

United States Court of Appeals
For the Eighth Circuit

No. 24-2568

United States of America

Plaintiff - Appellee

v.

Jeremy Mitchell Phillips

Defendant - Appellant

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

Submitted: October 20, 2025

Filed: September 18, 2026

Before COLLOTON, Chief Judge, LOKEN and BENTON, Circuit Judges.

LOKEN, Circuit Judge.

Jeremy Phillips appeals the 57 month sentence the district court¹ imposed after he pleaded guilty to Possession of a Firearm and Ammunition by a Felon in violation of 18 U.S.C. §§ 922(g)(1) and 924 (a)(8). Phillips argues that the district court erred

¹The Honorable C.J. Williams, Chief Judge of the United States District Court for the Northern District of Iowa.

by applying a four-level enhancement under USSG § 2K2.1(b)(6)(B)² for using the firearm in connection with another felony offense, Interference with Official Acts, Iowa Code § 719.1(1)(a) and (f) (2023); and that his sentence is substantively unreasonable because the requirement that state law apply in determining the § 2K2.1(b)(6)(B) enhancement creates unwarranted disparities among offenders in different States that unconstitutionally violates 18 U.S.C. § 3553(a)(6). We affirm.

I. Background

In late June 2023, law enforcement in Waterloo, Iowa observed social media posts by Jeremy Phillips, a convicted felon then on probation, showing Phillips possessing a black and silver semiautomatic pistol and marijuana. On July 3, a Waterloo police officer attempted to stop Phillips as he was riding his bicycle. Phillips fled, first on his bike and then on foot. During the attempted escape, Phillips dropped a firearm in the middle of a residential street and continued fleeing. After Phillips was apprehended with the help of a taser, the officer found a black and silver pistol in the street, loaded but with no round in the chamber. A warrant search of Phillips's residence found firearm ammunition. He was charged with Possession of a Firearm and Ammunition by a Felon. Pending state court charges were dismissed.

Phillips pleaded guilty to the federal charges in early 2024. The Presentence Investigation Report (PSR) determined an adjusted base offense level of 20 because Phillips committed the felon-in-possession offense after sustaining a qualifying prior felony conviction, see USSG § 2K2.1(a)(4)(A), resulting in an advisory guidelines sentencing range of 30 to 37 months imprisonment. The government objected that the total offense level should be increased and the advisory guidelines range adjusted accordingly -- by 4 levels under § 2K2.1(b)(6)(B) because Phillips used the firearm

²This provision was subsequently moved to § 2K2.1(b)(7)(B), but we will refer to it by its former guidelines location for clarity.

in connection with another felony offense, Iowa Code § 719.1(1)(f), and by 2 levels under § 3C1.2 because he “discarded a loaded firearm in a public area.” The Probation Officer replied that “the Court will need to resolve [those] issues.”

At the conclusion of the sentencing hearing, the district court applied the § 2K2.1(b)(6)(B) enhancement because Phillips possessed the firearm in connection with the Iowa felony offense of “Interference with Official Acts” under Iowa Code § 719.1(1)(a) and (f), and the firearm “was capable of facilitating interference with official acts.”³ The court explained that our previous cases applying the enhancement have “facts that are almost identical to what’s present here.” However, the court denied the government’s § 3C1.2 objection because “the only evidence I have is that the gun accidentally dropped out of his pants or his pocket, and all he did is keep fleeing from the officers at that point.”⁴ This resulted in an advisory guidelines range of 46-57 months imprisonment. Finding both the offense conduct and his understated criminal history to be aggravating, the court imposed a within-range 57 month sentence. The court explained, “I have considered all the factors at [18 U.S.C. § 3553(a)] even if I don’t mention each of them in my comments here.”

II. Discussion

A. The § 2K2.1(b)(6)(B) Enhancement. Phillips first argues the district court erred in applying the four-level enhancement under § 2K2.1(b)(6)(B). In

³§ 719.1(1)(a) provides, as relevant here, that “A person commits interference with official acts when the 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 officer’s] lawful duty or authority.” Subsection (f) provides that if a person who commits interference with official acts “is armed with a firearm, that person commits a class ‘D’ felony.”

⁴This is an unsettled issue. The court’s ruling is not challenged on appeal so we decline to address it.

reviewing alleged guidelines enhancement errors, “we review the district court’s legal conclusions *de novo* and its factual findings for clear error.” United States v. Green, 70 F.4th 478, 481 (8th Cir. 2023).

Section 2K2.1 of the Guidelines governs unlawful firearm and ammunition offenses. Subsection 2K2.1(a)(4) provides for a base offense level of 20 if the defendant has a prior crime of violence or controlled substance conviction, as Phillips has. Subsection 2K2.1(b)(6)(B) provides for a four-level enhancement of the base offense level if “the defendant used or possessed any firearm or ammunition in connection with another felony offense.” In United States v. Walker, we held that “another felony offense” includes any federal, state, or local felony offense, regardless of whether charges were filed or a conviction secured. 771 F.3d 449, 451 (8th Cir. 2014), quoting § 2K2.1 comment. (n.14(c)), cert. denied, 575 U.S. 906 (2015). The district court determined that Phillips’s armed flight from law enforcement constituted “Interference with Official Acts” under Iowa law, a class “D” felony if done while armed. § 719.1(1)(a), (f).

On appeal, Phillips implicitly concedes that his fleeing from and forceful resistance to the attempted stop was “Interference with Official Acts” under Iowa Code § 719.1(1)(a). But he argues, as he did to the district court, that § 719.1(1)(f) does not apply because he did not possess a firearm “in connection with” another felony offense -- his possession of the firearm he dropped while fleeing was merely “coincidental” to his interference and did not in any way facilitate his flight. Like the district court, we conclude this contention is contrary to prior Eighth Circuit cases applying the § 2K2.1(b)(6)(B) enhancement.

We observed in United States v. Nilsen that, as used in § 2K2.1(b)(6)(B), “in connection with” means that “at a minimum, the firearm had a purpose or effect with respect to the other felony offense because its presence facilitated or *had the potential to facilitate the offense*, as opposed to being the result of mere accident or

coincidence.” 18 F.4th 587, 589 (8th Cir. 2021) (quotation omitted, emphasis added). Applying this principle, we have repeatedly held that resisting arrest while armed is sufficient to apply the enhancement, even if the gun does not actually facilitate the resistance. See Green, 70 F.4th at 481-82 (defendant resisted officers removing him from a car that had a gun underneath the driver’s seat); United States v. Clark, No. 22-1875, 2023 WL 3300962 (8th Cir. May 8, 2023) (defendant fled a police officer on foot with gun in his waistband that he discarded); United States v. Broomfield, No. 23-1311, 2024 WL 2814669, at *3 (8th Cir. June 3, 2024) (defendant suspected of assault refused officers’ direction to come outside a bar, pulled away from an officer’s grasp, and fled when a gun fell from his person). As we noted in United States v. Guiheen, “[k]eeping the firearm at an easily accessible location while committing another felony permits the inference that the firearm emboldened the defendant to engage in the illegal act.” 594 F.3d 589, 591 (8th Cir. 2010).

Here, Phillips pleaded guilty to facts that are more than sufficient to establish that the firearm he dropped while fleeing had the “potential to facilitate” his felony offense of interference with the officers’ official act in attempting the stop. He pleaded guilty to knowingly possessing the black and silver 9x19mm pistol while fleeing law enforcement. Green, Clark, and Broomfield squarely foreclose his “coincidental” possession argument. His possession at the very least had the “potential to facilitate” the felony offense by being on his person. Nilsen, 18 F.4th at 589. It is true he did not use the firearm or threaten the officers with it before or during his flight. But as the district court stated, “The test is whether it facilitated or was capable of facilitating interference with official acts. And [the firearm] was capable. . . . [T]he defendant could have used the gun, brandished it to the police to get them to back off, give him a better way of escaping and so forth.” The district court did not err in applying the § 2K2.1(b)(6)(B) enhancement.

B. The Unwarranted Disparities Issue. Phillips argues for the first time on appeal that his sentence is substantively unreasonable because the 4 level

§ 2K2.1(b)(6)(B) enhancement creates an unwarranted sentence disparity. Because it requires use of state law to determine whether a prior state court conviction was a felony, it creates a disparity that violates 18 U.S.C. § 3553(a)(6) when the laws of different States produce different answers. As the laws of more than half the States in the Eighth Circuit provide that fleeing from police while armed is not in and of itself a felony, “a defendant who does the exact same thing that Mr. Phillips did would be sentenced to a lesser sentence, solely because the events did not take place in Iowa.”⁵

This contention is without merit. First, it was not properly preserved for appeal. Early in the sentencing hearing, the district court stated: “I have considered all the factors at Title 18 United States Code section 3553(a) even if I don’t mention each of them in my comments here.” It then went on to discuss and apply many of the factors and imposed a top-of-the-advisory-range sentence, explaining the offense conduct, including Phillips dropping a gun in the middle of a residential street, and his criminal history outweighed the mitigating circumstances the court acknowledged. While the court never mentioned the “unwarranted disparities” factor in § 3553(a)(6), “[w]e presume that district judges know the law and understand their obligation to consider all the § 3553(a) factors.” United States v. Masood, 133 F.4th 799, 809 (8th Cir. 2025) (quotation omitted), cert. denied, 146 S. Ct. 1514 (2026). District courts are not “required to mechanically recite [the § 3553(a) factors].” United States v. Jones, 89 F.4th 681, 686 (8th Cir. 2023) (citation omitted).

After the court announced the sentence it would impose, Phillips orally moved for a downward variance to 37 months, the top of the PSR-recommended range, “because as the Court has stated, it was a close call to apply the four-level [§ 2K2.1(b)(6)(B)] enhancement. . . . [T]hat four-level enhancement is beyond the

⁵For example, Phillips argues, in Nebraska resisting arrest is only a felony if the individual does so “through the use of a deadly or dangerous weapon,” which Phillips did not do. Neb. Rev. Stat. § 28-904 (2011). In contrast, in Iowa, the very act of fleeing from law enforcement while armed constitutes a felony.

scope of the conduct here.” No mention of “unwarranted disparities.” No mention of the court’s failure to address the § 3553(a)(6) sentencing factor. Thus, we have no way of knowing if the court considered the substantively unreasonable disparity theory Phillips raises on appeal. When the defendant raises on appeal a sentencing factor argument not raised at sentencing, we review the contention, if at all, for plain error. See United States v. O’Connor, 567 F.3d 395, 397 (8th Cir. 2009). Here, we know the district court considered “all the factors” in § 3553(a). Even on appeal, Phillips cites no authority directly supporting his substantively unreasonable disparity theory. As he did not urge the court to consider this unsupported theory, it would not be error, much less plain error, if the court only considered the § 3553(a)(6) sentencing factor in the context of our reported cases applying that factor.

Even more important, the theory as articulated is ill-conceived, and the sentencing record simply would not support a substantively unreasonable argument based on this theory that might be plausible. Section 3553(a)(6) provides that a sentencing court “shall consider” “(6) the need to avoid unwarranted sentence disparities *among defendants with similar records who have been found guilty of similar conduct.*” (Emphasis added.) As its plain language and our many cases make clear, the statute’s directive “refers to *national* disparities, not differences among co-conspirators.” United States v. Fry, 792 F.3d 884, 892 (8th Cir. 2015) (emphasis in original). Its application is specific, not general -- there must be proof of an unwarranted disparity among specific defendants with “similar records” convicted of “similar conduct.” National statistics of sentences imposed by different judges provide a court “no principled basis to say which defendants received the appropriate sentence.” United States v. Hill, 8 F.4th 757, 761 (8th Cir. 2021) (quotation omitted, cleaned up). Thus, a hypothetical disparity theory based on general differences in state law does not establish a specific sentence is substantively unreasonable unless supported by at least one concrete example of a defendant in the other State with a similar record convicted of similar conduct.

Here, the guideline range disparity posited by Phillips is hypothetical and speculative. The § 2K2.1(b)(6)(B) enhancement affects only the total offense level, one part of the advisory guidelines range determination. Phillips failed to provide concrete evidence -- specific sentencing examples -- of how the differences in state sentencing law he cites are applied by federal sentencing courts to produce the disparate *sentences* he alleges. Thus, he failed to prove his theory that the differing state sentencing laws cause unwarranted federal sentence disparities *that make an “unfavored” defendant’s sentence substantively unreasonable*.

Here, the district court thoroughly analyzed the § 3553(a) factors and arrived at a reasonable sentence that was well within its discretion. By correctly calculating and carefully reviewing the Guidelines range, which Phillips does not contest, the district court “necessarily [gave] significant weight and consideration” to the § 3553(a)(6) issue of unwarranted disparities. United States v. Castillo, 117 F.4th 1021, 1024 (8th Cir. 2024) (quotation omitted). “[A] district court may choose to deviate from the guidelines because of a policy disagreement . . . [but] is not required to do so.” United States v. Manning, 738 F.3d 937, 947 (8th Cir.) (quotation omitted), cert denied, 574 U.S. 858 (2014).

Had he presented this issue to the district court, Phillips doubtless would have preferred the court to give more weight to the alleged unwarranted disparities caused by differing state laws and grant a downward variance. But if pressed on appeal, that argument would fail to establish a substantively unreasonable abuse of discretion. “[M]ere disagreement with how the court chose to weigh the relevant factors does not alone justify reversal.” United States v. Nesdahl, 140 F.4th 474, 478 (8th Cir. 2025) (quotation omitted). “An argument that non-conspirator defendants received shorter

sentences for comparable offenses is at base a disagreement with the weighing of the § 3553(a) factors.” United States v. Soliz, 857 F.3d 781, 783 (8th Cir. 2017).

The judgment of the district court is affirmed.
