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United States Court of Appeals
For the Eighth Circuit

No. 22-2196

United States of America

Plaintiff - Appellee

v.

Javaar Yavonnie Kalem Watkins, also known as Javaar Yavonnie Watkins, also known as Javaar Ya'onnie-K Watkins

Defendant - Appellant

Appeal from United States District Court for the District of North Dakota - Western

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Submitted: February 15, 2023
Filed: May 9, 2023

Before COLLOTON, BENTON, and KELLY, Circuit Judges.

BENTON, Circuit Judge.

A jury convicted Javaar Yavonnie Kalem Watkins of possessing firearms and ammunition as an armed

career criminal in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2), and 924(e). The district court[1] sentenced him to 324 months in prison. He appeals his conviction. Having jurisdiction under 28 U.S.C. § 1291, this court affirms.

In September 2020, Watkins and his brother went to a bar in Bismarck, North Dakota. Jakim Jackson, Kendrick Jackson, and Alvin Blackmon were also there. After the bar closed, Watkins, his brother, and Blackmon had an altercation in the parking lot. Taking a 9 mm pistol from his truck, Blackmon fired three to four shots in the air. Jakim picked up a cell phone lying on the ground. He, Kendrick, and Blackmon left in Blackmon's truck. The phone rang. Jakim answered. The caller told Jakim he was tracking the phone and wanted it back.

Blackmon gave Jakim his 9 mm pistol and then dropped him and Kendrick off a few blocks from their apartment. When they arrived at their building, Kendrick sat on the porch outside. Jakim went inside to their basement-level apartment. Later that night, Watkins and his brother arrived at the apartment building. They pointed guns at Kendrick and asked "where he is." Believing they were asking about Jakim, Kendrick went into the apartment. Watkins and his brother followed. Watkins pointed a gun at Kendrick's head. Jakim came out of his bedroom. Watkins shot at him. Jakim grabbed the 9 mm pistol. He and Watkins

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[1] The Honorable Daniel L. Hovland, United States District Judge for the District of North Dakota.

exchanged gunfire. Jakim was shot multiple times. Kendrick fled. Watkins took the 9 mm pistol and left. Investigators found shell casings from two different firearms—a 9 mm pistol and .45-caliber handgun.

Five days later, investigators showed Jakim a photo array of suspects that did not include pictures of Watkins or his brother. Jakim identified one person but wasn't "even 50 percent sure on that." At a second interview less than a week later, investigators showed Jakim two photo arrays, one with Watkins' picture and one with his brother's picture. Jakim positively identified both Watkins and his brother, with 100% certainty. As to Watkins, he said, "That's the mother-fucker right there." Kendrick separately identified them with 100% certainty.

The identifications led to a trailer in Bismarck. Law enforcement surveilled it. They saw Watkins and his brother arrive and enter. Watkins left soon after. Officers followed him and apprehended him. His brother left the trailer later and surrendered. The brother's girlfriend wanted to speak with the officers. They talked on the porch of the trailer. A child stuck his head out a window of the trailer and said, "My daddy has a gun too." Because it was cold outside and the girlfriend wanted to make a phone call, officers entered the trailer. A child said, "My daddy has a gun in there," and "My daddy has a gun in the closet." They asked the brother's girlfriend for consent to search the trailer. She refused. They obtained a search warrant. They found two loaded firearms—a 9 mm pistol and a .45-caliber handgun—in a closet in a bedroom with

Watkins' driver's license. The handgun was wrapped in a t-shirt from the restaurant where Watkins and his brother worked. A DNA analysis showed Watkins was the main contributor of DNA on the handgun. DNA analysis was inconclusive on the pistol. The brand and caliber of the ammunition from both the pistol and the handgun was the same as the shell casings found at the apartment.

Prosecutors charged Watkins and his brother with possession of a firearm by a prohibited person. The district court denied Watkins' motion to suppress the evidence from the trailer. It also denied his motions to suppress the eyewitness identifications, to allow an expert witness on the reliability of eyewitness identification, and to sever his trial from his brother. The jury convicted Watkins but acquitted his brother. He appeals.

I.

Watkins argues the district court erred in denying his motion to suppress evidence because the search warrant was "authorized on uncorroborated statements" of a child and lacked probable cause. This court need not decide this issue because the district court correctly found that even without probable cause, the good faith exception applied. *See* ***United States v. Leon***, 468 U.S. 897, 925 (1984) (allowing courts to "reject suppression motions posing no important Fourth Amendment questions by turning immediately to a consideration of the officers' good faith"); ***United States v. Randle***, 39

F.4th 533, 536 (8th Cir. 2022) ("We will assume without deciding that the warrant affidavit lacked a sufficient showing of nexus and turn to consideration of the officers' good faith.").

The good faith exception applies unless "a reasonably well trained officer would have known that the search was illegal despite the issuing judge's authorization." ***Randle***, 39 F.4th at 536 (cleaned up). "Under *Leon*, evidence obtained from a search performed under a warrant is suppressed only if (1) the affiant misled the issuing judge with a knowing or reckless false statement; (2) the issuing judge wholly abandoned her judicial role; (3) the supporting affidavit was so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; or (4) the warrant was so facially deficient that the executing officer could not reasonably presume its validity." ***United States v. Hay***, 46 F.4th 746, 751 (8th Cir. 2022) (cleaned up).

On appeal, Watkins does not challenge the district court's good-faith conclusion. This argument is waived. *See* ***United States v. Azure***, 539 F.3d 904, 912 (8th Cir. 2008) (holding that "appellants must raise their issues on appeal in their opening briefs"). Even if it were not, the record does not indicate that any of the *Leon* exceptions applies here. The district court did not err in determining the good-faith exception applied.

II.

Watkins contends the district court erred in denying his motion to suppress the eyewitness identification because it was "based on the impermissibly suggestive photo array line-up and likelihood of misidentification." This court reviews de novo. ***United States v. Gilbert***, 721 F.3d 1000, 1006 (8th Cir. 2013). Considering the admissibility of a photo lineup identification, this court examines (1) "whether the identification procedure is impermissibly suggestive," *and* (2) "whether under the totality of the circumstances the suggestive procedure creates a very substantial likelihood of irreparable misidentification." ***Id.***

Even if the line-up were impermissibly suggestive as Watkins contends, it was sufficiently reliable (i.e., there was not a substantial likelihood of irreparable misidentification). In assessing sufficient reliability, this court considers "the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of his prior description of the criminal, the level of certainty demonstrated at the confrontation, and the time between the crime and the confrontation." ***United States v. Williams***, 340 F.3d 563, 567 (8th Cir. 2003).

Balancing these factors, there was "very little likelihood of misidentification." ***Id***. As the district court found, the two eyewitnesses interacted with Watkins both at the shooting *and* at the bar before the shooting, giving them "ample opportunity" to see him. The eyewitnesses also consistently identified Watkins'

physical characteristics, including his lighter skin tone and the tattoo on his neck. Finally, the eyewitnesses expressed 100% certainty about their identifications.

Watkins also suggests the district court's failure to hold a hearing on his motion to suppress the identification is a constitutional violation. But a pretrial hearing on the admissibly of identification evidence is not "constitutionally necessary." ***United States v. Daily***, 488 F.3d 796, 802 (8th Cir. 2007). Where a defendant has sufficient notice of pretrial identification evidence and the opportunity to cross-examine identification witnesses, there are no "exceptional circumstances" warranting a "constitutionally mandated pretrial hearing." ***Id***. at 803. Watkins does not argue lack of notice or ability to cross-examine the eyewitnesses. The district court did not err in declining to hold a hearing on the motion to suppress.

III.

Watkins asserts the district court erred in rejecting his request to present expert testimony on eyewitness identification. This court reviews the exclusion of expert testimony for abuse of discretion. *See* ***United States v. Davis***, 260 F.3d 965, 970 (8th Cir. 2001). "Criminal defendants have a fundamental right to present the testimony of witnesses in their defense." ***United States v. Strong***, 826 F.3d 1109, 1115 (8th Cir. 2016). "However, there is no absolute right for criminal defendants to call every witness." ***Id***. "A defendant's right to present witness testimony is limited by 'other

legitimate interests in the criminal trial process.'" ***Id***., *quoting* ***United States v. Scheffer***, 523 U.S. 303, 308 (1998). "In the case of all expert testimony the district court serves as a gatekeeper to ensure that only reliable and relevant expert testimony is presented to a jury." ***United States v. Legs***, 28 F.4th 931, 935 (8th Cir. 2022). Even if expert testimony meets the requirements of Federal Rule of Evidence 702, the district court may exclude it if "its probative value is substantially outweighed by a danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." ***Strong***, 826 F.3d at 1115 (cleaned up), *quoting* **Fed. R. Evid. 403**. When a layperson juror "would be able to make a common sense determination of the issue without the technical aid of such an expert, the expert testimony should be excluded as superfluous." ***United States v. Kime***, 99 F.3d 870, 884 (8th Cir. 1996).

Here, the district court analyzed the admission of the proposed testimony:

> In *Perry v. New Hampshire*, the Supreme Court stated the use of "expert testimony on the hazards of eyewitness identification evidence" may be admitted in appropriate cases, specifically noting it is appropriate to admit expert testimony in cases involving eyewitness identification of strangers. 565 U.S. at 247. However, as the charges in this case relate to the possession of firearms and ammunition, this is simply not one of those cases in which expert testimony regarding eyewitness

> identifications is appropriate. The Court is mindful that in any number of cases, expert testimony regarding eyewitness identifications could be useful to the jury in deciding factual issues, particularly when the identity of the defendant is an element of the offense charged or when the eyewitness identification is uncorroborated. However, this is simply not one of those cases. Moreover, the Court has significant concerns that any probative value of Professor Kehn testimony is outweighed by the danger of it misleading the jury in this case. See Fed. R. Evid. 403. Again, the Court emphasizes, this is not a case of mistaken identity or where the only evidence against the Defendant is uncorroborated eyewitness identifications, but instead the Defendants are charged with being felons or prohibited persons in possession of firearms or ammunition. Accordingly, the Court finds Rule 702 of the Federal Rules of Evidence is not satisfied and concludes testimony from Professor Kehn is not admissible at trial.

As the district court noted, the government presented significant evidence, in addition to the eyewitness testimony, that Watkins possessed the firearms: they were found in a bedroom where he stayed (immediately after he left the residence); one had his DNA on it; and the other was wrapped in a shirt from his business. The government's case did not solely rely on, or even require, the eyewitness testimony. *See* ***United States v. Nickelous***, 916 F.3d 721, 724-25 (8th Cir. 2019) (holding the district court did not abuse its discretion

in excluding expert testimony on eyewitness identification in part "because the conviction did not rest solely" on the eyewitness testimony); ***Kime***, 99 F.3d at 885 ("We are especially hesitant to find an abuse of discretion in denying expert eyewitness identification testimony unless the government's case against the defendant rested exclusively on uncorroborated eyewitness testimony." (cleaned up)). And the court gave a "comprehensive instruction regarding the evaluation and reliability of eyewitness testimony." ***Kime***, 99 F.3d at 885. There was no abuse of discretion.

IV.

Watkins believes the court deprived him of a fair trial by "denying multiple requests to sever" the trial with his co-defendant "despite antagonistic defenses." This court reviews the denial of a motion to sever for abuse of discretion. *See* ***United States v. Hawkins***, 796 F.3d 843, 861 (8th Cir. 2015). "There is a preference in the federal system for joint trials of defendants who are indicted together." ***Zafiro v. United States***, 506 U.S. 534, 537 (1993). Indeed, joint trials "play a vital role in the criminal justice system." ***Id***. Severance is not required merely because codefendants present conflicting defenses. ***Id***. at 538. District courts should grant a severance "only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence." ***Id***. Reversal of a denial of a motion to sever is not appropriate unless the denial resulted in "real and clear prejudice."

Hawkins, 796 F.3d at 861. Clear prejudice exists if: (1) a defendant's defense is irreconcilable with a codefendant's defense and the jury will infer this conflict demonstrates guilt; or (2) the jury will not be able to compartmentalize evidence about separate defendants. *See* ***United States v. Martin***, 777 F.3d 984, 994 (8th Cir. 2015). "The defendant carries a heavy burden to make either showing." ***Id***.

Watkins claims irreconcilable defenses: his defense relies on mistaken identity (he claims he was not at the apartment at the time of the shooting), while his brother claims both he and Watkins were at the shooting, but he did not possess a gun or shoot anyone. Watkins' argument is flawed. First, his claim of mistaken identity was not a defense to the crime charged. He was charged with unlawfully possessing a firearm and ammunition, not shooting or assaulting someone. The jury was not required to decide whether Watkins shot someone or was even present at the shooting. It could have convicted him for possession whether it believed he was present at the shooting or not. Second, the core of his brother's defense was simply that the brother did not possess or shoot the gun. *See* ***Hawkins***, 796 F.3d at 861 ("A defense is irreconcilable when the jury, to believe the core of one defense, must necessarily disbelieve the core of another."). The jury could have believed that both brothers were present at the shooting or neither was and still convicted Watkins. Third, as discussed, the government presented sufficient evidence, absent the eyewitness identification, to prove his possession charge. *See* ***Martin***, 777 F.3d

at 994 (holding that even if defenses were mutually antagonistic and irreconcilable, severance was not appropriate because the government offered evidence "independent of the conflicting defenses"). Finally, the district court instructed the jury to consider each charge and the evidence pertaining to that charge separately. It told the jury that a finding of guilty or innocent as to one defendant should not control their verdict as to the other. *See* ***Zafiro***, 506 U.S. at 540 (holding that a district court's jury instructions may cure any risk of prejudice from antagonistic defenses); ***United States v. Mann***, 685 F.3d 714, 718 (8th Cir. 2012) ("The risk of prejudice posed by joint trials is best cured by careful and thorough jury instructions."). The district court did not abuse its discretion in declining to sever the trial.

V.

Watkins maintains the district court erred by rejecting his proposed instruction on eyewitness identification and "instructing the jury they could consider personal experiences when determining objective reasonable doubt." District courts have "broad discretion" in formulating jury instructions. ***United States v. White Horse***, 35 F.4th 1119, 1121 (8th Cir. 2022). This court will affirm instructions if "taken as a whole," they "fairly and adequately submitted the issues to the jury." ***Id***.

Watkins challenges part of the district court's "reasonable doubt" instruction: "Proof beyond a reasonable

doubt is proof of such a convincing character that a reasonable person, after careful consideration, would not hesitate to rely and act upon that proof *in life's most important decisions*" (emphasis added). He also challenges the preliminary instruction that stated: "You are entitled to consider the evidence in light of your own observations and experiences in the affairs of life." He believes both of these instructions allow "the jury to make incorrect comparisons and input their own subjective level of proof to an otherwise objective standard."

Both these instructions are in the current edition of the Eighth Circuit Model Jury Instructions (Criminal), at §§ 1.01 and 3.11. Earlier versions of the reasonable doubt instruction did not contain the phrase, "in life's most important decisions." *See* ***United States v. Owens***, 966 F.3d 700, 705 (8th Cir. 2020). Adding the phrase, the Judicial Committee on Model Jury Instructions for the Eighth Circuit noted it was similar to instructions used in three other circuits. *See* **Eighth Circuit Manual of Model Jury Instructions (Criminal), § 3.11, Committee Comments** (2021), *citing* **Fifth Circuit Model Jury Instruction, § 1.05**; **Sixth Circuit Model Jury Instructions, § 1.03**; **Eleventh Circuit Model Jury Instruction § 3 (Reasonable Doubt)**.

The Supreme Court and other courts of appeal have approved similar language in reasonable doubt instructions. *See* ***Holland v. United States***, 348 U.S. 121, 140 (1954) (holding the instruction "the kind of doubt . . . which you folks in the more serious and

important affairs of your own lives might be willing to act upon" was not misleading and "correctly conveyed the concept of reasonable doubt to the jury"); ***United States v. Stewart***, 306 F.3d 295, 306-07 (6th Cir. 2002) (affirming jury instruction on reasonable doubt—"Proof beyond a reasonable doubt means proof which is so convincing that you would not hesitate to rely and act on it in making the most important decisions in your own lives"). This court has recognized that jurors can rely on their own observations and experiences in considering the evidence. ***United States v. Owens***, 966 F.3d 700, 709 (8th Cir. 2020) ("Rational jurors, using reason and common sense in light of their own observations and experiences, could infer beyond a reasonable doubt that a felony conviction would be a significant life event that a person would know about when it happened and remember at a later date."). Other parts of the reasonable doubt instruction included language that this court has approved. *See* ***Harris v. Bowersox***, 184 F.3d 744, 750-52 (8th Cir. 1999) (approving language that "Proof beyond a reasonable doubt is proof that leave you firmly convinced of the defendant's guilt"). Viewing the instruction as a whole, there was no error.

Watkins also argues the district court erred when it declined his proposed jury instruction on out-of-court identification that he took from the New Jersey Model Jury Instructions. This instruction was not based on federal law but rather on the due process protections under the New Jersey Constitution. *See* ***State v. Henderson***, 27 A.3d 872, 919 n.10 (N.J. 2011). Watkins was

not entitled to this instruction as a matter of right. *See* ***United States v. Bull***, 8 F.4th 762, 769 (8th Cir. 2021) (holding "the district court is only obligated to instruct the jury on relevant law").

The district court gave two instructions on eyewitness testimony and out-of-court identification evidence. These instructions were based upon the Eighth Circuit Model Jury Instructions of Witness Credibility and Eyewitness Testimony. *See* **Eighth Circuit Manual of Model Jury Instructions (Criminal), §§ 3.04 and 4.08**. These instructions sufficiently and accurately submitted these issues to the jury. *See* ***United States v. Grey Bear***, 883 F.2d 1382, 1387-88 (8th Cir. 1989) (upholding trial court's refusal to give an identification instruction where the instruction given adequately "pointed out the relevant considerations to be weighed in gauging eyewitness testimony"). The district court did not abuse its discretion in denying this instruction. *See* ***United States v. Heard***, 951 F.3d 920, 926 (8th Cir. 2020) (holding that the refusal to give a specific eyewitness instruction was not prejudicial error where the case did not rest solely on eyewitness identification).

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The judgment is affirmed.

UNITED STATES DISTRICT COURT

District of North Dakota

UNITED STATES OF AMERICA v. **Javaar Yavonnie Kalem Watkins a/k/a Javaar Watkins a/k/a Javaar Ya'onnie-Kaile Watkins**	AMENDED **JUDGMENT IN A CRIMINAL CASE** (amended to include dismissal of forfeiture) Case Number: **1:21-cr-00010-01** USM Number: **17569-509** **Paul H. Myerchin** 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) **1 of the Indictment** after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC §§ 922(g)(1), 924(a)(2), 924(e) and 2	**Possession of Firearms and Ammunition by a Prohibited Person (Armed Career Criminal)**	**Oct. 2020**	**1**

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) **Forfeiture Allegation** ☑ 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 change in economic circumstances.

May 25, 2022
Date of Imposition of Judgment

Daniel L. Hovland
Signature of Judge

Daniel L. Hovland U.S. District Judge
Name and Title of Judge

July 14, 2022
Date

IMPRISONMENT

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

324 MONTHS, with credit for time served.

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

The Court recommends the defendant be placed at FCI Oxford in Oxford, WI. In addition, the Court recommends that the defendant be afforded the opportunity to participate in the Bureau of Prisons' 500-Hour Residential Drug Abuse Program (RDAP).

☑ The defendant is remanded to the custody of the United States Marshal.

☐ 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 2 p.m. 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 _____ at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

5 YEARS.

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 the location where 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.

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 _____

SPECIAL CONDITIONS OF SUPERVISION

1. You must totally abstain from the use of alcohol and illegal drugs or the possession of a controlled substance, as defined in 21 U.S.C. § 802 or

state statute, unless prescribed by a licensed medical practitioner; and any use of inhalants or psychoactive substances (e.g., synthetic marijuana, bath salts, etc.) that impair your physical or mental functioning.

2. You must submit to drug/alcohol screening at the direction of the United States Probation Officer to verify compliance. Failure or refusal to submit to testing can result in mandatory revocation. Tampering with the collection process or specimen may be considered the same as a positive test result.

3. You must participate in a drug/alcohol dependency treatment program as approved by the supervising probation officer.

4. You must not communicate, or otherwise interact, with J.J., either directly or through someone else, without first obtaining the permission of the probation officer.

5. You must participate in a program aimed at addressing specific interpersonal or social areas, for example, domestic violence, anger management, marital counseling, financial counseling, cognitive skills, parenting, at the direction of your supervising probation officer.

6. You must participate in mental health treatment/counseling as directed by the supervising probation officer.

7. As directed by the Court, if during the period of supervised release the supervising probation officer determines you are in need of placement in a Residential Re-Entry Center (RRC), you must voluntarily report to such a facility as directed by the supervising probation officer, cooperate with all rules and regulations of the facility, participate in all recommended programming, and not withdraw from the facility without prior permission of the supervising probation officer. The Court retains and exercises ultimate responsibility in this delegation of authority to the probation officer.

8. You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)) other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition. The probation officer may conduct a search under this condition only when reasonable suspicion exists that you have violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Restitution	Fine
TOTALS	**$ 100.00**	**$**	**$**

AVAA Assessment*	JVTA Assessment**
$	**$**

☐ 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. § 3664W, all nonfederal victims must be paid before the United States is paid.

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* 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.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage
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:

*** 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.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are 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, PO Box 1193, Bismarck, North Dakota 58502-1193.

While on supervised release, the defendant 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 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:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 22-2196

United States of America

Appellee

v.

Javaar Yavonnie Kalem Watkins, also known as Javaar Yavonnie Watkins, also known as Javaar Ya'onnie-K Watkins

Appellant

Appeal from U.S. District Court
for the District of North Dakota - Western
(1:21-cr-00010-DLH-1)

ORDER

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

Judge Erickson did not participate in the consideration or decision of this matter.

June 20, 2023

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

/s/ Michael E. Gans

REASONABLE DOUBT DEFINED F-12

Reasonable doubt is doubt based upon reason and common sense, and not doubt based on speculation. A reasonable doubt may arise from careful and impartial consideration of all the evidence, or from a lack of evidence. Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person, after careful consideration, would not hesitate to rely and act upon that proof in life's most important decisions. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

There are a few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning the Defendant's guilt. If, based on your consideration of the evidence, you are firmly convinced that the Defendant is guilty of the crime charged, you must find him guilty. If on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

United States of America vs. Javaar Watkins
Case No. 1:21-cr-00010

DEFENDANT WATKINS' REQUESTED

PRELIMINARY INSTRUCTION NO. 3

REASONABLE DOUBT – DEFINED

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning the defendant's guilt. A reasonable doubt is a doubt based on reason and common sense after careful and impartial consideration of all the evidence in the case. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty. If on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.[5]

ALTERNATE INSTRUCTION (A)

Proof beyond a reasonable doubt is proof that leaves you firmly convinced the defendant is guilty. It is not required that the government prove guilt beyond all possible doubt. A reasonable doubt is a doubt based

[5] 10th Circuit Jury Instructions: https://www.ca10.uscourts.gov/sites/default/files/clerk/Jury%20Instructions%202021%20Version.pdf

upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence. If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty.[6]

ALTERNATE INSTRUCTION (B)

The prosecution must prove all of the essential elements of the crime charged by proof beyond a reasonable doubt. In other words, if you have a reasonable doubt that the Defendant committed the crime, then you must find the Defendant not guilty.

The prosecution is not required to prove guilt beyond all doubt, but beyond a reasonable doubt.

You should find the Defendant guilty only if you have a firm and abiding conviction of the Defendant's guilt based on a full and fair consideration of the evidence presented in the case and not from any other source.[7]

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[6] 9th Circuit: https://www.ce9.uscourts.gov/juryinstructions/sites/default/files/WPD/Criminal_Instructions_2021_3.pdf

[7] N.D.J.I. Crim. No. K - 1.10 Proof Beyond a Reasonable Doubt 2004 (North Dakota Jury Instructions - Criminal (2019 Edition))