RECORD NUMBER: _____

In the

Supreme Court of the United States

BRIAN LEE,

Petitioner,

– v. –

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the Fourth Circuit court erred in finding that the district court's consideration of conduct raised in a 5k2.1 motion was appropriate?

LIST OF PARTIES

All parties are set forth in the caption.

TABLE OF CONTENTS

Page

APPENDIX TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases:

Statutes & Other Authorities:

OPINION BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is unreported. This opinion is set forth in Appendix A. The written judgment entered in this matter contained in Appendix B.

JURISDICTION

The Fourth Circuit Court of Appeals entered judgment in this matter on September 16, 2020.

The jurisdiction of this Court is under 28 U.S.C. § 1254 and compelling reasons to grant certiorari exists under Rule 10 (a) &/or (c) of the Rules of the Supreme Court of the United States.

RULES AND STATUTES INVOLVED

The Sixth Amendment to the United States Constitution provides "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to

have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

21 U.S.C.A. § 841(a)(1) provides that "Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally-- (1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance....."

21 U.S.C.A. § 846 provides that "Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy."

U.S. Sentencing Guideline Manual § 1B1.3(a)(1) provides "Unless otherwise specified, (i) the base offense level where the guideline specifies more than one base offense level, (ii) specific offense characteristics and (iii) cross references in Chapter Two, and (iv) adjustments in Chapter Three, shall be determined on the basis of the following: (1)(A) all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant; and (B) in the case of a jointly undertaken criminal activity (a criminal plan, scheme,

endeavor, or enterprise undertaken by the defendant in concert with other, whether or not charged as a conspiracy), all reasonably foreseeable acts and omissions of others in furtherance of the jointly undertaken criminal activity, that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense;"

U.S. Sentencing Guideline Manual § 2D1.1(a)(5) provides "the offense level specified in the Drug Quantity Table set forth in subsection (c), except that if (A) the defendant receives an adjustment under §3B1.2 (Mitigating Role); and (B) the base offense level under subsection (c) is (i) level **32**, decrease by **2** levels; (ii) level **34** or level **36**, decrease by **3** levels; or (iii) level **38**, decrease by **4**levels. If the resulting offense level is greater than level **32** and the defendant receives the **4**-level ("minimal participant") reduction in §3B1.2(a), decrease to level **32**."

U.S. Sentencing Guideline Manual § 3B1.1(a) provides "Based on the defendant's role in the offense, increase the offense level as follows: If the defendant was an organizer or leader of a criminal activity that

involved five or more participants or was otherwise extensive, increase by **4** levels.

U.S. Sentencing Guideline Manual § 5K2.1 provides "If death resulted, the court may increase the sentence above the authorized guideline range. Loss of life does not automatically suggest a sentence at or near the statutory maximum. The sentencing judge must give consideration to matters that would normally distinguish among levels of homicide, such as the defendant's state of mind and the degree of planning or preparation. Other appropriate factors are whether multiple deaths resulted, and the means by which life was taken. The extent of the increase should depend on the dangerousness of the defendant's conduct, the extent to which death or serious injury was intended or knowingly risked, and the extent to which the offense level for the offense of conviction, as determined by the other Chapter Two guidelines, already reflects the risk of personal injury. For example, a substantial increase may be appropriate if the death was intended or knowingly risked or if the underlying offense was one for which base offense levels do not reflect an allowance for the risk of personal injury, such as fraud.

STATEMENT OF THE CASE

On March 3, 2018 Petitioner and his named co-Defendants were indicted in the District Court of South Carolina. The two counts alleged that (1) defendants knowingly and intentionally did combine, conspire, and agree and have tacit understanding with each other and with others, both known and unknown to the grand jury, to knowingly, intentionally and unlawfully possess with intent to distribute and distribute 50 grams or more of methamphetamine and 500 grams or more of a mixture and substance containing a detectable amount of methamphetamine; and 100 grams or more of a mixture and substance containing a detectable amount of heroin, in violation of Title 21, United States Code, Sections 841(a)(l), 841(b)(l)(A), and 841(b)(l)(B). All in violation of Title 21, United States Code, Section 846; and (2) defendants knowingly, intentionally and unlawfully did possess with intent to distribute 50 grams or more of methamphetamine and 500 grams or more of a mixture and substance containing a detectable amount of methamphetamine; and 100 grams or more of a mixture and substance containing a detectable amount of

heroin; In violation of Title 21, United States Code, Sections 841(a)(l), 841(b)(l)(A), and 841(b)(l)(B).

Petitioner entered a plea agreement with the assistance of his court appointed attorney William Thrower, Esq. and pled guilty to Count one of the Indictment on October 23, 2018. Shortly thereafter, Mr. Thrower passed away and S. Naki Richardson-Bax, Esq. was appointed to continue to represent Appellant through sentencing.

An initial Pre-Sentencing Report was prepared on February 25, 2019. Petitioner filed objections to that PSR. A revised Pre-Sentencing Report was filed on August 23, 2019. Respondent filed a Motion for Upward and Downward Departure on October 11, 2019. Appellant filed a Sentencing Memorandum on November 1, 2019. On November 5, 2019, noting that "The government made a motion pursuant to §5K I. I for substantial assistance and a motion pursuant to §5K2. I f or 'Death'." App. B. The court stated the "§5K2. 1 upward departure would have been granted had the government not also filed a §5Kl. 1 downward departure. The result after considering both, was a sentence at the top of the sentencing guideline range." The court then sentenced Petitioner to two hundred ninety-three (293) months.

Petitioner appealed his conviction to the Fourth Circuit Court of Appeals. In his brief, Petitioner asserted that the government's violation of the plea agreement made it's enclosed appellate waiver unenforceable and that the court erred in considering error the government's motion for a 5K2.1 in light of the violation and evidence presented. The Fourth Circuit declined to make a ruling on whether the government actually violated the plea agreement and then went on to review the district court's factual finding for clear error and its legal conclusion de novo. The court ultimately confirmed the district court's sentencing decision. App. A unpublished opinion U.S. v. Lee, (4th Cir. SC 2020). This Petition follows.

REASONS FOR GRANTING PETITION FOR WRIT OF CERTIORARI

The decision of the Fourth Circuit denying relief to Petitioner is erroneous as it doesn't properly take into account that fact that the court considered the facts and allegations contained in the government's 5K2.1 motion. This is patently inaccurate based on the facts in the record.

The Fourth Circuit found that Petitioner's objection to the district court's application of USSG §5k2.1 as unavailing as "as the court declined

to depart under that provision." That is not entirely accurate. The district court made it clear that it considered the application of §5K2.1 in it's Statement of Reasons. The court stated, "The government made a motion pursuant to §5K I. I for substantial assistance and a motion pursuant to §5K2. I f or 'Death'. The court stated the §5K2. I upward departure *would have been granted* (emphasis added) had the government not also filed a §5Kl.1 downward departure. The result *after considering both* (emphasis added), was a sentence at the top of the sentencing guideline range." App. B.

As such, Petitioner asserts that the court's consideration of those factors was improper. There were few facts presented to the court to support the government's 5K2.1 motion. As indicated in the PSR, (an individual, herein identified as S.C.) had a history of drug abuse and behavioral problems. Young Mr. S.C. had just left rehab, and returned home with his *mother* and *uncle.* They not only admittedly gave him drugs as soon as he was released from rehab, they also used those same drugs themselves contemporaneously to the time of Mr. S.C.'s death. The government obviously had little to no confidence of their ability to even indict, let only secure a conviction of Petitioner based on the scant

evidence against him, or they would have charged him with distribution resulting in death. According to their own indictment, the death happened before Petitioner was even a target of the government and not during the time that the underlying conspiracy for which he was charged was occurring.

Furthermore, for an enhancement pursuant to 5K2.1, the court, "must give consideration to matters that would normally distinguish among levels of homicide, such as the defendant's state of mind and the degree of planning or preparation." *United States v. Terry*, 142 F.3d 702, 709–10 (4th Cir. 1998) (district court erred by failing to consider the factors listed in §5K2.1, and not making any finding as to the defendant's state of mind); *United States v. Davis*, 30 F.3d 613, 615–16 (5th Cir. 1994) (the "only 'mandatory' language in the section is that the judge 'must' consider matters that 'normally distinguish among levels of homicide,' such as state of mind").

The extent of the increase should depend on "the dangerousness of the defendant's conduct, the extent to which death or serious injury was intended or knowingly risked, and the extent to which the offense level for the offense of conviction, as determined by the other Chapter Two

guidelines, already reflects the risk of personal injury." *United States v. Rodriguez*, 553 F.3d 380, 396-97 (5th Cir. 2008).

In *United States v. Mousseau,* 517 F.3d 1044, 1048–49 (8th Cir. 2008) the court found that an upward departure was warranted under §5K2.1 where the victim died one day after the defendant provided the victim with methamphetamine, and found that even though the defendant did not intend to harm the victim, it was "clear that her actions were very dangerous and that she disregarded a known risk by giving an unknown substance, suspected to be a narcotic, to a minor to ingest." This matter is distinguishable from *Mousseau.* First and foremost, Petitioner did not provide the drugs to S.C., his mother did. The only individuals that point to Petitioner as the supplier of these particular drugs are L.C. and her brother (L.C., S.C.'s biological mother and her brother were co-Defendants in a separate matter prosecuted by the U.S.) L.C. was someone who, not so insignificantly, the government requested that Petitioner be available to cooperate against.

More importantly, unlike Mousseau's negligence of giving an unidentified substance, which she assumed was cocaine to a minor, Petitioner operated under the belief that what he provided was only

heroin, strong heroin maybe, but still heroin. The government did not provide any facts to dispute this contention.

Perhaps the most significant fact that the court did not address was the fact that Petitioner was not the one that provided the drugs in question yet was still made responsible for the death.

It is Petitioner's contention that if the district court, who admits to considering these facts, did not do so improperly, he would have received the full benefit of the 5K1.1 motion that was filed due to his cooperation with the government. The government negated Petitioner's substantial assistance by using a previously known incident against him that even Probation did not indicate warranted an enhancement.

It is clear the government intended to negate any benefit Petitioner would have accrued by his extensive cooperation by filing this motion on the eve of sentencing which was never indicated or suggested as a possibility to Petitioner or his counsel in the lead-up to his cooperation. This lack of candor strongly indicates that the government wanted the information being provided by Petitioner, but did not want to pay for it by benefiting Petitioner. The court improperly declined to consider this despite Petitioner's objection.

CONCLUSION

Therefore, this Court should grant Petitioner a Writ of Certiorari to review the Fourth Circuit's determination regarding the district court's consideration of conduct raised in a 5k2.1 motion. This Court should then vacate Petitioner's sentencing and remand his case to the district court for resentencing.

Respectfully submitted,

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February 12, 2021 *Attorney For Petitioner*

APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-4834

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BRIAN DALE LEE,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Charleston. Richard Mark Gergel, District Judge. (2:18-cr-00264-RMG-1)

Submitted: August 18, 2020 Decided: September 16, 2020

Before WYNN and THACKER, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

S. Naki Richardson-Bax, BAX LAW FIRM, PA, Beaufort, South Carolina, for Appellant. Peter M. McCoy, Jr., United States Attorney, Columbia, South Carolina, Nick Bianchi, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, South Carolina, for Appellee.

PER CURIAM:

Brian Dale Lee appeals the 293-month sentence imposed following his guilty plea, pursuant to a written plea agreement, to a heroin and methamphetamine conspiracy, in violation of 21 U.S.C. § 846. On appeal, Lee argues that the Government breached its obligations under the plea agreement and that the district court erroneously considered facts underlying the Government's request for an upward departure when sentencing him. Finding no reversible error, we affirm.

"Plea agreements are grounded in contract law, and as with any contract, each party is entitled to receive the benefit of his bargain." *United States v. Edgell*, 914 F.3d 281, 287 (4th Cir. 2019) (internal quotation marks omitted). Thus, "when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." *Santobello v. New York*, 404 U.S. 257, 262 (1971). "Because a defendant's fundamental and constitutional rights are implicated when he is induced to plead guilty by reason of a plea agreement, our analysis of the plea agreement or breach thereof is conducted with greater scrutiny than in a commercial contract." *United States v. Lewis*, 633 F.3d 262, 269 (4th Cir. 2011) (internal quotation marks omitted). "The [G]overnment is only bound, however, by the promises that were actually made in inducing a guilty plea." *Id.*

Because Lee did not assert a breach of the plea agreement before the district court, our review is for plain error. *United States v. Tate*, 845 F.3d 571, 575 (4th Cir. 2017). To satisfy this standard, Lee must demonstrate "that the [G]overnment plainly breached its plea agreement with him and that the breach both affected his substantial rights and called

into question the fairness, integrity, or public reputation of judicial proceedings." *Edgell*, 914 F.3d at 286-87.

Assuming, without deciding, that the Government breached the plea agreement by seeking an upward departure, we conclude that Lee fails to carry his burden to establish that the breach affected his substantial rights. *See id.* at 290 (describing effect on substantial rights in breach context); *see also United States v. Olano*, 507 U.S. 725, 735 (1993) (recognizing defendant's burden to "make a specific showing of prejudice" in plain error context). The court did not grant the Government's request for an upward departure, and its statements at sentencing make patently clear its conclusion that a lower sentence would not have been reasonable under the facts presented. We therefore find no reversible error on this basis.

Turning to Lee's sentencing challenge,[*] we review a sentence for reasonableness, applying a deferential abuse-of-discretion standard. *United States v. Shephard*, 892 F.3d 666, 670 (4th Cir. 2018). We first ensure that the sentence contains no significant

[*] The Government asserts that, because it did not breach the plea agreement, we should enforce the waiver of appellate rights in the parties' plea agreement and decline to consider Lee's challenge to his sentence. Appeal waivers are not per se enforceable, however, *see United States v. Blick*, 408 F.3d 162, 168-69 (4th Cir. 2005) (discussing requirements for enforcement of waiver), and the Government offers no argument in support of its enforcement request. Thus, we conclude that the Government has forfeited consideration of the appeal waiver. *See United States v. Diaz*, 865 F.3d 168, 179 (4th Cir. 2017) (recognizing that Government's "meager submission" regarding issue in brief waived review of that issue); *United States v. Bartko*, 728 F.3d 327, 335 (4th Cir. 2013) (deeming issue waived when party failed to comply with Fed. R. App. P. 28). Because we decline to enforce an appeal waiver sua sponte, *United States v. Jones*, 667 F.3d 477, 486 (4th Cir. 2012), we proceed to the merits of Lee's sentencing challenge.

procedural error, such as miscalculating the Guidelines range, inadequately considering the 18 U.S.C. § 3553(a) factors, or insufficiently explaining the sentence. *United States v. Provance*, 944 F.3d 213, 218 (4th Cir. 2019). If we find the sentence procedurally reasonable, we also may consider the substantive reasonableness of the sentence. *Id.* In the sentencing context, we review the district court's "factual findings for clear error and its legal conclusions de novo." *Shephard*, 892 F.3d at 670.

Lee raises several procedural challenges to his sentence, generally asserting that the district court erred in considering the evidence presented in conjunction with the Government's motion for an upward departure. As a threshold matter, Lee's challenges to the court's application of U.S. Sentencing Guidelines Manual § 5K2.1 (2018), are unavailing, as the court declined to depart under that provision. Insofar as Lee disputes the court's findings regarding his role in the overdose death of a minor, his challenges are equally misplaced. Under Fed. R. Crim. P. 32(i)(3)(A), the sentencing court "may accept any undisputed portion of the presentence report as a finding of fact." *See United States v. Revels*, 455 F.3d 448, 451 n.2 (4th Cir. 2006). Even if a defendant objects to a finding in the presentence report, in the absence of an affirmative showing that the information is not accurate, "the court is free to adopt the findings of the presentence report without more specific inquiry or explanation." *United States v. Love*, 134 F.3d 595, 606 (4th Cir. 1998) (alteration and internal quotation marks omitted). Because Lee failed to object to the presentence report's findings regarding his involvement in the minor's death or otherwise to make any showing that those findings were inaccurate, the court was free to consider them in selecting an appropriate sentence. Further, the court was amply justified in

considering these facts in aggravation when conducting its sentencing calculus. *See* 18 U.S.C. § 3553(a)(1), (2)(A)-(C).

Accordingly, we affirm the district court's judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B

UNITED STATES DISTRICT COURT
District of South Carolina

UNITED STATES OF AMERICA

vs.

BRIAN DALE LEE

JUDGMENT IN A CRIMINAL CASE

Case Number: 2:18-cr-00264-RMG-1

USM Number: 33304-171

S. Naki Richardson-Bax, CJA
Defendant's Attorney

THE DEFENDANT:

■ pleaded guilty to Count 1.
☐ 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
21:841(a)(1), 841(b)(1)(A), 846, and 851	Please see Indictment	3/13/18	1

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.

☐ The defendant has been found not guilty on count(s)_____.
■ Count 2 is dismissed on the motion of the United States.
☐ Forfeiture provision is hereby dismissed on motion of the United States Attorney.

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 any material changes in economic circumstances.

November 5, 2019
Date of Imposition of Judgment

Signature of Judge

RICHARD M. GERGEL, U.S. DISTRICT JUDGE
Name and Title of Judge

11-6-19
Date

DEFENDANT: BRIAN DALE LEE
CASE NUMBER: 2:18-cr-00264-RMG-1

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of two hundred ninety-three (293) months. The defendant shall pay a $100.00 special assessment fee, due beginning immediately.

■ The court makes the following recommendations to the Bureau of Prisons: The defendant shall be designated to FMC Butner, NC.

■ 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: BRIAN DALE LEE
CASE NUMBER: 2:18-cr-00264-RMG-1

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of ten (10) years. While on supervised release, the defendant shall comply with the mandatory and standard conditions of supervision and the following special conditions. 1. The defendant shall participate in a program of testing for substance abuse as approved by the U.S. Probation Officer. 2. The defendant shall contribute to the costs of any treatment, drug testing and/or location monitoring not to exceed an amount determined reasonable by the court approved U.S. Probation Office's Sliding Scale for Services, and shall cooperate in securing any applicable third-party payment, such as insurance or Medicaid.

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 of 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: BRIAN DALE LEE
CASE NUMBER: 2:18-cr-00264-RMG-1

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation 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 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: BRIAN DALE LEE
CASE NUMBER: 2:18-cr-00264-RMG-1

CRIMINAL MONETARY PENALTIES

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

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	**$100.00**	**$**	**$**	**$**

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case(AO245C)* 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.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS $_____ $_____

☐ 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 judgment, pursuant to 18 U.S.C. §3612(f). All of the payment options on Sheet 5 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: BRIAN DALE LEE
CASE NUMBER: 2:18-cr-00264-RMG-1

SCHEDULE OF PAYMENTS

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

A ■ Lump sum payment of $100.00 special assessment due immediately.

☐ not later than _____, or

☐ in accordance with ☐ C, ☐ D, or ☐ E, or ☐ F below: or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____(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:

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 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:

As directed in the Preliminary Order of Forfeiture, filed_____and the said order is incorporated herein as part of 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.