

NO. _____

*IN THE
SUPREME COURT OF THE UNITED STATES*

JILL M. EVANS

Petitioner

-v-

UNITED STATES OF AMERICA

Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

APPENDIX

Appendix A: *United States v. Jill M. Evans*, No. 17-1185, --- Fed.Appx.----, 2018 WL 1778617 (April 13, 2018)

Appendix B:

- Case No. 15-CR-00220: Doc. 112 Judgment and Sentence Entry.....B-1
- Case No. 15-CR-00220: Select pages of Sentencing Hearing Transcript.....B-15

2018 WL 1778617

Only the Westlaw citation is currently available.
This case was not selected for publication in West's
Federal Reporter.

See Fed. Rule of Appellate Procedure 32.1 generally
governing citation of judicial decisions issued on or
after Jan. 1, 2007. See also U.S.Ct. of App. 10th Cir.
Rule 32.1.

United States Court of Appeals, Tenth Circuit.

UNITED STATES of America, Plaintiff-Appellee,
v.
Jill M. EVANS, Defendant-Appellant.

No. 17-1185
|
Filed April 13, 2018

Synopsis

Background: Defendant was convicted in the United States District Court for the District of Colorado, No. 1:15-CR-00220-JLK-1, of wire fraud and money laundering, and sentenced to 84 months imprisonment. Defendant appealed.

Holdings: The Court of Appeals, [Harris L. Hartz](#), Circuit Judge, held that:

[1] sentencing court's finding that defendant had not expressed sympathy for her victims was supported by sufficient evidence;

[2] sentencing court could deny two-level reduction in offense level for acceptance of responsibility based on defendant's post-plea misconduct;

[3] sentencing court applied proper procedure in determining sentence;

[4] sentencing court did not commit plain error in rejecting guideline for fraud offenses;

[5] any error in sentencing court's failure to properly complete Statement of Reasons was harmless; and

[6] sentence was not substantively unreasonable.

Affirmed.

West Headnotes (6)

[1] Sentencing and Punishment



Sentencing court's finding that wire fraud defendant had not expressed sympathy for her victims was supported by sufficient evidence, for purposes of determining whether defendant's 84-month sentence was procedurally unreasonable; absent expressions of sympathy for her victims, defendant's expressions of remorse could easily be viewed as merely reflecting regret at getting caught. 18 U.S.C.A. §§ 1343, 1957.

[Cases that cite this headnote](#)

[2] Sentencing and Punishment



Sentencing court could deny two-level reduction in offense level for acceptance of responsibility based on wire-fraud defendant's post-plea misconduct. 18 U.S.C.A. §§ 1343, 1957; U.S.S.G. § 3E1.1(a).

[Cases that cite this headnote](#)

[3] Sentencing and Punishment



Sentencing Court applied proper procedure in determining sentence for wire fraud defendant; court correctly calculated guidelines range, considered sentencing statute factors and arguments of counsel, did not presume that guidelines range was reasonable, and thoroughly explained its reasoning on the record. 18 U.S.C.A. §§ 1343, 1957, 3553; U.S.S.G. § 1B1.1 et seq.

[Cases that cite this headnote](#)

^[4] **Criminal Law**



Sentencing court did not commit plain error in rejecting guideline for fraud offenses in determining sentence for wire fraud defendant, based on court's skepticism of accuracy of the sentencing statistics on which the guideline levels were based. [U.S.S.G. § 1B1.1 et seq.](#)

[Cases that cite this headnote](#)

^[5] **Sentencing and Punishment**



Any error in district court's failure to properly complete Statement of Reasons by explaining sentence was harmless, for purpose of determining whether wire fraud defendant's 84-month sentence was procedurally reasonable; district court's oral explanation made clear that district court would have imposed same sentence had it filed written statements of reasons form. [18 U.S.C.A. §§ 1343, 1957.](#)

[Cases that cite this headnote](#)

^[6] **Sentencing and Punishment**



Eighty-four month sentence for defendant convicted of wire fraud arising from scheme to defraud investors in deals to purchase tankers of diesel oil and jet fuel was not substantively unreasonable given nature of the offenses, her continuing fraudulent conduct, her lack of sympathy for the victims, and her psychological problems. [18 U.S.C.A. §§ 1343, 1957.](#)

[Cases that cite this headnote](#)

(D.C. No. 1:15-CR-00220-JLK-1) (D. Colorado)

Attorneys and Law Firms

[Michael Conrad Johnson](#), Office of the United States Attorney, District of Colorado, Denver, CO, for Plaintiff-Appellee

[Kathleen McGarry](#), McGarry Law Office, Glorieta, NM, for Defendant-Appellant

Before [HARTZ](#), [McKAY](#), and [MORITZ](#), Circuit Judges.

ORDER AND JUDGMENT*

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with [Fed. R. App. P. 32.1](#) and [10th Cir. R. 32.1](#).

Harris L [Hartz](#), Circuit Judge

***1** Defendant Jill Evans appeals her 84-month sentence imposed by the United States District Court for the District of Colorado. She challenges the procedural and substantive reasonableness of the sentence. Exercising jurisdiction under [28 U.S.C. § 1291](#), we affirm.

I. BACKGROUND

In May 2015, Defendant was indicted on eight counts of wire fraud in violation of [18 U.S.C. § 1343](#) and six counts of money laundering in violation of [18 U.S.C. § 1957](#). On January 23, 2017, she pleaded guilty to two counts as part of a plea agreement. In return, the government dismissed the remaining counts. In the plea agreement the parties stipulated to the following facts:

Defendant began her fraudulent scheme in late 2011. She told would-be investors that they could quickly make a return of up to 50 times their original investments in deals to purchase tankers of diesel oil and jet fuel if they would pay some shipping, storage, and other fees. She claimed that an international law firm was involved in the transaction and “documented” her claim with forged e-mails and letters purporting to be from an attorney in the firm stating that the deals were proceeding. She also misrepresented to investors that Barclays Bank was vetting the transaction, when in reality Barclays had refused to

open a bank account for her because of her lack of business history. In addition, she falsely told victims that she and her husband had personally invested in the deals, forging documents purporting to show that she had invested \$200,000 to pay fees for the fictitious fuel transactions.

Defendant used the victims' funds to cover her personal expenses, including her son's college tuition and rent, mortgage payments, credit-card payments, restaurant and vacation costs, and restitution for a prior state-court fraud conviction. Although the deals never came to fruition, she continued to promise for several more years that funding was imminent. The investors lost more than \$2 million.

The presentence report (PSR) prepared after Defendant's guilty plea calculated her offense level as 26 and her criminal-history level as Category II, producing a guidelines range of 70–87 months' imprisonment. Despite her guilty plea, the PSR suggested that Defendant not receive a downward adjustment for acceptance of responsibility because "the defendant ha[d] not voluntarily terminated or withdrawn from fraudulent, criminal conduct." R., Vol. 2 at 101. In support of this determination the PSR reported that in November 2016, Defendant had lied to her probation officer about the reason for her termination from a job—she told him that she had left because she "couldn't sell anything," but she had actually been terminated for falsifying and forging documents. *Id.* (internal quotation marks omitted). And it said that in August 2016 she had obtained court permission to go to New York to help her son move there, but it was later discovered that her son had neither traveled to New York nor planned to do so, and that Defendant had engaged in activity connected to her fraudulent scheme while in New York.

*2 The sentencing hearing was conducted on May 3, 2017. The district court stated at the outset that it would not be following the Guidelines in imposing sentence because of its disagreement with the Sentencing Commission's use of data in setting the fraud guideline and its belief that the guideline did not properly reflect the purposes of sentencing set forth in 18 U.S.C. § 3553. As recommended by the PSR, it denied the parties' joint motion for a downward adjustment for acceptance of responsibility, ruling that "the defendant after the plea engaged in further deceptions and evasions, and I do not think that constitutes acceptance of responsibility." Case No. 15-cr-00220-JLK, Dkt. No. 123, May 3, 2017, Sentencing Tr. at 9. It imposed a sentence of 84 months' imprisonment. The court explained its sentence at length, consuming some seven pages of the hearing transcript. It highlighted the egregiousness of Defendant's crime; her lack of sympathy for her victims; the continuation of her illegal activity; the

need to reflect the seriousness of her offense and provide just punishment, to promote respect for the law, and to adequately deter her from further criminal conduct; and the potential value of providing her with access to educational and vocational training, as well as [cognitive behavioral therapy](#).

After the sentencing hearing the district court completed a Statement of Reasons form. The court noted: "Guidelines advice rejected. Sentenced per 18 U.S.C. § 3553," R., Vol. 2 at 213, although it checked the box on the form stating that the sentence was within the guideline range. As "ADDITIONAL BASIS FOR THE SENTENCE IN THIS CASE," the court wrote: "See Sentencing Statement in the transcript of May 3, 2017, sentencing proceedings." *Id.* at 216.

II. DISCUSSION

Defendant challenges both the procedural and substantive reasonableness of her sentence. We have explained the two concepts as follows:

Procedural reasonableness addresses whether the district court incorrectly calculated or failed to calculate the Guidelines sentence, treated the Guidelines as mandatory, failed to consider the § 3553(a) factors, relied on clearly erroneous facts, or failed to adequately explain the sentence. Substantive reasonableness review broadly looks to whether the district court abused its discretion in weighing permissible § 3553(a) factors in light of the totality of the circumstances.

United States v. Vigil, 696 F.3d 997, 1001–02 (10th Cir. 2012) (brackets, citation, and internal quotation marks omitted). We begin with the procedural-reasonableness challenge. Some of what Defendant characterizes as substantive-reasonableness arguments should have been characterized as procedural-reasonableness arguments, so our organization does not track the organization of her opening brief. But the substance of our analysis of each argument is not affected by the characterization.

A. Procedural Unreasonableness

Defendant mounts two challenges to the procedural reasonableness of the district court's imposition of sentence: (1) the court made unsupported factual findings; and (2) the court did not follow proper procedures in determining the appropriate sentence. Some of Defendant's arguments were not presented to the district court. For those unpreserved arguments, we review for plain error and can grant relief only if the following four requirements are met: "(1) the district court committed error; (2) the error was plain—that is, it was obvious under current well-settled law; (3) the error affected the Defendant's substantial rights; and (4) the error seriously affected the fairness, integrity, or public reputation of judicial proceedings." *United States v. Gantt*, 679 F.3d 1240, 1246 (10th Cir. 2012) (brackets and internal quotation marks omitted).

1. Factual Findings

a. Remorse and Sympathy

^[1]Defendant disputes the district court's finding that she had not expressed sympathy for her victims until the sentencing hearing itself. See Sentencing Tr. at 124:18–24 ("One of the things that is extremely poignant to me is that it was only about five minutes ago that this defendant made any statement at all expressing sympathy for the victims in this case."). She argues that she had repeatedly expressed remorse, as indicated in three letters to the court from her friends and a report by a psychiatrist that quoted her as saying that she "wish[ed she] would have made better decisions" and that she was "sorry it came to all those things and that I can't change it." R., Vol. 2 at 207. But absent expressions of sympathy for the victims, her expressions of remorse could easily be viewed as merely reflecting regret at getting caught. In our view, Defendant's continuing to lie and failure to express sympathy for the victims adequately supported the district court's finding.

b. Acceptance of responsibility

^{*3} Defendant also argues that the district court erroneously failed to find that she had accepted responsibility for her crimes. The Sentencing Guidelines allow a two-level reduction in the applicable offense level "[i]f the defendant clearly demonstrates acceptance of responsibility for h[er] offense." USSG § 3E1.1(a). One appropriate consideration is "voluntary termination or withdrawal from criminal

conduct." *Id.* n.1(B).

"Determination of acceptance of responsibility is a question of fact reviewed under a clearly erroneous standard." *United States v. Gauvin*, 173 F.3d 798, 805 (10th Cir. 1999). Thus, we will reverse only if "we are left with the definite and firm conviction that a mistake has been committed." *United States v. Battles*, 745 F.3d 436, 458 (10th Cir. 2014) (brackets and internal quotation marks omitted). Because "[t]he sentencing judge is in a unique position to evaluate a defendant's acceptance of responsibility ..., the determination of the sentencing judge is entitled to great deference on review." *Gauvin*, 173 F.3d at 805 (quoting USSG § 3E1.1, comment n.5). Reversal of the denial of the adjustment is also more difficult because the defendant has the burden of showing entitlement to the adjustment, so we must affirm if it was reasonable for the sentencing judge not to be persuaded by the defendant's evidence. See *Battles*, 745 F.3d at 458.

^[2]Defendant does not challenge the court's findings regarding her post-plea misconduct. Her argument relates to the timing. She contends that the court's reliance on "[a]ny alleged activities that took place AFTER the plea" was misplaced because such acts "do[] not in any way diminish that Ms. Evans pled guilty, saving the Government and the victims from the ordeal and cost of a trial." Aplt. Br. at 25. This contention, however, is contrary to circuit precedent, which has affirmed the denial of the adjustment because of post-plea misconduct. See *U.S. v. Prince*, 204 F.3d 1021, 1022–23 (10th Cir. 2000); see also *United States v. Downing*, Case No. 17-6058, — Fed.Appx. —, —, 2017 WL 6016335, at *2 (10th Cir. Dec. 5, 2017) (unpublished). At oral argument Defendant contended that her post-plea misconduct was not sufficiently egregious to justify denial of the adjustment. But that point was not raised in her opening brief on appeal, so we decline to address it. We affirm the district court's denial of the motion for a downward adjustment for acceptance of responsibility.

2. Proper Procedure

Defendant raises several challenges to the district court's sentencing methodology. In reviewing a sentence challenged on procedural grounds, we ordinarily review for an abuse of discretion. See *Gantt*, 679 F.3d at 1246. But, as previously noted, if the defendant failed to preserve the procedural challenge below, we review for plain error. See *id.*

The Supreme Court has charted the proper course for

district courts to follow in imposing sentence:

First, a district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range. As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark. The district court must then consider the arguments of the parties and the factors set forth in [18 U.S.C.] § 3553(a). The district court may not presume that the Guidelines range is reasonable; and it may in appropriate cases impose a non-Guidelines sentence based on disagreement with the Sentencing Commission's views. The district court must explain the basis for its chosen sentence on the record. A major departure from the Guidelines should be supported by a more significant justification than a minor one.

*4 *Peugh v. United States*, 569 U.S. 530, 536–37, 133 S.Ct. 2072, 186 L.Ed.2d 84 (2013) (brackets, citations, and internal quotation marks omitted).

¹³The district court complied with this procedure. It correctly calculated the guidelines range, considered the § 3553 factors and the arguments from counsel, did not presume that the guidelines range was reasonable, and thoroughly explained its reasoning on the record. Defendant's arguments to the contrary are not persuasive.

Defendant claims that the district court “would not acknowledge the role that other persons, particularly her [deceased] husband, played in the [fraudulent] scheme.” Aplt. Br. at 30. But the district court clearly did so when it stated that it did not “have any doubt at all that other people were involved in this.” Sentencing Tr. at 126:5–6. And it responded reasonably when it said that it was “concerned about this defendant, not about [Defendant's husband], not about any of these other people who were participants in this fraud.” *Id.* at 126:5–11.

Defendant also challenges the district court's method of sentencing, arguing that the district court's “process and procedure in this case is very confusing,” because the court both stated that it would grant a variance and imposed a sentence within the Guidelines. Aplt. Br. at 21. We do not

see the inconsistency. As we understand the district court, when it said that it would vary from the Guidelines, it was not predicting the ultimate sentence it would impose but only how it would reach its conclusion. It was not persuaded by the guideline for fraud offenses and therefore looked simply to the § 3553 factors (although after calculating the guideline sentencing range). Perhaps other judges would use different terminology, but there was certainly no prejudice to Defendant.

¹⁴Defendant next contends that the district court should not have rejected the guideline for fraud offenses. The court's rejection derived largely from its skepticism of the accuracy of the sentencing statistics on which the guideline levels were based. Despite ample opportunity, however, Defendant did not challenge in district court either the rejection of the fraud guideline or the court's reasons for doing so. We therefore review only for plain error, and affirm. It is well-settled that sentencing judges are not prohibited from rejecting guidelines. See *Kimbrough v. United States*, 552 U.S. 85, 109–10, 128 S.Ct. 558, 169 L.Ed.2d 481 (2007). And Defendant's use of statistics to try to support the fraud guideline comes too late for plain-error review. See *United States v. Wright*, 848 F.3d 1274, 1285 (10th Cir. 2017) (under plain-error review, failure to raise factual dispute at sentencing in district court waives the error).

In addition, Defendant argues that the district court failed to adequately express its reasons for the sentence. We disagree. Its explanation touched the necessary bases and provided a thorough report of its thinking.

¹⁵Defendant's final procedural challenge is that the district court failed to properly complete the Statement of Reasons by explaining the sentence. But any error in this regard was harmless because “the district court's oral explanation [makes clear] that the district court would have imposed the same sentence had it filed a written statement of reasons form.” *United States v. Ortiz-Lazaro*, 884 F.3d 1259, 1264 (10th Cir. 2018).

B. Substantive Unreasonableness

*5 Defendant also challenges the substantive reasonableness of her sentence, asserting that it was unreasonably long. “In evaluating the substantive reasonableness of a sentence, we ask whether the length of the sentence is reasonable considering the statutory factors delineated in 18 U.S.C. § 3553(a).” *United States v. Hamilton*, 510 F.3d 1209, 1217–18 (10th Cir. 2007). We review a sentence for substantive reasonableness under an

abuse-of-discretion standard. See *Gall v. United States*, 552 U.S. 38, 51, 128 S.Ct. 586, 169 L.Ed.2d 445 (2007). A sentence is unreasonable “only if it is arbitrary, capricious, whimsical, or manifestly unreasonable.” *Gantt*, 679 F.3d at 1249 (internal quotation marks omitted).

¹⁶In light of the district court’s supportable findings regarding the nature of Defendant’s offenses, her continuing fraudulent conduct, her lack of sympathy for the victims, and her psychological problems, the sentence imposed easily satisfies the abuse-of-discretion standard. She contends that her sentence fails to reflect the need to avoid sentencing disparities, see 18 U.S.C. § 3553(a)(6), citing two sentences imposed in the Eastern District of Tennessee. But as we have explained in rejecting a similar claim, “No two cases are identical, and comparison of an individual sentence with a few counsel-selected cases involving other defendants sentenced by other judges is almost always useless.” *United States v. Franklin*, 785 F.3d 1365, 1372 (10th Cir. 2015) (internal quotation marks omitted). Indeed, “the sentence may be substantively reasonable even when disparities are unwarranted.” *Id.* at 1371 n.4.

Defendant’s final challenge is that the 84-month sentence was substantively unreasonable because a 57-month sentence would be adequate to satisfy the statutory goals of sentencing. But “substantive reasonableness contemplates a range, not a point.” *United States v. Martinez*, 610 F.3d 1216, 1227 (10th Cir. 2010) (internal quotation marks omitted). “Even if we might reasonably conclude that a different sentence was also appropriate, that is not a sufficient basis for reversal.” *Id.*

We reject Defendant’s substantive-reasonableness challenge to her sentence.

III. CONCLUSION

We **AFFIRM** Defendant’s sentence.

All Citations

--- Fed.Appx. ----, 2018 WL 1778617

UNITED STATES DISTRICT COURT

District of Colorado

UNITED STATES OF AMERICA

v.

JILL M. EVANS

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:15-cr-00220-JLK-1

USM Number: 41141-013

Nathan Dale Chambers

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 and 10 of the Indictment☐ 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 & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 1343 and 2	Wire Fraud and Aiding and Abetting	09/06/11	1
18 U.S.C. §§ 1957 and 2	Money Laundering and Aiding and Abetting	10/03/11	10

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is not imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____☒ Count(s) Remaining of the Indictment ☐ 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.

May 3, 2017

Date of Imposition of Judgment

Signature of Judge

John L. Kane, Senior United States District Judge

Name and Title of Judge

May 9, 2017

Date

DEFENDANT: JILL M. EVANS
CASE NUMBER: 1:15-cr-00220-JLK-1

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: Eighty four (84) months as to Count 1, and eighty four (84) months as to Count 10; such terms to be served concurrently.

- ☒ The court makes the following recommendations to the Bureau of Prisons:
Designation to FCI Dublin, California.
- ☒ 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

DEFENDANT: JILL M. EVANS
CASE NUMBER: 1:15-cr-00220-JLK-1

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: three (3) years as to Count 1, three years as to Count 10; such terms 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 cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
5. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *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)*
6. ☐ 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: JILL M. EVANS
CASE NUMBER: 1:15-cr-00220-JLK-1

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: JILL M. EVANS
CASE NUMBER: 1:15-cr-00220-JLK-1

SPECIAL CONDITIONS OF SUPERVISION

1. You must participate in a cognitive behavioral treatment (CBT) program as directed by the probation officer until such time as you are released from the program by the probation officer. You must pay the cost of treatment as directed by the probation officer. You must pay the cost of treatment as directed by the probation officer.
2. You must not incur new credit charges or open additional lines of credit without the prior written approval of the probation officer. You must not permit others to open up credit charges or additional lines of credit or account on your behalf and in their name instead.
3. You must provide the probation officer access to any requested financial information and authorize the release of any financial information until all financial obligations imposed by the court are paid in full.
4. As directed by the probation officer, you must apply any monies received from income tax refunds, lottery winnings, inheritances, judgments, and any anticipated or unexpected financial gains to the outstanding court-ordered financial obligation in this case.
5. You must pay the restitution in accordance with the Schedule of Payments sheet of this judgment. You must also notify the court of any changes in economic circumstances that might affect your ability to pay the restitution.
6. You must obtain written approval from the probation officer of a monthly budget that will be modified and reviewed by the probation officer as and when the probation officer deems necessary.
7. The probation office may share any financial or employment documentation relevant to you with the Asset Recovery Division of the United States Attorney's Office to assist in the collection of the obligation.
8. You must document all income and compensation generated or received from any source and must provide that information in writing to the probation officer when and as requested.
9. You must not cause or induce anyone to conduct any financial transaction on your behalf or maintain funds on your behalf or accept such funds.
10. You must not conduct any foreign financial transactions without the advance written approval of the probation officer.
11. You must not engage in an occupation, business, profession, or volunteer activity that would require or enable you to have any access to any other individual's personal information without the prior written approval of the probation officer.
12. All employment you secure shall be approved in writing in advance by the supervising probation officer and you must not engage in any business activity unless approved by the probation officer in writing in advance of any such activity. All approved business activity must operate under a formal, registered entity, and you must provide the probation officer with the names of all business entities and their registered agents. You must not register any new business entity, foreign or domestic, without the prior written approval of the probation officer. You must not cause or induce or consent for others to register business entities on your behalf. For any approved business activity, you must maintain business records. You must provide all requested documentation and records to the probation officer regarding any of your business activities when and as requested by the probation officer.

DEFENDANT: JILL M. EVANS
CASE NUMBER: 1:15-cr-00220-JLK-1

SPECIAL CONDITIONS OF SUPERVISION

13. You must not engage in employment in which you would solicit funds for investment or employment that would permit you to have custody and/or control over investor funds, and you must not be the signatory on any accounts possessing investor funds.
14. You must maintain separate personal and business finances and must not co-mingle personal and business funds or income in any financial accounts, including but not limited to bank accounts and lines of credit.
15. You must comply with all legal obligations associated with any state department of revenue and the Internal Revenue Service regarding federal and state income taxes. This includes resolution of any tax arrearages as well as continued compliance with federal and state laws regarding the filing of taxes.
16. You must submit your person, property, house, residence, 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 search shall be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition. Any officer may conduct a search pursuant to this condition when reasonable grounds exists that you have violated a condition of your supervision.
17. You must participate in and successfully complete a program of mental health treatment, as approved by the probation officer, until such time as you are released from the program by the probation officer. You must pay the cost of treatment as directed by the probation officer.
18. You must remain medication compliant and must take all medications that are prescribed by your treating psychiatrist and/or physician. You must cooperate with random blood tests as requested by your treating psychiatrist and/or physician and/or supervising probation officer to ensure that a therapeutic level of your prescribed medications is maintained.

DEFENDANT: JILL M. EVANS
CASE NUMBER: 1:15-cr-00220-JLK-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on the following page.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 200.00	\$ 0.00	\$ 0.00	\$ 2,094,500.00

- ☐ 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>
J.Z.	\$500,000.00	\$500,000.00	
T.P.	\$181,000.00	\$181,000.00	
C.L.	\$150,000.00	\$150,000.00	
D.P.	\$10,000.00	\$10,000.00	
R.B.	\$70,000.00	\$70,000.00	
J.F.	\$40,000.00	\$40,000.00	
F.V.	\$693,500.00	\$693,500.00	
P.O.	\$450,000.00	\$450,000.00	

TOTALS	\$ <u>2,094,500.00</u>	\$ <u>2,094,500.00</u>
---------------	------------------------	------------------------

- ☐ 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:

* 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: JILL M. EVANS
CASE NUMBER: 1:15-cr-00220-JLK-1

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 \$ _____ due immediately, balance due
- ☐ not later than _____, or
- ☐ in accordance with ☐ 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:

The special assessment and restitution obligation are due immediately. Any unpaid monetary obligations upon release from incarceration shall be paid in monthly installment payments during the term of supervised release. The monthly installment payment will be calculated as at least 10 percent of the defendant's gross monthly income.

East victim shall receive an approximate proportional payment based on the victim's share of the total loss.

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

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and 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:
\$2,094,500.00 is subject to forfeiture as proceeds by defendant Evans through commission of the offenses in Count 1 for which she has pleaded guilty. An Order of Forfeiture for a Personal Money Judgment against the defendant in the amount of \$2,094,500.00 shall be entered in accordance with 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c).
- 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) JVT assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

DEFENDANT: JILL M. EVANS
CASE NUMBER: 1:15-cr-00220-JLK-1
DISTRICT: COLORADO

STATEMENT OF REASONS

(Not for Public Disclosure)

Sections I, II, III, IV, and VII of the Statement of Reasons form must be completed in all felony and Class A misdemeanor cases.

I. COURT FINDINGS ON PRESENTENCE INVESTIGATION REPORT

- A. ☐ The court adopts the presentence investigation report without change.
- B. ☒ The court adopts the presentence investigation report with the following changes. (Use Section VIII if necessary)
(Check all that apply and specify court determination, findings, or comments, referencing paragraph numbers in the presentence report.)
1. ☐ Chapter Two of the United States Sentencing Commission [Guidelines Manual](#) determinations by court: (briefly summarize the changes, including changes to base offense level, or specific offense characteristics)
 2. ☐ Chapter Three of the United States Sentencing Commission [Guidelines Manual](#) determinations by court: (briefly summarize the changes, including changes to victim-related adjustments, role in the offense, obstruction of justice, multiple counts, or acceptance of responsibility)
 3. ☐ Chapter Four of the United States Sentencing Commission [Guidelines Manual](#) determinations by court: (briefly summarize the changes, including changes to criminal history category or scores, career offender status, or criminal livelihood determinations)
 4. ☒ **Additional Comments or Findings:** (include comments or factual findings concerning any information in the presentence report, including information that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation, or programming decisions; any other rulings on disputed portions of the presentence investigation report; identification of those portions of the report in dispute but for which a court determination is unnecessary because the matter will not affect sentencing or the court will not consider it)
Guidelines advice rejected. Sentenced per 18 U.S.C. §3553
- C. ☐ The record establishes no need for a presentence investigation report pursuant to Fed.R.Crim.P. 32.
Applicable Sentencing Guideline: (if more than one guideline applies, list the guideline producing the highest offense level) _____

II. COURT FINDING ON MANDATORY MINIMUM SENTENCE (Check all that apply)

- A. ☐ One or more counts of conviction carry a mandatory minimum term of imprisonment and the sentence imposed is at or above the applicable mandatory minimum term.
- B. ☐ One or more counts of conviction carry a mandatory minimum term of imprisonment, but the sentence imposed is below a mandatory minimum term because the court has determined that the mandatory minimum term does not apply based on:
- ☐ findings of fact in this case: (Specify) _____
 - ☐ substantial assistance (18 U.S.C. § 3553(e))
 - ☐ the statutory safety valve (18 U.S.C. § 3553(f))
- C. ☒ No count of conviction carries a mandatory minimum sentence.

III. COURT DETERMINATION OF GUIDELINE RANGE: (BEFORE DEPARTURES OR VARIANCES)

Total Offense Level: _____ 26 _____
Criminal History Category: _____ II _____
Guideline Range: (after application of §5G1.1 and §5G1.2) _____ 70 _____ to _____ 87 _____ months, as to each count.
Supervised Release Range: _____ 1 _____ to _____ 3 _____ years, as to each count.
Fine Range: \$ _____ 12,500 _____ to \$ _____ 125,000 _____

- ☒ Fine waived or below the guideline range because of inability to pay.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 15-CR-00220-JLK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JILL M. EVANS,

Defendant.

REPORTER'S TRANSCRIPT
Sentencing

Proceedings before the HONORABLE JOHN L. KANE, JR.,
Judge, United States District Court for the District of
Colorado, commencing at 10:05 a.m., on the 3rd day of May, 2017,
in Courtroom A802, United States Courthouse, Denver, Colorado.

APPEARANCES

Anna Kathryn Edgar and Rebecca S. Weber,
U.S. Attorney's Office, 1801 California Street, Suite 1600,
Denver, CO 80202, appearing for the Plaintiff.

Nathan Dale Chambers of Nathan D. Chambers, LLC,
303 16th Street, Suite 200, Denver, CO 80202, appearing for the
Defendant.

JANET M. COPPOCK, Official Reporter
901 19th Street
Denver, Colorado, 80294
(303) 335-2106
Proceedings Reported by Mechanical Stenography
Transcription Produced via Computer

1 I am not going to follow the guidelines in this case,
2 but I still have to rule on the motions that are made regarding
3 them. And there is a motion -- first of all, the motion for a
4 variance is granted and I will not use the guidelines, so that
5 takes care of that document.

6 The second is that the government has filed a motion
7 for adjustment of the guidelines because of an acceptance of
8 responsibility. And acceptance of responsibility is
9 articulated in the government's sentencing memorandum to be
10 that the defendant has entered a plea of guilty to two counts,
11 and as part of the bargain the government has dismissed the
12 remaining counts. And the government says that she has adhered
13 to that agreement.

14 I think that that's correct and I accept the
15 government's representation, but I do not consider that an
16 acceptance of responsibility as warranted in this case because
17 the defendant after the plea engaged in further deceptions and
18 evasions, and I do not think that constitutes acceptance of
19 responsibility. Now, it in effect matters not because I am not
20 going to be using the guidelines, but that's the ruling and
21 that's the reason for my ruling.

22 No finding is necessary concerning the remaining
23 objections to the Presentence Report because the controverted
24 matters will not be taken into account in imposing sentence and
25 they will not affect the sentence. Neither the government nor