

NO. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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ROBERT GENE RAND,

*Petitioner,*

vs.

UNITED STATES OF AMERICA

*Respondent.*

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**ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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**APPENDIX TO  
PETITION FOR WRIT OF CERTIORARI**

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JUSTIN J. BUSTOS

*Counsel of Record*

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*Counsel for Petitioner Robert Gene Rand*

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**NOT FOR PUBLICATION**

**FILED**

**UNITED STATES COURT OF APPEALS**

**FEB 22 2019**

**FOR THE NINTH CIRCUIT**

**MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS**

**UNITED STATES OF AMERICA,**

**Plaintiff-Appellee,**

**v.**

**ROBERT GENE RAND,**

**Defendant-Appellant.**

**No. 17-10510**

**D.C. No. 3:16-cr-00029-MMD**

**MEMORANDUM\***

**Appeal from the United States District Court  
for the District of Nevada  
Miranda M. Du, District Judge, Presiding**

**Argued and Submitted February 8, 2019  
San Francisco, California**

**Before: PAEZ and BERZON, Circuit Judges, and FEINERMAN,\*\* District Judge.**

**Robert Gene Rand appeals his 96-month sentence for involuntary manslaughter (“Count One”), 18 U.S.C. § 1112(a), and 120-month sentence for distribution of a controlled substance (“Count Two”), 21 U.S.C. § 841(a)(1), (b)(1)(C). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.**

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

**\*\* The Honorable Gary Feinerman, United States District Judge for the Northern District of Illinois, sitting by designation.**

The appellate waiver in Rand's plea agreement does not preclude consideration of the merits of his appeal. The government concedes that Rand may appeal his sentence for Count One. We hold he also may appeal his sentence for Count Two. The appellate waiver was confusing and internally inconsistent, and the district court's colloquy with the parties at the plea hearing illustrated and added to the confusion. *See United States v. Spear*, 753 F.3d 964, 968 (9th Cir. 2014) ("We have steadfastly applied the rule that any lack of clarity in a plea agreement should be construed against the government as drafter.") (internal quotation marks and brackets omitted). Moreover, the district court told Rand that he could appeal his sentence, rendering unenforceable any waiver. *See United States v. Arias-Espinosa*, 704 F.3d 616, 618 (9th Cir. 2012) ("We have held that a district court's clear statement that a defendant has the right to appeal renders unenforceable the defendant's prior waiver of this right in a plea agreement.").

On the merits, the district court's holding that Rand failed to meet his burden of proving that he qualified for an acceptance of responsibility reduction under U.S.S.G. § 3E1.1 was not clearly erroneous. *See United States v. Rodriguez*, 851 F.3d 931, 949 (9th Cir. 2017) (explaining the burden and standard of review); *see also Cox v. Dep't of Soc. & Health Servs.*, 913 F.3d 831, 840 (9th Cir. 2019) ("[W]e may affirm on any ground supported by the record, even if it differs from the district court's rationale."). "[F]alsely den[ying], or frivolously contest[ing],

relevant conduct that the court determines to be true” is “inconsistent with acceptance of responsibility,” U.S.S.G. § 3E1.1 cmt. n.1(A), as is “plac[ing] responsibility on others” for one’s unlawful actions, *United States v. Doe*, 778 F.3d 814, 827 (9th Cir. 2015); *see also United States v. Osinger*, 753 F.3d 939, 949 (9th Cir. 2014). During his safety valve proffer and in his sentencing memorandum, Rand falsely denied or frivolously contested offense conduct by stating that he believed at the time that his prescribing practices were reasonable. Those statements also reflected an attempt to shift blame for his criminal conduct onto his patients. It does not matter whether Rand’s statements contested the specific examples of unlawful conduct set forth in his plea agreement, as those examples were illustrative, not exhaustive.

The district court’s holding that Rand failed to accept responsibility under U.S.S.G. § 3E1.1 is not inconsistent with its finding that Rand truthfully provided information to the government for purposes of safety valve relief under 18 U.S.C. § 3553(f)(5) and U.S.S.G. § 5C1.2(a)(5). Among other explanations for the different results, acceptance of responsibility turns on contrition *for the charged offense*, such that failing to “admit[] the conduct comprising the offense(s) of conviction” is not acceptance. U.S.S.G. § 3E1.1. That remains the case even if the defendant’s proffered alternative account is truthful, and thus qualifies him for safety valve relief. *See* U.S.S.G. § 5C2.1(a)(5) (providing that a defendant

qualifies for safety valve relief only if she “has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan”); *United States v. Rangel-Guzman*, 752 F.3d 1222, 1226-27 (9th Cir. 2014).

Because the district court reasonably held that Rand had not accepted responsibility, the government did not breach the plea agreement by arguing against the acceptance of responsibility reduction.

**AFFIRMED.**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

MAY 24 2019

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ROBERT GENE RAND,

Defendant-Appellant.

No. 17-10510

D.C. No. 3:16-cv-00029-MMD-  
WGC-1

District of Nevada,  
Reno

ORDER

Before: PAEZ and BERZON, Circuit Judges, and FEINERMAN,\* District Judge.

Defendant-Appellant filed a petition for rehearing or rehearing en banc on March 6, 2019 (Dkt. Entry 42). The panel has voted to deny the petition for rehearing. Judges Paez and Berzon have voted to deny the petition for rehearing en banc, and Judge Feinerman so recommends.

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

Fed. R. App. P. 35.

The petition for rehearing or rehearing en banc is DENIED.

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\* The Honorable Gary Feinerman, United States District Judge for the Northern District of Illinois, sitting by designation.

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA  
BEFORE THE HONORABLE MIRANDA M. DU, DISTRICT JUDGE  
---oOo---

UNITED STATES OF AMERICA, : No. 3:16-cr-029-MMD-WGC  
Plaintiff, :  
-vs- : November 20, 2017  
Robert Gene Rand, : United States District Court  
Defendant. : 400 S. Virginia Street  
Reno, Nevada 89501

TRANSCRIPT OF SENTENCING

A P P E A R A N C E S:

FOR THE GOVERNMENT: James Keller  
Assistant United States Attorney  
Reno, Nevada

FOR THE DEFENDANT: John Ohlson  
Jack Fox  
Attorneys at Law  
Reno, Nevada

Proceedings recorded by mechanical stenography produced by  
computer-aided transcript

Reported by: KATHRYN M. FRENCH, RPR, CCR  
NEVADA LICENSE NO. 392  
CALIFORNIA LICENSE NO. 8536

KATHRYN M. FRENCH, RPR, CCR  
(775) 786-5584



12:33:49 1 person's mind. So, circumstantially, you have evidence from  
12:33:53 2 doctors who are well respected in the community, and who do  
12:33:56 3 this, and have family practice in pain management, and see  
12:34:00 4 this in the ER, and say that this is an egregious case. There  
12:34:03 5 is no way it could be truthful that Mr. West was taking all  
12:34:07 6 the pain medication that he was, or that was a reasonable  
12:34:11 7 prescription.

12:34:11 8 THE COURT: Well, I agree. But Dr. Rand's  
12:34:14 9 response, at least his comment during the proffer, was  
12:34:16 10 that he felt he was being manipulated. That's a different  
12:34:19 11 issue altogether, which I'm going to consider. To me, it  
12:34:22 12 demonstrates a lack of remorse, but it doesn't -- but the  
12:34:27 13 calculation of the Sentencing Guidelines is very formulaic.  
12:34:30 14 It does not fit within Section 5C1.2. That's my point.  
12:34:35 15 Whether it fits within Section 3E1.1, I think you should  
12:34:38 16 focus on that.

12:34:39 17 MR. KELLER: All right, Your Honor. And I just,  
12:34:40 18 for the record, I think the truthful aspect is one that we've  
12:34:44 19 demonstrated through the testimony.

12:34:46 20 But in terms of acceptance, Your Honor, first of all  
12:34:50 21 it's defendant's burden to show by a preponderance that he  
12:34:52 22 actually warrants it. The language of the Plea Agreement is  
12:34:55 23 clear that he needs to continue to accept responsibility.  
12:34:58 24 And someone who simply answers a Plea Agreement does not  
12:35:01 25 automatically get it. But, here --

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App. 7a

ER0141

12:35:02 1 THE COURT: Right.

12:35:02 2 MR. KELLER: -- here, the defendant is doing  
12:35:05 3 two things. He's belittling his own conduct as to the actual  
12:35:09 4 offenses charged both as to Mr. Yenick and as to Mr. West,  
12:35:15 5 blaming it on the girlfriend in terms of why he prescribed  
12:35:19 6 after the mother begged him not to; why he disregarded  
12:35:22 7 Dr. Bartholomew's call, advising him a year earlier, hey,  
12:35:29 8 be careful; and why he says that 23,000, more than 23,000,  
12:35:33 9 Your Honor, 30-milligram oxycodone pills was somehow  
12:35:38 10 reasonable for the defendant to prescribe to Mr. West,  
12:35:40 11 and that he was taking all of them. That's -- he admitted  
12:35:43 12 that that was wrong in the Plea Agreement. But, now, he says,  
12:35:47 13 no, no, no, it was actually -- uh, it was reasonable. And I  
12:35:50 14 was manipulated. I was misled by a friendship. Your Honor,  
12:35:55 15 that's not accept --

12:35:56 16 THE COURT: Did he, at any point -- I don't  
12:35:58 17 recall seeing this in the proffer, where he admitted that  
12:36:02 18 he prescribed some of the medication to Mr. West not for a  
12:36:08 19 legitimate medical purpose. I don't see that.

12:36:10 20 MR. KELLER: I don't see that either, Your  
12:36:11 21 Honor, and so that's my concern. In any event, Your Honor,  
12:36:14 22 the calculation in the Plea Agreement as to the 23,000, is --  
12:36:19 23 that's, that's the question. It was the oxycodone 30  
12:36:22 24 milligrams, okay? For him to say, well, maybe he took -- I  
12:36:24 25 think he gave one to another patient -- I think he admitted

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App. 8a

ER0142

01:09:35 1 "Whether a defendant qualifies for a two-level reduction  
01:09:38 2 under Section 3E1.1(a) involves appropriate considerations of  
01:09:43 3 factors, including but not limited to whether defendant has  
01:09:48 4 truthfully admitted to relevant conduct comprising of the  
01:09:53 5 offenses of conviction, and whether -- and a defendant who  
01:10:00 6 falsely denies or frivolously contests relevant conduct  
01:10:05 7 that the Court determines to be true has acted in a manner  
01:10:08 8 inconsistent with acceptance of responsibility."

01:10:14 9 I do want to address one of Dr. Rand's arguments;  
01:10:14 10 and that is, he's already pled guilty. He admitted to the  
01:10:16 11 conduct that led me to find that there were, there was a  
01:10:21 12 factual basis supporting the guilty plea and, therefore, he  
01:10:27 13 satisfied the acceptance of responsibility requirements.  
01:10:30 14 But as Mr. Keller pointed out, Guideline Section 3E1.1,  
01:10:38 15 Application Note 3, provides, clearly, that "a defendant who  
01:10:41 16 enters a guilty plea is not entitled to an adjustment under  
01:10:45 17 this section as a matter of right if he's not demonstrated the  
01:10:49 18 other factors."

01:10:49 19 During the proffer, Dr. Rand did not admit that  
01:10:55 20 he prescribed some of the oxycodone to Mr. West not for a  
01:10:58 21 legitimate medical purpose, or not in the usual course of  
01:11:02 22 professional conduct. In fact, he stated the contrary; that  
01:11:05 23 he did not knowingly prescribe opiate medication. He told  
01:11:13 24 the government that without -- that he did not knowingly  
01:11:16 25 prescribe not for a legitimate medical purpose or not in the

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App. 9a

ER0163

01:11:20 1 usual course of professional conduct. He told the government  
01:11:21 2 that he believed Mr. West was trying to manipulate him. And  
01:11:24 3 that while Mr. West was, I quote, "getting huge amounts of  
01:11:29 4 medicine," unquote, he claims that he believes the amount of  
01:11:31 5 opiate medication prescribed was not unreasonable.

01:11:34 6 This amounts, to me, to not truthfully admitting  
01:11:39 7 the offense conduct for Count Two; or, at best, it amounts to  
01:11:43 8 frivolously contesting the relevant conduct.

01:11:47 9 So while Dr. Rand did admit to guilt with respect  
01:11:49 10 to Counts One and Two, he's not entitled to an adjustment  
01:11:53 11 as a matter of right. I find that he has not accepted  
01:11:58 12 responsibility under the Guideline, Section 3E1.1, and,  
01:12:02 13 therefore, is not entitled to the two point reduction under  
01:12:05 14 Section 3E1.1(a). And because he's not entitled to that  
01:12:09 15 reduction, he is not entitled to the additional one level  
01:12:11 16 reduction under Section 3E1.1(b). Therefore, I find that the  
01:12:17 17 Probation Office's Guideline calculation is incorrect and I'm  
01:12:21 18 adjusting the calculation.

01:12:24 19 Taking away the three levels for acceptance of  
01:12:29 20 responsibility, the total offense level is 31. And with a  
01:12:34 21 criminal history category of one, the guideline range calls  
01:12:37 22 for a sentence of between 108 to 135 months for Count Two.

01:12:44 23 There is a statutory maximum for Count One of  
01:12:48 24 96 months.

01:12:51 25 The guideline fine range is 30,000 to \$300,000 --

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App. 10a

ER0164

01:18:07 1 I had never had a full doctor -- had a family doctor which I  
01:18:12 2 would visit on a regular basis as I did with him. But looking  
01:18:16 3 back on it now, I realize a doctor should further examine a  
01:18:20 4 patient in pain and come up with a treatment plan, or refer  
01:18:24 5 a patient to an appropriate pain specialist for further  
01:18:30 6 treatment.

01:18:30 7 With how dangerous and addicting opioids can be,  
01:18:35 8 in my opinion, no one should be taking these pills unless  
01:18:38 9 absolutely necessary, and for as little time as necessary to  
01:18:41 10 avoid addiction. And I believe that a good doctor should not  
01:18:45 11 be prescribing a dangerous amount of pills on a month to month  
01:18:48 12 basis without some sort of treatment plan.

01:18:51 13 Thank you.

01:18:53 14 THE COURT: Thank you, Mr. Ahmad.

01:18:56 15 There is one thing I forgot to note earlier when I  
01:19:00 16 gave my ruling on the acceptance of responsibility under  
01:19:02 17 Section 3E1.1; and that is, that in the proffer statement,  
01:19:09 18 Dr. Rand indicated that he was concerned about potential  
01:19:16 19 overdose, which is why he prescribed Narcan for Mr. West. To  
01:19:21 20 me, that seemed inconsistent with the claim or the assertion  
01:19:26 21 that he didn't believe that the amount of opioids prescribed  
01:19:29 22 was unreasonable. Clearly, he was concerned enough about  
01:19:33 23 overdose to prescribe Narcan.

01:19:35 24 Mr. Keller.

01:19:37 25 MR. KELLER: All right. Your Honor, Mr. Steven

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App. 11a

ER0168

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I certify that the foregoing is a correct  
transcript from the record of proceedings  
in the above-entitled matter.

\s\ Kathryn M. French

December 8, 2017

KATHRYN M. FRENCH, RPR, CCR  
Official Reporter

DATE

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App. 12a

ER0259

## UNITED STATES DISTRICT COURT

District of Nevada

UNITED STATES OF AMERICA

v.

ROBERT GENE RAND

## JUDGMENT IN A CRIMINAL CASE

Case Number: 3:16-CR-29-MMD-WGC

USM Number: 23467-111

John Ohlson and Jack Fox  
Defendant's Attorneys

## THE DEFENDANT:

☒ pleaded guilty to counts 1 and 2 of the superseding information.☐ 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:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC §1112(a)	Involuntary Manslaughter	9/30/2015	1
21 USC §§841(a)(1), 841(b)(1) (C) and 21 CFR §1306.04	Distribution of a Controlled Substance (Oxycodone)	4/30/2016	2

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

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_☒ Count(s) Indictment and Superseding 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.

11/20/2017

Date of Imposition of Judgment



Signature of Judge

MIRANDA M. DU, U.S. DISTRICT JUDGE

Name and Title of Judge

November 21, 2017

Date

DEFENDANT: ROBERT GENE RAND  
CASE NUMBER: 3:16-CR-29-MMD-WGC

### IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: 120 months (96 months as to Count 1; 120 months as to Count 2; to be served concurrently.)

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

FCI Herlong, CA.

☒ 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 \_\_\_\_\_

a \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

\_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL



DEFENDANT: ROBERT GENE RAND  
CASE NUMBER: 3:16-CR-29-MMD-WGC

### SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: 3 years as to each count, 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, not to exceed 104 tests annually.  
☒ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☒ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (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, or 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)*
8. You must pay the assessment imposed in accordance with 18 U.S.C. § 3013.
9. If this judgment imposes a fine, you must pay in accordance with the Schedule of Payments sheet of this judgment.
10. You must notify the court of any material change in your economic circumstances that might affect your ability to pay restitution, fines, or special assessments.

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: ROBERT GENE RAND  
CASE NUMBER: 3:16-CR-29-MMD-WGC

### 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 nunchukus 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 User Only

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

Defendant's signature \_\_\_\_\_

Date \_\_\_\_\_

DEFENDANT: ROBERT GENE RAND  
CASE NUMBER: 3:16-CR-29-MMD-WGC

### **SPECIAL CONDITIONS OF SUPERVISION**

1. You must provide the probation officer access to any requested financial information and authorize the release of any financial information. The probation office will share financial information with the U.S. Attorney's Office.
2. If the judgment imposes a financial penalty, you must pay the financial penalty 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 the ability to pay this financial penalty.
3. You must not engage in an occupation, business, or profession, or volunteer activity that would require or enable you to work in the medical profession without the prior approval of the probation officer. You are further prohibited from working or engaging in any business or activities involving the prescribing of medication.
4. You must complete 200 hours of community service within 12 months. The probation officer will supervise the participation in the program by approving the program (agency, location, frequency of participation, etc.). You must provide written verification of completed hours to the probation officer.
5. 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 a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition.

The probation officer may conduct a search under this condition only when reasonable suspicion exists that you have violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

6. You must not communicate, or otherwise interact, with the victim's immediate family or any codefendant, either directly or through someone else, without first obtaining the permission of the probation office.

DEFENDANT: ROBERT GENE RAND  
CASE NUMBER: 3:16-CR-29-MMD-WGC

### CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$ 200.00	\$	\$25,000.00	\$11,960.00

☐ 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>
The Yenick family		11,960.00	

**TOTALS** \$ \_\_\_\_\_ \$ 11,960.00

☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☒ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* 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: ROBERT GENE RAND  
CASE NUMBER: 3:16-CR-29-MMD-WGC

### 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 \$ 37,160.00 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 \_\_\_\_\_ (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:  
Any unpaid balance must be paid at a monthly rate of not less than 10% of any income earned during incarcerations and/or gross income while on supervision, subject to adjustment by the Court based upon ability to pay.

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:

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 A assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.