

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MEAMEN JEAN NYAH,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals For The Eighth Circuit

APPENDIX

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA
 v.

Meamen Jean Nyah

JUDGMENT IN A CRIMINAL CASE

Case Number: 4:19-CR-00221-001

USM Number: 17797-030

Andrew J. Dunn, Jessica Donels, and Alfredo G. Parrish
 Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) _____

pleaded nolo contendere to count(s) _____
 which was accepted by the court.

was found guilty on count(s) One of the Indictment filed on December 18, 2019.
 after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §§ 922(g)(1), 924(a)(2)	Felon in Possession of a Firearm	12/07/2019	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.

February 26, 2021

Date of Imposition of Judgment

Signature of Judge



John A. Jarvey, Chief U.S. District Judge

Name of Judge

Title of Judge

February 26, 2021

Date

DEFENDANT: Meamen Jean Nyah
CASE NUMBER: 4:19-CR-00221-001

IMPRISONMENT

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

96 months as to Count One of the Indictment filed on December 18, 2019, to be served consecutively to the sentence imposed upon revocation of the term of supervised release in the United States District Court for the Southern District of Iowa, Docket Number 4:16-CR-00180-001.

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

that the defendant be evaluated for placement at a federal medical facility on the east coast of the United States to be as close to family as possible.

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: Meamen Jean Nyah
CASE NUMBER: 4:19-CR-00221-001

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 18, 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: Meamen Jean Nyah
CASE NUMBER: 4:19-CR-00221-001

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: Meamen Jean Nyah
CASE NUMBER: 4:19-CR-00221-001

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

You shall not knowingly associate or communicate with any member of the C-Block criminal street gang, or any other criminal street gang.

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: Meamen Jean Nyah
CASE NUMBER: 4:19-CR-00221-001**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: Meamen Jean Nyah
CASE NUMBER: 4:19-CR-00221-001

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
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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 Glock, Model 30S, .45 caliber pistol (SN: BBGK668).

Payments shall be applied in the following order: (1) assessment, (2) restitution 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.

United States Court of Appeals
For the Eighth Circuit

No. 21-1490

United States of America

Plaintiff - Appellee

v.

Meamen Jean Nyah

Defendant - Appellant

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

Submitted: January 14, 2022
Filed: May 27, 2022

Before LOKEN, GRUENDER, and GRASZ, Circuit Judges.

GRASZ, Circuit Judge.

Meamen Jean Nyah pointed a firearm at a police officer while fleeing a traffic stop. A jury later convicted Nyah of unlawfully possessing a firearm as a felon. Nyah appeals his conviction and sentence on numerous grounds. We affirm.

I. Background

Police Officer Nicholas Anderson clocked a car going almost twenty miles per hour over the speed limit with his radar one night and tried to initiate a stop. Despite Anderson's flashing patrol lights, the driver continued driving and eventually merged onto an interstate highway and fled from Anderson at over one hundred miles per hour. The fleeing car eventually crashed. Anderson then saw two suspects, one of whom was Nyah, running away from the wrecked car in different directions. Anderson pursued Nyah who, unbeknownst to Anderson, was the car's passenger rather than its driver.

Nyah eventually bolted behind a house despite Anderson's persistent commands to stop and warnings of: "Taser, taser, taser." Anderson eventually deployed his taser and Nyah fell to the ground. Undeterred, Nyah quickly jumped back up, picked up a black pistol off the ground nearby, and, despite Anderson's commands to drop it, pointed the pistol at Anderson. Anderson then shot Nyah. Officers later recovered a loaded black pistol from the same driveway.

Nyah survived, and a grand jury indicted him in the Central Division of the Southern District of Iowa with unlawfully possessing a firearm as a felon. *See* 18 U.S.C. §§ 922(g)(1), 924(a)(2). Nyah moved to suppress the evidence seized after he was tased, including the black pistol. The district court¹ held a hearing and denied the motion. The district court later transferred venue to the Eastern Division of the Southern District of Iowa. Nyah objected to the transfer, but the district court overruled the objection.

The case proceeded to jury selection, during which Nyah (who is black) objected to the racial makeup of the jury venire because no prospective jurors were black. The district court overruled this objection and later empaneled a jury.

¹The Honorable John A. Jarvey, then Chief Judge, United States District Court for the Southern District of Iowa, now retired.

At trial, the district court admitted into evidence, over Nyah's objection, nine images taken from music videos in 2015 and 2016 in which Nyah is holding firearms, some in which he is also smoking or in the vicinity of alcohol. Though Nyah stipulated to both his status as a felon and knowledge of being a felon, the district court concluded this evidence was relevant in deciding whether Nyah knowingly possessed the firearm in this case in December 2019 and admitted the images under Federal Rule of Evidence 404(b). The district court gave limiting instructions for the evidence when admitting it and again in the district court's final jury instructions.

The jury convicted Nyah as charged. At sentencing, the district court applied three United States Sentencing Guidelines Manual ("Guidelines") enhancements for possessing a stolen firearm, using a firearm in connection with another felony offense, and assaulting a police officer. The district court then calculated Nyah's final offense level as 26 and his criminal history category as IV, resulting in a recommended range of 92 to 115 months of imprisonment. The district court next refused to depart downward based on Nyah's assertion the Guidelines overrepresented his criminal history and ultimately sentenced Nyah to 96 months of imprisonment.

II. Analysis

Nyah appeals, challenging (A) the denial of his motion to suppress; (B) the transfer of venue; (C) the racial makeup of the jury venire; (D) the admission of the images underlying his prior conviction; (E) the three sentencing enhancements and the district court's refusal to depart downward; and (F) the substantive reasonableness of his sentence.

A. Motion to Suppress

Nyah initially argues the district court erroneously denied his motion to suppress. In evaluating the denial of a motion to suppress, we review the district

court's legal conclusions de novo and factual findings for clear error. *United States v. Robinson*, 982 F.3d 1181, 1184 (8th Cir. 2020).

The Fourth Amendment protects a person from "unreasonable . . . seizures." U.S. Const. amend. IV. Nyah asserts his seizure when Anderson tased him was unreasonable, so any evidence obtained must be excluded under the exclusionary rule. *See Utah v. Strieff*, 579 U.S. 232, 237 (2016) (stating the exclusionary rule encompasses "evidence later discovered and found to be derivative of an illegality" as "fruit of the poisonous tree") (quoting *Segura v. United States*, 468 U.S. 796, 804 (1984)). We disagree.

Anderson's tasing of Nyah constituted a warrantless arrest. *See Torres v. Madrid*, 141 S. Ct. 989, 1003 (2021) ("[T]he application of physical force to the body of a person with intent to restrain is a seizure even if the person does not submit and is not subdued.").² A warrantless arrest is reasonable only if supported by probable cause. *United States v. Green*, 9 F.4th 682, 690 (8th Cir. 2021). Probable cause exists "when the facts and circumstances are sufficient to lead a reasonable person to believe that the defendant has committed or is committing an offense." *Id.* (quoting *Royster v. Nichols*, 698 F.3d 681, 688 (8th Cir. 2012)). It "requires only a probability or substantial chance of criminal activity, not an actual showing of such activity." *District of Columbia v. Wesby*, 138 S. Ct. 577, 586 (2018) (quoting *Illinois v. Gates*, 462 U.S. 213, 243–44 n.13 (1983)).

Here, Anderson had probable cause to arrest Nyah. The district court found Anderson clocked a car travelling in excess of the speed limit with his radar, providing probable cause for a stop. *See United States v. Fuehrer*, 844 F.3d 767, 772 (8th Cir. 2016) (stating that traffic violations provide probable cause to stop a car). While Nyah argues Anderson's testimony that Nyah committed a speeding violation was "suspect," Nyah does not show how the district court's factual finding that he committed a driving violation was clearly erroneous. *See United States v.*

²The government does not dispute Anderson arrested Nyah when tasing him.

Cotton, 861 F.3d 1275, 1277 (8th Cir. 2017) (“Clear error exists where, viewing the record as a whole, we are left with the definite and firm conviction that a mistake has been committed.”) (quoting *United States v. Finley*, 612 F.3d 998, 1002 (8th Cir. 2010)). The car fled, leading to a high-speed chase at over one hundred miles per hour in the dark and resulting in the car crashing. Anderson then saw Nyah running away from the car, and Nyah ignored Anderson’s verbal commands to stop. Anderson, not knowing which fleeing suspect was the driver, reasonably seized Nyah by tasing him after Nyah continually ignored orders to stop. *See United States v. Flores-Lagonas*, 993 F.3d 550, 560 (8th Cir. 2021) (“We have consistently held that a defendant’s response to an arrest or *Terry* stop . . . may constitute independent grounds for arrest.”). We thus affirm the district court’s denial of Nyah’s motion to suppress.

B. Transfer of Division

Nyah next argues the district court erroneously transferred venue to the Eastern Division from the Central Division of the Southern District of Iowa. We disagree. The “district judge has broad discretion in determining where within a district a trial will be held, and to overturn the court’s decision the defendant must prove abuse of that discretion or prejudice.” *United States v. Worthey*, 716 F.3d 1107, 1112 (8th Cir. 2013) (quoting *United States v. Stanko*, 528 F.3d 581, 584 (8th Cir. 2008)). Nyah proves neither here.

Nyah does not show the district court abused its discretion. First, the district court did not violate Nyah’s Sixth Amendment rights. The Sixth Amendment “requires that a trial be held in the state and district where the crime was committed.” *Id.* (quoting same). It does not, however, establish “a right to be tried in a particular division.” *Id.* (quoting same). Here, Nyah’s crime occurred in the Southern District of Iowa. Thus, the district court’s choice of division within the Southern District did not violate the Sixth Amendment.

Next, the district court appropriately weighed the relevant factors in setting trial in the Eastern Division. Under Federal Rule of Criminal Procedure 18, the district “court must set the place of trial within the district with due regard for the convenience of the defendant, any victim, and the witnesses, and the prompt administration of justice.” Convenience of the defendant encompasses the ability of the defendant’s “family, friends, and other supporters to attend trial.” *Stanko*, 528 F.3d at 586. Here, the district court acknowledged the inconvenient distance for Nyah, his family, and other spectators but noted public transportation mitigated the inconvenience. It also considered the witnesses’ convenience, noting only the government identified witnesses besides Nyah yet expressed no concerns about transporting them. Finally, the district court considered the prompt administration of justice, specifying “this case needs to be tried” and observing the Eastern Division had a “significantly smaller degree” of COVID-19 infections and was open for in-court criminal trials. It noted the Central Division, in contrast, had a “very substantial backlog” of trials. We conclude the district court acted within its broad discretion when applying these factors.³

Nyah also shows no prejudice. While Nyah expressed concern about the racial composition of the jury pool, the district court found based on census data that the Southern District of Iowa’s Eastern Division had a higher proportion of black people in its population than its Central Division. His concerns about racial disparities thus lack merit. Nyah cites no other indicia of prejudice besides distance, but the district court already concluded this concern was mitigated by public transportation. We thus affirm the district court’s choice of venue because Nyah shows neither abuse of discretion nor prejudice.

³Nyah also vaguely asserts the transfer violated his due process rights and 28 U.S.C. § 1406(a). We disagree. We find no authority suggesting Nyah’s due process rights or 28 U.S.C. § 1406(a) were violated by the district court’s intra-district transfer that complied with the Sixth Amendment and governing law.

C. Racial Makeup of Jury Panel

Nyah then argues his Sixth Amendment right to a fair cross-section of the community was violated because the jury venire lacked black prospective jurors. When “a defendant claims that jury selection violated his Sixth Amendment right to a fair cross-section of the community, we review the district court’s decision de novo.” *United States v. Reed*, 972 F.3d 946, 953 (8th Cir. 2020), *cert. denied*, 141 S. Ct. 2765 (2021).

Under the Sixth Amendment, criminal defendants are entitled “to an ‘impartial jury drawn from a fair cross-section of the community.’” *Id.* (quoting *Taylor v. Louisiana*, 419 U.S. 522, 536 (1975)). Nyah does not dispute his jury venire was drawn from a fair cross-section of the community, so he does not establish a Sixth Amendment violation.⁴ In light of this undisputed fact, the absence of black prospective jurors on the jury venire does not establish a Sixth Amendment violation. *See United States v. Erickson*, 999 F.3d 622, 627 (8th Cir. 2021) (“It is the number of [persons from the relevant distinctive group] in the jury pool, not the number who showed up for jury selection in a particular case, that is relevant to assessing the merits of a fair cross section challenge.”), *cert. denied*, 142 S. Ct. 512 (2021). We affirm the district court’s conclusion Nyah’s Sixth Amendment rights were not violated.

D. Admission of Photographs

Nyah next argues the district court erred under Federal Rule of Evidence 404(b) by admitting the images of him holding firearms in 2015 and 2016. We review a district court’s admission of Rule 404(b) evidence for abuse of discretion, “and we will not reverse unless the evidence clearly had no bearing on the case and

⁴Nyah argues Supreme Court caselaw from *Taylor* should be amended, but that is not for us to decide. *See James v. City of Boise*, 577 U.S. 306, 307 (2016) (noting federal courts are bound by the Supreme Court’s interpretation of federal law).

was introduced solely to prove the defendant’s propensity to commit criminal acts.” *United States v. Smith*, 978 F.3d 613, 616 (8th Cir. 2020) (quoting *United States v. Williams*, 796 F.3d 951, 958 (8th Cir. 2015)), *cert. denied*, 142 S. Ct. 396 (2021).

Rule 404(b)(1) states: “Evidence of any other crime, wrong, or act is not admissible to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character.” But “[t]his evidence may be admissible for another purpose, such as proving . . . knowledge.” Fed. R. Evid. 404(b)(2). We have said “Rule 404(b) is a rule ‘of inclusion, such that evidence offered for permissible purposes is presumed admissible absent a contrary determination.’” *United States v. Aungie*, 4 F.4th 638, 644 (8th Cir. 2021) (quoting *United States v. LaFontaine*, 847 F.3d 974, 981 (8th Cir. 2017)). District courts may “admit evidence under Rule 404(b) if: ‘(1) it is relevant to a material issue; (2) it is similar in kind and not overly remote in time to the crime charged; (3) it is supported by sufficient evidence; and (4) its potential prejudice does not substantially outweigh its probative value.’” *Smith*, 978 F.3d at 616 (quoting *Williams*, 796 F.3d at 959).

Given that no parties here dispute the third element, the admitted images satisfied the remaining elements. First, our precedent states the images were relevant to a material issue. We have said a defendant places the “knowing possession” element of 18 U.S.C. § 922(g)(1) at issue by pleading not guilty even when, as here, the government proceeds “on an actual possession theory.” *Smith*, 978 F.3d at 616 (quoting *Williams*, 796 F.3d at 959). We have also held one’s prior possession of firearms is relevant in proving this “knowing possession” element. *Id.* Moreover, we previously held that music video images showing a defendant possessing a firearm were relevant in establishing his later knowing possession of a firearm. *See United States v. Rembert*, 851 F.3d 836, 839 (8th Cir. 2017). We cannot conclude the district court erred here by concluding the music video images were relevant in establishing his knowing possession of the firearm in this case.

Next, the prior acts captured by the images were similar in kind. We require only that the prior acts be “sufficiently similar to support an inference of criminal

intent.” *Williams*, 796 F.3d at 959 (quoting *United States v. Walker*, 470 F.3d 1271, 1275 (8th Cir. 2006)). Nyah’s prior unlawful possession of firearms supported an inference of criminal intent here.

Nyah’s prior acts were also not overly remote in time. “There is no absolute rule about remoteness in time, and we apply a reasonableness standard based on the facts and circumstances of each case.” *Smith*, 978 F.3d at 616 (quoting *United States v. Yielding*, 657 F.3d 688, 702 (8th Cir. 2011)). Here, Nyah’s prior illegal possession captured by the images occurred within five years of his instant illegal possession. Given that Nyah was incarcerated for much of the interval, and that we have often discounted such time from the remoteness analysis, *see, e.g.*, *Smith*, 978 F.3d at 617, and that we have affirmed admissions of past crimes committed well over five years before, *see, e.g.*, *Williams*, 796 F.3d at 960, we cannot conclude Nyah’s prior illegal possessions here were overly remote in time.

Last, the evidence satisfies the fourth element. The fourth element is found in Federal Rule of Evidence 403: a “court may exclude relevant evidence if its probative value is substantially outweighed by a danger of . . . unfair prejudice.” Fed. R. Evid. 403; *see Williams*, 796 F.3d at 959. We acknowledge in applying this test that “all Rule 404(b) evidence is inherently prejudicial.” *United States v. Jackson*, 856 F.3d 1187, 1192 (8th Cir. 2017) (quoting *United States v. Cook*, 454 F.3d 938, 941 (8th Cir. 2006)). As stated earlier, our precedent indicates the acts captured by the images were potentially probative of whether Nyah knowingly possessed the firearms here.⁵ *See Smith*, 978 F.3d at 616–17. While these images

⁵While our precedent holds that evidence of a defendant possessing a weapon years before the offense at issue can be relevant to show “knowledge” of the possession of a firearm in a recent case—even where the government proceeds only on a theory of actual possession—it would be helpful to the reviewing court for the district court to explain how the images are relevant to establish knowledge. After all, admission of such evidence is reversible error if it was “introduced solely to prove the defendant’s propensity to commit criminal acts.” *Smith*, 978 F.3d at 616 (quoting *Williams*, 796 F.3d at 958). Relevance and probative value are case-by-case determinations that cannot be satisfied by mere incantation of a conclusory

were inherently prejudicial, especially considering some depicted Nyah's holding a weapon while smoking or in the vicinity of alcohol, the district court twice gave limiting instructions as a safeguard against unfair prejudice by informing the jury it could use this evidence only to help decide whether Nyah knowingly possessed the firearm in this case and that the evidence could not be used as improper propensity evidence. *See Rembert*, 851 F.3d at 840 (noting limiting instructions serve “as a protection against unfair prejudice”). Considering these limiting instructions, we cannot say the district court abused its discretion in concluding the danger of unfair prejudice did not substantially outweigh the evidence’s probative value.

E. Sentencing Enhancements and Departure

Nyah then argues the district court erroneously applied the three sentencing enhancements. We review the district court’s application or interpretation of the Guidelines *de novo* and its factual findings for clear error. *United States v. Belfrey*, 928 F.3d 746, 750 (8th Cir. 2019).

First, the district court properly applied the stolen firearm enhancement. This enhancement applies if “any firearm was stolen.” U.S.S.G. § 2K2.1(b)(4)(A). Whether the defendant knew or had reason to know the firearm was stolen is irrelevant. *Id.* § 2K2.1 cmt. n.8(B); *United States v. Martinez*, 339 F.3d 759, 761–62 (8th Cir. 2003). Nyah does not dispute the firearm here was stolen, so the enhancement applies.

Nyah argues the district court should have deviated from the Guidelines because he claims he did not know the firearm was stolen so the enhancement overly punished him. We disagree. While the district court may “deviate from the

assertion. *See United States v. Caldwell*, 760 F.3d 267, 276 (3d Cir. 2014) (“The task is not merely ‘to find a pigeonhole in which the proof might fit,’ but to actually demonstrate that the evidence ‘prove[s] something other than propensity.’”) (alteration in original) (quoting 1 Christopher B. Mueller & Laird C. Kirkpatrick, *Federal Evidence* § 4:28 (4th ed. 2013)).

guidelines because of a policy disagreement,’ it is ‘not required to do so.’” *United States v. Heim*, 941 F.3d 338, 340 (8th Cir. 2019) (quoting *United States v. Manning*, 738 F.3d 937, 947 (8th Cir. 2014)). We affirm the district court’s refusal to deviate here.

Second, the district court properly applied the “in connection with” enhancement. This enhancement applies if the defendant “used or possessed any firearm . . . in connection with another felony offense.” U.S.S.G. § 2K2.1(b)(6)(B). We have held that carrying a dangerous weapon in violation of Iowa Code § 724.4(1) qualifies as “another felony offense” for this enhancement. *See United States v. Roberts*, 958 F.3d 675, 677 (8th Cir. 2020); *United States v. Walker*, 771 F.3d 449, 453 (8th Cir. 2014). Because Nyah does not dispute the district court’s conclusion that he possessed a firearm in connection with carrying weapons under Iowa Code § 724.4(1), the enhancement applies.

Third, the district court properly applied the enhancement for assaulting a police officer. This enhancement applies “[i]f, in a manner creating a substantial risk of serious bodily injury, the defendant . . . knowing or having reasonable cause to believe that a person was a law enforcement officer, assaulted such officer during the course of the offense or immediate flight therefrom.” U.S.S.G. § 3A1.2(c)(1). Here, Nyah undisputedly knew or had reasonable cause to believe Anderson was a law enforcement officer. The district court then found Nyah assaulted Anderson by pointing a loaded gun at him while fleeing from him, thereby creating a substantial risk of serious bodily injury. *See United States v. Olson*, 646 F.3d 569, 573 (8th Cir. 2011) (stating an assault under this enhancement includes “an act which is intended to, and reasonably does, cause the victim to *fear* immediate bodily harm . . . even if no physical harm is attempted, achieved, or intended” (quoting *United States v. Lee*, 199 F.3d 16, 18 (1st Cir. 1999))). Nyah does not show the district court clearly erred in this factual finding, so we affirm the district court’s application of this enhancement.

While Nyah does not argue the district court improperly calculated his criminal history, he argues it improperly refused to depart downward as a matter of policy based on his allegedly overstated criminal history under U.S.S.G. § 4A1.3(b)(1). We cannot review the district court’s refusal, however, “because the district court recognized it had the power to depart downward and” Nyah does not argue the district court “had an unconstitutional motive for failing to do so.” *See United States v. Carter*, 960 F.3d 1007, 1012–13 (8th Cir. 2020), *cert. denied*, 141 S. Ct. 835 (2020). Nyah’s argument thus lacks merit here.

F. Substantive Reasonableness

Finally, Nyah argues the district court imposed a substantively unreasonable sentence. We review the substantive reasonableness of a sentence “under a highly deferential abuse of discretion standard.” *United States v. Hubbs*, 18 F.4th 570, 571 (8th Cir. 2021). “A sentencing court abuses its discretion when it ‘fails to consider a relevant factor that should have received significant weight, gives significant weight to an improper or irrelevant factor, or considers only the appropriate factors but commits a clear error of judgment in weighing those factors.’” *Id.* at 572 (quoting *United States v. David*, 682 F.3d 1074, 1077 (8th Cir. 2012)). We presume sentences within the Guidelines range, as here, are reasonable. *United States v. Williams*, 934 F.3d 804, 809 (8th Cir. 2019). Nyah does not rebut this presumption.

Nyah argues the district court did not adequately consider his medical conditions, the impacts of COVID-19, or his history and characteristics. *See* 18 U.S.C. § 3553(a)(1). We disagree. To the contrary, the record reveals the district court thoroughly considered Nyah’s physical injuries, his medical issues (including reports from two doctors), his contraction of COVID-19 in jail, and his history and characteristics, including his family support, childhood, upbringing, education, and employment. That we “might reasonably have concluded that a different sentence was appropriate” under these circumstances “is insufficient to justify reversal of the district court.” *See United States v. DeMarrias*, 895 F.3d 570, 574 (8th Cir. 2018) (quoting *United States v. Boneshirt*, 662 F.3d 509, 517 (8th Cir. 2011)).

We also reject Nyah’s argument that his 96-month sentence created an unwarranted sentencing disparity with the other fleeing suspect’s 40-month sentence of imprisonment. *See* 18 U.S.C. § 3553(a)(6). We initially note Nyah’s argument is misguided: the statutory requirement “to avoid unwarranted sentence disparities refers to *national* disparities, not differences among co-conspirators.” *United States v. Baez*, 983 F.3d 1029, 1044 (8th Cir. 2020) (citation omitted) (quoting *United States v. Fry*, 792 F.3d 884, 892 (8th Cir. 2015)), *cert. denied*, 141 S. Ct. 2744 (2021). And even assuming the other suspect was a similarly situated co-conspirator, there is “no principled basis for [us] to say which defendant received the appropriate sentence.” *See id.* (quoting *Fry*, 792 F.3d at 893). Regardless, the district court did not abuse its discretion in concluding Nyah was not similarly situated to the other suspect because Nyah, unlike the other suspect, pointed a firearm at a law enforcement officer and was on supervised release for a federal firearm offense. The district court thus did not abuse its discretion in imposing Nyah’s sentence.

III. Conclusion

For the reasons stated herein, we affirm the district court’s judgment.

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 21-1490

United States of America

Appellee

v.

Meamen Jean Nyah

Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Central
(4:19-cr-00221-JAJ-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

June 30, 2022

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

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