

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

February 3, 2022

Lyle W. Cayce
Clerk

No. 21-30585
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOHN EDWARD MCINTYRE,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 3:20-CR-213-1

Before SMITH, STEWART, and GRAVES, *Circuit Judges.*

PER CURIAM:*

John Edward McIntyre pleaded guilty to possession with the intent to distribute methamphetamine and possession of a firearm in furtherance of drug trafficking. He now appeals the district court's denial of his motion to suppress evidence, arguing that the incriminating evidence at issue was

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 21-30585

discovered pursuant to a pretextual traffic stop. He correctly concedes that his argument is foreclosed by *Whren v. United States*, 517 U.S. 806 (1996), but he wishes to preserve it for further review. The Government moves for summary affirmance or, in the alternative, for an extension of time to file a brief.

As the Government asserts and as McIntyre concedes, the sole issue raised on appeal is foreclosed by *Whren*. Because the Government’s position “is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case,” *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), summary affirmance is proper.

Accordingly, the Government’s motion for summary affirmance is GRANTED, and the district court’s judgment is AFFIRMED. The Government’s alternative motion for an extension of time to file a brief is DENIED.

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

UNITED STATES OF AMERICA

CASE NO. 3:20-CR-00213-01

VERSUS

JUDGE TERRY A. DOUGHTY

JOHN EDWARD MCINTYRE (01)

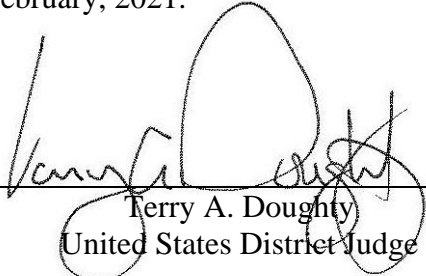
MAG. JUDGE KAREN L. HAYES

JUDGMENT

The Report and Recommendation of the Magistrate Judge [Doc. No. 27] having been considered, together with the written Objection [Doc. No. 28] filed with this Court, and, after a *de novo* review of the record, finding that the Magistrate Judge's Report and Recommendation is correct, and that judgment as recommended is warranted,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant John Edward McIntyre's Motion to Suppress [Doc. No. 20] is **DENIED**.

THUS DONE in Chambers on this 4th day of February, 2021.



Terry A. Doughty
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

UNITED STATES OF AMERICA

CASE NO. 3:20-CR-00213-01

VERSUS

JUDGE DOUGHTY

JOHN EDWARD MCINTYRE (01)

MAG. JUDGE KAREN L. HAYES

REPORT AND RECOMMENDATION

Defendant, John Edward McIntyre, is charged in a three-count indictment with possession with intent to distribute methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) & (b)(1)(A)(viii), possession of a firearm in furtherance of drug trafficking, in violation of 18 U.S.C. § 924 (c)(1), and felon in possession of a firearm, in violation of 18 U.S.C. § 922 (g)(1). On November 20, 2020, Defendant filed a motion to suppress evidence seized during a traffic stop. [doc. # 20]. The motion is opposed. [doc. # 22]. For the following reasons, it is recommended that the motion be DENIED.

Background

On January 12, 2020, Deputies Adam Arrant (“Arrant”) and Tyler Dooley (“Dooley”) initiated a traffic stop of Defendant John McIntyre (“McIntyre”). [doc. #22, pp. 1-2]. Arrant and Dooley had been driving on unrelated business when they observed a white Tahoe cross the centerline on Drago Street in West Monroe and then change lanes at an intersection without signaling. [doc. # 22, p. 2]. The deputies then performed a traffic stop on the white Tahoe for violating Louisiana Revised Statute 32:79 - Driving on a Roadway Laned for Traffic. [doc. # 22, p. 2].

When Dooley and Arrant approached the driver's and passenger's windows, respectively, they observed that McIntyre, the driver, was the only person in the Tahoe. [doc. # 22, p. 2]. Dooley informed him of the reason for the traffic stop, and McIntyre explained that he had been eating cereal while driving, which made him unable to stay in his lane. [doc. # 22, p. 2]. According to Dooley, McIntyre seemed nervous during the encounter, and McIntyre's hand was shaking as he handed Dooley the vehicle paperwork. [doc. # 22, p. 2]. Further, Dooley noticed black digital scales in the cupholder, which both deputies know are commonly used in drug distribution, and Arrant recognized McIntyre from previous cases in the area as a known methamphetamine dealer. [doc. # 22, p. 2]. Arrant knew that the Metro Narcotics Unit had an active investigation into McIntyre for dealing methamphetamine. [doc. # 22, p. 3].

Arrant asked McIntyre for consent to search the Tahoe, which McIntyre denied. [doc. # 22, p. 3]. The deputies then called for a K-9 unit to come to the scene; meanwhile Arrant checked to see if the defendant had outstanding warrants against him, as well as contacting the Metro Narcotics Unit to see if they possessed warrants signed by the judge but not entered into the system yet. [doc. # 22, p. 3]. Shortly thereafter (within five minutes), the K-9 unit arrived and performed a free air sniff of the Tahoe, alerting the deputies to the odor of illegal controlled substances in the Tahoe. [doc. # 22, p. 3]. First, the dog alerted on the front passenger side of the vehicle, where the door was closed; then, the K-9 unit walked around the rear of the vehicle to the open driver's side door, where the dog entered the car and alerted once more to the presence of controlled substances. [January 11, 2021 Evidentiary Hearing, testimony of Officer Martin].

At this point, deputies had not issued traffic citations or completed their records check of McIntyre, and based on the K-9 alert, they searched the Tahoe. [doc. # 22, p. 3]. In the vehicle, the deputies found digital scales and a backpack. [doc. # 22, p. 3]. Inside the backpack, they

located a black magnetic box containing approximately 120 grams of methamphetamine, 13 suspected Clonazepam pills, 14 bags containing approximately 1400 Xanax pills, marijuana, other prescription drugs, two Christmas cards, a Sig Sauer 9mm semi-automatic handgun, and \$2,185.00 in U.S. Currency. [doc. # 22, p. 3]. The stop lasted approximately four to six minutes in total.

On September 23, 2020, a federal grand jury indicted Defendant on one count of possession with intent to distribute methamphetamine in violation of 21 U.S.C. § 841(a)(1), (b)(1)(A)(viii); one count of possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1); and one count of felon in possession of a firearm in violation of 18 U.S. C. § 922(g)(1). [doc. # 1].

On November 20, 2020, Defendant filed a motion to suppress evidence seized on the grounds that (1) Defendant committed no traffic violation to justify the initial stop and (2) the detention of Defendant while the deputies waited for the K-9 unit was unreasonable. [doc. # 20]. On December 11, 2020, the Government filed its response, claiming (1) the deputies had reasonable suspicion to perform the traffic stop due to Defendant's crossing the center line and failing to signal when changing lanes; (2) that the deputies did not extend the detention of Defendant to wait for the K-9 unit, but even if they had such an extension was supported by reasonable suspicion and thus not a violation of the Fourth Amendment and (3) the K-9's alert on the vehicle provided probable cause to search the vehicle. [doc. # 22].

An evidentiary hearing was conducted on January 11, 2021. [doc. # 25]. Defendant made an oral motion for discovery to produce the supplemental K-9 report written by Officer Martin, the K-9 handler. [doc. # 24]. The Court granted the motion, ordering production of the supplemental K-9 report. [doc. #s 25]. According to both counsel, the supplemental K-9 report

was produced, and matched Officer Martin’s testimony; therefore, there is no need for additional testimony. Accordingly, the motion is ripe.

Law and Analysis

1. The Traffic Stop was Reasonable

When an officer has probable cause to believe an individual has violated the traffic code, the stop is rendered reasonable under the Fourth Amendment. *United States v. Valenzuela-Gomez*, 816 Fed. App’x 914, 917 (5th Cir. 2020); *Whren v. United States*, 517 U.S. 806 (1996). The actual motivation for the stop does not affect the reasonableness of the stop. A traffic stop constitutes a seizure under the Fourth Amendment, and a court determines the reasonableness of a traffic stop by examining “whether the officer’s action was: (1) ‘justified at its inception’; and (2) ‘reasonably related in scope to the circumstances which justified the interference in the first place.’” *United States v. Lopez-Moreno*, 420 F.3d 420, 430 (5th Cir. 2005) (quoting *Terry v. Ohio*, 392 U.S. 1, 19-20 (1968)).

Under the first prong, a traffic stop is justified at its inception when an officer has a reasonable suspicion that “some sort of illegal activity, such as a traffic violation, occurred, or is about to occur, before stopping the vehicle.” *Id.* Reasonable suspicion exists when officer has “a particularized and objective basis for suspecting legal wrongdoing” based on the totality of the circumstances. *Id.* (internal quotations omitted). An officer must be able to “point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the search and seizure.” *Id.* Although “reasonable suspicion need not rise to the level of probable cause,” a “mere hunch will not suffice.” *Id.*

Further, “the decision to stop an automobile is reasonable when the police have probable cause to believe that a traffic violation has occurred.” *Whren v. United States*, 517 U.S. 806, 810

(1996). “Probable cause exists when the totality of facts and circumstances within a police officer’s knowledge at the moment of [a stop or] arrest are sufficient for a reasonable person to conclude that the suspect had committed, or was in the process of committing, an offense.”

United States v. Zavala, 541 F.3d 562, 575 (5th Cir. 2008) (citations omitted). An officer has probable cause to conduct a traffic stop when he personally observes the defendant commit a traffic violation. *United States v. Rosales-Giron*, 592 F. App’x 246, 251 (5th Cir. 2014).

Here, the officers’ testimony establishes that they personally observed Defendant’s vehicle cross the center line and depart from its lane without signaling, which is a violation of Louisiana traffic law. Under Fifth Circuit precedent, this observation gave the officers probable cause to conduct a traffic stop. Defendant presented no evidence at the evidentiary hearing to refute the basis for the stop. Thus, the initial stop was justified because the officers personally observed Defendant commit a traffic violation.

2. The Time of Detention was Reasonable

Under the second prong of *Terry*, the detention “must be temporary and last no longer than is necessary to effectuate the purpose of the stop.” *United States v. Brigham*, 382 F.3d 500, 507 (5th Cir. 2004).” During a traffic stop, a police officer may examine a driver’s license and vehicle registration, run a computer check on the driver and the vehicle, and question the driver about a wide range of matters, including those unrelated to the purpose of a routine traffic stop.” *Zavala*, 541 F.3d at 576. “All these inquiries are within the scope of investigation attendant to the traffic stop.” *Brigham*, 382 F.3d at 508.

However, “[a]n officer’s subsequent actions are not reasonably related in scope to the circumstances that caused him to stop the vehicle if he detains its occupants beyond the time needed to investigate the circumstances that caused the stop, unless he develops reasonable

suspicion of additional criminal activity in the meantime.” *United States v. Pack*, 612 F.3d 341, 350 (5th Cir.), *opinion modified on denial of reh’g*, 622 F.3d 383 (5th Cir. 2010) “Once a computer check is completed and the officer either issues a citation or determines that no citation should be issued, the detention should end and the driver should be free to leave.” *United States v. Santiago*, 310 F.3d 336, 341–42 (5th Cir. 2002). “In order to continue a detention after such a point, the officer must have a reasonable suspicion supported by articulable facts that a crime has been or is being committed.” *Id.* at 342. *See also Rodriguez v. United States*, 575 U.S. 348, 353–54 (2015) (absent reasonable suspicion, police may not extend a completed traffic stop in order to obtain a drug-sniffing dog).

Here, upon approaching the vehicle, Officer Dooley noticed black digital scales in the cupholder of Defendant’s vehicle and knew that scales are often used in drug distribution and dealing. Further, Officer Dooley observed Defendant’s nervous demeanor and shaking hand when he asked for his vehicle paperwork. Officer Arrant recognized Defendant from previous drug-related investigations in the area and knew that Defendant had a drug-trafficking history. Although a K-9 unit was called to the scene, the officers did not extend the traffic stop unreasonably by doing so because they were still checking for warrants when the K-9 unit arrived on scene. However, even if the record and warrant check had been completed prior to the arrival of the K-9 unit, the officers still had reasonable suspicion to extend the stop because the observation of digital scales combined with Defendant’s nervous demeanor and known history of drug trafficking provided reasonable suspicion that illegal activity was taking place. The stop took a total of four to six minutes: clearly a reasonable time.

3. The Vehicle Search was Supported by Probable Cause

Finally, the first alert of the K-9 unit did not constitute a search and provided reasonable suspicion for the officers to search Defendant's vehicle. Generally, "an alert by a drug-detecting dog provides probable cause to search a vehicle." *United States v. Rodriguez*, 702 F.3d 206, 210 (5th Cir. 2012). Here, the K-9 unit first alerted on the closed front passenger side door of the vehicle, giving the officers reasonable suspicion to search the vehicle. Regardless of whether the dog's jumping in the driver's side door of the vehicle constituted a search, she had already alerted on the other side of the car where the door was closed, so there was probable cause for the search. Thus, the officers' stop of Defendant was reasonable in scope and based on reasonable suspicion, and their search of the vehicle was supported by probable cause. Accordingly, the motion to suppress evidence of the search must be denied.

Conclusion

For the foregoing reasons,

IT IS RECOMMENDED that Defendant's motion to suppress [doc. # 20] be **DENIED**.

Under the provisions of 28 U.S.C. § 636(b)(1)(C) and FRCP Rule 72(b), the parties have **fourteen (14) days** from service of this Report and Recommendation to file specific written objections with the Clerk of Court. A party may respond to another party's objections within **fourteen (14) days** after being served with a copy. A courtesy copy of any objection or response or request for extension of time shall be furnished to the District Judge at the time of filing. Timely objections will be considered by the District Judge before making a final ruling.

Failure to file written objections to the proposed findings, conclusions, and recommendations contained in this Report and Recommendation within fourteen (14) days from the date of its service, shall bar an aggrieved party, except on grounds of plain error, from

attacking on appeal the unobjected-to factual findings and legal conclusions accepted by the District Judge.

In Chambers, at Monroe, Louisiana, this 20th day of January 2021.



KAREN L. HAYES
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT

Western District of Louisiana

Monroe Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

JOHN EDWARD MCINTYRE

Case Number: 3:20-CR-00213-1

USM Number: 12647-035

Betty Lee Marak

Defendant's Attorney

THE DEFENDANT:☒ pleaded guilty to count(s) 1 and 2 of the Indictment☐ 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:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21USC841(a)(1)	Possession With Intent To Distribute Methamphetamine	01/12/2020	1
18USC924(c)(1)	Possession Of A Firearm In Furtherance Of Drug Trafficking	01/12/2020	2

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(s) 3 ☒ 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.

September 14, 2021

Date of Imposition of Judgment

Signature of Judge

TERRY A. DOUGHTY, United States District Judge

Name of Judge

Title of Judge

September 14, 2021

Date

DEFENDANT: JOHN EDWARD MCINTYRE
CASE NUMBER: 3:20-CR-00213-1

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: 120 month(s) as to count 1; 60 month(s) as to count 2 Terms to run consecutively. It is the intention of the Court that Defendant serve 180 months in prison. This sentence is to run concurrently with any sentence imposed in Docket No. 20-cr-000345 in the 4JDC, Parish of Ouachita, State of Louisiana, pursuant to USSG 5G1.3(c), because the conduct associated with the arrest forms the basis of the instant offense.

- ☒ The court makes the following recommendations to the Bureau of Prisons: that Defendant be evaluated for placement in a residential drug treatment program deemed appropriate.
- ☒ 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: JOHN EDWARD MCINTYRE
CASE NUMBER: 3:20-CR-00213-1

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of : five (5) years

MANDATORY CONDITIONS (MC)

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.
4. ☐ 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*)
5. ☐ 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*)
6. ☒ You must cooperate in the collection of DNA as directed by the probation officer. (*check if applicable*)
7. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. (*check if applicable*)
8. ☐ You must participate in an approved program for domestic violence. (*check if applicable*)
9. ☐ The passport restriction imposed at the time of initial release is hereby suspended, and defendant's passport is ordered released to defendant's attorney. (*check if applicable*)
10. ☐ The passport restriction imposed at the time of initial release is continued, and defendant's passport is ordered transferred to the U. S. Department of State. (*check if applicable*)
11. You must comply with the standard conditions that have been adopted by this court as well as any other conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION (SC)

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: JOHN EDWARD MCINTYRE
CASE NUMBER: 3:20-CR-00213-1

SPECIAL CONDITIONS OF SUPERVISION (SP)

1. Because the presentence report and/or other reliable sentencing information indicates a high risk of future substance abuse, the defendant shall participate in a program for the treatment of drug and/or alcohol addiction, dependence, or abuse which may include, but not limited to, urine, breath, saliva, and skin testing should a screening and/or assessment indicate treatment is needed. The Court will determine whether any such treatment will be inpatient or outpatient after the screening and/or assessment is conducted. The defendant shall comply with the rules and regulations of the treatment agency and allow the probation officer, in consultation with the agency, to adjust the modality, duration, and intensity of treatment as needed. The defendant shall further submit to drug and/or alcohol testing techniques, in addition to those performed by the treatment agency, during and after formal treatment services.

DEFENDANT: JOHN EDWARD MCINTYRE
CASE NUMBER: 3:20-CR-00213-1

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$200.00	\$.00	\$.00	\$.00	\$.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.

- ☐ 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/or penalties and it is ordered that:
- ☐ the interest and/or ☐ penalty requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest and/or ☐ penalty requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299..

** 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: JOHN EDWARD MCINTYRE
CASE NUMBER: 3:20-CR-00213-1

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 \$ 200.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ 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: Payable to U.S. Clerk of Court

The Court orders that any federal income tax refund payable to the defendant from the Internal Revenue Service will be turned over to the Clerk of Court and applied toward any outstanding balance with regard to the outstanding financial obligations ordered by the Court.

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, or, unless ordered otherwise, criminal debt payments may be made online at www.lawd.uscourts.gov/fees.

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 Court gives notice this case involves other defendants who may be held jointly and several liable for payment of all or part of the restitution ordered herein and may order such payment in the future.
- ☐ 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:

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.