

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JESSE DAVENPORT,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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Appendix A

FILED

JAN 15 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALSUNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JESSE DAVENPORT, AKA Draco John
Flama,

Defendant-Appellant.

No. 17-10140

D.C. No.

2:13-cr-00399-MCE-1

Eastern District of California,
Sacramento

ORDER

Before: D.W. NELSON, W. FLETCHER, and BYBEE, Circuit Judges.

The court's memorandum disposition filed October 26, 2018, is hereby amended. An amended memorandum is filed herewith.

The panel has voted to grant panel rehearing for the purposes of amending the memorandum disposition only, and has voted to deny further panel rehearing. Judge W. Fletcher and Judge Bybee voted to deny the petition for rehearing en banc, and Judge D.W. Nelson recommended denying the petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App.

P. 35.

The petition for rehearing and the petition for rehearing en banc, filed December 10, 2018, is DENIED. No subsequent petitions for rehearing or rehearing en banc may be filed.

Appendix B

FILED

JAN 15 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JESSE DAVENPORT, AKA Draco John
Flama,

Defendant-Appellant.

No. 17-10140

D.C. No.
2:13-cr-00399-MCE-1

AMENDED MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Morrison C. England, Jr., District Judge, PresidingArgued and Submitted October 9, 2018
San Francisco, California

Before: D.W. NELSON, W. FLETCHER, and BYBEE, Circuit Judges.

Jesse Davenport appeals his conviction and 50-year prison sentence on child pornography charges. He raises five challenges to his conviction and four to his sentence. Although Davenport's challenges to his conviction are without merit, the

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

district court committed two prejudicial errors during sentencing. We affirm Davenport's conviction and remand the matter for re-sentencing.

I. CHALLENGES TO THE CONVICTION

1. First, Davenport challenges the district court's decision to allow him to waive his right to counsel and represent himself before and during trial. A defendant has the right to proceed without counsel, *Faretta v. California*, 422 U.S. 806, 819–21 (1975), but the district court must first determine that he “understands 1) the nature of the charges against him, 2) the possible penalties, and 3) the dangers and disadvantages of self-representation.” *United States v. Erskine*, 355 F.3d 1161, 1167 (9th Cir. 2004) (internal citation and punctuation omitted). We review this mixed question of fact and law de novo. *United States v. Neal*, 776 F.3d 645, 657 (9th Cir. 2015).

Here, the district court ensured that Davenport's waiver of counsel was knowing, intelligent, and voluntary. On three occasions—when Davenport first requested to represent himself, when he was arraigned on a superseding indictment, and when Davenport requested that his stand-by counsel be discharged, the district court advised Davenport of the serious nature of the charges against him, the wisdom of retaining counsel, and the likelihood of conviction if he chose to represent himself. The government advised Davenport of the charges on both

the original and superseding indictments and the statutory minimum and maximum penalties he would face if convicted. Thus, the district court did not err in concluding that Davenport understood the nature of the charges against him, the possible penalties, and the dangers and disadvantages of self-representation. *See Erskine*, 355 F.3d at 1167.

2. Second, Davenport argues that the district court erred in denying his motion to suppress evidence from a search of his cell phone. He claims his parole officer was without statutory or constitutional authority to search the phone while Davenport was detained in a county jail on suspicion of a parole violation. We review the district court's decision de novo. *United States v. Zapien*, 861 F.3d 972, 974 (9th Cir. 2017).

A California parolee is, by statute, "subject to search or seizure by a probation or parole officer or other peace officer at any time of the day or night, with or without a search warrant or with or without cause." *See* Cal. Penal Code § 3067(b)(3). Davenport signed terms of parole consenting to these warrantless statutory searches. The U.S. Supreme Court has upheld California officials' authority to conduct warrantless parole searches pursuant to this statute so long as the searches are not "arbitrary, capricious, or harassing," citing the state's strong interest in preventing recidivism. *See Samson v. California*, 547 U.S. 843, 850,

856 (2006). California authorities may conduct parole searches at any time up until the subject's parole is formally revoked. *See People v. Hunter*, 45 Cal. Rptr. 3d 216, 221 (Cal. Ct. App. 2006).

Davenport remained on parole at the time his parole officer searched his phone, and he raises no argument that the search was arbitrary, capricious, or harassing. Rather, he asks this court to accept his novel interpretation of a 2011 California statute re-aligning the state's parole procedures, which, he argues, implicitly eliminated the state's longstanding investiture of authority in *all* of its peace officers to conduct parole searches. We decline to do so, and affirm the district court's denial of this motion.

3. Third, Davenport argues that the district court violated his Fifth Amendment rights by permitting him to be shackled to a concrete bucket during trial. Because Davenport did not object to his shackling and raises this argument for the first time on appeal, we review for plain error. *See Puckett v. United States*, 556 U.S. 129, 134–35 (2009).

Davenport has failed to establish the first prong of plain error review, that the district court committed an error. *See id.* As his counsel conceded at oral argument, our controlling precedential opinion is *United States v. Cazares*, 788 F.3d 956 (9th Cir. 2015). In that case, we held that “[v]isibility of the shackles [to

the jury] is critical to the determination of the due process issue.” *Id.* at 966; *see also Cox v. Ayers*, 613 F.3d 883, 890 (9th Cir. 2010) (applying a conjunctive four-factor test to determine whether shackling was a due process violation; one factor is whether the shackling was seen by the jury). Here, Davenport has presented no evidence that his shackling was visible to the jury—rather, the record reflects that the district court took care to ensure that the jury would be oblivious to the shackling by placing skirts around the counsel tables and prohibiting the government attorneys from standing up in the presence of the jury.

4. Fourth, Davenport argues that the district court violated the Confrontation Clause, U.S. CONST., amd. VI, by limiting his cross-examination of a witness for the government. We review for harmless error. *See Delaware v. Van Arsdall*, 475 U.S. 673, 684 (1986). Here, we conclude that even if the district court erred in limiting cross-examination, any error was “harmless beyond a reasonable doubt” and would not be sufficient to vacate his conviction. *See id.*

On harmless error review, we consider “the importance of the witness’ testimony in the prosecution’s case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution’s case.” *Id.* Here, the

prosecution presented overwhelming testimonial and forensic evidence against Davenport, with electronic data and several other witnesses supporting the relevant witness's testimony. It is beyond any reasonable doubt that the jury's verdict would have remained the same even if Davenport had been permitted to ask the two excluded questions aimed at impeaching this witness on a collateral issue.

5. Finally, Davenport argues that the district court erred in denying his motion for acquittal on a conspiracy charge under Federal Rule of Criminal Procedure 29. We review this decision de novo and consider whether, in the light most favorable to the government, "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *United States v. Christensen*, 828 F.3d 763, 780 (9th Cir. 2015) (quoting *United States v. Chapman*, 528 F.3d 1215, 1218 (9th Cir. 2008)).

Davenport has failed to establish that no rational jury could find him guilty of conspiring to produce child pornography. The jury heard testimony from the filmer of the pornography in question, who testified that Davenport gave her specific and graphic instructions on how to abuse and distract the child victim during filming. This evidence supports a reasonable inference that Davenport and the filmer agreed to, and intended to, produce child pornography. *See, e.g., United*

States v. Espinoza-Valdez, 889 F.3d 654, 656 (9th Cir. 2018) (elements of criminal conspiracy).

II. CHALLENGES TO THE SENTENCE

1. First, Davenport contends that the district court violated the Ex Post Facto Clause, U.S. CONST., art. I, § 9, cl. 3, in calculating his Guidelines range by using the 2016 Sentencing Guidelines, which were in effect at the time of sentencing, rather than the 2012 Sentencing Guidelines, which were in effect at the time of the offense conduct. Because Davenport did not object to the use of the 2016 Guidelines at sentencing, we review for plain error. *See Puckett*, 556 U.S. at 134–35.

The government concedes that the district court erred, and that the error was plain. On the third prong of plain error review, we hold that the error affected Davenport’s substantial rights. *See id.* at 135. “When a defendant is sentenced under an incorrect Guidelines range—whether or not the defendant’s ultimate sentence falls within the correct range—the error itself can, and most often will, be *sufficient to show a reasonable probability of a different outcome* absent the error.” *Molina-Martinez v. United States*, 136 S. Ct. 1338, 1345 (2016) (emphasis added). Further, a Guidelines error that affects substantial rights ordinarily satisfies the fourth prong of plain error review, that the error affects “the fairness, integrity or

public reputation of judicial proceedings.” *See Rosales-Mireles v. United States*, 138 S. Ct. 1897, 1908 (2018). Thus, we conclude that the district court plainly erred in applying the incorrect Sentencing Guidelines and vacate the sentence.

2. Second, Davenport argues that the district court inappropriately concluded that he was a “repeat and dangerous sex offender against minors” under U.S.S.G. § 4B1.5(a). We review the district court’s application of the Guidelines to particular facts for abuse of discretion. *United States v. Gasca-Ruiz*, 852 F.3d 1167, 1170 (9th Cir. 2017) (en banc).

We hold that the district court abused its discretion. The court adopted the findings of a Presentencing Investigation Report that contradicted itself, writing in one section that Davenport’s 2011 California conviction for oral copulation with a minor qualified him for the “repeat and dangerous” enhancement, and in another section that it did not. We conclude that this conviction alone does not qualify Davenport for the enhancement because the California offense conduct as described in the record would not have been sufficient to convict Davenport of any offense described in 18 U.S.C. § 2426(b)(1)(A) had it occurred under federal jurisdiction. *See* U.S.S.G. § 4B1.5(a), n.3(A)(ii). We thus remand this matter for the district court to reconsider whether Davenport was eligible for this enhancement.

3. Third, Davenport argues that the district court erred in applying a leadership enhancement under U.S.S.G. § 3B1.1(c). We conclude that the district court did not abuse its discretion in doing so because application of this enhancement merely requires a “showing that the defendant had control over others.” *United States v. Pimental-Lopez*, 859 F.3d 1134, 1143–44 (9th Cir. 2016). Here, Davenport’s co-conspirator provided detailed testimony, supported by text messages and emails, about her role as a “slave” to Davenport’s “master.” The evidence also established that Davenport provided specific and detailed instructions to the co-conspirator at all stages of the offense.

4. Finally, Davenport asserts that his 600-month prison sentence is substantively unreasonable. Because the district court made two material errors in its Guidelines calculation, we will remand for re-sentencing, without reaching the question of whether the sentence as a whole is reasonable. *United States v. Kilby*, 443 F.3d 1135, 1140 (9th Cir. 2006) (citation omitted).

For the forgoing reasons, we **AFFIRM** the judgment of conviction, **VACATE** the sentence, and **REMAND** the matter to the district court for re-sentencing consistent with our disposition.

Appendix C

UNITED STATES DISTRICT COURT

Eastern District of California

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Case Number: **2:13CR00399-1****JESSE DAVENPORT**

Defendant's Attorney: Timothy Zindel, Assistant Federal Defender

THE DEFENDANT:

- ☐ pleaded guilty to count(s) ____.
- ☐ pleaded nolo contendere to count(s) ____ which was accepted by the court.
- ☒ was found guilty on counts 1, 2, 3 and 4 after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature Of Offense	Date Offense Concluded	Count Number
18 U.S.C. § 2251(a)	Conspiracy to Sexually Exploit a Child (Class B Felony)	August 26, 2013	1
18 U.S.C. § 2252(a)(2)	Receipt of Child Pornography (Class B Felony)	August 27, 2013	2
18 U.S.C. § 2252(a)(2)	Distribution of Child Pornography (Class B Felony)	August 28, 2013	3
18 U.S.C. § 2252(a)(2)	Receipt of Child Pornography (Class B Felony)	September 4, 2013	4

The defendant is sentenced as provided in pages 2 through 8 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) ____ dismissed on the motion of the United States.
- ☒ Indictment is to be dismissed by District Court on motion of the United States.
- ☒ Appeal rights given. ☐ Appeal rights waived.

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.

3/23/2017

Date of Imposition of Judgment



Signature of Judicial Officer

Morrison C. England, Jr., United States District Judge

Name & Title of Judicial Officer

3/24/2017

Date

DEFENDANT: **JESSE DAVENPORT**
CASE NUMBER: **2:13CR00399-1**

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IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: 360 months as to Count 1 and 240 months as to each of Counts 2, 3, and 4 to be served concurrently to one another and to be served consecutively to Count 1 for a total term of 600 months.

- ☐ No TSR: Defendant shall cooperate in the collection of DNA.
- ☒ The court makes the following recommendations to the Bureau of Prisons:
The court recommends that the defendant be incarcerated in either the Seagoville, Texas, Tucson, Arizona or Englewood, Colorado facility, but only insofar as this accords with security classification and space availability.
- ☒ 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 ____ 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 Officer.
- If no such institution has been designated, to the United States Marshal for this district.

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: **JESSE DAVENPORT**
CASE NUMBER: **2:13CR00399-1**

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :
LIFE as to each of Counts 1, 2, 3, and 4 to be served concurrently for a total term of LIFE.

MANDATORY CONDITIONS

You must not commit another federal, state or local crime.

You must not unlawfully possess a controlled substance.

You must refrain from any unlawful use of controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two (2) periodic drug tests thereafter, not to exceed four (4) drug tests per month.

- ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse.
- ☒ You must cooperate in the collection of DNA as directed by the probation officer.
- ☐ 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 which you reside, work, are a student, or were convicted of a qualifying offense.
- ☐ You must participate in an approved program for domestic violence.

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of 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 the probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment, you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person, such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the Court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

<

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

SPECIAL CONDITIONS OF SUPERVISION

1. As directed by the probation officer, the defendant shall participate in a program of testing (i.e. breath, urine, sweat patch, etc.) to determine if he has reverted to the use of drugs or alcohol.
2. The defendant shall not possess or have access to any cellular phone without the advance permission of the probation officer. The defendant shall provide all billing records for such devices, whether used for business or personal, to the probation officer upon request.
3. As directed by the probation officer, the defendant shall participate in a co-payment plan for treatment or testing and shall make payment directly to the vendor under contract with the United States Probation Office of up to \$25 per month.
4. The defendant shall submit to the search of his person, property, house, residence, vehicle, papers, computer, other electronic communication or data storage devices or media, and effects at any time, with or without a warrant, by any law enforcement or probation officer in the lawful discharge of the officer's supervision functions with reasonable suspicion concerning unlawful conduct or a violation of a condition of probation or supervised release. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
5. The defendant shall not possess or use a computer or any device that has access to any "on-line computer service" unless approved by the probation officer. This includes any Internet service provider, bulletin board system, or any other public or private computer network.
6. The defendant shall have no contact with known children under the age of 18, unless approved by the probation officer in advance. The defendant is not to loiter within 100 feet of school yards, parks, playgrounds, arcades, or other places primarily used by children under the age of 18. This shall include that the defendant is not to engage in any occupation, either paid or volunteer, that causes him to regularly contact known persons under the age of 18.
7. The defendant shall consent to the probation officer and/or probation service representative conducting periodic unannounced examinations of (a) any computer, or (b) computer-related device, or (c) equipment that has an internal or external modem which is in the possession or control of the defendant. The defendant consents to retrieval and copying of all data from any such computer, computer-related device, or equipment as well as any internal or external peripherals to ensure compliance with conditions. The defendant consents to removal of such computer, computer-related device, and equipment for purposes of conducting a more thorough inspection and analysis.

The defendant consents to having installed on any computer, computer-related device, and equipment, at the defendant's expense, any hardware or software systems to monitor the use of such computer, computer-related device, and equipment at the direction of the probation officer, and agrees not to tamper with such hardware or software and not install or use any software programs designated to hide, alter, or delete his computer activities. The defendant consents to not installing new hardware without the prior approval of the probation officer.

8. The defendant shall not possess, own, use, view, or read any material depicting and/or describing sexually explicit conduct involving children, including computer images, pictures, photographs, books, writings, drawings, videos, or video games. "Sexually explicit conduct" as defined in 18 U.S.C. § 2256(2) means actual or simulated (a) sexual intercourse, including genital-genital, oral-genital, or oral-anal, whether between the same or opposite sex; (b) bestiality; (c) masturbation; (d) sadistic or masochistic abuse; or (e) lascivious exhibition of the genitals or pubic area of any person.

In addition, the defendant shall not possess, own, use, view, or read any material depicting and/or describing sexually explicit conduct involving adults, defined as sexually stimulating depictions of adult sexual conduct that are deemed inappropriate by the defendant's probation officer, including computer images, pictures, photographs, books, writings, drawings, videos, or video games depicting such conduct. Furthermore, the defendant shall not frequent any place whose primary purpose is to sell, rent, show, display, or give other forms of access to, material depicting and/or describing sexually explicit conduct.

9. The defendant shall provide all requested business/personal phone records to the probation officer. The defendant shall disclose to the probation officer any existing contracts with telephone line/cable service providers. The defendant shall provide the probation officer with written authorization to request a record of all outgoing or incoming phone calls from any service provider.
10. The defendant shall consent to third-party disclosure to any employer or potential employer, concerning any computer-related restrictions that are imposed upon him. This includes any activities in which you are acting as a technician, advisor, or consultant with or without any monetary gain or other compensation.
11. The defendant shall attend, cooperate with, and actively participate in a sex offender treatment and therapy program [which may include, but is not limited to, risk assessment, polygraph examination, and/or Visual Reaction Treatment] as approved and directed by the probation officer and as recommended by the assigned treatment provider.

DEFENDANT: **JESSE DAVENPORT**

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12. The defendant's residence shall be pre-approved by the probation officer. The defendant shall not reside in direct view of places such as school yards, parks, public swimming pools, or recreational centers, playgrounds, youth centers, video arcade facilities, or other places primarily used by children under the age of 18.
13. The defendant shall register, as required in the jurisdiction in which he resides, as a sex offender.

DEFENDANT: JESSE DAVENPORT
CASE NUMBER: 2:13CR00399-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$400.00	\$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.

☐ 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:

☐ If incarcerated, payment of the fine is due during imprisonment at the rate of not less than \$25 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program.

☐ If incarcerated, payment of the restitution is due during imprisonment at the rate of not less than \$25 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program.

*Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

SCHEDULE OF PAYMENTS

Payment of the total fine and other criminal monetary penalties shall be due as follows:

- A. ☐ Lump sum payment of \$ ____ 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/probation 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 defendants ability to pay at that time; or
- F. ☐ Special instructions regarding the payment of criminal monetary penalties:

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

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

☐ Joint and Several

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:
 One LG cell phone, model VM-670, serial number 105KPCA0657859, pursuant to the February 24, 2017, Preliminary Order of Forfeiture.

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.