

APPENDIX

A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-10726
Non-Argument Calendar

D.C. Docket No. 8:18-cr-00350-SDM-JSS-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SAVANNAH ROLLE,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida

(March 26, 2020)

Before WILLIAM PRYOR, JILL PRYOR, and ANDERSON, Circuit Judges.

PER CURIAM:

Savannah Rolle appeals his convictions and 120-month sentence for possession of a firearm by a convicted felon on two grounds. First, as to his conviction itself, he argues that the district court plainly erred by failing to inform him that the government had to prove that he knew he was convicted of a crime punishable by more than one year before accepting his guilty plea, as the Supreme Court required in *Rehaif v. United States*, __ U.S. __, 139 S. Ct. 2191 (2019). Second, as to his sentence, he argues that the district court erred in finding that he did not qualify for a reduction in his offense level for acceptance of responsibility when it found that his case was not “extraordinary” under application note 4 to § U.S.S.G. § 3E1.1. We affirm on both grounds and address each in turn.

I. ROLLE’S GUILTY PLEA

Rolle argues that the district court plainly erred by accepting his guilty plea when he had not been properly apprised of the elements of the offense with which he was charged. We review the constitutionality of a guilty plea and a Rule 11 violation for plain error when the objection is raised for the first time on appeal. *United States v. Moriarty*, 429 F.3d 1012, 1018–19 (11th Cir. 2005). Under plain error review, the defendant has the burden to show that: (1) an error occurred; (2) the error was plain; and (3) the error affects substantial rights. *United States v. Monroe*, 353 F.3d 1346, 1349 (11th Cir. 2003). If the first three prongs of plain error are met, we may exercise our discretion to review the error, but only if the

error seriously affects the fairness, integrity, or public reputation of judicial proceedings. *Id.*

The district court must satisfy the three core objectives of Federal Rule of Criminal Procedure 11 when conducting a plea colloquy. *See Fed. R. Crim. P. 11(b)(1)(G).* Rule 11 requires that a district court determine that: (1) the guilty plea is free from coercion; (2) the defendant understands the nature of the charges; and (3) the defendant knows and understands the consequences of his guilty plea. *United States v. Zickert*, 955 F.2d 665, 668 (11th Cir. 1992). Rule 11 does not require a district court to list the elements of an offense. *United States v. Presendieu*, 880 F.3d 1228, 1238 (11th Cir. 2018); *see Fed. R. Crim. P. 11(b)(1)(G).*

In *United States v. Quinones*, we held that, when the district court failed to ensure that the defendant understood the nature of the charge against him, the failure was plain error and violated the defendant's substantial rights. 97 F.3d 473, 475 (11th Cir. 1996), *abrogated on other grounds by United States v. Vonn*, 535 U.S. 55, 74–75 (2002)). *Quinones* was later abrogated in part by the Supreme Court in *Vonn*, which held that it was improper to limit the analysis of whether a Rule 11 error occurred or resulted in prejudice by reviewing only the plea colloquy transcript and that, instead, the “reviewing court may consult the whole record

when considering the effect of any error on substantial rights.” *See Vonn*, 535 U.S. at 74–75.

The Supreme Court later provided in *United States v. Dominguez Benitez* a standard for determining whether a defendant has shown whether a plain error under Rule 11 affected his substantial rights. 542 U.S. 74, 81 (2004). The Supreme Court held that a defendant seeking a reversal of his conviction on the ground that the district court committed plain error under Rule 11 in accepting his guilty plea must show a “reasonable probability that, but for the error, he would not have entered the plea.” *Id.* at 83. The Court also held that the defendant “must satisfy the judgment of the reviewing court, informed by the entire record, that the probability of a different result is sufficient to undermine confidence in the outcome of the proceeding.” *Id.* (quotation omitted). We applied *Dominguez Benitez* and held that when a district court plainly errs by failing to ensure that a defendant understood the nature of the charges against him, to warrant relief under plain error review, the defendant still must show a reasonable probability that he would not have entered a guilty plea but for the error. *Presendieu*, 880 F.3d. at 1239, 1239 n.3 (holding that the defendant did not make this showing because he had not cited any evidence indicating that he otherwise would not have pled guilty).

It is unlawful for a person “who has been convicted in any court of[] a crime punishable by imprisonment for a term exceeding one year” to “knowingly” possess a firearm or ammunition. 18 U.S.C. § 922(g)(1). In *Rehaif v. United States*, the Supreme Court held that “in a prosecution under 18 U.S.C. § 922(g) and § 924(a)(2), the government must prove both that the defendant knew he possessed a firearm and that he knew he belonged to the relevant category of persons barred from possessing a firearm” when he possessed it. 139 S. Ct. 2191, 2200 (2019).

In *United States v. Reed*, we affirmed Reed’s conviction for possessing a firearm as a felon under section 922(g)(1) after the Supreme Court’s decision in *Rehaif*. 941 F.3d 1018, 1022 (11th Cir. 2019). We acknowledged that Reed established errors in his indictment and at trial that *Rehaif* made plain. *Rehaif* made clear that the government must prove that a defendant knew of his status as a person barred from possessing a gun. The government conceded that error occurred when Reed’s indictment failed to allege that he knew he was a felon and when the jury was not instructed to find that Reed knew he was a felon, and conceded that *Rehaif* made that error plain. *Id.* at 1021.

Nevertheless, we concluded that Reed could not show a reasonable probability that the outcome of his trial would have been different had the knowledge requirement been included. *Id.* We opined that to properly evaluate Reed’s claims of error, we had to view them against the entire record. *Id.*

Specifically, we noted that the record showed that: (1) Reed had been convicted of 8 felonies in state court at the time of his arrest for firearm possession; (2) Reed stipulated prior to trial that he had previously been convicted of a felony and had never had his right to possess a firearm restored; (3) Reed acknowledged during his trial testimony that he knew he was not supposed to have a gun; and (4) the PSI stated that he had been incarcerated for 18 years prior to the firearm possession, which Reed did not dispute. *Id.* at 1021–22. We held that, because the record established that Reed knew he was a felon, he failed to show that the errors affected his substantial rights or the fairness, integrity, or public reputation of his trial. *Id.* at 1022.

We note, as a threshold matter, that Rolle did not challenge the validity of his guilty plea before the district court and therefore, as he concedes, his challenge is subject to review for plain error. *See Moriarty*, 429 F.3d at 1018–19. We conclude here, as we did in *Reed*, that Rolle “has established errors . . . at his trial that *Rehaif* made plain.” 941 F.3d at 1021; *see Rehaif*, 139 S. Ct. at 2200. Rolle next has to show a “reasonable probability that, but for the error, he would not have entered the [guilty] plea.” *See Dominguez Benitez*, 542 U.S. at 83.

Rolle has not met this burden. He does not even argue—much less show—that he would not have pleaded guilty had he known that the government was required to prove that he knew that he was a convicted felon. Moreover, in light of

the entire record, it seems rather unlikely that Rolle would have changed his guilty plea with this information.

First, in his sentencing memorandum and at sentencing, Rolle admitted to having previously served a sentence of 36 months—which shows that, at the time he possessed the gun, he objectively and subjectively knew that he had been convicted in any court of a crime punishable by imprisonment for a term exceeding one year. *See* 18 U.S.C. § 922(g)(1). Second, Rolle pleaded guilty to the indictment, which included five separate convictions that were described as felonies in the § 922(g) count. Third, though Rolle structured his guilty plea such that he only pleaded guilty to the essential elements of the crime, he affirmed to the district court that he was not contesting that he was a convicted felon. Fourth, Rolle did not object to the PSI’s description of the five felony convictions that the government included in the indictment.¹ Fifth, and finally, the fact that Rolle, while fleeing from a Florida police officer, threw his gun onto the roof of a nearby house lends itself to a reasonable inference that he knew that his status as a felon meant that he was not allowed to possess a gun. Accordingly, the argument that Rolle would have pleaded not guilty but for the plain error is as weak here as it was in *Reed*, where the defendant had been convicted of multiple felony convictions in

¹ As we explained in *United States v. Wade*, “[i]t is the law of this circuit that a failure to object to allegations of fact in a PSI,” like a list of felony convictions, “admits those facts for sentencing purposes.” 458 F.3d 1273, 1277 (11th Cir. 2006).

state court, stipulated that he was a felon, and testified that he knew he was not supposed to have a gun. 941 F.3d at 1021–22.

Accordingly, Rolle has thus failed to carry his burden under plain error review of showing that any plain error affected his substantial rights. *See Dominguez Benitez*, 542 U.S. at 83; *Presendieu*, 880 F.3d. at 1239, 1239 n.3.

II. ACCEPTANCE OF RESPONSIBILITY REDUCTION

Rolle’s second argument is that the district court erred by refusing to grant him a reduction in his sentence for acceptance of responsibility under § 3E1.1. In reviewing the district court’s application of the Sentencing Guidelines, we review its legal interpretation of the Guidelines *de novo*, *United States v. Coe*, 79 F.3d 126, 127 (11th Cir. 1996), and the factual findings upon which its determinations are made for clear error. *See Moriarty*, 429 F.3d at 1022–23. Because the sentencing judge is in a unique position to evaluate a defendant’s acceptance of responsibility, the determination of the sentencing judge is “entitled to great deference on review.” U.S.S.G. § 3E1.1, cmt. n.5. To find the district court’s decision clearly erroneous, we must have a “definite and firm conviction that a mistake was committed.” *United States v. Rothenberg*, 610 F.3d 621, 624 (11th Cir. 2010) (quotation omitted). The district court’s decision on the acceptance of responsibility reduction will not be overturned unless the facts in the record clearly establish that the defendant actually accepted personal responsibility. *United*

States v. Sawyer, 180 F.3d 1319, 1323 (11th Cir. 1999). The defendant bears the burden of proving he clearly accepted responsibility. *Id.*

A defendant is entitled to a two-level reduction in his offense level if he clearly demonstrates acceptance of responsibility. U.S.S.G. § 3E1.1(a). With respect to obstruction of justice enhancements, the commentary to § 3E1.1 states that:

Conduct resulting in an enhancement under § 3C1.1 (Obstructing or Impeding the Administration of Justice) ordinarily indicates that the defendant has not accepted responsibility for his criminal conduct. There may, however, be extraordinary cases in which adjustments under both §§ 3C1.1 and 3E1.1 may apply.

U.S.S.G. § 3E1.1, comment. (n.4). “A defendant who enters a guilty plea is not entitled to an adjustment under this section as a matter of right.” *Id.* cmt. n.3. Indeed, more than a guilty plea is required to warrant the reduction for acceptance of responsibility. *See United States v. Wright*, 862 F.3d 1265, 1279 (11th Cir. 2006). The entry of a guilty plea combined with a truthful admission of the conduct comprising the offense charged constitutes significant evidence of acceptance of responsibility. U.S.S.G. § 3E1.1, cmt. n.3. But those acts may be outweighed by conduct that is inconsistent with acceptance of responsibility.

United States v. Wade, 458 F.3d 1273, 1279 (11th Cir. 2006).

While a district court has broad discretion to grant or deny a reduction for acceptance of responsibility, the court errs if it believes it does not have the

authority to grant the reduction. *United States v. Mathews*, 874 F.3d 698, 709 (11th Cir. 2017). We remanded a case for resentencing when we determined that the district court erroneously believed that a defendant's failed drug test meant that, as a matter of law, it did not have the authority to grant the acceptance of responsibility adjustment. *Id.*

As an initial matter, the district court's determination that Rolle was not entitled to an acceptance of responsibility reduction should be reviewed for clear error only. Rolle's argument that he is entitled to *de novo* review fails because he inaccurately asserts that he is challenging the district court's interpretation and application of the Guidelines. As a practical matter, Rolle is *solely* challenging the district court's factual finding—not its *legal* interpretation of the applicable Guidelines. Accordingly, Rolle must show that the district court clearly erred in finding that he had not accepted responsibility for his conduct and his circumstances were not extraordinary.

It was not clear error for the district court to find that Rolle's conduct that led to the obstruction of justice enhancement—his failure to appear at a show cause hearing regarding his multiple pretrial violations—outweighed his admission of guilt and was inconsistent with an acceptance of responsibility adjustment. *See Wade*, 458 F.3d at 1279. Accordingly, the district court did not clearly err in

finding that Rolle's case was not extraordinary and denying Rolle a reduction for acceptance of responsibility.

AFFIRMED.

B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

vs.

JUDGMENT IN A CRIMINAL CASE

CASE NUMBER: 8:18-cr-350-T-23JSS
USM NUMBER: 70827-018

SAVANNAH ROLLE

Defendant's Attorney: Kathleen Sweeney, AFD

The defendant pleaded guilty to count one of the indictment.

The defendant is adjudicated guilty of this offense:

<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
18 U.S.C. § 922(g)(1)	Felon in possession of a firearm	June 26, 2018	One
18 U.S.C. § 924(a)(2)			

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

The defendant must notify the United States attorney for this district within thirty 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 the United States attorney of any material changes in his economic circumstances.

Date of Imposition of Judgment: February 25, 2019


 STEVEN D. MERRYDAY
 UNITED STATES DISTRICT JUDGE

February 25th, 2019

Defendant: SAVANNAH ROLLE
Case No.: 8:18-cr-350-T-23JSS

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IMPRISONMENT

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

The court recommends confinement at FCI Coleman, Florida, and participation in UNICOR and the residential drug abuse program (RDAP).

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: SAVANNAH ROLLE
Case No.: 8:18-cr-350-T-23JSSJudgment - Page 3 of 7**SUPERVISED RELEASE**

Upon release from imprisonment, you will be on supervised release for a term of **thirty-six months**.

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 courts 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 which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ____ You must participate in an approval 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: SAVANNAH ROLLE
Case No.: 8:18-cr-350-T-23JSSJudgment - Page 4 of 7**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 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. I understand additional information regarding these conditions is available at the www.uscourts.gov.

Defendant's Signature _____ Date _____

Defendant: SAVANNAH ROLLE
Case No.: 8:18-cr-350-T-23JSS

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SPECIAL CONDITION OF SUPERVISION

The defendant must participate in a substance abuse program, follow the probation officer's instructions with respect to the program, contribute to the cost of the program in accord with the applicable sliding scale, and submit to random drug testing.

Defendant: SAVANNAH ROLLE
Case No.: 8:18-cr-350-T-23JSSJudgment - Page 6 of 7**CRIMINAL MONETARY PENALTIES**

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

<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTAL	\$100	n/a	waived

- 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>
TOTALS			

- Restitution amount ordered pursuant to plea agreement \$ _____.
- The defendant must pay interest on a fine or restitution 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 7 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 the offenses committed on or after September 13, 1994, but before April 23, 1996.

Defendant: SAVANNAH ROLLE
Case No.: 8:18-cr-350-T-23JSSJudgment - Page 7 of 7

SCHEDULE OF PAYMENTS

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

A. Lump sum payment of \$100 due immediately

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 _____ days (*e.g., thirty or sixty 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. thirty or sixty days*) after release from imprisonment to a term of supervision; or

E. Payment during the term of supervised release will commence within _____ (*e.g., thirty or sixty 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 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

- 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:

The preliminary order of forfeiture (Doc. 35) is final and incorporated into this judgment.

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

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 8:18-cr-350-T-23JSS

SAVANNAH ROLLE

PRELIMINARY ORDER OF FORFEITURE

Savannah Rolle pleaded guilty to, and was adjudged guilty of, the offense charged in count one of the indictment — a violation of 18 U.S.C. § 922(g)(1).

The United States moves (Doc. 34) under 18 U.S.C. § 924(d)(1), 28 U.S.C. § 2461(c), and Rule 32.2(b)(2), Federal Rules of Criminal Procedure, for a preliminary order forfeiting Rolle's interest in a 9-millimeter Glock 17 pistol, serial number BFKU991, and 16 rounds of 9-millimeter ammunition.

The United States has established the requisite connection between the firearm and the ammunition and the offense charged in count one of the indictment. Because the United States is entitled to possession of the firearm and the ammunition, the motion is **GRANTED**. Rolle's interest in the firearm and the ammunition is condemned and forfeited to the United States for disposition according to law, subject to the provisions of 21 U.S.C. § 853(n), as incorporated by 28 U.S.C. § 2461(c).

Jurisdiction is retained to the extent necessary to complete the forfeiture and disposition of the firearm and ammunition.

ORDERED in Tampa, Florida, on November 13, 2018.



STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE