

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA

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CRIMINAL DOCKET NO. 08-232

v.

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SECTION: "FB"

JOHN V. CLARK

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FACTUAL BASIS

The above-named defendant, **JOHN V. CLARK**, has agreed to plead guilty as charged to the Superseding Bill of Information now pending against him. Should this matter have proceeded to trial, the United States of America would have proven beyond a reasonable doubt, through the introduction of relevant, competent, and admissible testimonial, physical and demonstrative evidence, the following facts to support the allegation against the defendant, **JOHN V. CLARK ("CLARK")**:

Unless stated otherwise, all of the events set forth in this Factual Basis occurred within the Eastern District of Louisiana.

On August 13, 2008, the Drug Enforcement Administration ("DEA"), in conjunction with local law enforcement agencies, was conducting surveillance of heroin transactions in New Orleans, Louisiana. The agents were conducting a heroin investigation in which KIM LEE and

JEREMIAH HARRIS were suspects. Agents were using a confidential source (“CS”) in order to conduct a controlled purchase of heroin from LEE and or HARRIS at a location chosen by LEE near Poland Avenue and North Rampart.

LEE and HARRIS, however, did not conduct the transaction. Instead, TIFFANY LANDRY called the CS from LEE’s phone and told the CS to meet her near the intersection of Poland and Burgundy. There, LANDRY conducted heroin transactions with multiple persons, including defendant **CLARK**. At that location, **CLARK** purchased an amount of heroin from LANDRY.

LANDRY’s vehicle was parked on Burgundy and facing Poland Avenue. **CLARK**’s vehicle was parked behind LANDRY’s and facing the same direction. After witnessing the events, a vehicle of the surveilling agents drove down Burgundy towards Poland Avenue and stopped their vehicle, blocking LANDRY’s vehicle. Task Force Officers (“TFO”) Josh Champagne and Tim Miller exited the vehicle and focused their attentions on LANDRY. DEA Special Agent (“SA”) William Larry Johnson and St. Bernard Parish Sheriff’s Office Captain Chip Englande exited the vehicle and focused their attentions on **CLARK**. Agents were wearing exterior clothing and insignia clearly identifying them as law enforcement. SA Johnson, was a federal officer who was, at all pertinent times, engaged in the performance of his official duties.

CLARK had entered his vehicle, a red Honda Civic. The agents’ vehicle blocked any forward exit from the scene on Burgundy. As a result, **CLARK** could not travel forward on Burgundy toward Poland Avenue. **CLARK** put his vehicle into reverse, backing down Burgundy in an eastward direction and turning to his left toward the Mississippi River onto Kentucky Street. The front of **CLARK**’s vehicle was then facing northward on Kentucky toward

Lake Pontchartrain. **CLARK** could not continue reversing on Kentucky toward the river because the street was blocked by railroad tracks.

As **CLARK** was reversing down Burgundy onto Kentucky, SA Johnson and Cpt. Englande were pursuing him on foot giving directions to stop. **CLARK** ignored these directions and did not stop his vehicle. As the agents approached the intersection of Burgundy and Kentucky, SA Johnson moved a few feet onto Kentucky Street in an effort to prevent **CLARK's** escape from the area. **CLARK** deliberately accelerated his vehicle northward and lakeward-bound down Kentucky, in the area where SA Johnson was standing. SA Johnson, believing he was in imminent danger of death or bodily injury as a result of the oncoming vehicle, fired a shot from his weapon in the direction of **CLARK's** vehicle, striking the vehicle in the hood. Because of the vehicle's speed and direction, SA Johnson had to quickly move westward to the side of Kentucky street to avoid the vehicle. SA Johnson fired two more shots, once more striking the vehicle's hood, and striking its front driver's side tire.

Also, during these events, Cpt. Englande had taken a position on Burgundy facing Kentucky. As **CLARK's** vehicle traveled forward on Kentucky, Cpt. Englande believed that SA Johnson was in imminent danger of death or serious bodily injury. Cpt. Englande, therefore, fired one shot from his weapon hitting the rear driver's side wheel of **CLARK's** vehicle.

After this occurred, **CLARK's** vehicle eventually came to a stop a few moments later within the block on Kentucky Street. Cpt. Englande eventually approached the vehicle and pulled **CLARK** from it. Inside the vehicle, Cpt. Englande observed a syringe on the passenger floorboard with what appeared to be blood in it, as well as a spoon containing residue, which later tested positive for heroin.

Following being given his Miranda warnings, **CLARK** informed agents that he had come to the location to purchase heroin from HARRIS. He admitted to having a “monster” heroin addiction that he couldn’t get rid of. **CLARK** said he panicked when the officers arrived. He also said that, as he was attempting to flee the area, he had put the syringe into the floorboard and injected the heroin therein into the floorboard.

CLARK’s actions while attempting to flee the scene in his vehicle constituted a forcible assault on SA Johnson. For purposes of U.S.S.G. § 3A1.2(c)(1), **CLARK** assaulted SA Johnson in a manner creating a substantial risk of bodily injury while knowing or having reasonable cause to believe that SA Johnson was a law enforcement officer. However, the Government agrees that **CLARK** did not use his automobile with intent to cause bodily injury, for purposes of U.S.S.G. § 2A2.2(b)(2), but rather used it in an attempt to flee from the area and evade arrest.

CLARK had previously been convicted of possession of heroin, a felony drug offense, in the Criminal District Court for the Parish of Orleans, State of Louisiana, case number 478-285 “D” on or about May 23, 2008.

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JOHN V. CLARK
Defendant

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