No. _____

In The
Supreme Court of the United States

KEESHA ELAYNE FRYE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

Douglas E. Kingsbery
Counsel of Record
THARRINGTON SMITH, L.L.P.
150 Fayetteville Street, Suite 1800
Raleigh, North Carolina 27601
(919) 821-4711 (Telephone)
(919) 829-1583 (Facsimile)
dek@tharringtonsmith.com

Counsel for Petitioner ***Dated: October 7, 2019***

THE LEX GROUP[DC] ♦ 1050 Connecticut Avenue, N.W. ♦ Suite 500, #5190 ♦ Washington, D.C. 20036
(202) 955-0001 ♦ (800) 856-4419 ♦ www.thelexgroup.com

QUESTIONS PRESENTED

During a federal criminal jury trial, the district court sent a copy of the indictment to the jury room for the jury's use in its deliberations and the completion of its verdict sheet. The district court intended for the courtroom clerk to give the jury a heavily redacted version of the indictment because the original indictment contained several allegations that the government agreed would have been prejudicial to the jury's consideration of the defendant's case.

After the jury's verdict was received and the jury was discharged, the courtroom clerk destroyed the indictment she had given to the jury, and no copy was made or retained by the district court.

The Fourth Circuit Court of Appeals rejected defendant's claim that the clerk's actions deprived her of meaningful appellate review, holding that the burden was on defendant to show that the clerk had submitted the wrong version of the indictment to the jury.

The Question Presented is:

What is the correct standard to determine whether a criminal defendant is denied meaningful appellate review when the district court destroys the only copy of a redacted indictment used by the jury in its deliberations, and who's burden is it to show whether the jury was given the correct version of the indictment?

RELATED CASES

- *United States v. Frye*, No. 1:17-cr-00115-WO-1, U.S. District Court for the Middle District of North Carolina. Judgment entered May 23, 2018.

- *United States v. Frye*, No. 18-4346, U.S. Court of Appeals for the Fourth District. Judgment entered May 20, 2019.

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CONSTITUTIONAL PROVISION

STATUTE

PETITION FOR WRIT OF CERTIORARI

Keesha Frye, an inmate currently incarcerated at Alderson Federal Prison Camp, by and through counsel, respectfully petitions this court for a writ of certiorari to review the judgment of the Fourth Circuit Court of Appeals.

OPINIONS BELOW

The opinion of the Fourth Circuit Court of Appeals appears at App. 1a-6a to this petition. The court's opinion is unpublished. *See United States v. Frye*, 770 F. App'x 137 (4th Cir. 2019). On July 8, 2019, the Fourth Circuit Court of Appeals denied Ms. Frye's petition for rehearing. That Order is also included in the appendix at App. 22a.

JURISDICTION

This petition seeks review of a judgment of the United States Court of Appeals for the Fourth Circuit entered on May 20, 2019. Ms. Frye's petition for rehearing to the Fourth Circuit Court of Appeals was denied on July 8, 2019. Ms. Frye invokes this Court's jurisdiction under 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall

> any person be subject for the same offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

Ms. Frye was convicted by a jury in the Middle District of North Carolina on January 12, 2018, with crimes relating to her ownership and operation of an income tax preparation business located in Durham, North Carolina known as KEF Professional Services, LLC ("LLC"). A grand jury had previously returned a 35-count superseding indictment against Ms. Frye and Maria Streater, an office manager at KEF.

The Superseding Indictment alleged that Ms. Frye had conspired with Ms. Streater and others to defraud the United States by impeding the lawful governmental function of the IRS in the assessment and collection of federal income taxes (count 1), aiding and abetting the preparation and filing of false income tax returns (counts 2-21) and filing her own false individual income tax returns (counts 33 and 34) (hereinafter, "the indictment"). (JA at 14) Several of the thirty-one (31) overt acts charged in the conspiracy count (count 1), as well as counts 22-31, 32 and 35 of the indictment, pertained solely to Streater.

Streater entered a plea of guilty to certain of the charges against her, and the case proceeded to trial solely against Ms. Frye. Streater did not testify at the trial.

Prior to jury selection, the government moved to dismiss counts 12, 13, 14 and 16, each of which pertained solely to Ms. Frye. Without objection, the district court granted the motion. (CA JA at 8; Dkt. Entry 01/08/2018) Ms. Frye entered a plea of not guilty to all the remaining counts that pertained to her.

At the close of the trial, the district court instructed the courtroom clerk to send the following items to the jury room for the jury's use in deliberations: (1) the trial exhibits, (2) a copy of the jury instructions, (3) the verdict sheet, and (4) a redacted copy of the indictment. During the course of the trial, the district court had prepared several versions of a redacted indictment, all of which contained prejudicial allegations against Ms. Frye, except for the last version, which was the version the district court *intended* for the courtroom clerk to give to the jury.

The district court, counsel for the government and counsel for Ms. Frye all agreed that the indictment needed to be redacted for the following reasons:

(1) Prior to jury selection, counts 12, 13, 14 and 16 of the indictment had been dismissed. (JA at 8; Dkt. Entry 01/08/2018)

(2) At the close of the government's evidence, the district court noted that no evidence had been presented to support several of the overt acts alleged in count 1. (JA at 408-09)

(3) At the close of all the evidence, the government volunteered that it had not presented

any evidence on one of the two false statements alleged in count 34. (JA at 545-46)[1]

(4) Counts 14-31, 32 and 35 of the indictment pertained solely to Streater, who was not on trial. (JA at 24-29)

Notably, the Government has conceded in this case that if an unredacted version of the indictment was given to the jury, Ms. Frye would have been prejudiced. (See Govt's Response Brief at 23.)

The verdict sheet did not identify the specific offenses as to which the jury was to render its verdicts. Instead, the district court instructed the jury to use the (modified) indictment and then decide whether Frye was guilty or not guilty "of the crime charged in (each numbered count as listed in the indictment)." (JA at 727-32) The verdict sheet and the indictment were designed to be read together, since one cannot decipher the verdict sheet without the indictment to which each verdict refers.

According to the verdict sheet, the jury found Frye "not guilty" "of the crime charged in count five of the (modified) indictment," and "guilty" of the other counts. *Id*.

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[1] Count 34 alleged that Frye made two false statements on her 2012 individual income tax return. (JA 27-28) In its response brief, the government conceded that one of those false statements was not proven and should have been redacted on the copy of the indictment submitted to the jury. (Govt.'s Brief, p. 23) If the version of the indictment given to the jury was not correctly redacted, even a cautionary instruction that the indictment is not evidence of guilt cannot remedy the error of allowing the jury to convict on a false statement that was not proven.

After the jury was discharged, the courtroom clerk filed into the record the jury's verdict sheet (JA at 8, Dkt. #77) and the final jury instructions the jury had used in its deliberations. (JA at 8, Dkt. #76) The court did not, however file the modified indictment upon which the verdict sheet was based.

On 23 May 2018 the district court entered Judgment, sentencing Frye to 49 months on count 1, 36 months on count 33 to run consecutively to the sentence imposed in count 1, and 36 months on count 34 to run consecutively to the sentence imposed in count 33, for a total of 121 months active imprisonment. The court consolidated the remaining counts and imposed a sentence of 36 months to run concurrently with the sentences imposed in the other counts.[2] (JA at 734).

On appeal, the courtroom clerk advised appellate counsel that she had destroyed the version of the indictment the jury used in its deliberations, and that the district court had not retained a copy.

Ms. Frye appealed her conviction to the Fourth Circuit Court of Appeals, arguing that destruction of the document used by the jury denied Frye of meaningful appellate review of the jury instructions, the verdict sheet, and issues related to the document itself.

After Ms. Frye had filed her opening brief in the Fourth Circuit—and eight (8) months after the jury was discharged—the courtroom clerk notified

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[2] Here, "counts" refers to the counts in the Superseding Indictment returned by the grand jury, not the "modified" indictment used by the petit jury.

counsel for the government and Ms. Frye that the district court had located "a copy of the redacted superseding indictment." The communication gave no indication of whether the document purported to be a copy of the document that was sent to the jury room.

Prior to filing its response brief, the government filed a motion in the district court to supplement the record with the late-found document. (Dist. Ct. DE# 110) Counsel for Frye filed a response seeking clarification of whether the document was in fact a copy of what had been sent into the jury room. (Dist. Ct. DE# 111 and 111-1)

The district court then scheduled a hearing regarding the government's motion to supplement the record. In the hearing, the district court explained that the document was recently found by the court's judicial assistant amongst her miscellaneous papers and files. (SA 2, 20-21). The district court opined as follows:

> But in any event, my judicial assistant, Francis Cable, has some other papers on her desk where she keeps an assortment of papers that actually has the original Wite-out from where she redacted the indictment. Under those circumstances, I am---I'm going to put it at the 80 percent mark—80 to 90 percent satisfied that this is the original indictment that was redacted and the one from which copies were made to send back to the jury.

(SA 21)

In a written order granting the government's motion to supplement the record, the court stated the document "appears to [the] court to be a copy of either the final redacted version of the Superseding Indictment submitted to the jury or a very close approximation thereof." (SA 2)

The government then filed its response brief, arguing that the late-found document must be a copy of what was sent to the jury room because the redactions in it are consistent with the redactions discussed in the trial transcripts, the government's closing argument, and the verdict sheet.[3]

On May 20, 2019, the Fourth Circuit Court of Appeals issued its decision affirming the decision of the district court. In that decision, the Fourth Circuit concluded that "based on the totality of the circumstances" the version of the indictment located by the district court during the pendency of the appeal was "very likely the version given to the jury." *United States v. Frye*, 770 F. App'x at 138. The Court also found that Ms. Frye had "offered nothing but speculation that a different copy of the indictment could have been submitted." *Id.* Ms. Frye petitioned for rehearing arguing that the standard of review that the Fourth Circuit had set was impossible for any criminal defendant to meet. Ms. Frye's petition was denied by the Court on July 8, 2019.

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[3] Of course, the most the district court could say about the late-found document is that it is a copy of what the district court *intended* the courtroom clerk to give to the jury.

REASONS FOR GRANTING THE WRIT

1. No Proper Standard Exists to Govern the Facts of This Case.

Neither this Court, nor any Circuit Court, based on undersigned counsel's review, has developed a standard to address when a criminal defendant is denied meaningful appellate review based on the failure of the district court to preserve for the record a key charging document that was submitted to the jury for its use in deliberating the case.

While it is true that the Courts of Appeal have developed a standard to govern instances of missing or inaccurate trial transcripts, *see, e.g.*, *United States v. Weisser*, 417 F.3d 336, 342 (2d Cir. 2005), the Courts have developed no such standard for missing documents utilized by the jury in rendering a guilty verdict.

This case presents an ideal vehicle for this Court to announce a proper standard.

The Fourth Circuit, in its opinion below, held that Ms. Frye had the burden of demonstrating that a prejudicial version of the indictment was sent to the jury. "Frye has offered nothing but speculation that a different copy of the indictment could have been submitted. We therefore conclude that Frye has not shown that she has been denied meaningful appellate review." 770 F. App'x at 138. In reaching this holding, the Court cited a prior Fourth Circuit case involving an omission from a trial transcript. *Id.* (*citing United States v. Huggins*, 191 F.3d 532, 536 (4th Cir. 1999) ("[W]hether an omission from a transcript warrants a new trial depends on whether the appellant has

demonstrated that the omission specifically prejudices [her] appeal." (internal quotation marks omitted)). The Fourth Circuit's reasoning is tautological. Ms. Frye's argument is that because the district court failed to maintain the copy of the indictment sent to the jury, she is denied the opportunity on appeal to determine whether she was prejudiced by that document. Ms. Frye cannot be expected to produce evidence that was destroyed by the district court. The standard developed by the Circuit Courts to address instances of missing or inaccurate trial transcripts is inadequate to address the facts of Ms. Frye's claim for denial of meaningful appellate review.

The Fourth Circuit also held that the version of the indictment located by the district court during the pendency of the appeal was "very likely the version given to the jury." *United States v. Frye*, 770 F. App'x at 138. As stated above, the Government has conceded that an improperly redacted indictment would have been prejudicial to Ms. Frye. A holding that Ms. Frye was "very likely" not prejudiced, and that therefore she has failed to show prejudicial error, cannot comport with the requirements of due process under the Fifth Amendment.[4]

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[4] Moreover, as noted above, the most anyone could say about the late-found version of the redacted indictment is that it is the version the district court *intended* for the courtroom clerk to give to the jury. Because there were at least four (4) different versions of the indictment in the courtroom during the trial, the courtroom clerk could easily have submitted one of the improper versions by mistake. *See, e.g., United States v. Barnes,* 747 F.2d 246 (4th Cir. 1984) (courtroom clerk sent wrong exhibits to the jury room) and *United States v. Greene,* 834 F.2d 86 (4th Cir. 1987) (same).

This Court should grant certiorari to develop a standard to decide whether a criminal defendant is denied meaningful appellate review when key charging documents utilized by the jury in reaching its verdict are not maintained by the district court.

2. The Fourth Circuit's Opinion is Incorrect, and Ms. Frye was Denied Meaningful Appellate Review

As the government concedes, if the jury in this case received an unredacted - or improperly redacted - version of the superseding indictment, the error was prejudicial. "If the indictment contains irrelevant allegations, ordinarily they should be redacted." *United States v. Polowichak*, 783 F.2d 410, 413 (4th Cir. 1986)[5] Because the district court destroyed the version of the superseding indictment that was sent to the jury, Ms. Frye has been denied meaningful appellate review.

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[5] While the chance of prejudice can be reduced where "the jury is unequivocally instructed that the indictment is not evidence, that the indictment is distributed solely as an aid in following the court's instructions and the arguments of counsel, and that certain counts should be disregarded as irrelevant to the defendants currently before the district court," *i.d.,* that was not done here. The jury instructions in this case fill 25 pages of transcript. In those 25 pages, the court did say – one time – that the indictment is not evidence of guilt. (JA 601) The court did not say that the indictment was not evidence and did not state the limited purpose of the indictment or instruct the jury disregard the dismissed counts against Ms. Frye, or the counts and allegations that related to Streater.

CONCLUSION

The Circuit Courts need an authoritative standard of review to apply in determining whether the post-verdict destruction of critical items that were submitted to the jury for use in its deliberations denies a criminal defendant of meaningful appellate review. This Court should grant the petition for certiorari to develop and announce that standard.

Respectfully submitted,

Douglas E. Kingsbery
Counsel of Record
THARRINGTON SMITH, L.L.P.
150 Fayetteville Street, Suite 1800
Raleigh, North Carolina 27601
(919) 821-4711 (Telephone)
(919) 829-1583 (Facsimile)
dek@tharringtonsmith.com

APPENDIX

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[ENTERED: May 20, 2019]

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4346

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KEESHA ELAYNE FRYE,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. William L. Osteen, Jr., District Judge. (1:17-cr-00115-WO-1)

Submitted: March 28, 2019 Decided: May 20, 2019

Before WILKINSON, DIAZ, and RICHARDSON, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Douglas E. Kingsbery, THARRINGTON SMITH LLP, Raleigh, North Carolina, for Appellant. Richard E. Zuckerman, Principal Deputy Assistant Attorney General, S. Robert Lyons, Stanley J. Okula, Jr., Alexander P. Robbins, Gregory S. Knapp, Tax Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C.; Matthew G.T. Martin, United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Keesha Elayne Frye appeals her convictions for conspiracy to defraud the United States, in violation of 18 U.S.C. § 371 (Count 1), aiding and assisting in preparing false tax returns, in violation of 26 U.S.C. § 7206(2) (Counts 2-4, 6-11, 15, and 17-21), and subscribing to false tax returns, in violation of 26 U.S.C. § 7206(1) (Counts 33 and 34). Frye contends that she has been denied the right to meaningful appellate review and that the evidence was insufficient to convict her of Counts 33 and 34. We affirm.

Frye contends that she has been denied meaningful appellate review because all copies of the redacted indictment given to the jury were destroyed. Because of this omission, Frye argues that it is impossible to decipher the jury's verdict form, to review the district court's jury instructions, and to

determine whether the indictment was constructively amended in violation of her Fifth Amendment rights.

The district court, however, subsequently located a copy of a redacted indictment. In a written order, the court found that this indictment "appears to this court to be a copy of either the final redacted version of the Superseding Indictment submitted to the jury or a very close approximation thereof." Suppl. App'x at 2. The court wrote that it "believe[d]" the document was a copy of the indictment submitted to the jury. *Id.* And it stated several times during a hearing that the document was very probably the one that the jury saw. *Id.* at 21 ("I am . . . 80 to 90 percent satisfied that this is the original indictment that was redacted and the one from which copies were made to send back to the jury."); *id.* at 30 ("I'm 99 per cent certain it's very close, if not identical, to what went back, but it wasn't found under circumstances where I can say 100 percent certainty. Is it 90 percent, 80 percent? I don't know. I'm confident. Am I fully satisfied and entirely convinced? Probably, but I'd rather have to judge it on a reasonable doubt standard.").

Based on the totality of the circumstances, we conclude that this version was very likely the version given to the jury. We note that the unearthed indictment reflects amendments made just before closing arguments. Further, we believe deference is due to the district court's statements regarding its confidence that this indictment reflects the one submitted to the jury. To support her claim that review is impossible, however, Frye has offered nothing but speculation that a different copy of the indictment could have been submitted. We therefore

conclude that Frye has not shown that she has been denied meaningful appellate review. *See United States v. Huggins*, 191 F.3d 532, 536 (4th Cir. 1999) ("[W]hether an omission from a transcript warrants a new trial depends on whether the appellant has demonstrated that the omission specifically prejudices [her] appeal." (internal quotation marks omitted)).

Next, we review de novo the sufficiency of the evidence supporting a conviction. *United States v. Wolf*, 860 F.3d 175, 194 (4th Cir. 2017). A defendant challenging evidentiary sufficiency carries "a heavy burden." *United States v. Cornell*, 780 F.3d 616, 630 (4th Cir. 2015) (internal quotation marks omitted). We will uphold a conviction if, "view[ing] the evidence in the light most favorable to the government . . . [,] any rational trier of fact could have found the essential elements of the crime charged beyond a reasonable doubt." *United States v. Barefoot*, 754 F.3d 226, 233 (4th Cir. 2014) (emphasis and internal quotation marks omitted).

Frye contends that the evidence was insufficient to convict her of Count 33 because the government showed, at most, that the name of the childcare provider on her 2010 tax return was incorrect, and that this is not a material falsehood because Frye had child and dependent care expenses incurred from another provider. We conclude, however, that a rational juror could have found Frye guilty of Count 33 beyond a reasonable doubt. A "defendant's credibility is a material consideration in establishing guilt, and if a defendant takes the stand and denies the charges and the jury thinks [s]he's a liar, this becomes evidence of guilt to add to the other

evidence." *United States v. Burgos*, 94 F.3d 849, 868 (4th Cir. 1996) (en banc) (brackets, ellipsis, and internal quotation marks omitted). Here, the jury was free to disbelieve Frye's testimony in light of the extensive evidence of Frye's fraudulent conduct in other matters presented at trial. Thus, this claim is without merit.

Frye also contends that the evidence was insufficient to convict her of Count 34 because the government failed to show that Frye personally signed her 2012 tax return before it was filed. Frye first argues that the mere entry of Frye's personal identification number (PIN) is insufficient to show that she signed her return because Form 8879, the form authorizing e-filing, was unsigned. But we believe a rational juror could conclude that the presence of Frye's PIN, a unique identifier, on her return was sufficient to show that Frye signed her return. Frye further argues that the evidence was insufficient to convict her of Count 34 because her tax preparer signed Frye's return, not Frye. Frye's explanation, proffered at trial, is plausible, and a rational juror could have accepted this explanation. Yet equally plausible is that Frye knowingly participated in the fraud and signed her tax return with her PIN. Ultimately, "it was the responsibility of the jury to weigh the evidence and determine which version to believe." *United States v. Stockton*, 349 F.3d 755, 761 (4th Cir. 2003). The jury here elected to discredit Frye's testimony on this point, and we are bound to accept that decision. *See United States v Roe*, 606 F.3d 180, 186 (4th Cir. 2010).

Accordingly, we affirm the judgment of the district court. We dispense with oral argument

because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

[ENTERED: May 20, 2019]

FILED: May 20, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4346
(1:17-cr-00115-WO-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

KEESHA ELAYNE FRYE

Defendant – Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

[ENTERED: May 23, 2018]

AO 245B (NCMD Rev. 02/18) Sheet 1 –
Judgment in a Criminal Case

United States District Court
Middle District of North Carolina

UNITED STATES OF AMERICA

v.

KEESHA ELAYNE FRYE

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:17-CR-00115-1

USM Number: 33826-057

Mark Everette Edwards
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s) __ which was accepted by the court.

☒ was found guilty on counts 1s-4s, 6s-11s, 15s, 17s-21s & 33s-34s after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18:371	Conspiracy	03/24/2014	1s
26:7206(2)	Aid and Assist in Filing False Tax Returns	03/24/2014	2s-4s, 6s-11s, 15s, 17s-21s
26:7206(1)	Subscribe to False Tax Returns	04/11/2011	33s
26:7206(1)	Subscribe to False Tax Returns	05/06/2013	34s

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 5s.

☒ Counts 1-21, 33-34 of the Original Indictment filed on 03/28/2017 and Counts 12s-14s, 16s of the Superseding Indictment filed on 6/27/2017 are dismissed on the motion of the United States.

IT IS ORDERED that the defendant shall 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 shall notify the court and United States attorney of any material change in the economic circumstances.

April 11, 2018
Date of Imposition of Judgment

/s/ William L. Osteen, Jr.
Signature of Judge

William L. Osteen, Jr., United States District Judge
Name & Title of Judge

MAY 23 2018
Date

DEFENDANT: KEESHA ELAYNE FRYE
CASE NUMBER: 1:17-CR-00115-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **121 months.**

[49 months as to count 1s; 36 months each as to counts 33s and 34s which shall run consecutively with the sentence imposed as to count 1s; 36 months as to the remaining counts, that is, counts 2s-4s, 6s-11s, 15s, and 17s-21s which shall run concurrently with the sentences imposed as to counts 1s, 33s and 34s]

☒ The court makes the following recommendations to the Bureau of Prisons: that the defendant be designated to a facility as close to her home in Durham, North Carolina, as possible and further that she be designated to a facility where she may receive medical care as reasonably necessary under the circumstances.

☐ The defendant is remanded to the custody of the United States Marshal.

☒ The defendant shall surrender to the United States Marshal for this district or to the designated institution

☒ at 12:00 p.m. on June 6, 2018.

☐ 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 pm 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: KEESHA ELAYNE FRYE
CASE NUMBER: 1:17-CR-00115-1

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: **three (3) years.**

[Three (3) years imposed as to count 1s; One (1) year each as to counts 33s-34s which shall run concurrently with the supervised release imposed as to count 1s; One (1) year each as to counts 2s-4s, 6s-11s, 15s, 17s-21s which shall run 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 the defendant poses 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: KEESHA ELAYNE FRYE

CASE NUMBER: 1:17-CR-00115-1

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: KEESHA ELAYNE FRYE
CASE NUMBER: 1:17-CR-00115-1

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall not incur any new credit charges or open additional lines of credit without the approval of the probation officer.

The defendant shall provide any requested financial information to the probation officer.

DEFENDANT: KEESHA ELAYNE FRYE
CASE NUMBER: 1:17-CR-00115-1

CRIMINAL MONETARY PENAL TIES

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

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	$1,800.00		$.00	$1,742,823.00

☐ 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 pursuant to 18 U.S.C. Section 3612(f)(3) for the ☐ fine ☒ restitution. **The defendant shall pay interest, and that interest shall begin to accrue after the completion of the term of imprisonment and the term of supervised release as to any restitution amounts that remain unpaid after completion of the term of supervised release**

☐ 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: KEESHA ELAYNE FRYE

CASE NUMBER: 1:17-CR-00115-1

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 $ 1,744,623.00 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 monthly installments of $100.00, to begin 60 days after the commencement of the term of supervised release and continuing during the entire term of supervised release or until paid in full; 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:

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 to be made to the Clerk of Court, United States District Court for the Middle District of North Carolina, 324 West Market Street, Greensboro, NC 27401-2544, unless otherwise directed by the court, the probation officer, or the United States Attorney. **Nothing herein shall prohibit the United States Attorney from pursuing collection of outstanding criminal monetary penalties.**

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

☒ Joint and Several

Co-defendant Maria Nicole Streater, Case Number: 1:17cr115-2

☐ 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) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

[ENTERED: July 8, 2019]

FILED: July 8, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4346
(1:17-cr-00115-WO-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

KEESHA ELAYNE FRYE

Defendant – Appellant

O R D E R

The court denies the petition for rehearing.

Entered at the direction of the panel: Judge Wilkinson, Judge Diaz, and Judge Richardson.

For the Court

/s/ Patricia S. Connor, Clerk