

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ANDRES KEYON ROMAN,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

PETITION FOR WRIT OF CERTIORARI
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Respectfully submitted,

Steve Hershberger, Attorney at Law
Texas State Bar # 09543950
600 No. Marienfeld St., Ste 1035
432-570-4014

Attorney for Petitioner

QUESTION PRESENTED FOR REVIEW

Whether the District Court denied the Petitioner's constitutional right to substantive due process under the Fourth Amendment in this narcotics case by the denying a motion to suppression on a warrantless vehicle search by permitting the collective knowledge of the officers to create reasonable suspicion.

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IN THE SUPREME COURT OF THE UNITED STATES

ANDRES KEYON ROMAN,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

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

TO THE HONORABLE JUSTICES OF THE UNITED STATES SUPREME COURT:

The Petitioner, ANDRES KEYON ROMAN, Appellant in the United States Court of Appeals for the Fifth Circuit in Case No. 19-50943 and the Defendant in Case No. MO-19-CR-086, submits this Petition for Writ of Certiorari and respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered on July 29, 2020.

OPINION BELOW

On July 29, 2020, the United States Court of Appeals for the Fifth Circuit entered its Opinion affirming the sentence returned against Petitioner. A copy of the Opinion is attached as Appendix A.

The District Court's Criminal Judgment is attached as Appendix B.

JURISDICTION

Jurisdiction of this Court is invoked under Title 28, United States Code sec. 1254(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fifth Amendment to the United States Constitution states, in pertinent part to the case *sub judice*:

No person...shall be deprived of life, liberty, or property, without due process of law...

STATEMENT OF THE CASE

The Government obtained a single-count indictment against Petitioner, alleging that he possessed with intent to distribute five grams or more of actual methamphetamine in violation of 21 U.S.C. Sec. 841. Specifically, the Government alleged that on or about April 29, 2019, Petitioner and one Rosanne Marie Isham intentionally and knowingly possessed with intent to distribute a controlled substance which involved five grams or more of actual methamphetamine (ROA. 19).

Petitioner entered a plea of "not guilty" in the United States District Court for the Western District of Texas (ROA.23). Petitioner, thereafter, filed a motion to suppress, contending that the Indictment was premised on a warrantless vehicle stop, not premised on probable cause (ROA. 27-33).

On or about June 21, 2019, the Hon. David Counts, United States District Judge, Western District of Texas, heard both the motion to suppress and conducted a bench trial. The District Court denied the motion to suppress and found Petitioner guilty. Petitioner was subsequently

sentenced to 140 months incarceration and five years of supervised release, among other things (ROA.57).

Petitioner appealed to the United States Court of Appeals, for the Fifth Circuit. On or about July 27, 2020, the United States Court of Appeals affirmed the conviction of the District Court, the United States District Court for the Western District of Texas.

REASON FOR GRANTING THE WRIT

The District Court erred, as a matter of law, by denying the Motion to Suppress filed by Petitioner/Appellant in this warrantless vehicle search case.

A warrantless search is presumptively unreasonable unless it falls within an exception to the Fourth Amendment warrant requirement. United States v. Karo, 468 U.S. 705, 717 (1984).

One exception permits police to search a car if the police have probable cause to believe it contains contraband or evidence of a crime. Florida v. White, 526 U.S. 559 (1999).

Police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supportable by articulable facts that criminal activity “may be a foot” even if the officer lacks probable cause. United States v. Sokolow, 490 U.S. 1 (1989); Terry v. Ohio, 390 U.S. 1, 30 (1968). To fall within the limited exception to the usual probable cause requirement, an investigative detention on Terry must be carefully tailored to its underlying justification. Florida v. Royer, 460 U.S. 491, 498 (1983). Whether any particular stop is reasonable varies with the facts on the ground. Id.

In general, litigants are entitled to a fair adjudication based solely on the evidence adduced at a trial or sentencing hearing. Jordan v. Massachusetts, 225 U.S. 167, 176 (1912); Smith v. Phillips, 455 U.S. 209, 217 (1982). Further, the United States Supreme Court has recognized that

due process implies a tribunal both impartial and mentally competent to afford a hearing with a factfinder capable and willing to decide the case solely on the evidence before it. Tanner v. United States, 483 U.S. 107, 117 (1987).

In this case, the United States Court of Appeals held that Terry was satisfied by the collective information from one or more officer, citing United States v. Powell, 732 F.3d 361, 369 (5th Cir. 2013). The evidence in this case was that a Sgt. Abel Sanchez, a narcotics officers with the City of Odessa, Texas Police Department had, with other officers, arranged for a controlled buy of methamphetamine from Petitioner at a car wash in west Odessa, Texas. The transaction occurred between 8:30-9 p.m. Sanchez did not see the events at the car wash (ROA.84).

The appellate court ruling in this case and in Powell, Id. violates Terry v. Ohio. Terry is premised on a reasonable suspicion or probable cause garnered from articulable facts from the officer that criminal activity is afoot.

Here, the facts were not garnered by the officer individually, for he did not witness the transaction. Moreover, there was no showing that the information underlying the claim of reasonable suspicion are marked by indicia of reliability. Adams v. Williams, 407 U.S. 143 (1972).

Without the officer, in this case Abel Sanchez, seeing the events at the subject car wash the Government can not rely upon Terry and reliance upon Powell violates Roman's Fourth Amendment right. Accordingly, the remedy would be suppression of all evidence post stop.

Petitioner requests the District Court conviction be vacated on the ground that the seizure and search was unreasonable and that the judgment below be reversed and a judgment of acquittal be entered.

CONCLUSION

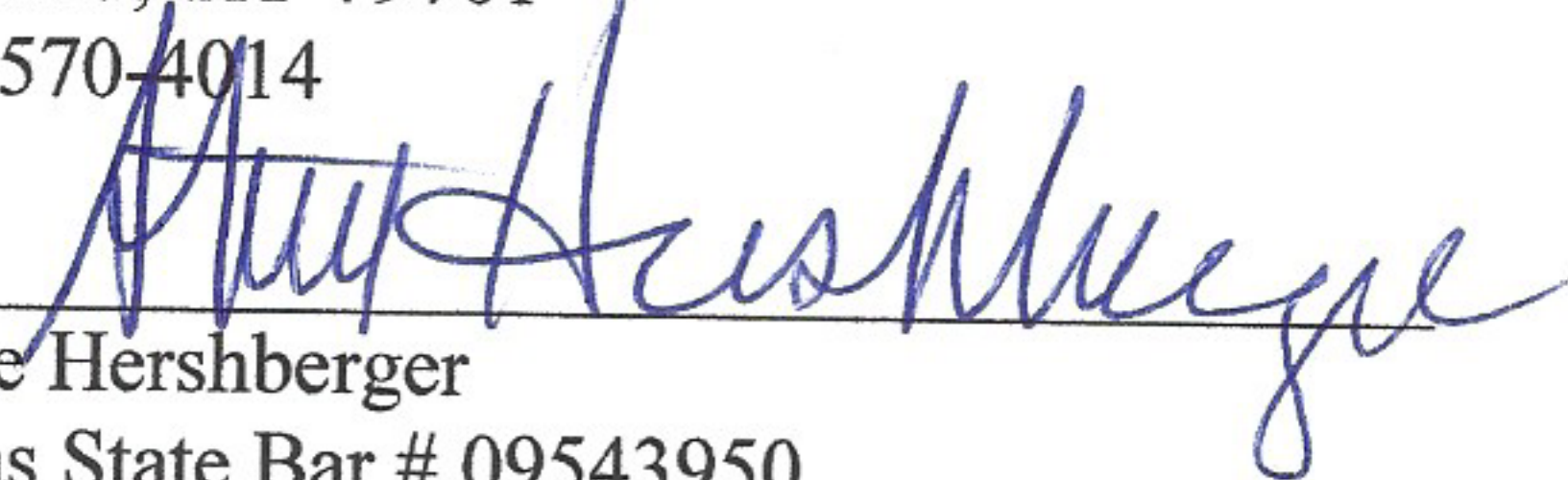
For the foregoing reasons, Petitioner respectfully submits that the Petition for Writ of Certiorari should be granted and prays that the Criminal Judgment be reversed, and a judgment of acquittal be entered. Petitioner further requests such other relief to which he is justly entitled to receive either in law or through equity.

PRAYER FOR RELIEF

Petitioner, ANDRES KEYON ROMAN, requests that the Petition for Writ of Certiorari be granted for the reasons stated and that the conviction entered against him be reversed and a judgment of acquittal be entered, and such other relief to which Petitioner would be entitled to receive in law or in equity.

Respectfully submitted,

Steve Hershberger, Attorney at Law
600 No. Marienfeld St., Ste. 1035
Midland, TX 79701
432-570-4014

By: 
Steve Hershberger
Texas State Bar # 09543950

Attorney for Petitioner

APPENDIX A

(Opinion of the United States Court of Appeals, for the Fifth Circuit)

Case: 19-50943 Document: 00010000100 Page: 1 Date Filed: 07/29/2020

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 19-50943
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 29, 2020

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ANDRES KEYON ROMAN,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:19-CR-86-1

Before JONES, SMITH, and DENNIS, Circuit Judges.

PER CURIAM:*

Andres Keyon Roman was convicted of possessing with the intent to distribute more than five grams of methamphetamine and was sentenced to 140 months. On appeal, he challenges the district court's denial of his motion to suppress, renewing his argument that officers lacked reasonable suspicion to justify the initial stop of his vehicle. He does not brief any challenge to the

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

validity of the subsequent search and has therefore abandoned any such argument. *See United States v. Reagan*, 596 F.3d 251, 254 (5th Cir. 2010).

We review the district court's factual findings in connection with the denial of a motion to suppress for clear error and its conclusions of law de novo. *United States v. Pack*, 612 F.3d 341, 347 (5th Cir.), *modified on other grounds denial of reh'g*, 622 F.3d 383 (5th Cir. 2010). We "view the evidence in the light most favorable to the party that prevailed below" and "may affirm the district court's decision on any basis established by the record." *Pack*, 612 F.3d at 347.

Viewing the evidence in the light most favorable to the Government, the district court did not err in denying the motion to suppress. Sgt. Sanchez's testimony established that he and other officers were aware of Roman's suspected drug trafficking based on the information supplied by the confidential informant (CI), arranged a controlled purchase, surveilled the location where the purchase was to take place, observed Roman engage in the drug transaction with the CI in open view at the appointed time and place, and maintained surveillance of the dark-colored Dodge pickup truck Roman was driving until it was stopped approximately five minutes later. *See United States v. Macias*, 658 F.3d 509, 519-20 (5th Cir. 2011). Alternatively, as officers were aware that Roman was wanted on an outstanding federal arrest warrant, and additionally had probable cause to arrest him based on observing the controlled purchase, they were permitted to stop the truck to arrest Roman based on their knowledge that he was driving it.

Inasmuch as Roman challenges the validity of the stop on the ground that Sgt. Sanchez did not personally observe the underlying drug transaction, the argument is unavailing. The officers' collective knowledge provided Sgt. Sanchez with sufficient reasonable suspicion to justify the stop. *See United States v. Powell*, 732 F.3d 361, 369 (5th Cir. 2013) ("[R]easonable suspicion can

vest through the collective knowledge of the officers involved in the search and seizure operation . . . so long as there is “some degree of communication” between the acting officer and the officer who has knowledge of the necessary facts.”). Equally unavailing is Roman’s assertion that Sgt. Sanchez did not have the requisite reasonable suspicion because he testified at the suppression hearing that the truck Roman was driving was black when his prior affidavit described it as grey. Sgt. Sanchez explained that the drug transaction took place at night and that Roman’s vehicle could fairly be described as either black or dark grey at night. The district court implicitly found no significant conflict between Sgt. Sanchez’s testimony and the prior affidavit, and Roman fails to show that this finding was clearly erroneous. *See Pack*, 612 F.3d at 347. Further, Sgt. Sanchez’s description of the truck as dark grey or black does not vitiate his reasonable suspicion for the stop, particularly because, as the district court found, officers maintained constant surveillance of his dark-colored vehicle from the time of the controlled purchase until it was stopped. *See Macias*, 658 F.3d at 519-20.

AFFIRMED.

APPENDIX B

(Criminal Judgment, United States District Court for the Western District
of Texas, Midland Division)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

UNITED STATES OF AMERICA

v.

Case Number: 7:19CR00086(1) DC
USM Number: 07814-180

ANDRES KEYON ROMAN

Alias(es):

AKA billy lozano,; AKA Keyon Roman,; AKA Keyon Andres Roman,; AKA Andres Roman,; AKA Keyon Andres Roman,;
Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, Andres Keyon Roman, was represented by Steve Hershberger.

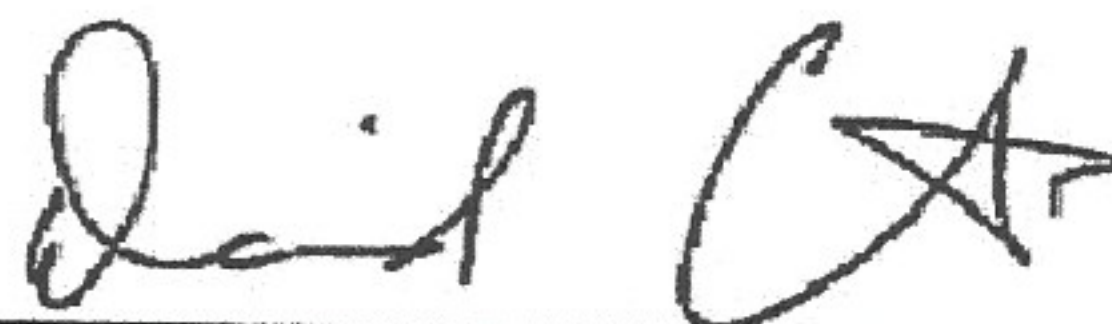
The defendant was found guilty by bench trial to Count(s) 1, of the Indictment on June 21, 2019. Accordingly, the defendant is adjudged guilty of such Count(s), involving the following offense(s):

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count(s)</u>
21 U.S.C. § 841(a)(1), 21 U.S.C. § 841(b)(1)(B)	Possession with Intent to Distribute 5 Grams or More of Actual Methamphetamine	April 9, 2019	1

As pronounced on September 26, 2019, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is further 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 defendant's economic circumstances.

Signed this 4th day of October, 2019.



David Counts
United States District Judge

DEFENDANT: ANDRES KEYON ROMAN
CASE NUMBER: 7:19CR00086(1) DC

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of **One Hundred Forty (140) months** with credit for time served while in custody for this federal offense pursuant to 18 U.S.C. § 3585(b).

The Court makes the following recommendations to the Bureau of Prisons:

That if eligible, the defendant participate in the 500 Hour Intensive Drug Abuse Education Program.

That the defendant be incarcerated in a federal facility with a drop out yard if possible.

The defendant shall remain in custody pending service of sentence.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____ with a certified copy of the Judgment.

United States Marshal

DEFENDANT: ANDRES KEYON ROMAN
CASE NUMBER: 7:19CR00086(1) DC

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **Five (5) years**.

While on supervised release, the defendant shall comply with the mandatory, standard and if applicable, the special conditions that have been adopted by this Court and shall comply with the following additional conditions:

The defendant shall participate in a substance abuse treatment program and follow the rules and regulations of that program. The program may include testing and examination during and after program completion to determine if the defendant has reverted to the use of drugs. The probation officer shall supervise the participation in the program (provider, location, modality, duration, intensity, etc.). During treatment, the defendant shall abstain from the use of alcohol and any and all intoxicants. The defendant shall pay the costs of such treatment if financially able.

The defendant shall participate in a mental health treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, shall supervise participation in the program (provider, location, modality, duration, intensity, etc.). The defendant shall pay the costs of such treatment if financially able.

The defendant shall submit his or her person, property, house, residence, vehicle, 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. The defendant shall 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 the defendant has violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search shall be conducted at a reasonable time and in a reasonable manner.

DEFENDANT: ANDRES KEYON ROMAN
CASE NUMBER: 7:19CR00086(1) DC

CONDITIONS OF SUPERVISED RELEASE
(As Amended November 28, 2016)

It is ORDERED that the Conditions of Probation and Supervised Release applicable to each defendant committed to probation or supervised release in any division of the Western District of Texas, are adopted as follows:

Mandatory Conditions:

- [1] The defendant shall not commit another federal, state, or local crime during the term of supervision.
- [2] The defendant shall not unlawfully possess a controlled substance.
- [3] The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release on probation or supervised release and at least two periodic drug tests thereafter (as determined by the court), but the condition stated in this paragraph may be ameliorated or suspended by the court if the defendant's presentence report or other reliable sentencing information indicates low risk of future substance abuse by the defendant.
- [4] The defendant shall cooperate in the collection of DNA as instructed by the probation officer, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. § 14135a).
- [5] If applicable, the defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et. seq.) as instructed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which the defendant resides, works, is a student, or was convicted of a qualifying offense.
- [6] If convicted of a domestic violence crime as defined in 18 U.S.C. § 3561(b), the defendant shall participate in an approved program for domestic violence.
- [7] If the judgment imposes a fine or restitution, it is a condition of supervision that the defendant pay in accordance with the Schedule of Payments sheet of the judgment.
- [8] The defendant shall pay the assessment imposed in accordance with 18 U.S.C. § 3013.
- [9] The defendant shall notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines or special assessments.

Standard Conditions:

- [1] The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
- [2] After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed.
- [3] The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer.
- [4] The defendant shall answer truthfully the questions asked by the probation officer.

DEFENDANT: ANDRES KEYON ROMAN
CASE NUMBER: 7:19CR00086(1) DC

- [5] The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall 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, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
- [6] The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that are observed in plain view.
- [7] The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment, he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her work (such as the position or job responsibilities), the defendant shall 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, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
- [8] The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer.
- [9] If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours.
- [10] The defendant shall 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] The defendant shall 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 the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk.
- [13] The defendant shall follow the instructions of the probation officer related to the conditions of supervision.
- [14] If the judgment imposes other criminal monetary penalties, it is a condition of supervision that the defendant pay such penalties in accordance with the Schedule of Payments sheet of the judgment.
- [15] If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall provide the probation officer access to any requested financial information.
- [16] If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall not incur any new credit charges or open additional lines of credit without the approval of the probation officer, unless the defendant is in compliance with the payment schedule.
- [17] If the defendant is excluded, deported, or removed upon release on probation or supervised release, the term of supervision shall be a non-reporting term of probation or supervised release. The defendant shall not illegally re-enter the United States. If the defendant is released from confinement or not deported, or lawfully re-enters the United States during the term of probation or supervised release, the defendant shall immediately report in person to the nearest U.S. Probation Office.

DEFENDANT: ANDRES KEYON ROMAN
CASE NUMBER: 7:19CR00086(1) DC

CRIMINAL MONETARY PENALTIES/ SCHEDULE

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth. Unless the Court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. Criminal Monetary Penalties, except those payments made through Federal Bureau of Prisons' Inmate Financial Responsibility Program shall be paid through the Clerk, United States District Court, 200 E. Wall St. Room 222, Midland, TX 79701.

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

	<u>Special Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTAL:	\$100.00	\$0.00	\$0.00	\$0.00

Special Assessment

It is ordered that the defendant shall pay to the United States a special assessment of **\$100.00**.

Fine

The fine is waived because of the defendant's inability to pay.

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 above. However, pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. §3614.

The defendant shall pay interest on any fine or restitution of more than \$2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. §3612(f). All payment options may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).

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.

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.

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22