

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

RAEKWON MALIK PATTON,

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 Court of Appeals
For the Eighth Circuit

No. 22-2777

United States of America

Plaintiff - Appellee

v.

Austin James Mallory

Defendant - Appellant

No. 22-2784

United States of America

Plaintiff - Appellee

v.

Raekwon Malik Patton, also known as Kwon, also known as Nutt

Defendant - Appellant

Appeals from United States District Court
for the Southern District of Iowa - Central

Submitted: October 19, 2023

Filed: June 12, 2024

Before GRUENDER, STRAS, and KOBES, Circuit Judges.

STRAS, Circuit Judge.

A jury found Raekwon Patton and Austin Mallory guilty for their roles in a drive-by shooting. Although they challenge the evidence and the instructions the jury heard, we affirm.

I.

The shooting occurred after a chance encounter with a rival gang member outside a Des Moines shopping mall. Mallory had driven there in an SUV with a group that included Patton and other members of two local street gangs, the Heavy Hitters and OTB (short for Only the Brothers). In the parking lot, they spotted Raysean Nelson, whom they followed as he drove away. Mallory was still behind the wheel, with Patton in the back seat.

Eventually, Nelson pulled over and got out. There was an exchange of gunfire once Mallory's SUV passed Nelson's car, though it is unclear who shot first. At one point, Patton was hanging out the window firing back in Nelson's direction. Another passenger in the SUV, who may have been shooting as well, was shot in the head.

Patton and Mallory each faced charges of attempted murder in aid of racketeering, *see* 18 U.S.C. § 1959(a)(5), and discharging a firearm during a crime of violence, *see id.* § 924(c)(1)(A)(iii), the former as a principal and the latter as his accomplice. The jury found them both guilty, but not before the district court¹ overruled multiple objections.

¹The Honorable Rebecca Goodgame Ebinger, United States District Judge for the Southern District of Iowa.

II.

We begin with Patton, who attacks the verdict from two angles. Missing, he argues, were at least two jury instructions and reasonable limits on the evidence that the government presented, much of which cast him in a poor light.

A.

Particularly problematic from his perspective were the instructions on the attempted-murder-in-aid-of-racketeering charge. Although it is a federal crime, the “predicate offense[]” can come from state law. *United States v. Kehoe*, 310 F.3d 579, 588 (8th Cir. 2002) (explaining that state or federal law can be the source). When it does, state law defines its parameters, including potential defenses. *See id.*

One defense to an Iowa attempted-murder charge is justification. *See Iowa Code § 707.11(1)*. Patton’s position is that the other side’s decision to shoot first justified his decision to return fire, yet the jury never received the justification instruction he requested. We review *de novo* whether it should have. *See United States v. Poe*, 442 F.3d 1101, 1103 (8th Cir. 2006) (“Whether there is sufficient evidence to support the submission of an instruction on an affirmative defense is a question of law”); *cf. State v. Shanahan*, 712 N.W.2d 121, 141 (Iowa 2006) (explaining that a justification instruction requires “substantial evidence”).

Justification requires a bit more when the person claiming it was “engaged in illegal activity.” Iowa Code § 704.1(3). Iowa allows most people facing injury or death to “stand [their] ground.” *State v. Ellison*, 985 N.W.2d 473, 477–78 (Iowa 2023). But not Patton, who was “engaged in [the] illegal activity” of possessing a firearm as a felon, which created a duty to retreat before he could use force himself. *Id.* (citation omitted); *State v. Baltazar*, 935 N.W.2d 862, 871 (Iowa 2019) (holding that a defendant who illegally brought a gun to a confrontation had a “duty to retreat” before using it in self-defense).

There was no evidence that he tried. It is true that the shell casings and bullet fragments discovered near the intersection and the bullet holes throughout Mallory's SUV are consistent with someone else shooting before Patton did, meaning that he might have had a "reasonabl[e] belie[f] that [deadly] force [was] necessary." Iowa Code § 704.3. But Patton, Mallory, and the others had a golden opportunity to escape, given that Nelson's car was already stopped. Yet, by having guns at the ready and rolling down the windows as they approached Nelson's parked car, the only reasonable inference was that they planned to fire regardless of what anyone else did. *Cf.* Iowa Code § 704.6(3) ("The defense of justification is not available to . . . [o]ne who initially provokes the use of force against oneself by one's unlawful acts . . ."). It was, in other words, a preplanned drive-by shooting, not an act of justified self-defense. *See State v. Cruse*, 228 N.W.2d 28, 30 (Iowa 1975) (explaining that self-defense requires "retreat[ing] as far as is reasonable and safe" (citation omitted)).

No one doubts that, once the shooting started, Patton and the others faced grave danger. Look no further than the fact that a bullet struck another backseat passenger in the head. But we do not know when it happened—toward the beginning, middle, or end of the shootout—and an "alternative course of action" may well have prevented it. *Baltazar*, 935 N.W.2d at 870. Unfortunately, Patton returned fire before anyone had a chance to try.

B.

Another problem, according to Patton, was that the instructions set the bar too low on the racketeering element. *See* 18 U.S.C. § 1959(a)(5). He requested an instruction requiring the jury to find that the attempted murder was "an integral aspect of membership" in the gang or that a "substantial purpose" of the crime was maintaining or increasing his position. The court stuck with a less rigid formulation, requiring only that it have as its "purpose . . . gain[ing] entrance to, . . . maintain[ing] or increas[ing] [his] position" in the organization. The question for us is whether it

abused its discretion in doing so. *See United States v. White Horse*, 35 F.4th 1119, 1121 (8th Cir. 2022).

The answer is no because the instruction “fairly and adequately” told the jury what it needed to know. *Id.* (citation omitted). It closely tracked the statutory language, which does not specify how substantial the purpose must be. *See* 18 U.S.C. § 1959(a) (prohibiting acts done “for the purpose of gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity”); *see also United States v. Gill*, 513 F.3d 836, 852 (8th Cir. 2008) (recommending that “district courts should clearly list . . . [what] the particular offense requires by tracking the applicable statutory language”); *White Horse*, 35 F.4th at 1123 (explaining that jury instructions do not need to clarify every nuance with “technical[] perfect[ion]” (citation omitted)).

It also did not tempt the jury to focus just “on [Patton’s] status as a gang member.” *United States v. Banks*, 514 F.3d 959, 969 (9th Cir. 2008). In fact, the district court dispelled any possible confusion by giving specific examples of what would satisfy the legal standard: “committ[ing] the crime because [the defendant] knew it was expected of him by reason of his membership” or “thought it would enhance his position or prestige within the enterprise.” These examples focused the jury’s attention where it belonged, which was on Patton’s motivation for attempting the murder. *See* 18 U.S.C. § 1959(a).

C.

The last part of Patton’s appeal focuses on the evidence admitted over his objections. Our review is “for an abuse of discretion.” *United States v. Caruso*, 63 F.4th 1197, 1202 (8th Cir. 2023).

Some of it was background information about gangs. A federal agent testified about how they form, act, and deal with one another. The point was to help the jury

understand upcoming testimony about the mindset and practices of OTB and other Des Moines gangs. *See* Fed. R. Evid. 702 (authorizing expert testimony); *United States v. Sparks*, 949 F.2d 1023, 1025–26 (8th Cir. 1991) (holding that it was not an abuse of discretion to let an expert testify “regarding the way gangs operate”).

It is true, as Patton emphasizes, that there was some daylight between the “gangs” the agent had in mind and how “an enterprise engage[s] in racketeering activity” under federal law. *Compare, e.g.*, Iowa Code § 723A.1(2) (defining “[c]riminal street gang”), *with* 18 U.S.C. § 1959(a), (b). But the need for the jury to figure out the relationship between the two concepts was why the testimony was helpful. *See Sparks*, 949 F.2d at 1026. Together with the more specific evidence about OTB and what led to the shootout, it allowed the jury to evaluate whether the gang was an “enterprise” and the murder attempt aided in its racketeering activity. *See* Fed. R. Evid. 401 (defining “relevan[ce]”).

The testimony also posed little risk of “unfair prejudice.” Fed. R. Evid. 403. After all, the agent acknowledged up front that he did not know Patton (or have any other involvement with the case), so it is unlikely that the jury relied on what he said for anything more than general background information. *Cf. United States v. Overton*, 971 F.3d 756, 763 (8th Cir. 2020) (warning of the risks posed when an investigator provides “dual-role testimony” as both a lay witness and an expert).

As for more specific evidence about OTB from other witnesses, it was relevant to show that the gang was “engaged in racketeering activity” when the crime occurred. 18 U.S.C. § 1959(a). In addition to the gang’s history and past activities, some witnesses discussed later crimes, including an attempt to retaliate for the earlier shooting. No one suggested that Patton, who was behind bars by then, had anything to do with them. *See* Fed. R. Evid. 403; *see also United States v. Johnson*, 535 F.3d 892, 897 (8th Cir. 2008) (emphasizing that we generally defer to the district court’s Rule 403 balancing). But the evidence was valuable because it allowed the jury to

draw the reasonable inference that a functioning enterprise both before and after the crime would have also been one on the day it happened. *See Fed. R. Evid. 401.*

III.

Mallory also attacks the verdict from two angles. The first strikes a familiar note by challenging two evidentiary decisions. The second is about whether the government established that Mallory was a knowing accomplice.

A.

We start where we left off, with the district court's evidentiary rulings. Mallory's counsel wanted to put another occupant of the SUV on the stand. The hope was that he would admit he was the driver but switched seats with Mallory before the cops pulled them over. *Cf. Rosemond v. United States*, 572 U.S. 65, 71 (2014) (explaining that accomplice liability requires "an affirmative act in furtherance of th[e] offense"). When he failed to show up at trial, the only alternative was to try to get the admission in through another OTB member, but the district court excluded it.

It was classic hearsay, an out-of-court statement offered for the truth of the matter asserted. *See Fed. R. Evid. 801(c).* The debate was over whether it fell into the exception for statements against penal interest, which are only admissible if they are trustworthy. *See Fed. R. Evid. 804(b)(3)(B)* (requiring "corroborating circumstances that clearly indicate [the statement's] trustworthiness"). The district court concluded it was not, and we generally defer to its "determination of a declarant's credibility and motivation in making a statement." *United States v. Chase*, 451 F.3d 474, 480 (8th Cir. 2006).

The relevant factors for determining whether a statement is trustworthy are the declarant's motive, character, and relationship with the witness; the timing of the

statement and what prompted it; and whether anyone else heard it. *See United States v. Halk*, 634 F.3d 482, 490 (8th Cir. 2011). Applying those factors here, the district court had reason to exclude it.

First, the declarant had a “clear motivation to lie.” *United States v. Dunn*, 76 F.4th 1062, 1067 (8th Cir. 2023). The evidence established that engaging in violence was a way to gain standing in the gang, so he had an incentive to exaggerate his involvement.

Second, he had denied being the driver during a pretrial interview. He said then that he had not driven the SUV, switched seats with Mallory, or told someone he had. *See United States v. Ironi*, 525 F.3d 683, 687 (8th Cir. 2008) (concluding that a declarant’s own contradictory statements “undermined” the trustworthiness of an alleged admission against interest).

Third, even the person who heard the statement questioned its veracity, given that it was “[n]ot clear at all” when the switch could have happened with the police chasing them. With little to no corroboration for the hearsay statement, the district court did not abuse its discretion by excluding it. *See id.*

B.

Nor did it have to admit evidence showing Mallory’s involvement in a variety of non-gang activities, including ROTC, Boy Scouts, and swim team. He hoped that showing he had a “busy schedule” would allow the jury to see that he did not have time to participate in a gang or plan shootings.

The problem was that much of it was inadmissible character evidence. *See* Fed. R. Evid. 405(b) (prohibiting the admission of “specific instances of [a] person’s conduct” unless “character or a character trait is an essential element of a charge, claim, or defense”). To the extent any was not, the risk of unfair prejudice

substantially outweighed any probative value it had. *See* Fed. R. Evid. 403. The district court’s main concern was that the evidence would invite the jury to decide the case “on an improper . . . emotional [basis].” *United States v. Condon*, 720 F.3d 748, 755 (8th Cir. 2013) (citation omitted). Preventing it from doing so was not an abuse of discretion.

C.

The evidence was also sufficient for the jury to conclude that Mallory was guilty as an accomplice. The government had to prove that he knew there was a gun in the car and one of his passengers would fire it at someone else. *See* 18 U.S.C. §§ 2(a), 924(c)(1)(A)(iii), 1959(a)(5); *see also Rosemond*, 572 U.S. at 77 (explaining that “active[] participat[ion] . . . with full knowledge of the circumstances constituting the charged offense” establishes the necessary intent). If a reasonable jury, “viewing [the] evidence in the light most favorable to the government” and drawing “all reasonable inferences” in its favor, could have found that he did, his attempted-murder and discharging-a-firearm convictions will stand. *United States v. Atkins*, 52 F.4th 745, 751–52 (8th Cir. 2022) (citation omitted) (applying *de novo* review).

Several facts established Mallory’s knowledge. First, he admitted during a jailhouse interview that he knew someone in the SUV was about to fire once the back windows dropped. Another passenger confirmed Mallory’s interpretation: when “the windows went down,” it meant someone “was going to shoot somebody.” According to him, they came down before the SUV “got on the block,” meaning that the jury could have inferred that Mallory still had time to hit the brakes, turn the vehicle around, or otherwise withdraw his assistance. *See Rosemond*, 572 U.S. at 78 (clarifying that an accomplice’s “knowledge of a firearm must be advance knowledge”).

The windows were not the only tipoff. Mallory’s social-media feed featured posts from Patton and other OTB members discussing how they carried guns and shot at rivals. With that background, he would have known that a drive-by shooting was a distinct possibility after a passenger who “was into it” with Nelson and “didn’t like” him said to follow his car.² *See United States v. Daniel*, 887 F.3d 350, 357 (8th Cir. 2018) (holding there was sufficient evidence that a defendant knew an accomplice would use a gun and emphasizing that “the jury can ‘draw inferences . . . based on all the facts and circumstances of a crime’s commission’” (emphasis omitted) (quoting *Rosemond*, 572 U.S. at 78 n.9)). Or at least the jury could have reasonably concluded so.

IV.

We accordingly affirm the judgments of the district court.

²Although Mallory also suggests that the verdict was against the weight of the evidence, it appears he is just repackaging his argument that the government’s evidence of knowledge fell short, not suggesting that his “preponderate[d] heavily against” it. *United States v. Stacks*, 821 F.3d 1038, 1044–45 (8th Cir. 2016) (citation omitted) (explaining that granting a new trial based on the weight of the evidence is “generally disfavored,” “reserved for exceptional cases,” and committed to the district court’s “quite broad” discretion (citations omitted)). Regardless, this is not one of those “exceptional cases” deserving of a new trial. *Id.*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA

v.

RAEKWON MALIK PATTON
A/K/A KWON, NUTT**JUDGMENT IN A CRIMINAL CASE**Case Number: 4:21-cr-00075-001
USM Number: 46558-509J. Keith Rigg
Defendant's Attorney**THE DEFENDANT:** pleaded guilty to count(s) Six of the Indictment filed on May 19, 2021. pleaded nolo contendere to count(s) _____ which was accepted by the court. was found guilty on count(s) Four and Five of the Indictment filed on May 19, 2021. 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. § 1959(a)(5)	Attempted Murder in Aid of Racketeering	05/10/2020	Four
18 U.S.C. § 924(c)(1)(A)(iii)	Use, Carry, and Discharge a Firearm During and in Relation to a Crime of Violence	05/10/2020	Five
18 U.S.C. §§ 922(g)(1), 924(a)(2)	Felon in Possession of a Firearm	05/10/2020	Six

 See additional count(s) on page 2

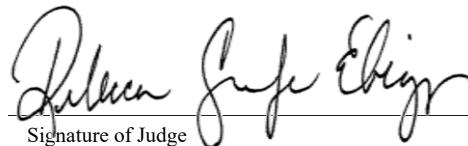
The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

 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.

August 19, 2022

Date of Imposition of Judgment



Rebecca Goodgame Ebinger, U.S. District Judge

Name of Judge

Title of Judge

August 19, 2022

Date

Appendix page B-1

DEFENDANT: RAEKWON MALIK PATTON A/K/A KWON, NUTT
CASE NUMBER: 4:21-cr-00075-001

IMPRISONMENT

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

300 months, consisting of 120 months as to each of Counts Four and Six, with 60 months of Count Six to run concurrently with Count Four and 60 months to run consecutively to Count Four, and 120 months as to Count Five of the Indictment filed on May 19, 2021, to be served consecutively to Counts Four and Six. Counts Four and Six shall run concurrently to the undischarged term of imprisonment in Iowa District Court for Polk County Docket Number FECR338165 and Count Five shall run consecutively.

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

The defendant be placed at FCI Sandstone if commensurate with his security and classification needs or as close to the State of Iowa as possible. The Court further recommends the defendant be afforded the opportunity to participate in the 500-hour Residential Drug Abuse Treatment Program (RDAP) or any other available substance abuse treatment programs.

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: RAEKWON MALIK PATTON A/K/A KWON, NUTT
CASE NUMBER: 4:21-cr-00075-001

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SUPERVISED RELEASE

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

Three years as to each of Counts Four and Six, and five years as to Count Five of the Indictment filed on May 19, 2021, to be served concurrently.

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: RAEKWON MALIK PATTON A/K/A KWON, NUTT
CASE NUMBER: 4:21-cr-00075-001

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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: RAEKWON MALIK PATTON A/K/A KWON, NUTT
CASE NUMBER: 4:21-cr-00075-001

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SPECIAL CONDITIONS OF SUPERVISION

You shall not knowingly associate or communicate with any member of the OTB or Heavy Hittas criminal street gang, or any other criminal street gang.

If not obtained while in Bureau of Prisons' custody, you must participate in GED classes as approved by the U.S. Probation Office.

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 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.

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.

DEFENDANT: RAEKWON MALIK PATTON A/K/A KWON, NUTT
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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 \$ 300.00	\$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, B06, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: RAEKWON MALIK PATTON A/K/A KWON, NUTT
CASE NUMBER: 4:21-cr-00075-001

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 \$ 300.00 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. Such plan shall be approved by the Court.

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 Smith and Wesson, model 4053 TSW, .40 caliber pistol (SN: MSE8831) as described in the Preliminary Order of Forfeiture entered on June 27, 2022.

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: 22-2784

United States of America

Appellee

v.

Raekwon Malik Patton, also known as Kwon, also known as Nutt

Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Central
(4:21-cr-00075-RGE-1)

ORDER

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

July 16, 2024

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

/s/ Maureen W. Gornik