

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES FREI

Petitioner

vs.

UNITED STATES OF AMERICA,

Respondent

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

APPENDIX

United States v. Frei, 995 F.3d 561 (6th Cir. 2021) (Case No. 20-5119)
(May 3, 2021)
(Opinion affirming district court judgment)

United States v. Frei, Case No. 20-5119
(June 3, 2021)
(Order denying Petition for Rehearing En Banc)

United States of America vs. James Frei; Case No. 3:17-cr-0032
(U.S. District Court, Middle District of Tennessee, January 21, 2021)
(Judgment in a Criminal Case)

United States of America vs. James Frei; Case No. 3:17-cr-0032
(U.S. District Court, Middle District of Tennessee, September 20, 2018)
(Order Appointing Co-Counsel)

/s/ Charles D. Buckholts
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**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Deborah S. Hunt
Clerk

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Filed: May 03, 2021

Mr. Charles David Buckholts
40 Burton Hills Boulevard
Suite 200
Nashville, TN 37215

Ms. Katy Risinger
Mr. John Christopher Suedekum
Office of the U.S. Attorney
110 Ninth Avenue, S., Suite A-961
Nashville, TN 37203

Re: Case No. 20-5119, *USA v. James Frei*
Originating Case No. : 3:17-cr-00032-1

Dear Counsel,

The court today announced its decision in the above-styled case.

Enclosed is a copy of the court's opinion together with the judgment which has been entered in conformity with Rule 36, Federal Rules of Appellate Procedure.

Yours very truly,

Deborah S. Hunt, Clerk

Cathryn Lovely
Deputy Clerk

cc: Ms. Lynda M. Hill

Enclosures

Mandate to issue.

RECOMMENDED FOR PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 21a0100p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JAMES FREI,

Defendant-Appellant.

No. 20-5119

Appeal from the United States District Court
for the Middle District of Tennessee at Nashville.
No. 3:17-cr-00032-1—Eli J. Richardson, District Judge.

Decided and Filed: May 3, 2021

Before: BATCHELDER, GRIFFIN, and STRANCH, Circuit Judges.

COUNSEL

ON BRIEF: Charles D. Buckholts, BUCKHOLTS LAW OFFICE, Nashville, Tennessee, for Appellant. J. Christopher Suedekum, Kathryn D. Risinger, UNITED STATES ATTORNEY'S OFFICE, Nashville, Tennessee, for Appellee.

OPINION

ALICE M. BATCHELDER, Circuit Judge. A jury convicted defendant-appellant James Frei of eight counts of child-exploitation-related crimes, including four counts of sexual exploitation of a minor in violation of 18 U.S.C. § 2251. The district court sentenced Frei to a 318-month prison term and a life term of supervised release. On appeal, Frei argues that: (1) the district court's jury instruction regarding § 2251 was misleading and erroneously omitted Frei's

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proposed instruction; and (2) his sentence is substantively unreasonable. Both arguments are meritless. We AFFIRM.

I.

Frei is a 48-year-old male from North Carolina who, in the spring of 2016, joined a Facebook group created for teenage girls. He used the forum to contact TB, a 15-year-old living in Tennessee. Frei told TB that she was “sexy” and later told her that he would teach her about sex. TB accepted Frei’s advances and Frei took advantage; he sent her nude photos of himself and tried to convince TB to send him nude and sexually suggestive images of herself. Frei eventually convinced TB to meet at her parents’ house in Nashville to have sex. After they agreed to meet, Frei asked to photograph their sexual encounters.

Frei made three trips to Nashville in May and June 2016. On each occasion, Frei and TB engaged in sexual activity and Frei took sexually explicit photos and videos of TB. In one of the several videos, Frei pointed the camera at TB as he had sex with her and told her to “smile,” to act “like [she] was enjoying [her] time,” and to “look at the camera.” He also told her that “we need to get you over this shyness,” and the videos showed him adjusting the camera to capture their sexual activities. Frei saved and organized these images in his phone under TB’s name.

The National Center for Missing and Exploited Children notified the Metro Nashville Police Department (MNPd) about Frei’s and TB’s Facebook conversation. MNPd identified Frei and obtained a search warrant for his home in North Carolina. After his arrest, Frei admitted that he knew that TB was only fifteen years old and that he took numerous photos and videos of their engaging in sexual conduct. Law enforcement found approximately 500 files of child pornography, including dozens of photos and videos of Frei engaging in sexual activity with TB.

The grand jury indicted Frei on nine counts. Counts one through four charged Frei with sexual exploitation of a minor (i.e., producing child pornography), in violation of 18 U.S.C. §§ 2251(a) and (d). Count five charged Frei with enticing a minor to engage in sexual conduct, in violation of 18 U.S.C. § 2422(b). Counts six, seven, and eight charged Frei with traveling in interstate commerce to engage in illegal or illicit sexual conduct with a minor, in violation of 18

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U.S.C. § 2423(b).¹ And count nine charged Frei with transportation of child pornography in interstate commerce, in violation of 18 U.S.C. §§ 2252A(a)(1) and 2252A(b).

Near the end of the trial, the court and parties conferenced to discuss jury instructions. The parties had jointly requested Sixth Circuit Pattern Jury Instruction 16.01, which specifically addresses § 2251, for counts one through four. As relevant here, Pattern Jury Instruction 16.01 explains that the jury must find:

That the defendant employed, used, persuaded, induced, enticed, or coerced [TB,] a minor, to engage in sexually explicit conduct for the purpose of producing a visual depiction of that conduct on or around the date alleged in each Count.

Pattern Jury Instruction 16.01(2)(C) defines the phrase “for the purpose of”:

The term “for the purpose of” means that the defendant acted with the intent to create visual depictions of sexually explicit conduct, and that the defendant knew the character and content of the visual depictions.

Frei proposed a supplemental instruction to add to Pattern Jury Instruction 16.01(2)(C) additional language, namely:

The defendant must have engaged in sexually explicit conduct with the specific intent to produce a visual depiction. It is not enough for the government to simply prove that the defendant purposely produced the visual depiction.

Def.’s Proposed Suppl. Jury Instr. (emphasis added). Frei’s counsel explained that his proposed supplemental language was a “hybrid” that he had formulated from his reading of the statute and a Fourth Circuit case interpreting the mens rea requirement.

The district court rejected Frei’s proposed language, emphasizing that the instruction needed to be an accurate statement of the law. The district court reviewed the relevant law and proposed its own language to respond to Frei’s proposal and his anticipated arguments in closing. The district court’s proposed language would have instructed the jury that “[t]he government must show that making a visual depiction was a purpose for causing a minor to engage in sexually explicit conduct.” The district court explained that the language was better

¹The district court dismissed count eight upon the government’s motion.

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because even under the case relied upon by Frei, a person can have multiple purposes, and the government need only prove that it was one of the defendant's purposes.

Both parties opposed the district court's proposed language. The government contended that Pattern Jury Instruction 16.01 already accurately tracked the statute's language, so modifying it risked injecting error. Frei objected, preferring Pattern Jury Instruction 16.01 because otherwise, there was a risk the jury might be confused by switching from "the purpose" to "a purpose." Frei noted that, even if the court stuck with the Pattern Jury Instruction, he would argue in closing that he did not have the requisite mens rea.

The court therefore abandoned its proposed language and used Pattern Jury Instruction 16.01 without alteration. Before instructing the jury, the court acknowledged that Frei had properly preserved his objections to both the final jury instruction and the court's rejection of his proposed jury instruction. In his closing argument, Frei's counsel argued to the jury that the government had to prove that Frei's recording of TB having sex "must have been the purpose of the sexual act" and disputed that the purpose of Frei's conduct was anything more than having sex.

The jury convicted Frei on all eight counts.

The Presentence Report (PSR) calculated a total offense level of 43 and a criminal history category of one, resulting in a guidelines range of life imprisonment. At the sentencing hearing, the district court adopted the PSR's calculations without objection from either party. Frei requested a downward variance based on the 18 U.S.C. § 3553(a) factors. Frei argued that the four-point enhancement for committing multiple distinct offenses on different dates under USSG § 3D1.4 and the five-point enhancement for engaging in a pattern of activity involving prohibited sexual conduct under USSG § 4B1.5(b)—while correctly applied—double-counted Frei's conduct and imposed an overly harsh punishment.

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The district court agreed with Frei. After a thorough colloquy with the parties and § 3553(a) analysis, the court determined that a life sentence was too harsh and sentenced Frei to a 318 months' imprisonment for counts one through seven, and 240 months' imprisonment for count nine, to run concurrently.

Frei timely appeals.

II.

On appeal, Frei challenges both the jury instructions and the substantive reasonableness of his sentence. We review both issues for abuse of discretion. *United States v. Godofsky*, 943 F.3d 1011, 1019 (6th Cir. 2019) (jury instructions); *Gall v. United States*, 552 U.S. 38, 41 (2007) (substantive reasonableness).

A. Jury Instructions

Frei argues that (1) the Sixth Circuit Pattern Jury Instruction 16.01(2)(C) misled and confused the jury; and (2) the district court improperly rejected Frei's proposed jury instruction. Both arguments fail.

1. Pattern Jury Instruction 16.01

Frei argues that Pattern Jury Instruction 16.01(2)(C) misled and confused the jury because it is inconsistent with § 2251(a)'s language and fails to precisely specify the defendant's requisite degree of culpability.

We "review jury instructions as a whole in order to determine whether they adequately inform the jury of the relevant considerations and provide a sound basis in law to aid the jury in reaching its decision." *United States v. Fisher*, 648 F.3d 442, 447 (6th Cir. 2011) (citation omitted). "There is a high standard for reversal of a conviction on the grounds of improper instructions." *Id.* We "may reverse a judgment only if the instructions, viewed as a whole, were confusing, misleading, and prejudicial." *Id.*

The court's jury instruction regarding § 2251(a), viewed as a whole, is not confusing, misleading, or prejudicial. The jury instruction mirrors Sixth Circuit Pattern Jury Instruction

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16.01(2)(c) and accurately states the law. To start, “we regularly look to whether jury instructions mirror or track the pattern jury instructions as one factor in determining whether any particular instruction is misleading or erroneous.” *United States v. Damra*, 621 F.3d 474, 499–500 (6th Cir. 2010); *see United States v. Allen*, 712 F. App’x 527, 537 (6th Cir.2017) (finding no abuse of discretion when the district court followed the Pattern Jury Instruction and refused to change the instruction as requested by the defendant); *United States v. Hines*, 398 F.3d 713, 718 (6th Cir. 2005) (holding that the district court did not plainly err when it “tracked the language and organization of the Sixth Circuit Pattern Jury Instruction”). In the same vein, this court has noted the potential problems that can arise when trial courts stray from the Pattern Jury Instructions. *See, e.g., United States v. Rios*, 830 F.3d 403, 434 (6th Cir. 2016) (discussing modification of reasonable-doubt Pattern Jury Instruction and noting that “departures from pattern instructions . . . tend only to muddy the waters further”); *United States v. Clinton*, 338 F.3d 483, 490–91 (6th Cir. 2003) (describing the district court’s failure to use the Sixth Circuit Pattern Jury Instruction as “risky” when giving an *Allen* charge).

But our deference to the pattern jury instructions partially depends on whether our case law supports the instruction in question. *See United States v. Pina*, 724 F. App’x 413, 423 (6th Cir. 2018) (affirming the district court’s use of the Pattern Jury Instruction because this court’s case law amply supported it); *United States v. Young*, 516 F. App’x 599, 602 (6th Cir. 2013) (“The district court strictly adhered to the wording of the Sixth Circuit Pattern Jury Instruction which accurately states the law of this Circuit.”). Here, our case law does not directly support Pattern Jury Instruction 16.01(2)(C). The committee commentary cites *United States v. Wright*, No. 1:12–CR–130, 2013 WL 164096, at *7 (W.D. Mich. Jan. 5, 2013), *affirmed*, 774 F.3d 1085 (6th Cir. 2014), but our holding in that case does not address the mens rea requirement of § 2251(a). *See* Sixth Circuit Pattern Jury Instruction § 16.01 (2019), Committee Commentary. To be sure, the district court opinion analyzed the mens rea requirement, but the parties in that case did not appeal that issue, and this court did not rule on that issue. *Id.* So, we must assess for the first time whether Pattern Jury Instruction 16.01(2)(C) is soundly based on the law. We conclude that it is.

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A defendant violates § 2251(a) if he “employs, uses, persuades, induces, entices, or coerces any minor to engage in . . . any sexually explicit conduct for the purpose of producing any visual depiction of such conduct.” 18 U.S.C. § 2251(a). Contrary to Frei’s argument, § 2251(a) contains no language that requires the defendant to sexually engage with the minor for the *sole* purpose of producing visual depictions. Instead, § 2251 is a specific-intent crime, which requires that the defendant must purposefully or intentionally commit the act that violates the law and do so intending to violate the law. *See United States v. Ramamoorthy*, 949 F.3d 955, 961 (6th Cir. 2020) (defining specific intent).

This interpretation is also congruent with the interpretations of at least seven of our sister circuits that omit the lesser culpability of incidental purpose, *see United States v. Palomino-Coronado*, 805 F.3d 127, 132 (4th Cir. 2015) (explaining that the defendant must act “with the specific intent to produce a visual depiction; it is not sufficient simply to prove that the defendant purposefully took a picture”); *United States v. Fortier*, 956 F.3d 563, 567 (8th Cir. 2020) (explaining that the defendant must act with purpose, not merely by accident); *United States v. Torres*, 894 F.3d 305, 312 (D.C. Cir. 2018) (same), and the greater culpability of sole purpose, *see United States v. Sirois*, 87 F.3d 34, 39 (2d Cir. 1996) (rejecting the contention that the illegal activity of producing visual depictions must be the sole dominant purpose); *Palomino-Coronado*, 805 F.3d at 132 (same); *United States v. Fifer*, 863 F.3d 759, 768 (7th Cir. 2017) (same); *United States v. Raplinger*, 555 F.3d 687, 693 (8th Cir. 2009) (same); *United States v. Miller*, 819 F.3d 1314, 1316 (11th Cir. 2016) (same).

The Pattern Jury Instruction addresses the elements of § 2251(a) and includes a specific-intent requirement that the defendant “acted with the *intent* to create visual depictions of sexually explicit conduct, and that the defendant *knew* the character and content of the visual depictions.” Sixth Circuit Pattern Instruction 16.01 (emphasis added). Furthermore, the jury instruction is neither confusing nor prejudicial. First, the Sixth Circuit Pattern Jury Instructions are presumptively straightforward, and there is no evidence that the jury questioned the language’s meaning. Second, the Pattern Jury Instruction allowed Frei to argue that he did not have sex with TB for the sole purpose of creating the visual depictions. Indeed, in his Rule 29 motion for judgment of acquittal, Frei’s counsel focused almost entirely on his claim that Frei had engaged

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in sexual conduct simply to have sex, not to create a visual depiction. And in his closing argument to the jury, counsel argued at length that the evidence demonstrated only that Frei and the minor had an ongoing sexual relationship, and that he engaged in that relationship simply for the purpose of having sex, and not for the purpose of creating any visual depictions.

The district court did not abuse its discretion by adopting Pattern Jury Instruction 16.01(2)(C).

2. Frei's Proposed Jury Instructions

Next, Frei argues that the district court erred by denying his proposed § 2251(a) mens rea jury instruction.

We reverse the judgment only if the litigant's denied instruction was: "(1) a correct statement of the law, (2) not substantially covered by the charge actually delivered to the jury, and (3) concern[ed] a point so important in the trial that the failure to give it substantially impair[ed] the defendant's defense." *Godofsky*, 943 F.3d at 1019 (quoting *United States v. Volkman*, 797 F.3d 377, 385 (6th Cir. 2015)).

Frei argues that the instruction should include supplemental language expanding on the requisite intent. Frei's proposed language can be read two ways. One interpretation is that the defendant must do more than purposely take a picture or click the shutter-release button without knowing the content of that visual depiction (the equivalent of incidental purpose). The other interpretation is that the defendant must have had sex for the *sole* purpose of producing a visual depiction.

The incidental-purpose reading fails because the instruction delivered to the jury substantially covered Frei's proposed language. The instruction required that the jury find from the evidence that Frei intended to produce the visual depiction and that he knew the character and conduct of the images, not that he made them by accident.

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The sole-purpose reading fails because Frei's proposed instruction did not accurately state the law. Section 2251(a) does not have a sole-purpose provision and no court has held that the defendant must be single-minded in his conduct.

The court did not abuse its discretion by rejecting Frei's proposed language.

B. Sentencing

Frei claims the district court erred in sentencing him, even though it imposed a below-guidelines sentence of 318-month's imprisonment. Specifically, Frei says that the four-point enhancement under USSG § 3D1.4 and five-point enhancement under USSG § 4B1.5(b) resulted in "outweigh[ing] the individualized § 3553 factors to such a degree that the guideline starting point was substantively unreasonable." But Frei's argument is misplaced. By objecting to the § 3D1.4 and § 4B1.5(b) enhancements, and the guidelines starting point, he challenges the procedural reasonableness of his sentence, a challenge that he waived below and does not raise on appeal. Therefore, we review the substantive reasonableness of his sentence only as it relates to the district court's downward variance.

"A sentence is substantively unreasonable if the district court selects the sentence arbitrarily, bases the sentence on impermissible factors, fails to consider pertinent 18 U.S.C. § 3553(a) factors, or gives an unreasonable amount of weight to any pertinent factor." *United States v. Tristan-Madrigal*, 601 F.3d 629, 633 (6th Cir. 2010). "Although it is not impossible to succeed on a substantive-reasonableness challenge to a below-guidelines sentence, defendants who seek to do so bear a heavy burden." *United States v. Greco*, 734 F.3d 441, 450 (6th Cir. 2013).

Here, the district court meticulously weighed the § 3553(a) factors and determined that Frei's sentence was necessary to achieve the sentencing goals. First, it considered the nature and circumstances of Frei's crimes, noting that as horrifying as the crimes were, there are ways "the offense could be worse," such as if the minor were younger or Frei's conduct were violent. Second, the court assessed Frei's personal history and characteristics, noting his childhood, work, substance-abuse, and criminal histories. Third, the court determined that Frei's sentence

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United States v. Frei

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served to deter Frei from future conduct and to protect the public. Finally, the court addressed potential sentencing disparities.

Frei's argument "ultimately boils down to an assertion that the district court should have balanced the § 3553(a) factors differently," which "is simply beyond the scope of [this court's] appellate review." *United States v. Sexton*, 512 F.3d 326, 332 (6th Cir. 2008) (quotation marks and citation omitted).

The district court did not abuse its discretion in calculating and imposing this sentence.

III.

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

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 20-5119

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAMES FREI,

Defendant - Appellant.

FILED
May 03, 2021
DEBORAH S. HUNT, Clerk

Before: BATCHELDER, GRIFFIN, and STRANCH, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Middle District of Tennessee at Nashville.

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

No. 20-5119

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jun 03, 2021
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA.

Plaintiff-Appellee,

V.

JAMES FREI,

Defendant-Appellant.

ORDER

BEFORE: BATCHELDER, GRIFFIN, and STRANCH, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

Wm L. Hunt

Deborah S. Hunt, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

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Filed: June 03, 2021

Mr. Charles David Buckholts
Law Office
40 Burton Hills Boulevard
Suite 200
Nashville, TN 37215

Re: Case No. 20-5119, *USA v. James Frei*
Originating Case No.: 3:17-cr-00032-1

Dear Mr. Buckholts,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Beverly L. Harris
En Banc Coordinator
Direct Dial No. 513-564-7077

cc: Ms. Katy Risinger
Mr. John Christopher Suedekum

Enclosure

UNITED STATES DISTRICT COURT

Middle District of Tennessee

UNITED STATES OF AMERICA

v.

JAMES FREI

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:17-cr-00032

USM Number: 25232-075

Michael Noel and Charles Buckholts

Defendant's Attorney

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) 1, 2, 3, 4, 5, 6, 7 & 9
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 2251(a)	Production of Child Pornography	5/8/2016	1
18 U.S.C. § 2251(a)	Production of Child Pornography	5/17/2016	2
18 U.S.C. § 2251(a)	Production of Child Pornography	6/3/2016	3

The defendant is sentenced as provided in pages 2 through 8 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) 8 ☒ 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.

1/13/2020

Date of Imposition of Judgment

Eli Richardson

Signature of Judge

Eli Richardson, United States District Judge

Name and Title of Judge

January 21, 2020

Date

ADDITIONAL COUNTS OF CONVICTION

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DEFENDANT: JAMES FREI
CASE NUMBER: 3:17-cr-00032

IMPRISONMENT

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

318 months (318 months on each of Counts 1, 2, 3, 4, 5, 6 and 7 to run concurrent with each other and concurrent with 240 months on Count 9)

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

Designation to a facility that has a sex offender treatment program (residential) or, alternatively, a non-residential sex offender treatment program.

☒ 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: JAMES FREI
CASE NUMBER: 3:17-cr-00032

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

Lifetime - (Counts 1, 2, 3, 4, 5, 6, 7, and 9 to run concurrent with each other)

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: JAMES FREI
CASE NUMBER: 3:17-cr-00032

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: JAMES FREI
CASE NUMBER: 3:17-cr-00032

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall participate in a mental health program as directed by the United States Probation Office. The defendant shall pay all or part of the cost of mental health treatment if the United States Probation Office determines the defendant has the financial ability to do so or has appropriate insurance coverage to pay for such treatment.
2. The defendant shall participate in sex offender assessment and treatment, including but not limited to polygraph examinations recommended by the treatment provider and as directed by the U.S. Probation Office. The defendant shall contribute to the cost as determined by the U.S. Probation Office.
3. The defendant shall not consume any alcoholic beverages.
4. The defendant's residence and employment shall be pre-approved by the U.S. Probation Office.
5. The defendant shall not associate with children under the age of 18 nor frequent, volunteer, or work at places where children congregate (e.g., playgrounds, parks, malls, day-care centers or schools) unless approved by the U.S. Probation Office.
6. The defendant shall have no direct or indirect contact with T.B. or the victim's immediate family, without the prior approval of the United States Probation Office, and the United States Probation Office will verify compliance with this condition.
7. The defendant shall not buy, sell, exchange, possess, trade, or produce visual depictions of minors or adults engaged in sexually explicit conduct. The defendant shall not correspond or communicate in person, by mail, telephone, or computer, with individuals or companies offering to buy, sell, trade, exchange, or produce visual depictions of minors or adult engaged in sexually explicit conduct, as defined in 18 U.S.C. § 2256(2).
8. The defendant shall not possess or use a device capable of creating pictures or video without the prior permission of the U.S. Probation Office.
9. The defendant shall not rent or use a storage facility without the prior permission of the U.S. Probation Office.
10. The defendant shall register as a sex offender as prescribed by state and federal law.
11. The defendant shall 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 United States Probation Office. This includes any Internet service provider, bulletin board system, or any other public or private network or e-mail system. The defendant's residence shall not contain any electronic devices capable of Internet access without prior approval of the probation officer.
12. The defendant shall consent to the U.S. Probation Office conducting unannounced examinations of the defendant's computer system(s), mobile devices, 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. The defendant will consent to having installed on the defendant's computer(s), any hardware/software to monitor computer use or prevent access to particular materials. The defendant will further consent to periodic inspection of any such installed hardware/software to ensure it is functioning properly. The defendant shall pay the cost of the installation of and the continuing use of the monitoring program.
13. The defendant shall provide the U.S. Probation Office with accurate information about the defendant's entire computer system (hardware/software) and internal/external storage devices; all passwords used by the defendant; and will abide by all rules regarding computer use and restrictions as provided by the U.S. Probation Office.
14. The defendant shall furnish all financial records, including, without limitation, earnings records and tax returns, to the United States Probation Office upon request.
15. You shall pay restitution in an amount totaling \$2,080 to Taylor Bushong. The victim's address will be provided to the Clerk of the Court under separate cover. Payments shall be submitted to the Clerk, United States District Court, 801 Broadway, Nashville, TN 37203. [If you are incarcerated, payment shall begin under the Bureau of Prisons' Inmate Financial Responsibility Program. Should there be any unpaid balance when supervision commences, you shall pay the remaining restitution at a minimum monthly rate of 10 percent of your gross monthly income. No interest shall accrue as long as you remain in compliance with the payment schedule ordered. Pursuant to 18 U.S.C. § 3664(k), you shall notify the court and United States Attorney of any material change in economic circumstances that might affect ability to pay.

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CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 800.00	\$	\$	\$ 2,080.00

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

☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Taylor Bushong		\$2,080.00	

TOTALS	\$	<u>0.00</u>	\$	<u>2,080.00</u>
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☐ Restitution amount ordered pursuant to plea agreement \$ _____

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

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

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

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

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

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

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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 \$ 800.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

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), 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:

The property set forth in the Agreed Stipulation Regarding Forfeiture (Doc. No. 69), which is now final as to Defendant.

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.

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES FREI,

Defendant.


No. 3:17-cr-00032

CHIEF JUDGE CRENSHAW

ORDER

For the reasons given at the September 20, 2018 status conference, Charles D. Buckholts is **APPOINTED** as second-chair counsel in this case. The Court will hold a follow-up status conference on **September 25, 2018**, at 3:30 p.m., to select a new trial date. The Clerk is **DIRECTED** to forward a copy of this Order to Ann Card at the Federal Public Defender's Office.

IT IS SO ORDERED.



WAVERLY D. CRENSHAW, JR.
CHIEF UNITED STATES DISTRICT JUDGE