

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

TAWHYNE M. PATTERSON, SR.,

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*

PETITION FOR A WRIT OF CERTIORARI

TAWHYNE M. PATTERSON, SR., Petitioner

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QUESTION PRESENTED

A jury returned a general verdict finding Tawhyne M. Patterson, Sr., “guilty” of violating 18 U.S.C. §924(o) where only one of the two predicate offenses alleged to support that firearms conspiracy charge was legally valid. A divided panel of the Eighth Circuit affirmed the conviction, finding the instructional error, though plain, did not affect Patterson’s substantial rights. The question presented is:

Whether the Eighth Circuit erred in determining the two alleged predicate offenses were “so inextricably intertwined that no rational juror could have found Patterson... possessed firearms in relation to one predicate but not the other.”

LIST OF PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page.

STATEMENT ON RELATED CASES

There are no related cases.

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PETITION FOR A WRIT OF CERTIORARI

Tawhyne M. Patterson, Sr., an inmate currently incarcerated for a term of 660 months at the United States Penitentiary in Florence, Colorado, by and through his undersigned counsel, respectfully petitions this Court for a writ of certiorari to review the opinion and judgment of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

Patterson was charged with murder, attempted robbery and conspiracy in connection with a botched July 31, 2018, home invasion robbery of a reputed marijuana dealer in Lincoln, Nebraska. A jury found him guilty on all counts, and the district court sentenced him, *inter alia*, to life imprisonment on the murder charge. Patterson's murder conviction was vacated on his first direct appeal to the United States Court of Appeals for the Eighth Circuit pursuant to *United States v. Taylor*, 142 S.Ct. 2015, 213 L.Ed.2d 349 (2022), which was decided during the pendency of the appeal. His remaining convictions, including the conspiracy conviction at issue here, were affirmed. The case was then remanded to the United States District Court for the District of Nebraska under the sentencing package doctrine for resentencing. Following resentencing, Patterson took another direct appeal, this time challenging his new sentence. The sentences were affirmed by an opinion and judgment entered April 1, 2025. Copies of the opinions in Patterson's first and final direct appeal appear in Appendices A and B, respectively.

JURISDICTION

Patterson invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1254(1) and Supreme Court Rule 13, filing this Petition within ninety (90) days of April 1, 2025, the date the Eighth Circuit entered its final judgment. Federal jurisdiction in the district court over the subject matter of this case was proper pursuant to 18 U.S.C. §3231.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. U.S. Const. amend V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

2. 18 U.S.C. § 924(o)

A person who conspires to commit an offense under [18 U.S.C. §924(c)] shall be imprisoned for not more than 20 years, fined under this title, or both.

3. 18 U.S.C. 924(c)

"[A]ny person who, during and in relation to any crime of violence or drug trafficking crime... for which a person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime possesses a firearm shall" be punished as further set forth in the statute.

STATEMENT OF THE CASE

In the early morning hours of July 31, 2018, three males, at least two of whom were armed, approached the Lincoln, Nebraska residence of a reputed

marijuana dealer with the apparent intention to conduct a home invasion robbery. After one of the males breached the locked front door the residence, they all rushed inside. Two of the males quickly restrained some of the parties present on the main floor of the residence using zip-ties and duct tape, while the third, who had kicked the door in, approached an interior stairway leading down to the basement. A few seconds later, this male fired thirteen gunshots down the stairwell. The trio then fled the residence without taking any property.

One of the gunshots hit Jessica Brandon, who was at the bottom of the stairs, in the left shoulder. She died from the injury a short time later in a hospital.

A surveillance system using cameras installed around the exterior of the residence by Michael Robertson, the marijuana dealer who lived there, recorded to a hard drive video of the perpetrators as they entered the residence, and as they fled less than three minutes later. The same system about 24 hours earlier also recorded four subjects, three of whom are similar in appearance to the persons depicted in video from the morning of the homicide, casing the residence but not entering.

The subjects depicted in the video recording of the home invasion were wearing hats and face coverings, except for Dante Williams, who only wore a hat. That omission resulted in clear camera footage of his face which, coupled with the distinctively patterned pants he owned and wore during the home invasion along with some incriminating statements he made, prompted his guilty plea. The

identities of the other perpetrators of the home invasion was the question of Patterson's trial.

A jury found Patterson guilty of murder under 18 U.S.C. 924(j), with attempted Hobbs Act robbery serving as the predicate 18 U.S.C. §924(c) offense. As relevant here, the jury also found Patterson guilty of an 18 U.S.C. §924(o) firearms conspiracy after being instructed to consider two predicate offenses alleged to be the objects of the conspiracy: conspiracy to commit Hobbs Act robbery and/or conspiracy to possess with intent to distribute marijuana. The government's trial theory and evidence suggested the object of the robbery at issue was to obtain Robertson's drug money. Consequently, there was far less evidence that the perpetrators conspired to steal Robertson's marijuana to later sell. The general verdict form returned by the jury did not specify which predicate it found supported its guilty verdict, or whether both of them did. Patterson was thereafter ordered to serve 240 months imprisonment on the firearms conspiracy conviction, and a consecutive life sentence for the murder count.

While his first direct appeal was pending, this Court decided *United States v. Taylor*, 142 S.Ct. 2015, 213 L.Ed.2d 349 (2022), which held attempted Hobbs Act robbery was not a "crime of violence" within the meaning of 18 U.S.C. §924(c). An Eighth Circuit panel then unanimously vacated Patterson's 924(j) murder conviction and life sentence as it was predicated on that offense, but affirmed his firearms conspiracy conviction in a 2-1 decision. The majority found on plain error review Patterson's substantial rights were not affected by the instructional error

because the two predicates “were so inextricably intertwined that no rational juror could have found Patterson [and his codefendant] possessed firearms in relation to one predicate but not the other.”

Judge Kelly dissented, siding with Patterson who argued given the evidence and the way the government presented its case the jury likely rested its verdict on the invalid “conspiracy to commit Hobbs Act robbery” predicate, and not on the marijuana conspiracy predicate. Judge Kelly correctly determined the majority conflated the proper standard of review for this claim, whether there was a “reasonable probability” the jury rested its verdict solely on the invalid predicate, with a simple “sufficiency of the evidence” standard. The majority’s error, as Judge Kelly also correctly feared, resulted in a consecutive 180-month sentence for the dubious offense on remand.

REASONS FOR GRANTING THE PETITION

I. The Eighth Circuit erred in determining the two predicate offenses alleged to support Patterson’s firearms conspiracy conviction were “so inextricably intertwined that no rational juror” could have found Patterson committed one predicate without also committing the other. The error enabled the imposition of 180 months of additional imprisonment on Patterson and thereby affected his substantial rights.

Although the government alleged in the operative indictment Patterson conspired to possess firearms both in furtherance of crimes of violence and drug trafficking crimes, its trial evidence better supported the theory that he conspired to possess them to conduct a home invasion robbery to obtain drug money. So that was the way it tried the case. This unremarkable approach made sense in February, 2021, and carried the day until its bottom fell out with *United States v.*

Taylor, 142 S.Ct. 2015, 213 L.Ed.2d 349 (2022). After *Taylor* held attempted Hobbs Act robbery is not a crime of violence under 18 U.S.C. 924(c), the government's focus at trial on proving the "crime of violence" predicate to the exclusion of proving the drug trafficking predicate is known to have been misplaced.

But instead of simply acknowledging the "reasonable probability" Patterson's jury returned the verdict the government specifically asked for and vacating the conviction, the majority of a divided Eighth Circuit panel on direct appeal scoured the record of the two-week trial, searching for drug trafficking evidence to use to resuscitate it. Finding little, the majority simply sidestepped the applicable "reasonable probability the jury relied on an invalid predicate" inquiry by declaring the two predicates "were so inextricably intertwined that no rational juror could have found Patterson [and his codefendant] possessed firearms in relation to one predicate but not the other." This error adversely affected Patterson's substantial rights and seriously affected the fairness of this judicial proceeding.

This Court has made clear that "[a] conviction based on a general verdict is subject to challenge if the jury was instructed on alternative theories of guilt and may have relied on an invalid one." *Hedgpeth v. Pulido*, 555 U.S. 57, 58, 129 S.Ct. 530, 172 L.Ed.2d 388 (2008) (per curiam). That is what happened here: the jury was presented with two theories of guilt for the § 924(o) offense charged in Count Five—one based on a valid drug trafficking predicate and the other based on a now-invalid crime of violence predicate—and it "may have relied on" the latter theory "to the exclusion of" the former theory. *United States v. Jones*, 935 F.3d 266, 270 (5th Cir.

2019) (per curiam) (addressing a challenge to § 924 convictions that, because the jury returned a general verdict, could have been based on an invalid crime of violence predicate). On plain error review, when as here an error is plain, the inquiry turns to whether the error affected the defendant's substantial rights. An error affects a defendant's substantial rights if the defendant "shows a reasonable probability that, but for the error, the outcome of the proceeding would have been different." *United States v. Davies*, 942 F.3d 871, 873 (8th Cir. 2019) (cleaned up) (quoting *Molina-Martinez v. United States*, 578 U.S. 189, 194, 136 S.Ct. 1338, 194 L.Ed.2d 444 (2016)).

As Judge Kelly's dissent makes clear, Patterson made the required showing on direct appeal:

To start, there was enough evidence presented at trial for a jury to conclude that the sole object of Patterson's and Williams's firearms conspiracy was to steal money, which would have been consistent with a Hobbs Act robbery conspiracy but not with a marijuana conspiracy. For instance, Keyana Clark-Jennings, who was Patterson's girlfriend at the time, testified that money was "tight" for Patterson and Williams in the summer of 2018. She explained that the two agreed to rob Michael Robertson after William Boothe "told" them "about the money" that Robertson kept in his house. Clark-Jennings stated more than once that Patterson and Williams expected to find over \$100,000 at Robertson's residence. Another witness testified that on the night before the July 31 break-in, Boothe called to ask where in the house Robertson kept his money. And Clark-Jennings testified that following the break-in, Patterson and Williams looked "disappointed" after they learned about the large stash of money police seized from Robertson, which jurors could have interpreted as proof that the two regretted not finding that money themselves. It is thus "entirely plausible" that the jury, believing that Patterson and Williams were after money alone, rested its Count Five verdict on the invalid Hobbs Act robbery conspiracy predicate. *United States v. Capers*, 20 F.4th 105, 124 (2d Cir. 2021) (concluding that an instructional error affected substantial rights in part because there was enough evidence at trial to support a guilty verdict based on an invalid § 924(c) predicate); see *Jones*, 935 F.3d at 273 (concluding that an instructional error affected

substantial rights in part because “[a] reasonable probability remain[ed]” that the jury “relied upon” conduct consistent with an invalid § 924(c) predicate to convict the defendants of several § 924 offenses).

Judge Kelly went on to observe:

There is likewise a reasonable probability that the jury did not rest its Count Five verdict on the valid marijuana conspiracy predicate. *See United States v. Said*, 26 F.4th 653, 661 (4th Cir. 2022) (“[T]he defendant must show not only that he *could* have been convicted under the erroneous instruction, but also that he *was not* convicted under the proper instruction.” (cleaned up)). Patterson and Williams were not charged with, let alone found guilty of, any standalone controlled substance offenses. It thus cannot be said that the jury conclusively found that Patterson or Williams engaged in any sort of drug-trafficking-related conduct that would have, in turn, clearly supported a § 924(o) conviction based on a drug trafficking predicate. *Cf. Said*, 26 F.4th at 662 (concluding that a § 924-related instructional error was harmless because “common sense” suggested that a jury “that found [the defendant] guilty of several substantive crimes of violence” based a separate § 924(c) conviction on at least one of those valid predicates). Nor did the government offer any direct evidence at trial that Patterson or Williams distributed marijuana or were otherwise involved in drug trafficking, so it cannot be inferred from the trial record that the marijuana conspiracy predicate obviously served as a basis for the jury’s Count Five verdict. *Cf. Ali*, 991 F.3d at 576 (concluding that a § 924-related instructional error did not affect substantial rights because the “overwhelming weight of the evidence ... presented at trial” supported a theory of guilt based on a valid § 924(c) predicate).

And finally, Judge Kelly explained why the predicates were not inextricably intertwined:

For these same reasons, the Hobbs Act robbery conspiracy and marijuana conspiracy predicates were not so “inextricably intertwined” that no rational juror could have found the defendants guilty on Count Five based on one predicate but not the other. *Reed* and *Cannon* support this conclusion. In both cases, the defendants agreed with undercover officers to rob drug stash houses that turned out to be fake, and they were subsequently charged under § 924(c) for carrying firearms during and in relation to a crime of violence (i.e., conspiracy to commit Hobbs Act robbery) and a drug trafficking crime (i.e., cocaine conspiracy). *See United States v. Reed*, 48 F.4th 1082, 1084 (9th Cir. 2022); *United States v. Cannon*, 987 F.3d 924, 931, 946 (11th Cir. 2021). In both cases, the jury found the defendants guilty on the § 924(c) counts based on a general verdict, and the defendants appealed, arguing it was

unclear whether they had been unanimously convicted on the now-invalid Hobbs Act robbery conspiracy predicate or on the still-valid cocaine conspiracy predicate. Notably, the defendants in both cases had been told that the stash houses they agreed to rob held large quantities of cocaine. *See Reed*, 48 F.4th at 1091 (noting that the defendant was told that “there would be 22 to 39 kilograms of cocaine in the stash house”); *Cannon*, 987 F.3d at 934 (“The [confidential informant] confirmed there would be 18 kilograms of cocaine in the stash house.”). And in both cases, there was no question that “the goal of the robbery scheme[s] was to steal cocaine from a stash house so [the defendants] could then distribute it themselves.” *Cannon*, 987 F.3d at 948; *see Reed*, 48 F.4th at 1091 (“The logical conclusion is that [the defendant] understood [he and his co-conspirators] were robbing the stash house to obtain cocaine with the intent to sell it.”). Each defendant, in short, had agreed to steal drugs for the purpose of furthering a drug trafficking conspiracy, and each defendant was separately convicted on a drug trafficking conspiracy count. On these facts, the Ninth and Eleventh Circuits thus concluded that the defendants’ Hobbs Act robbery conspiracy and cocaine conspiracy predicates were so “inextricably intertwined” that their § 924(c) convictions “necessarily rested on *both*” predicates, meaning in turn that the instructional errors at issue were harmless. *Reed*, 48 F.4th at 1090; *see Cannon*, 987 F.3d at 950.

United States v. Patterson, 68 F.4th 402, 425-26 (8th Cir. 2023) (Emphasis added).

The majority opinion failed to confront any of these particulars, and failed to explain its conclusory statement that “evidence relating to one [predicate was] so closely tied to [the other] that the conduct cannot be disentangled from each other.” *Patterson*, 68 F.4th at 423. The fact is, if Patterson’s objective was to conduct a home invasion robbery to obtain drug money, as the government repeatedly portrayed during the trial, he could have done so without also committing a drug trafficking crime. It is only in the converse where the two predicates would be inextricably intertwined: when the objective of a home invasion robbery is to obtain drugs to sell, like in *Reed* and *Cannon*, the actor will necessarily commit both predicates. This was not the government’s theory or evidence in Patterson’s trial.

Patterson was sentenced to serve 180 months imprisonment, consecutive to his other sentences, for this infirm conviction. Not only are his substantial rights obviously affected by the error below, “the fairness, integrity, and public reputation of judicial proceedings are seriously affected when a defendant must spend additional time in prison on account of an illegal sentence.” *See United States v. Pirani*, 406 F.3d 543, 553–54 (8th Cir. 2005). Patterson’s conviction and sentence on Count V of his second superseding indictment should be vacated.

CONCLUSION

For the foregoing reasons, Tawhyne M. Patterson, Sr., respectfully requests this Court grant certiorari to review the judgment of the Eighth Circuit Court of Appeals.

Dated this 30th day of June, 2025.

Respectfully submitted,

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