on Iowa’s use-of-a-dangerous-weapon statute because it has elements different than the federal firearms offense); *Jackson*, 633 F.3d at 707-08 (holding no impermissible double counting because the Missouri offense required “exhibition of the firearm in an angry or threatening manner,” an element not necessary in “the underlying felon-in-possession offense”). The Iowa offense required Clark to resist or obstruct officers in their performance of lawful duties while armed. These elements were not necessary to prove the underlying federal firearms offense. *Compare* Iowa Code § 719.1(1)(a), (f), *with* 18 U.S.C. § 922(g)(1).

Clark tries to distinguish *Walker* and *Jackson*, arguing they “all involved underlying otherwise qualifying *felony* offenses, absent the element of a firearm possession.” But that statement is inaccurate. The Iowa statute in *Walker* criminalized going “armed with a pistol or revolver, or any loaded firearm of any kind.” *Walker*, 771 F.3d at 452, quoting Iowa Code § 724.4(1). That statute “is a

firearm offense.” *Id.* But it still qualifies as “another felony offense” for purposes of the enhancement because Walker could “have committed the underlying federal offense without also violating the state offense that the district court used to support the enhancement.” *Id.* (cleaned up). The same is true here.

The district court did not err in applying the enhancement.

* * * * *

The judgment is affirmed.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA
 v.

LITTLETON WILLIAM CLARK

) **JUDGMENT IN A CRIMINAL CASE**
)
)
) Case Number: 4:19-CR-00223-001
)
) USM Number: 62661-509
)
) James S. Nelsen
 Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) Count One of the Indictment filed on December 17, 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 <small>?</small> | Nature of Offense | Offense Ended | Count |
|--------------------------------------|---|---------------|-------|
| 18 U.S.C. §§ 922(g)(1), 924(a)(2) | Felon in Possession of a Firearm | 12/08/2019 | 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.

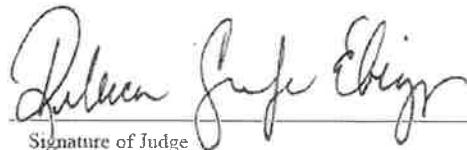
The defendant has been found not guilty on count(s)

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.

April 25, 2022

Date of Imposition of Judgment


 Signature of Judge

Rebecca Goodgame Ebinger, U.S. District Court Judge

Name of Judge

Title of Judge

Appendix B-6

Date

DEFENDANT: LITTLETON WILLIAM CLARK
CASE NUMBER: 4:19-CR-00223-001

IMPRISONMENT

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

110 months as to Count One of the Indictment filed on December 17, 2019, to be served consecutively to the undischarged terms of imprisonment in the Iowa District Court for Polk County Docket Numbers AGCR333375 and FECR337454.

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

The defendant be placed at FCI Oxford. The Court further recommends that the defendant be made eligible to participate in the 500-hour Residential Drug Abuse Treatment Program (RDAP) or other available substance abuse treatment program, and vocational training in HVAC, electrical, and plumbing.

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: LITTLETON WILLIAM CLARK
CASE NUMBER: 4:19-CR-00223-001

Judgment Page: 3 of 7

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:
Three years as to Count One of the Indictment filed on December 17, 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: LITTLETON WILLIAM CLARK
CASE NUMBER: 4:19-CR-00223-001

Judgment Page: 4 of 7

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: LITTLETON WILLIAM CLARK
CASE NUMBER: 4:19-CR-00223-001

Judgment Page: 5 of 7

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 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 must participate in a cognitive behavioral treatment program, which may include journaling and other curriculum requirements, as directed by the U.S. Probation Officer.

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.

DEFENDANT: LITTLETON WILLIAM CLARK
CASE NUMBER: 4:19-CR-00223-001

Judgment Page: 6 of 7

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: LITTLETON WILLIAM CLARK
CASE NUMBER: 4:19-CR-00223-001

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:

a loaded Springfield XD40 .40 caliber pistol (SN: MG313395), as outlined in the Preliminary Order of Forfeiture entered on February 9, 2022.

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

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

4:19-cr-00223-RGE-SHL

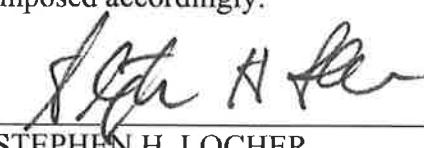
LITTLETON WILLIAM CLARK,

Defendant.

REPORT AND RECOMMENDATION CONCERNING PLEA OF GUILTY

The United States of America and the Defendant, having both filed a written consent, appeared before me pursuant to Rule 11, Fed. R. Crim. P. and L. Cr. R. 11. The Defendant entered a plea of guilty to Count 1 of the Indictment. After cautioning and examining the Defendant under oath concerning each of the subjects mentioned in Rule 11, I determined that the guilty plea was knowing and voluntary as to each count, and that the offense charged is supported by an independent factual basis concerning each of the essential elements of such offense. There is no plea agreement. I further determine the United States of America has established the requisite nexus between the offenses and the property it seeks in forfeiture. I, therefore, recommend that the plea of guilty be accepted, that a pre-sentence investigation and report be prepared, and that the Defendant be adjudged guilty and have sentence imposed accordingly.

Date: December 22, 2021


STEPHEN H. LOCHER
U.S. MAGISTRATE JUDGE

NOTICE

Failure to file written objections to this Report and Recommendation within fourteen (14) days from the date of its service shall bar an aggrieved party from attacking such Report and Recommendation before the assigned United States District Judge. 28 U.S.C. § 636(b)(1)(B).