

APPENDIX

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

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: July 27, 2018

Mr. C. William Swinford Jr.
Law Offices
271 W. Short Street
Suite 200
Lexington, KY 40507

Re: Case No. 18-5760, *USA v. Jordan Combs*
Originating Case No. : 5:17-cr-00031-1

Dear Counsel,

This appeal has been docketed as case number **18-5760** with the caption that is enclosed on a separate page.

As defendant's trial counsel, your appointment under the Criminal Justice Act is extended automatically pursuant to Sixth Circuit Rule 12(c)(2). **This letter serves as your authorization to order any transcript which you deem necessary for the appeal.** Even if the defendant filed the notice of appeal, Sixth Circuit Rule 12(c)(1) requires that counsel continue representation on appeal until specifically relieved by this Court.

Before preparing any documents to be filed, counsel are strongly encouraged to read the Sixth Circuit Rules at www.ca6.uscourts.gov. If you have not established a PACER account and registered with this court as an ECF filer, you should do so immediately. Your password for district court filings will not work in the appellate ECF system.

At this stage of the appeal, the following forms should be downloaded from the web site and filed with the Clerk's office by **August 10, 2018**. Additionally, the transcript order must be completed by that date.

NOTE: Effective July 18, 2016, all attorneys must order transcript for appeal by using the CM/ECF docket entries. The transcript order form used prior to that date will not be accepted after July 18. For further information and instructions on ordering transcript electronically, please visit the court's website.

Appellant: Appearance of Counsel
Application for Admission to 6th Circuit Bar (if applicable)

Appellee: Appearance of Counsel
Application for Admission to 6th Circuit Bar (if applicable)

More specific instructions are printed on each form. If the filing fee for the appeal is due because the appellant is not indigent, it must be paid to the District Court by **August 10, 2018**. These deadlines are important -- if the initial forms are not timely filed or the filing fee is due but not paid, the appeal will be dismissed for want of prosecution.

If you have questions after reviewing the forms and the rules, please contact the Clerk's office for assistance.

Sincerely yours,

s/Ryan E. Orme
Case Manager
Direct Dial No. 513-564-7079

cc: Mr. David A. Marye

Enclosure

UNITED STATES DISTRICT COURT

SEP 05 2018

Eastern District of Kentucky – Central Division at Lexington

UNITED STATES OF AMERICA

V.

Jordan Combs

Date of Original Judgment: July 23, 2018
(Or Date of Last Amended Judgment)

Reason for Amendment:

- ☐ Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
☐ Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
☐ Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
☐ Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 5:17-CR-31-S-KKC
USM Number: 21432-032

C William Swinford
Defendant's Attorney

- ☐ Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
☐ Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
☐ Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
☐ Direct Motion to District Court Pursuant ☐ 28 U.S.C. § 2255 or ☐ 18 U.S.C. § 3559(c)(7)
☒ Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

- ☐ pleaded guilty to count(s) _____
☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.
☒ was found guilty on count(s) 1s – 20s
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18:2252(a)(2)	Receipt of Child Pornography	06/07/2010	1s
18:2252(a)(2)	Receipt of Child Pornography	08/22/2010	2s
18:2252(a)(2)	Receipt of Child Pornography	01/09/2011	3s
18:2252(a)(2)	Receipt of Child Pornography	01/12/2011	4s
18:2252(a)(2)	Receipt of Child Pornography	01/25/2011	5s
18:2252(a)(2)	Receipt of Child Pornography	08/27/2012	6s

The defendant is sentenced as provided in pages 2 through 9 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) _____ Original 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.

August 30, 2018

Date of Imposition of Judgment

Karen K. Caldwell
Signature of Judge

Honorable Karen K. Caldwell, Chief U.S. District Judge

Name and Title of Judge

9/5/18
Date

DEFENDANT: Jordan Combs
CASE NUMBER: 5:17-CR-31-S-KKC

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18:2252(a)(2)	Receipt of Child Pornography	April 21, 2013	7s
18:2251(a)	Production of Child Pornography	December 8, 2013	8s
18:2252(a)(2)	Distribution of Child Pornography	December 8, 2013	9s
18:2251(a)	Production of Child Pornography	December 11, 2013	10s
18:2252(a)(2)	Distribution of Child Pornography	December 11, 2013	11s
18:2251(a)	Production of Child Pornography	December 12, 2013	12s
18:2252(a)(2)	Distribution of Child Pornography	December 12, 2013	13s
18:2251(a)	Production of Child Pornography	December 13, 2013	14s
18:2252(a)(2)	Distribution of Child Pornography	December 13, 2013	15s
18:2252(a)(2)	Receipt of Child Pornography	January 28, 2014	16s
18:2252(a)(2)	Receipt of Child Pornography	March 2, 2015	17s
18:2252(a)(2)	Receipt of Child Pornography	November 10, 2015	18s
18:2252(a)(2)	Distribution of Child Pornography	January 20, 2016	19s
18:2252(a)(4)(B)	Possession of Child Pornography	March 10, 2016	20s

DEFENDANT: Jordan Combs
CASE NUMBER: 5:17-CR-31-S-KKC

IMPRISONMENT

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

Two Hundred Forty (240) Months on Counts 1s-7s, 9s, 11s, 13s, and 15s-19s; Three Hundred Sixty (360) Months on Counts 8s, 10s, 12s, and 14s; One Hundred Twenty (120) Months on Count 20s, all counts to run concurrently with each other, FOR A TOTAL TERM OF THREE HUNDRED SIXTY (360) MONTHS

☒ The court makes the following recommendations to the Bureau of Prisons:
It is recommended to the Bureau of Prisons that the defendant participate in a sex offender treatment program.
It is recommended to the Bureau of Prisons that the defendant be designated to a facility closest to his home in Nicholasville, Kentucky.

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

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____
☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____
☐ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____ with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Jordan Combs
CASE NUMBER: 5:17-CR-31-S-KKC

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

LIFE on all counts to run concurrently, for a TOTAL TERM OF LIFE

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☒ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(Check, if applicable.)*
4. ☒ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(Check, if applicable.)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where 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: Jordan Combs
CASE NUMBER: 5:17-CR-31-S-KKC

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: Jordan Combs
CASE NUMBER: 5:17-CR-31-S-KKC

SPECIAL CONDITIONS OF SUPERVISION

Sex Offender Treatment

You must participate in a program for treatment of mental health/sexual disorders; must undergo a sex offender risk assessment, psychosexual evaluation and/or other evaluation as needed; must be subject to periodic polygraph examinations and/or Computer Voice Stress Analysis (CVSA) testing, at the discretion and direction of the probation officer; and, must follow the rules and regulations of the sex offender treatment program as implemented by the probation office.

Residence Restriction

Your residence and employment must be pre-approved by the probation officer and in compliance with state and local law.

Restricted Contact with Minors

You must not frequent, volunteer, or work at places where children under the age of 18 congregate (e.g., playgrounds, parks, day-care centers, public swimming pools, youth centers, video arcade facilities) unless approved by the probation officer, and must have no contact with victims.

You must not associate or have verbal, written, telephonic, or electronic communication with any person under the age of 18 without the permission of the probation officer. This provision does not encompass persons under the age of 18 such as ticket vendors, cashiers, waiters, etc., with whom you must deal in order to obtain ordinary and usual commercial services.

Restricted Materials

You must not possess, view, listen to, or go to locations where any form of pornography, sexually stimulating performances, or sexually oriented material, items, or services are available.

You must not possess or use a device capable of creating pictures or video, without the approval of the probation officer.

Restricted Access

You must not rent or use a post office box or storage facility without the approval of the probation officer.

Sex Offender Registration

You must register as a sex offender as prescribed by state law.

Computer Restrictions

You must not possess or use a computer or any device with access to any "on-line computer service" at any location (including place of employment) without the prior written approval of the probation officer. This includes any Internet Service provider, bulletin board system, or any other public or private network or e-mail system.

You must consent to the U.S. Probation Office conducting unannounced examinations of your computer system(s) and internal/external storage devices, which may include retrieval and copying of all memory from hardware/software and/or removal of such system(s) for the purpose of conducting a more thorough inspection and will consent to having installed on your computer(s), any hardware/software to monitor your computer use or prevent access to particular materials, and to consent to periodic inspection of any such installed hardware/software to insure it is functioning properly.

You must provide the U.S. Probation Office with accurate information about your entire computer system (hardware/software) and internal/external storage devices; all passwords used by you; and will abide by all rules of the computer Restriction and Monitoring Program.

Search/Seizure

You must submit your person, residence, office, vehicle, or any property under your control to a search conducted by the United States Probation Office, at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation of supervision. You must inform any other residents that the premises may be subject to searches pursuant to this condition.

DEFENDANT: Jordan Combs
CASE NUMBER: 5:17-CR-31-S-KKC

ADDITIONAL SPECIAL CONDITIONS OF SUPERVISION

Financial Disclosure

You must provide the probation officer with access to any requested financial information. This special condition for financial disclosure is recommended as a means to allow the U.S. Probation Office to monitor purchases of electronic and/or peripheral devices, as well as any internet service either subscribed to or accessed by you (e.g., amount paid for internet services exceeds amount approved by the Probation Office, you have purchased more electronic devices than you claim to possess.)

DEFENDANT: Jordan Combs
CASE NUMBER: 5:17-CR-31-S-KKC

CRIMINAL MONETARY PENALTIES

The defendant must pay the following 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>
TOTALS	\$ 2,000.00	\$ 0.00	\$ Waived	\$ 3,000.00*

☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

☒ *The defendant shall 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>
Deborah A. Bianco P.S. 14535 Bellevue-Redmond Rd. Ste. 201 Bellevue, WA 98007		\$3,000.00	

TOTALS	\$ _____	\$ 3,000.00*
--------	----------	--------------

☐ 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 ☐ 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: Jordan Combs
CASE NUMBER: 5:17-CR-31-S-KKC

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A ☒ Lump sum payment of \$ 5,000.00* 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, ☐ 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:
Criminal monetary penalties are payable to:
Clerk, U. S. District Court, Eastern District of Kentucky
101 Barr Street, Room 206, Lexington KY 40507

INCLUDE CASE NUMBER WITH ALL CORRESPONDENCE

The defendant shall participate in the Bureau of Prisons' Inmate Financial Responsibility Program.

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

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

- ☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), 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:
As listed in the Forfeiture Allegation of the Superseding Indictment.

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.

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 18-5760

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jun 20, 2019
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

V.

JORDAN COMBS,

Defendant-Appellant.

) ON APPEAL FROM THE UNITED
) STATES DISTRICT COURT FOR
) THE EASTERN DISTRICT OF
) KENTUCKY

O R D E R

Before: SUHRHEINRICH, GIBBONS, and WHITE, Circuit Judges.

Jordan Combs, a federal prisoner, appeals his conviction, arguing that there was insufficient evidence to support his conviction for possession of child pornography and one of his convictions for production of child pornography. The parties have waived oral argument, and this panel unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

Combs was sentenced to 360 months of imprisonment after being convicted by a jury of ten counts of receipt of child pornography, four counts of production of child pornography, five counts of distribution of child pornography, and one count of possession of child pornography. After the government presented its case-in-chief, Combs moved for a judgment of acquittal on one of his production charges and on one of his distribution charges. The district court reserved ruling on the motion for a judgment of acquittal pending presentation of Combs's defense. After presenting his defense, Combs renewed the motion for a judgment of acquittal, asserting that all

No. 18-5760

- 2 -

of his distribution charges should be dismissed because the government failed to show that the videos were distributed across state lines. The district court denied the motion for a judgment of acquittal because there was sufficient evidence upon which a reasonable jury could return a verdict of guilty. Combs then filed a motion for a new trial, a second motion for judgment of acquittal, and a supplement, which the district court denied. On appeal, Combs argues that the district court erred in denying his motion for a new trial and in denying his motion for a judgment of acquittal as to one of his production charges.

Combs argues that the district court erred in denying his motion for a new trial because his convictions for receipt and possession of child pornography violate the Double Jeopardy Clause. We review a district court's denial of a motion for a new trial for an abuse of discretion. *United States v. Farrad*, 895 F.3d 859, 885 (6th Cir.), *cert. denied*, 139 S. Ct. 651 (2018). A motion for a new trial based on any ground other than newly discovered evidence must be filed within fourteen days of the guilty verdict. Fed. R. Crim. P. 33(b)(2). Because the double-jeopardy claim was not raised within fourteen days of the jury verdict and does not rely on newly discovered evidence, the district court did not abuse its discretion in denying this claim. Moreover, Combs's argument fails on the merits. At trial, the government presented evidence of separate conduct underlying the possession count. The possession count (Count 20) charged Combs with possessing child pornography on or about March 20, 2016; a video with a file date of March 20, 2016 was played for the jury, and the government's expert narrated its contents. (R. 126, PageID 881.)

Combs argues that the district court erred in denying his motion for a judgment of acquittal as to one of his production charges. However, because Combs failed to raise this claim in his renewed motion for a judgment of acquittal made after the presentation of his defense, he has forfeited this claim "absent a showing of a manifest miscarriage of justice." *See United States v. Roberge*, 565 F.3d 1005, 1008 (6th Cir. 2009). "A miscarriage of justice exists only if the record is devoid of evidence pointing to guilt." *United States v. Tragas*, 727 F.3d 610, 618 (6th Cir. 2013) (quoting *Roberge*, 565 F.3d at 1008). Section 2251(a) prohibits the use of "any minor to engage in . . . any sexually explicit conduct [which includes the "lascivious exhibition of the anus, genitals, or pubic area of any person"] for the purpose of producing any visual depiction of such conduct."

No. 18-5760

- 3 -

18 U.S.C. §§ 2251(a) and 2256(2)(A)(v). The evidence in this case included video showing an adult man pleasuring himself while he was video-chatting with two young women. While Combs asserts that the government failed to show that he was the man pleasuring himself in the video, Combs admitted on direct- and cross-examination that he was the man depicted in the video. Additionally, while the government was unable to identify the precise age of the young women who appeared in the video, at least one of the young women stated through chat that she was under eighteen years old. Because the record is not devoid of evidence pointing to Combs's guilt, the district court did not create a manifest miscarriage of justice in denying the motion for a judgment of acquittal as to this claim.

For the foregoing reasons, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", is written over a horizontal line.

Deborah S. Hunt, Clerk