

IN THE
Supreme Court of the United States

DIAMONIQUE SHAWN NEWTON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the district court clearly erred in applying a four-level enhancement under U.S.S.G. § 2K2.1(b)(6)(B) where the evidence did not show that Petitioner possessed a firearm in connection with a drug trafficking offense.

PARTIES TO THE PROCEEDING

Petitioner Diamonique Shawn Newton was the appellant before the United States Court of Appeals for the Fourth Circuit and the defendant before the United States District Court for the Eastern District of North Carolina.

Respondent United States was the appellee before the United States Court of Appeals for the Fourth Circuit and the plaintiff before the United States District Court for the Eastern District of North Carolina.

LIST OF PRIOR PROCEEDINGS

- (1) *United States v. Diamonique Shawn Newton*, United States District Court, Eastern District of North Carolina, No. 5:24-CR-00304-D-BM-1 (final judgment entered July 17, 2025).
- (2) *United States v. Diamonique Shawn Newton*, United States Court of Appeals for the Fourth Circuit, No. 25-4389 (unpublished per curiam opinion issued April 30, 2026).

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PETITION FOR WRIT OF CERTIORARI

Petitioner Diamonique Newton respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

The Fourth Circuit’s unpublished opinion is available at 2026 WL 1180811, 2026 U.S. App. LEXIS 12540 (4th Cir. Apr. 30, 2026); *see also infra*, Pet. App. 1a.

JURISDICTION

The Fourth Circuit issued its opinion on April 30, 2026. Pet. App. 1a. This Court’s jurisdiction rests on 28 U.S.C. § 1254(1).

GUIDELINE INVOLVED

Section 2K2.1(b)(6)(B) of the U.S. Sentencing Guidelines Manual instructs the court to apply a four-level enhancement if a defendant “used or possessed any firearm or ammunition in connection with another felony offense.” U.S.S.G. § 2K2.1(b)(6)(B).

INTRODUCTION

When state authorities searched Petitioner Diamonique Newton's house and seized 188 grams of marijuana and a firearm, they could have charged him with a trafficking offense. They did not. Nor did the federal authorities. The reason appears obvious—there was no evidence to support such a charge. Petitioner was a known gang member and heavy marijuana user, so it was entirely unsurprising that law enforcement found a gun and marijuana in his home. What law enforcement did *not* find was evidence of trafficking: no packaging materials, no baggies, no large sums of cash, no drug ledgers, no evidence of customers coming and going—none of the typical indicia of drug trafficking. Instead, the scene signaled personal use: officers found marijuana loose and ready for Petitioner's consumption in the living room, right next to his lighter and two ashtrays containing the remnants of his latest smoke. To be sure, law enforcement had personally observed Petitioner on social media smoking what they believed was a marijuana cigar.

The district court nonetheless enhanced Petitioner's sentence because it concluded he was trafficking marijuana. Because the district court's determination lacks evidentiary support and ignores substantial evidence to the contrary, the district court clearly erred in applying the enhancement. The Fourth Circuit likewise erred in affirming the sentence. This Court should vacate the sentence and remand for resentencing without the enhancement.

STATEMENT OF THE CASE

A. District Court Proceedings

Petitioner pled guilty, without a written plea agreement, to possession of a firearm by a convicted felon. At the plea hearing, the prosecutor proffered facts showing that in February 2024, Raleigh police officers reviewed social media posted to Petitioner's account. In the posts, Petitioner appeared to brandish a black Glock firearm outside his residence. The officers knew Petitioner was a gang member and a felon. They then obtained a warrant to search Petitioner's home. When they executed the warrant, Petitioner attempted to flee out of the back door but was quickly detained by the officers. As they entered the home, officers observed a black Glock handgun on the living room table that was later determined to be stolen. The officers also found 188 grams of marijuana and a digital scale. A nexus expert confirmed that the firearm had been manufactured outside North Carolina and thus affected interstate commerce.

In preparation for sentencing, the probation officer submitted a presentence investigation report ("PSR") summarizing Petitioner's background and calculating the guideline imprisonment range, among other things. The PSR noted that Petitioner began smoking marijuana when he was twelve, a habit that turned into an addiction. At the time of his arrest, Petitioner was smoking one ounce of marijuana daily.

Regarding the guideline calculations, Petitioner's criminal history score was 7, placing him in criminal history category IV. Relevant here, the probation officer

applied a four-level enhancement under U.S.S.G. § 2K2.1(b)(6)(B) because, the officer asserted, Petitioner “used the firearms in connection with the felony offense of Possession With Intent to Sell or Deliver Marijuana.” Joint Appendix (hereinafter, “JA”) 107. The probation officer subtracted three levels for Petitioner’s acceptance of responsibility, resulting in a total offense level of 23. Based on a total offense level of 23 and criminal history category IV, the guideline imprisonment range was 70 to 87 months.

Petitioner objected to the four-level enhancement, arguing there was “insufficient evidence to suggest a connection between the possession of firearms and drug trafficking.” JA111. In support of his objection and request for a below-guidelines sentence, Petitioner submitted a sentencing memorandum. In his memorandum, Petitioner noted that although fifteen officers wearing body-worn cameras searched his home on February 29, 2024, none of the footage documented “when and where the 188.81 grams of marijuana was collected.” JA116. Nor was there any documentation “detailing the specific location and description of the evidence prior to collection or evidence documenting the entire process, including who handled the evidence, when, and where, it was collected.” JA116. He pointed out that neither the executed search warrant nor the inventory of items seized was ever returned, despite state law requiring such return. And although state authorities charged him with possession of a firearm by a felon, possession of a stolen firearm, and possession of marijuana, they did not charge him with possession with the intent to sell or deliver marijuana. JA116-JA117. Absent the

four-level enhancement, Petitioner noted that the guideline imprisonment range would be 46 to 57 months. JA117.

At sentencing, the court first took up Petitioner's objection to the four-level enhancement. In support of the enhancement, the government presented testimony by the case agent, Britt Kuchen, a detective with the Raleigh Police Department ("RPD"). Detective Kuchen testified that he was assigned to the department's intelligence center, where he investigated missing persons cases and conducted threat assessments "for any protests or riots gang-related events in the city of Raleigh." JA35.

In February of 2024, Detective Kuchen said he was a senior police officer assigned to RPD's gang suppression unit when he began investigating Petitioner. JA35. Detective Kuchen "had been monitoring open-source social media" when he discovered a Facebook account belonging to Petitioner. There, he observed Petitioner "posting photographs in Facebook live videos possessing a firearm and amounts of marijuana." JA35.

Based on these postings, Detective Kuchen obtained and executed a search warrant of Petitioner's home on February 29, 2024. JA36. As the SWAT team entered the home, Petitioner "attempted to run out of the back door of that residence and was taken into custody without incident." JA36. Petitioner's girlfriend and her two children were also present in the home. After the SWAT team secured the home, Detective Kuchen and other officers entered and began searching the residence. He said that "[a]n overlook video was taken by another

officer and at that time we began searching the residence after reading the search warrant aloud inside the residence.” JA36-JA37.

In the living room, Detective Kuchen testified, “a Glock handgun was found on the living room table; marijuana in a glass jar I believe was found on the living room table; and also in that living room was a bag of marijuana, an amount of marijuana.” JA37. He said that a second firearm, a Taurus handgun, was found in a bedroom. JA37. Although it was not seized, Detective Kuchen stated that “a digital scale was on the table in the living room as well.” JA37.

When asked whether there was any body camera footage showing the location and seizure of this contraband, Detective Kuchen admitted that he could not review any body camera footage, including the video of the initial walk-through of the residence, due to problems with the police department’s cloud server. JA38-JA39. He also testified that it was not standard procedure to activate body-worn cameras beyond the initial search warrant execution and securing of the residence, and thus he agreed that any footage would “not show the actual execution and searching around the house.” JA40.

When asked whether there were “any photographs taken of the larger quantity of marijuana or the marijuana that was found in a jar,” Detective Kuchen answered: “I believe the jar of marijuana was photographed. I don’t recall if the larger quantity of marijuana was found, but I know a separate bag that once contained a large quantity of marijuana was photographed at that time.” JA41. The government did not seek to introduce any photographs, however.

Detective Kuchen admitted that he never filed an inventory sheet of the seized items with the clerk's office, despite department policy and procedure (and state law). JA41. Detective Kuchen blamed "human error on [his] part" for the lapse. JA42. He confirmed that 188 grams of marijuana was seized. Detective Kuchen opined that, based on his training and experience, 188 grams was not a user amount of marijuana. JA42.

When asked about the difference between hemp and marijuana, Detective Kuchen said that "[a] certain compound separates the two, Delta-9 and Delta-8" but he was not sure whether "Delta-8 or Delta-9 is the legal one." JA51. Detective Kuchen did not know whether the substance seized from Petitioner's home had been tested, nor did he know whether the substance contained any Delta-9. JA52.

The court overruled the objection "based on the officer's credible testimony that the Glock was found in close proximity to the drugs, as well as the digital scale, which is further evidence in my mind of the intent to distribute[.]" JA60. With the objection overruled, the court determined that the guideline sentencing range was 70 to 87 months. The court then imposed a sentence of 78 months of imprisonment and three years of supervised release with standard and special conditions. Petitioner appealed to the United States Court of Appeals for the Fourth Circuit.

B. Court of Appeals Proceedings

On appeal, the Fourth Circuit affirmed the district court, concluding that the court did not clearly err in applying the enhancement. This petition followed.

REASONS FOR GRANTING THE PETITION

Section 2K2.1(b)(6)(B) of the Guidelines instructs that a four-level enhancement applies if the defendant “used or possessed any firearm or ammunition in connection with another felony offense.” The term “another felony offense” 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.” *Id.* at cmt. n. 14(C).

To apply the enhancement, the evidence must show that: (1) the defendant committed another felony offense; and (2) the defendant used or possessed a firearm in connection with that offense. *United States v. Mitchell*, 78 F.4th 661, 671 (4th Cir. 2023); *United States v. Blount*, 337 F.3d 404, 407-11 (4th Cir. 2003). To show such connection, the firearm must have “facilitated, or had the potential of facilitating, another felony offense.” U.S.S.G. § 2K2.1 cmt. n. 14(A). The purpose of the enhancement is “to ensure that a defendant receives more severe punishment if, in addition to committing a firearms offense within the scope of § 2K2.1, he commits a separate felony offense that is rendered more dangerous by the presence of a firearm” *Blount*, 337 F.3d at 406 (citing former U.S.S.G. § 2K2.1(b)(5) (2001)). “When the other felony offense is a drug trafficking crime, a presumption in favor of facilitation applies when the firearm and the drugs are found in close proximity to one another; however, the presumption is lost when the other felony offense is simple drug possession.” *Mitchell*, 78 F.4th at 671; *accord* U.S.S.G. § 2K2.1 cmt.

n.14(B). “[I]n the case of a drug possession offense, the general rule of Application Note 14(A) governs, and therefore the district court must evaluate whether the firearm ‘facilitated, or had the potential of facilitating’ the other offense to determine whether Section 2K2.1(b)(6) applies.” *United States v. Jenkins*, 566 F.3d 160, 163 (4th Cir. 2009).

Here, the district court clearly erred in applying the § 2K2.1(b)(6)(B) enhancement after determining that Petitioner possessed the Glock in connection with a drug trafficking offense; specifically, possession of marijuana with the intent to distribute. The undisputed evidence showed that Petitioner was a heavy user of marijuana. Indeed, as the PSR noted, Petitioner began smoking marijuana when he was twelve, and he averaged an ounce of marijuana daily. JA105. “[H]eavy users of marijuana often possess moderate amounts of the drug at one time.” *United States v. Gomez*, 773 F. Supp. 3d 257, 297 (N.D. Tex. 2025). Here, Petitioner possessed only 188 grams of marijuana, which is 6.66 ounces. At an average rate of consumption of one ounce per day, the amount of marijuana Petitioner possessed was not enough for even a single week of personal use. *See Gomez*, 773 F. Supp. 3d at 297 (concluding that seven ounces of marijuana, which was “enough to fill a large plastic bag and to roll about 98 blunts,” was consistent with a heavy user amount). The court thus erred in concluding that Petitioner was selling marijuana based on the amount he possessed—he had barely enough for himself, much less for distribution.

The court’s failure to factor in Mr. Newton’s personal consumption is critical, because “intent [to distribute] cannot be imputed when a defendant possesses a quantity of [drugs] that could also be attributable to personal use.” *United States v. Cox*, 165 F.4th 249, 253 (4th Cir. 2026) (citing *United States v. Brandon*, 247 F.3d 186, 194-95 (4th Cir. 2001)). In *Brandon*, the Fourth Circuit observed that “it is clear that some defendants possess very small quantities of drugs for the sole purpose of distributing them and that some defendants possess significant quantities of drugs solely for personal use.” *Brandon*, 247 F.3d at 192. “Therefore,” *Brandon* explains, “while the quantity of drugs possessed can serve as an indicator of the purposes for which the drugs were possessed, at certain levels it is a rough and imprecise indicator at best.” *Id.* Notably, *Brandon* held that thirty-five grams of cocaine “could reasonably be intended only for personal use” and was an insufficient amount to impute intent to distribute. *Brandon*, 247 F.3d at 195; *accord Cox*, 165 F.4 at 253.

Although Detective Kuchen opined, based on his “training and experience,” that 188 grams was not a user amount of marijuana, JA42, his (non-expert) opinion did not account for Petitioner’s undisputed heavy marijuana use. Detective Kuchen did not factor in Petitioner’s heavy use, despite personally observing social media posts of Petitioner smoking marijuana. What’s more, Detective Kuchen did not explain how his “training and experience” qualified him to offer an opinion about drug use. According to Detective Kuchen, his background was in intelligence and gang suppression; he mentioned no experience in drug interdiction. JA35. To be

sure, when questioned, Detective Kuchen could not remember the difference between hemp and marijuana. JA51. To the extent the court relied on Detective Kuchen's unsupported opinion, the court clearly erred.

What's more, officers discovered no indicia of drug trafficking at Petitioner's home. For example, there were no baggies nor large amounts of cash found. There were no stamps or cutting agents, and no drug ledger was located. The marijuana seized was not bundled or bagged. Although a digital scale was found, "[p]araphernalia that could be consistent with personal use does not provide a sound basis for inferring intent to distribute." *United States v. Skipper*, 74 F.3d 608, 611 (5th Cir. 1996). And "[h]eavy users of marijuana often employ small food scales and baggies to measure it for their own use." *Gomez*, 773 F. Supp. 3d at 297. Because scales are commonly used by drug consumers, their presence in Petitioner's home does not add to the calculus. *See United States v. Logan*, 2025 U.S. App. LEXIS 7726, *4 (6th Cir. 2025) (government argued that a finding of drug trafficking was unsupported where quantity of methamphetamine found along with marijuana and a scale was "borderline" for personal use but where the defendant did not have a cellphone or a larger amount of U.S. currency, and the drugs he possessed were not individually packaged). Tellingly, state authorities never charged Petitioner with a drug trafficking offense.

Because the evidence does not show that Petitioner intended to distribute the marijuana seized, and because the court disregarded substantial evidence showing that the marijuana was for his personal use, the court clearly erred in finding that

he committed a drug trafficking offense. The Fourth Circuit likewise erred in affirming the sentence. This Court should grant the petition and remand this case for resentencing without the enhancement.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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