

APPENDIX A

United States Court of Appeals
For the Eighth Circuit

No. 19-3053

United States of America

Plaintiff - Appellee

v.

Joe Lenard Rodriguez

Defendant - Appellant

Appeal from United States District Court
for the District of North Dakota - Fargo

Submitted: October 20, 2020

Filed: January 8, 2021

Before SMITH, Chief Judge, LOKEN and GRUENDER, Circuit Judges.

GRUENDER, Circuit Judge.

Joe Lenard Rodriguez was convicted of seven drug-trafficking crimes. Rodriguez appeals, challenging the sufficiency of the evidence for one of his

convictions and arguing that the district court¹ erred in its handling of a transcript of an audio recording. We affirm.

I.

On August 1, 2017, law enforcement conducted a controlled buy from an individual who subsequently agreed to become a confidential informant (the "CI"). The CI told law enforcement that Rodriguez was the source of the methamphetamine that she was caught selling. She testified that Rodriguez would supply her with 3.5 to 7 grams of methamphetamine "[o]nce a week at least" during the time period leading up to August 1. Some of this she would use—she testified that she used methamphetamine most days, a quarter gram at a time—and the rest of it she would sell. According to the CI, Rodriguez made regular trips to Texas to replenish his stock of methamphetamine.

After agreeing to cooperate with law enforcement, the CI conducted four controlled buys from Rodriguez in August 2017 and a fifth in October 2017. On each occasion, the CI carried a hidden recording device. During the October controlled buy, Rodriguez said that he was heading to Texas to acquire more methamphetamine and offered to sell some to the CI at a discount if she paid in advance. After obtaining a warrant, law enforcement placed a tracker on Rodriguez's vehicle, monitored his travel to Texas, and arrested him on November 9 while he was on his way back to North Dakota. A search of his car revealed over 300 grams of methamphetamine wrapped in plastic and concealed in raw meat.

On June 20, 2018, a federal grand jury indicted Rodriguez on seven counts, including one count of conspiracy to possess with intent to distribute methamphetamine. *See generally* 21 U.S.C. §§ 841(a)(1), 846. The indictment

¹The Honorable Daniel L. Hovland, then Chief Judge, United States District Court for the District of North Dakota.

alleged that Rodriguez was involved in the conspiracy between July 1, 2017 and the date of the indictment.

During the morning of the day before trial, the prosecutor emailed defense counsel a transcript of a recording of one of the controlled buys. That afternoon, the prosecutor sent defense counsel another email with the subject line "Joe Rodriguez trial, stipulation to Exhibit 5 (audio of 10/24/17 controlled buy)." In the body of the email, the prosecutor wrote, "I agree to your proposal from our call this morning that the parties stipulate as to foundation and admissibility for the 'deal' portion of this audio recording (and related transcript) in exchange for us not trying to offer into evidence the entire audio recording as part of the prosecution case-in-chief." Defense counsel responded, "That sounds good." What was then labelled "Exhibit 5" included both the audio and the transcript.

The next day, at the beginning of trial, the district court asked the parties if there were any evidentiary issues that needed to be resolved outside the presence of the jury. The prosecutor stated that "with respect to Exhibit 5, which is an audio excerpt of one of the five controlled buys that is alleged to have taken place in this case, the parties have agreed as to foundation and admissibility for that and I wanted to put that on the record now." When the district court asked defense counsel if she was "on the same page," she replied: "Yes, Your Honor. . . . [W]e just request that the transcript be just limited to the actual controlled buy, not before or after the parties interact in that tape." Rodriguez was present when his counsel made this statement, and he did not object.

After the Government played the controlled-buy segment of Exhibit 5 for the jury with the transcript appearing on the screen in the courtroom, defense counsel objected on the ground that the transcript was lacking in foundation. Later, defense counsel claimed that the transcript contained inaccuracies. The district court ruled that the transcript was not to be replayed for or sent back with the jury and that Rodriguez could argue to the jury that the transcript was inaccurate. Exhibit 5 was relabeled "Exhibit 5A" and marked as a court exhibit, and a copy of the audio

recording without the transcript was sent back with the jury under the label "Exhibit 5." When the district court presented its final jury instructions, which did not address the transcript, defense counsel stated, "I just wanted to put on the record that we did review the jury instructions and we don't have any objections."

The jury returned a verdict of guilty on all seven counts. Rodriguez appeals, raising two issues. First, he argues that there was insufficient evidence to support his conviction for conspiracy to possess with intent to distribute methamphetamine. Second, he argues that the district court erred in its handling of the transcript of the audio recording.

II.

Rodriguez first claims that the evidence was insufficient to support his conviction for conspiracy to possess with intent to distribute methamphetamine within the time period alleged in the indictment. We reverse a conviction "for insufficient evidence only if no reasonable jury could have found [the defendant] guilty beyond a reasonable doubt." *United States v. White*, 816 F.3d 976, 985 (8th Cir. 2016).

To convict a defendant of conspiracy to possess with intent to distribute methamphetamine under 21 U.S.C. §§ 841(a)(1), 846, the government must prove that the defendant "intentionally became a part of . . . an agreement among individuals to" possess with intent to distribute methamphetamine. *See United States v. Herra-Herra*, 860 F.3d 1128, 1132 (8th Cir. 2017). "[A]n express agreement is unnecessary—a conspiracy may consist of simply a tacit understanding." *Id.* Because at least two individuals must be parties to an agreement in good faith for there to be a genuine agreement, "there can be no indictable conspiracy involving only the defendant and government agents and informers." *See United States v. Nelson*, 165 F.3d 1180, 1184 (8th Cir. 1999). To prove the existence of a conspiracy, the government need not establish the identities of the other conspirator(s); it just needs to establish that there were other conspirator(s). *Id.*

(noting that we have “sustain[ed] conspiracy convictions when all conspirators other than the defendant are unknown”).

In cases involving the distribution of controlled substances, we distinguish between a conspiracy and a mere “buyer-seller” relationship. *United States v. Conway*, 754 F.3d 580, 591 (8th Cir. 2014). Evidence of “a single transaction . . . involving small quantities of drugs consistent with personal use” is consistent with a “mere buyer-seller relationship.” *Id.* at 591-92. However, evidence of multiple transactions is evidence of a conspiracy. *See id.* at 592 (explaining that the “buyer-seller [jury] instruction is inappropriate where there is evidence of multiple drug transactions, as opposed to a single, isolated sale” (internal quotation marks omitted)). So is evidence that the transaction involved large quantities of drugs. *See United States v. Wiggins*, 104 F.3d 174, 177 (8th Cir. 1997) (treating the “receipt of large quantities of drugs” as indicative of a conspiracy rather than “a single buy-sell relationship”).

Here, evidence of Rodriguez’s dealings with the CI and evidence of Rodriguez’s dealings with an unknown individual in Texas were each independently sufficient to support a reasonable jury’s finding beyond a reasonable doubt that Rodriguez conspired to possess with intent to distribute methamphetamine within the time period alleged in the indictment.

Regarding the CI, Rodriguez points out, correctly, that the controlled buys executed after August 1 do not prove the existence of a conspiracy between Rodriguez and the CI because by then the CI was acting as a confidential informant. *See Nelson*, 165 F.3d at 1184 (“[T]here can be no indictable conspiracy involving only the defendant and government agents and informers.”). But the CI testified that she had been purchasing methamphetamine from Rodriguez “[o]nce a week at least” during the time period “leading up to” August 1, when she became a confidential informant. And she testified that she purchased enough to satisfy her own addiction with plenty leftover to sell. Thus, there was evidence that, between July 1, 2017 and August 1, 2017, Rodriguez and the soon-to-be CI engaged in multiple drug

transactions involving more than “small quantities of drugs consistent with personal use.” *See Conway*, 754 F.3d at 592. This alone is sufficient to support Rodriguez’s conviction for conspiracy to possess with intent to distribute methamphetamine. *See id.*; *Wiggins*, 104 F.3d at 177.

In addition, law enforcement caught Rodriguez returning from Texas in November 2017 with more than 300 grams of methamphetamine after he had told the CI that he was going to Texas to replenish his stock. Thus, there was evidence that Rodriguez and an unknown individual in Texas engaged in a transaction involving a large quantity of drugs inconsistent with personal use. This also is sufficient on its own to support Rodriguez’s conviction for conspiracy to possess with intent to distribute methamphetamine. *See Wiggins*, 104 F.3d at 177.²

In sum, there was sufficient evidence for a reasonable jury to conclude beyond a reasonable doubt that Rodriguez conspired with the soon-to-be CI and with an unknown individual in Texas to possess with intent to distribute methamphetamine. Rodriguez emphasizes that much of this evidence consisted in the testimony of the CI, whose credibility he challenges. But “[i]t is axiomatic that we do not review questions involving the credibility of witnesses.” *United States v. Dabney*, 367 F.3d 1040, 1043 (8th Cir. 2004). “Unwilling to usurp the jury’s unique role in judging the credibility of witnesses,” *id.*, we conclude that there was sufficient evidence to support Rodriguez’s conviction for conspiracy to possess with intent to distribute methamphetamine.

²Furthermore, the CI testified that Rodriguez regularly sourced his methamphetamine from Texas. From this, a reasonable jury could infer that Rodriguez was making multiple purchases of methamphetamine from the same supplier rather than returning to the same location for unplanned, one-time transactions with different suppliers. This constitutes a second basis for finding that Rodriguez conspired with an unknown individual in Texas to possess with intent to distribute methamphetamine. *See Conway*, 754 F.3d at 592.

III.

Rodriguez's second claim concerns the transcript of the audio recording. He argues that the district court erred by permitting the jury to view the transcript before defense counsel had an opportunity to review the transcript and take a position as to its accuracy. *See United States v. McMillan*, 508 F.2d 101, 105 (8th Cir. 1974) (“[A] transcript should normally be used only after the defendant has had an opportunity to verify its accuracy . . .”). According to Rodriguez, the district court's error in permitting the jury to view the transcript, together with the fact that the transcript contained inaccuracies and the district court failed to provide a curative instruction, entitles him to a new trial.

Rodriguez frames his claim in terms of the Sixth Amendment right to trial by jury.³ Ordinarily, we review claims of constitutional error, including violations of the Sixth Amendment right to trial by jury, *de novo*. *United States v. Hawkins*, 796 F.3d 843, 863 (8th Cir. 2015). “When there is no objection [at trial] to the lack of an instruction,” however, the objection is forfeited, and “we review any decision by the district court to omit a curative instruction for plain error.” *See United States v. LeGrand*, 468 F.3d 1077, 1081 (8th Cir. 2006). And when “a defendant knowingly and voluntarily waives a right, any error is unreviewable on appeal.” *United States v. Campbell*, 764 F.3d 874, 878 (8th Cir. 2014).

Rodriguez's assertion that his counsel had no opportunity to review the transcript and take a position as to its accuracy fails to support his claim of error because it is false. Defense counsel received the transcript by email, agreed to stipulate as to its foundation and admissibility, and confirmed this agreement before the district court.

³Because we conclude that the district court did not commit the alleged error, we need not address whether Rodriguez is correct that the alleged error constitutes a Sixth Amendment violation.

Rodriguez's assertion that the transcript contained inaccuracies also fails to support his claim of error, even assuming it is true. Rodriguez's counsel confirmed her stipulation to the admissibility of the audio recording and its transcript before the court, in the presence of and without objection from Rodriguez. Thus, Rodriguez waived any objection that he may have had to the presentation of the transcript to the jury—including any objection on the ground that the transcript was inaccurate. *See United States v. Robinson*, 617 F.3d 984, 989-90 (8th Cir. 2010) (holding that defense counsel's stipulation to the admissibility of evidence, in the presence of and without objection from the defendant, constitutes a waiver of objections to the evidence's admission). Even assuming that, by objecting to the transcript after it was shown, Rodriguez successfully withdrew his earlier stipulation, *but see United States v. Mezzanatto*, 513 U.S. 196, 202 (1995) (“[A]greements to waive evidentiary rules are generally enforceable even over a party's subsequent objections.”), the transcript was not replayed for or sent back with the jury. The only time the jury saw the transcript was when Rodriguez's waiver was unambiguously in effect.

That leaves Rodriguez's objection to the lack of a curative instruction. Because Rodriguez did not raise this objection below, we review his claim for plain error. *See LeGrand*, 468 F.3d at 1081. Rodriguez has failed to show any error, let alone error that was plain. As we have explained, Rodriguez waived any right that he may have had against the presentation of the transcript to the jury. Therefore, the district court did not err by permitting the jury to see the transcript. *See United States v. Olano*, 507 U.S. 725, 732-33 (1993) (explaining that, if a right has been waived, then what would otherwise violate the right does not constitute error). And if the district court did not err by permitting the jury to see the transcript, then neither did the district court err, plainly or otherwise, by failing to give a curative instruction. *See Hendricks v. Vasquez*, 974 F.2d 1099, 1108 (9th Cir. 1992) (explaining that no curative instruction is necessary where there is no underlying error to cure).

Therefore, the lack of a curative instruction regarding the transcript did not constitute error, let alone error that was plain.⁴

IV.

For the foregoing reasons, we affirm.

⁴Even assuming the district court did err in failing to give a curative instruction, Rodriguez's claim would not survive plain-error review because he has not shown that the lack of a curative instruction affected the outcome of the trial. *See LeGrand*, 468 F.3d at 1081.

UNITED STATES DISTRICT COURT

District of North Dakota

UNITED STATES OF AMERICA

v.

JOE LENARD RODRIGUEZ

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:18-cr-102

USM Number: 10610-179

Darla J. Schuman

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 and 7 of the Indictment.
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>
21 USC §§841(a)(1), 841(b)(1)(A)(viii), 846 & 841(b)(1)(C) & 18 USC §2	Conspiracy to Possess with Intent to Distribute and Distribute Controlled Substances	June 2018	1

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) _____ ☐ 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 9, 2019
Date of Imposition of Judgment

Signature of Judge

Daniel L. Hovland

U.S. Chief District Judge

Name and Title of Judge

Date

September 9, 2019

DEFENDANT: JOE LENARD RODRIGUEZ
CASE NUMBER: 3:18-cr-102

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 USC §§ 841(a)(1), 841(b)(1)(C) and 18 USC § 2	Distribution of a Controlled Substance	August 1, 2017	2
21 USC §§ 841(a)(1), 841(b)(1)(C) and 18 USC § 2	Distribution of a Controlled Substance	August 2, 2017	3
21 USC §§ 841(a)(1), 841(b)(1)(C) and 18 USC § 2	Distribution of a Controlled Substance	August 14, 2017	4
21 USC §§ 841(a)(1), 841(b)(1)(C) and 18 USC § 2	Distribution of a Controlled Substance	August 16, 2017	5
21 USC §§ 841(a)(1), 841(b)(1)(C) and 18 USC § 2	Distribution of a Controlled Substance	October 24, 2017	6
21 USC §§ 841(a)(1), 841(b)(1)(A)(viii), 841(b)(1)(C) and 18 USC § 2	Possession with Intent to Distribute Controlled Substances	November 9, 2017	7

DEFENDANT: **JOE LENARD RODRIGUEZ**
CASE NUMBER: **3:18-cr-102**

IMPRISONMENT

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

144 MONTHS, on each of Counts 1, 2, 3, 4, 5, 6 and 7, all sentences to run concurrent with one another. Defendant shall receive credit for time served in state custody in Walsh County, North Dakota, pursuant to 18 U.S.C. §3585.

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

The Court recommends the Defendant be placed in a low security correctional facility as close as possible to North Dakota, to remain close to family, specifically FPC Duluth in Duluth, MN; FCI Sandstone in Sandstone, MN; FMC Rochester in Rochester, MN; or FPC Yankton in Yankton, SD.

☒ 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 _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: **JOE LENARD RODRIGUEZ**

CASE NUMBER: **3:18-cr-102**

SUPERVISED RELEASE

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

6 YEARS on each of Counts 1, 2, 3, 4, 5, 6 and 7, each count to run concurrent with one another.

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 cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
5. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 2091, *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)*
6. ☐ 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: JOE LENARD RODRIGUEZ
CASE NUMBER: 3:18-cr-102**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: **JOE LENARD RODRIGUEZ**
CASE NUMBER: **3:18-cr-102**

SPECIAL CONDITIONS OF SUPERVISION

1. You must participate in a drug/alcohol dependency treatment program as approved by the supervising probation officer.
2. You must totally abstain from the use of alcohol and illegal drugs or the possession of a controlled substance, as defined in 21 U.S.C. § 802 or state statute, unless prescribed by a licensed medical practitioner; and any use of inhalants or psychoactive substances (e.g., synthetic marijuana, bath salts, etc.) that impair your physical or mental functioning.
3. You must submit to drug/alcohol screening at the direction of the United States Probation Officer to verify compliance. Failure or refusal to submit to testing can result in mandatory revocation. Tampering with the collection process or specimen may be considered the same as a positive test result.
4. As directed by the Court, if during the period of supervised release the supervising probation officer determines you are in need of placement in a Residential Re-Entry Center (RRC), you must voluntarily report to such a facility as directed by the supervising probation officer, cooperate with all rules and regulations of the facility, participate in all recommended programming, and not withdraw from the facility without prior permission of the supervising probation officer. The Court retains and exercises ultimate responsibility in this delegation of authority to the probation officer.
5. You must submit your person, residence, workplace, vehicle, computer (including password)s, and/or possessions to a search conducted by a United States Probation Officer based upon reasonable suspicion of a violation of a condition of supervision. Failure to submit to a search may be grounds for revocation, additional criminal charges, and arrest. You must notify any other residents that the premises may be subject to searches pursuant to this condition.

DEFENDANT: JOE LENARD RODRIGUEZ
CASE NUMBER: 3:18-cr-102

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	\$ 700.00	\$	\$	\$

☐ 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>
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TOTALS	\$ 0.00	\$ 0.00
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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.

DEFENDANT: **JOE LENARD RODRIGUEZ**
CASE NUMBER: **3:18-cr-102**

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 \$ 700.00 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:

All criminal monetary payments are to be made to the Clerk's Office, U.S. District Court, P.O. Box 1193, Bismarck, North Dakota, 58502-1193.

While on supervised release, the Defendant shall cooperate with the Probation Officer in developing a monthly payment plan consistent with a schedule of allowable expenses provided by the Probation Office.

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:

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) JVA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

APPENDIX C

United States of America, Appellee v. Joe Lenard Rodriguez, Appellant
UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT
2021 U.S. App. LEXIS 7382
No: 19-3053
March 12, 2021, Decided

Editorial Information: Prior History

{2021 U.S. App. LEXIS 1}Appeal from U.S. District Court for the District of North Dakota - Fargo.
(3:18-cr-00102-DLH-1).United States v. Rodriguez, 984 F.3d 704, 2021 U.S. App. LEXIS 443 (8th Cir.
N.D., Jan. 8, 2021)

Counsel

For United States of America, Plaintiff - Appellee: Megan A. Healy,
Assistant U.S. Attorney, Jacob T. Rodenbiker, Assistant U.S. Attorney, U.S. ATTORNEY'S
OFFICE, Fargo, ND.

Joe Lenard Rodriguez, Defendant - Appellant, Pro se, Oklahoma
City, OK.

For Joe Lenard Rodriguez, Defendant - Appellant: Darla Jane
Schuman, SCHUMAN LAW OFFICE, Grand Forks, ND.

Opinion

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.
Judge Erickson did not participate in the consideration or decision of this matter.