

## APPENDICES

### **8<sup>th</sup> Circuit Court of Appeals – *United States v. Shawn Durrah* – 23-3127**

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### **District Court in the Southern District of Iowa – *United States v. Shawn Durrah*, No. 3:22-CR-24-SMR-SBJ**

E – Notice of Appeal (Sept. 20, 2023)

F – Judgment (Sept. 19, 2023)

**8<sup>th</sup> Circuit Court of Appeals – *United States v. Shawn Durrah* – 23-3127**

A – Order Denying En Banc Review (July 26, 2024)

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

No: 23-3127

United States of America

Appellee

v.

Shawn Eric Durrah, Jr.

Appellant

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Appeal from U.S. District Court for the Southern District of Iowa - Eastern  
(3:22-cr-00024-SMR-1)

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**ORDER**

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

July 26, 2024

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

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/s/ Maureen W. Gornik

**8<sup>th</sup> Circuit Court of Appeals – *United States v. Shawn Durrah* – 23-3127**

B – Judgment (June 5, 2024)

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

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No: 23-3127

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United States of America

Plaintiff - Appellee

v.

Shawn Eric Durrah, Jr.

Defendant - Appellant

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Appeal from U.S. District Court for the Southern District of Iowa - Eastern  
(3:22-cr-00024-SMR-1)

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**JUDGMENT**

Before BENTON, ARNOLD, and STRAS, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

June 05, 2024

Order Entered in Accordance with Opinion:  
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Maureen W. Gornik

**8<sup>th</sup> Circuit Court of Appeals – *United States v. Shawn Durrah* – 23-3127**

**C – Opinion Affirming Judgment (June 5, 2024)**

**United States Court of Appeals**  
**For the Eighth Circuit**

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No. 23-3127

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United States of America

*Plaintiff - Appellee*

v.

Shawn Eric Durrah, Jr.

*Defendant - Appellant*

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

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Submitted: April 8, 2024

Filed: June 5, 2024

[Unpublished]

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Before BENTON, ARNOLD, and STRAS, Circuit Judges.

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PER CURIAM.

Shawn Eric Durrah, Jr. pled guilty to conspiracy to distribute 50 grams or more of methamphetamine (Count 1) and distribution of 50 grams or more of methamphetamine (Count 2), in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A)

and 846. The district court<sup>1</sup> sentenced him to 250 months in prison on each count, to run concurrently. He appeals. Having jurisdiction under 28 U.S.C. § 1291, this court affirms.

Durrah contends the district court erred in assessing a two-level enhancement for possession of a firearm during a drug trafficking offense under U.S.S.G. § 2D1.1(b)(1). This court reviews factual findings for clear error and interpretation of the guidelines de novo. *United States v. Vickers*, 528 F.3d 1116, 1120 (8th Cir. 2008).

Under U.S.S.G. § 2D1.1(b)(1), the court must apply a two-level enhancement if the government proves “by a preponderance of the evidence that the defendant possessed ‘a dangerous weapon (including a firearm)’ while violating 21 U.S.C. § 841(b).” *United States v. Savage*, 414 F.3d 964, 966 (8th Cir. 2005), quoting U.S.S.G. § 2D1.1(b)(1). The weapon must be connected to the criminal activity for the enhancement to apply, but the government “need not show that a defendant used or even touched [the] weapon.” *Id.* at 966–67. It is sufficient that the firearm be “readily accessible” during the illegal activities. *Id.* at 967. Although “mere presence” is not sufficient, the enhancement applies “unless it is clearly improbable that the weapon was connected with the offense.” *Id.* at 966.

Durrah claims there was insufficient evidence that he possessed a firearm and that it was connected to drug trafficking activities. At sentencing, the government recounted the grand jury testimony of a confidential source (CS):

Looking at the gun enhancement, first we see the grand jury testimony of the defendant—excuse me—the CS, who indicates that every time he dealt with the defendant, he had a 9-millimeter within the center console. He then threatened him with a gun at some later time in February of 2021.

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<sup>1</sup>The Honorable Stephanie M. Rose, Chief Judge, United States District Court for the Southern District of Iowa.



We have the Facebook messages that go from May of 2020 to October of '21, where he is conversing about guns and selling guns; and then we have the Mississippi report in November of 2021, where he is the driver of the vehicle in which there is a firearm in the vehicle.

Applying the enhancement, the district court said:

With respect to the gun, again, here I think even if we don't rely on anything that's contested that the cooperating informant said, I still think there's a preponderance of the evidence that establishes the gun under, Mr. Cole, as you've acknowledged, the very unfavorable case law that exists in the Eighth Circuit about these matters.

First, in paragraph 22, there's the outlining of this traffic stop that happened in November of 2021 when they—law enforcement seized somewhere between 75 and 100 fentanyl pills. Defendant gives them a false statement during that traffic stop, and they end up finding a firearm in that car that he's driving.

Added to that, you've got this search of Defendant's phone and social media accounts that has all this information about him selling drugs and guns. And that's uncontested in paragraph 25, in particular the messages which Ms. Zaehring highlighted in her sentencing memo, paragraphs 27, subpart (d) through subpart (e).

I find all of that, without the controlled—or the cooperating source's information, is sufficient to establish by a preponderance of the evidence that Defendant possessed a gun in connection with his drug activities, and in particular when you add in then—even if you give limited weight to what the cooperating source said, that just corroborates the other information that isn't contested. So I do find that adjustment applies as well.

“Firearms are tools of the drug trade,” and the district court did not err in finding Durrah possessed a dangerous weapon in connection with his drug distribution. *See United States v. Renteria-Saldana*, 755 F.3d 856, 859 (8th Cir. 2014) (holding that a loaded gun at a house with drugs is enough to show a connection between the

firearm and the drug trafficking offense, even if the defendant was not home at the time).

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The judgment is affirmed.

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**8<sup>th</sup> Circuit Court of Appeals – *United States v. Shawn Durrah* – 23-3127**

D – Order Appointing Criminal Justice Act Counsel (Sept. 21, 2023)

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

No: 23-3127

United States of America

Appellee

v.

Shawn Eric Durrah, Jr.

Appellant

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Appeal from U.S. District Court for the Southern District of Iowa - Eastern  
(3:22-cr-00024-SMR-1)

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**ORDER**

Attorney Rockne Ole Cole is hereby appointed to represent appellant in this appeal under the Criminal Justice Act. Information regarding the CJA appointment and vouchering process in eVoucher will be emailed to counsel shortly.

September 21, 2023

Order Entered under Rule 27A(a):  
Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Michael E. Gans

**District Court in the Southern District of Iowa – *United States v. Shawn Durrah*, No. 3:22-CR-24-SMR-SBJ**

E – Notice of Appeal (Sept. 20, 2023)

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
DAVENPORT DIVISION

UNITED STATES OF AMERICA,	)	
	)	No. 3:22-CR-0024-SMR-
	)	SBJ
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
SHAWN DURRAH,	)	
	)	
Defendant.	)	

**DEFENDANT’S NOTICE OF APPEAL**

Pursuant to Fed. R. App. Proc. 4 (b) (1) (A), Defendant files his notice of appeal from the final judgment entered on September 19, 2023, and all adverse findings entered therein. Mr. Durrah previously proceeded in forma pauperis and was Counsel was appointed under the Criminal Justice Act. Mr. Durrah seeks appointment on appeal.

RESPECTFULLY SUBMITTED,  
/s/ Rockne Cole

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**ATTORNEY FOR  
DEFENDANT**

**CERTIFICATE OF SERVICE**

I hereby certify that on September 20, 2023, I electronically filed the foregoing with the Clerk of the Court using EM-ECF which will send notification of such filing to the parties or attorneys of record.

/s/ Rockne Cole

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**District Court in the Southern District of Iowa – *United States v. Shawn Durrah*, No. 3:22-CR-24-SMR-SBJ**

F – Judgment (Sept. 19, 2023)



**UNITED STATES DISTRICT COURT**  
 SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA

v.

Shawn Eric Durrah, Jr.

**JUDGMENT IN A CRIMINAL CASE**

Case Number: 3:22-cr-00024-001

USM Number: 21399-510

Rockne Cole  
 Defendant's Attorney

**THE DEFENDANT:**

- pleaded guilty to count(s) One and Two of the Indictment filed on March 8, 2022.
- pleaded nolo contendere to count(s) \_\_\_\_\_  
 which was accepted by the court.
- was found guilty on count(s) \_\_\_\_\_  
 after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), 846	Conspiracy to Distribute 50 Grams or More of Methamphetamine	12/30/2021	One
21 U.S.C. § 841(a)(1), 841(b)(1)(A)	Distribution of 50 Grams or More of Methamphetamine	02/03/2021	Two

See additional count(s) on page 2

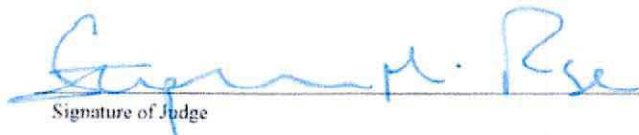
The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- 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.

September 19, 2023

Date of Imposition of Judgment



Signature of Judge

Stephanie M. Rose, Chief U.S. District Judge

Name of Judge

Title of Judge

September 19, 2023

Date

DEFENDANT: Shawn Eric Durrah, Jr.  
CASE NUMBER: 3:22-cr-00024-001

### IMPRISONMENT

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

250 months as to Counts One and Two of the Indictment filed on March 8, 2022, to be served concurrently. This sentence is to be served consecutively to Iowa District Court for Scott County docket number FECR369809.

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

The Court recommends the defendant be evaluated for placement at FMC Rochester, Minnesota, if commensurate with his security classification and needs. The Court also recommends that the defendant be made eligible for the 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 \_\_\_\_\_ 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: Shawn Eric Durrah, Jr.  
CASE NUMBER: 3:22-cr-00024-001

### SUPERVISED RELEASE

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

Five years as to Counts One and Two of the Indictment filed on March 8, 2022, 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: Shawn Eric Durrah, Jr.  
CASE NUMBER: 3:22-cr-00024-001

### 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](http://www.uscourts.gov).

Defendant's Signature \_\_\_\_\_

Date \_\_\_\_\_

DEFENDANT: Shawn Eric Durrah, Jr.  
CASE NUMBER: 3:22-cr-00024-001

### **SPECIAL CONDITIONS OF SUPERVISION**

You must participate in a program of testing and/or treatment for substance abuse, as directed by the probation office, until such time as the defendant is released from the program by the probation office. At the direction of the probation office, you must receive a substance abuse evaluation and participate in inpatient and/or outpatient treatment, as recommended. Participation may also include compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third-party payment. You must not use alcohol and/or other intoxicants during the course of supervision.

You must participate in an approved treatment program for domestic violence. Participation may include inpatient/outpatient treatment. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third-party payment.

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

You must maintain full-time, legitimate employment and not be unemployed for a term of more than 30 days unless excused for schooling, training, or other acceptable reasons. Further, you must provide documentation including, but not limited to pay stubs, contractual agreements, W-2 Wage and Earnings Statements, and other documentation requested by the U.S. Probation Officer. You must not terminate any employment without prior approval from the U.S. Probation Office. If separated from employment for any reason, you must notify the U.S. Probation Office within 48 hours.

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 the U.S. Probation Office. Failure to submit to a search may be grounds for revocation. You must warn any other residents or occupants that the premises and/or vehicle may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your release and/or that the area(s) or item(s) to be searched contain evidence of this violation or contain contraband. Any search must be conducted at a reasonable time and in a reasonable manner. This condition may be invoked with or without the assistance of law enforcement, including the U.S. Marshals Service.

DEFENDANT: Shawn Eric Durrah, Jr.  
CASE NUMBER: 3:22-cr-00024-001

**CRIMINAL MONETARY PENALTIES**

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

- Pursuant to 18 U.S.C. § 3573, upon the motion of the government, the Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
<b>TOTALS</b>	\$ 200.00	\$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>
<b>TOTALS</b>		\$0.00	\$0.00

- Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
  - the interest requirement is waived for the  fine  restitution.
  - the interest requirement for the  fine  restitution is modified as follows:

\*Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.  
 \*\* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.  
 \*\*\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Shawn Eric Durrah, Jr.  
CASE NUMBER: 3:22-cr-00024-001

### 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 \$ 200.00 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:  
Clerk's Office, United States District Court, P.O. Box 9344, Des Moines, IA 50306-9344.

While on supervised release, you shall cooperate with the United States Probation Office in developing a monthly payment plan, which shall be subject to the approval of the Court, consistent with a schedule of allowable expenses provided by the United States Probation Office.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
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- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

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) JVT A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.