

APPENDIX

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APPENDIX A

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-10803

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MITCHELLE DERWIN ROBINSON,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:23-cr-80097-RLR-1

Before NEWSOM, GRANT, and TJOFLAT, Circuit Judges.

PER CURIAM:

Mitchelle Robinson appeals his conviction for attempting to possess with intent to distribute cocaine and carrying a firearm in relation to a drug trafficking crime. He raises two main arguments. First, he contends that his conviction cannot stand because the government failed to prove he knew the substance in question was cocaine, as the jury instructions allegedly required. Second, he argues that the District Court abused its discretion in admitting evidence of prior marijuana distribution under Rule 404(b). We affirm.

I.

A grand jury indicted Mitchell Robinson with (1) conspiring to possess with intent to distribute a controlled substance, (2) attempting to possess with intent to distribute a controlled substance, and (3) possessing a firearm in furtherance of a drug trafficking crime. Robinson pleaded not guilty and the case proceeded to trial. At trial, the government presented the following evidence:

During a May 2023 postal investigation, a United States Postal Inspection Services Task Force Officer flagged a suspicious package and obtained a warrant to search it. Inside, authorities found approximately one kilogram of a white powder, initially believed to be fentanyl but later confirmed to be cocaine. Based on this discovery, law enforcement conducted a controlled delivery with a tracking device in the package.

The recipient, Nicole Daly, agreed to cooperate with law enforcement. Acting under law enforcement guidance, Daly contacted Robinson and arranged to meet him in a parking lot. Surveillance captured Robinson circling the lot multiple times before approaching Daly and accepting the parcel. During the handoff, Daly mentioned a “loose powder” that “might be fentanyl,” and Robinson responded with acknowledgment. Law enforcement then apprehended Robinson shortly after he drove away, discovering a loaded pistol in his car alongside the package.

At trial, the government also presented Robinson’s text messages showing prior marijuana sales. Although Robinson objected to the relevance and prejudicial impact of these messages, the District Court admitted them, highlighting their probative value in establishing his familiarity with drug trafficking.

The jury acquitted Robinson on the conspiracy charge but found him guilty on the attempt and firearm counts. He timely appeals.

II.

We review Robinson’s challenge to the sufficiency of the evidence de novo, examining whether any reasonable trier of fact could have found Robinson guilty beyond a reasonable doubt based on the evidence presented. *See United States v. Taylor*, 480 F.3d 1025, 1026 (11th Cir. 2007). When a defendant raises a new sufficiency argument on appeal that was not presented in his Rule 29 motion, however, we review for plain error only. *United States v. Baston*, 818 F.3d 651, 663–64 (11th Cir. 2016); Fed. R. Crim. P. 52(b). Plain error

requires a showing that (1) an error occurred; (2) the error was plain; (3) the error affects substantial rights; and (4) “the error seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Rosales-Mireles v. United States*, 585 U.S. 129, 134–35, 138 S. Ct. 1897, 1904–05 (2018) (internal quotation marks omitted).

Robinson argues that the government relied on a “cocaine-specific” theory and that the government failed to prove he knew the package contained cocaine. Although Robinson concedes that the law does not require knowledge of the specific drug, he contends that the jury instructions required the government to prove he knew the package contained cocaine.

But Robinson’s argument falls short because sufficiency review focuses on the statutory elements of the offense rather than on any other requirements added by the jury instructions. *See Musacchio v. United States*, 577 U.S. 237, 243–44, 136 S. Ct. 709, 715 (2016). In other words, if the indictment and statutory elements did not require knowledge of cocaine specifically, the sufficiency of the evidence is assessed accordingly, irrespective of any potential overstatement in the instructions. *See id.*

Under 21 U.S.C. § 841(a)(1), a person violates the law by knowingly possessing with intent to distribute “a controlled substance”—specific knowledge of the type of controlled substance involved is unnecessary. *United States v. Gomez*, 905 F.2d 1513, 1514 (11th Cir. 1990) (“It is well-settled that to sustain a conviction for possession with intent to distribute a controlled substance, it need not be proved that the defendant had knowledge of the particular

drug involved, as long as he knew he was dealing with a controlled substance.”).

Here, Robinson’s knowledge of the type of substance was not an element of the charged crime. As a result, the government did not have to prove his knowledge at trial.

Robinson tries to subvert this legal framework by relying on *Ciminelli v. United States*, 598 U.S. 306, 143 S. Ct. 1121 (2023). But *Ciminelli* is inapposite. In *Ciminelli*, the Supreme Court vacated a conviction because the government had prosecuted the case under a flawed legal theory that was not actually part of the charges presented to the jury. *Ciminelli*, 598 U.S. at 311, 143 S. Ct. at 1125. Unlike in *Ciminelli*, where the government’s theory was legally invalid from the start, Robinson’s conviction was based squarely on the statutory elements of 21 U.S.C. §§ 841(a)(1) and 846. Those statutes require only that he knowingly attempt to possess with intent to distribute a “controlled substance.” Even if the District Court’s instructions were drug-specific, they did not alter the statutory elements of the offense. And the District Court made clear that Robinson’s knowledge of the substance as a “controlled substance” was enough for conviction.¹

¹ The jury submitted a question to the District Court during deliberations, which asked, “[i]s it relevant that the Defendant knew it was cocaine or could it be any controlled substance?” The Court re-read the jury instruction of Count 2, which in part read:

The Defendant knowingly possessed the controlled substance if, number one, the Defendant knew he possessed a substance listed on

Because the core requirement of the statute—knowledge of engaging in an illegal drug transaction involving a controlled substance—remained intact despite the jury instruction, sufficient evidence supports the jury’s conclusion. The record reveals that Robinson coordinated closely with Daly, arranging the transaction, accepting the delivery, and responding nonchalantly when informed of the powder’s possible fentanyl content. Together with Robinson’s pattern of drug-related communications, these actions strongly support an inference that Robinson was fully aware he was handling illegal drugs, satisfying the government’s burden to show his intent to traffic in a controlled substance. Under both *de novo* and plain-error review, Robinson’s challenge fails.

III.

We turn next to Robinson’s contention that the District Court improperly admitted evidence of his prior marijuana distribution under Rule 404(b). We review Rule 404(b) evidentiary rulings for abuse of discretion. *United States v. Culver*, 598 F.3d 740, 747 (11th Cir. 2010).

Federal Rule of Evidence 404(b) prohibits using evidence of other crimes or wrongs solely to establish character and thereby show conformity with that character on a specific occasion. But the

the Federal schedules of controlled substances, even if the Defendant did not know the identity of the substance; or, two, the Defendant knew the identity of the substance he possessed, even if the Defendant did not know the substance was listed on the Federal schedules of controlled substances.

Rule allows the introduction of such evidence for non-character purposes, such as proving motive, opportunity, intent, preparation, knowledge, or absence of mistake. *United States v. Jones*, 913 F.2d 1552, 1566 (11th Cir. 1990). This Rule is especially pertinent when intent or knowledge becomes central to a defendant's case, as it did here when Robinson pleaded not guilty and argued a lack of knowledge or intent.

In determining whether evidence is admissible under Rule 404(b), we apply a three-part test: (1) the evidence must be relevant to an issue other than the defendant's character; (2) there must be sufficient proof for a jury to find by a preponderance of the evidence that the defendant committed the act; and (3) the probative value of the evidence must not be substantially outweighed by undue prejudice. *United States v. Edouard*, 485 F.3d 1324, 1344 (11th Cir. 2007); *see also* Fed. R. Evid. 403.

The evidence of Robinson's prior drug distribution met each prong. First, the evidence was relevant to an issue beyond character—specifically, it bore directly on Robinson's knowledge and intent in handling the package he received from Daly. By demonstrating his familiarity with drug transactions through prior marijuana sales, the evidence negated any notion that Robinson was accidentally or unknowingly caught up in the drug deal. When a defendant's mental state is at issue, and the defendant has previously engaged in similar conduct, extrinsic evidence is "highly probative" of intent, even when it involves a different controlled substance.

United States v. Delgado, 56 F.3d 1357, 1366 (11th Cir. 1995); *United States v. Colston*, 4 F.4th 1179, 1192 (11th Cir. 2021).

Second, the evidence contained in Robinson's phone records and decoded by a task force officer provided sufficient proof for a reasonable jury to find that Robinson had indeed engaged in the prior marijuana sales.² And while Robinson asserts that distributing small amounts of marijuana differed in nature from the charged offense involving a kilogram of cocaine, the distinction does not diminish the probative force of the evidence. Regardless of drug type or quantity, Robinson's pattern of drug distribution speaks directly to his intent and knowledge in the charged offense.

Third, Robinson's argument that the District Court should have issued a limiting instruction for the Rule 404(b) evidence is without merit. Although the risk of prejudice can often be mitigated by an instruction, it is only error to omit one if the defendant requested an instruction. Robinson did not. Instead, he specifically requested that no limiting instruction be given. This deliberate choice invokes invited error, precluding Robinson from later claiming that the omission of an instruction was prejudicial. *See United States v. Love*, 449 F.3d 1154, 1157 (11th Cir. 2006).

Nor was the admission of the evidence unduly prejudicial. The evidence served a clear purpose by demonstrating Robinson's

² The officer translated drug code and trafficking language to the jury. For example, the officer told the jury that "420" is "used as coded language when it refers to marijuana" and that "gorilla glue 3 is the strength of marijuana he is offering."

knowledge and intent, and it did not unfairly sway the jury's judgment. Its probative value substantially outweighed any risk of unfair prejudice. Given that Robinson affirmatively waived the limiting instruction, we find no abuse of discretion, and conclude that any residual risk of prejudice was minor.

IV.

Robinson alleges that the weight of the evidence presented at trial did not support his conviction for attempting to possess with intent to distribute cocaine and that the District Court abused its discretion by allowing evidence of his past drug transaction. But that is not so. The jury's verdict is supported by the evidence presented at trial and the prior drug dealings were probative of his intent. We affirm.

AFFIRMED.

APPENDIX B

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 23-CR-80097-ROSENBERG

UNITED STATES OF AMERICA

v.

MITCHELLE DERWIN ROBINSON,

Defendant.

**ORDER GRANTING THE GOVERNMENT’S MOTION TO
INTRODUCE EVIDENCE UNDER FEDERAL RULE OF EVIDENCE 404(B)**

THIS CAUSE comes before the Court upon the Government’s Notice of Intent to Use Federal Rule of Evidence 404(b) Evidence which the Court treats as a motion in limine. DE 26. Defendant filed a Response to the motion. DE 38. For the reasons set forth below, the motion is **GRANTED**.

Defendant is charged with Conspiracy to Possess with Intent to Distribute a Controlled Substance, Attempt to Possess with Intent to Distribute a Controlled Substance, and Knowingly Carrying a Firearm During, in Relation to, and in Furtherance of a Drug Trafficking Crime. DE 25. Defendant has pleaded not guilty. DE 32. The Government seeks to admit evidence of uncharged prior criminal conduct by Defendant. More specifically, the Government seeks to admit text messages from Defendant’s cellular phone that demonstrate Defendant’s involvement in the distribution of controlled substances.

Federal Rule of Evidence 404(b) provides that extrinsic evidence of other crimes, wrongs or acts is not admissible to prove a defendant’s character by showing conformity therewith. Such evidence “may, however, be admissible for other purposes such as proof of motive, intent, plan, knowledge . . . or lack of mistake or accident” as to the charged offense. Fed. R. Evid. 404(b). For

such extrinsic evidence to be admissible under Rule 404(b), the Court must find that: (1) the evidence is relevant to an issue other than Defendant's character; (2) the act must be established by sufficient proof for the jury to find that Defendant committed the extrinsic act; and (3) the probative value of the evidence cannot be substantially outweighed by undue prejudice. *United States v. Edouard*, 485 F.3d 1324, 1344 (11th Cir. 2007).

Here, the Government seeks admission of its proffered evidence on the grounds that the evidence will show that the Defendant had the motive, intent, plan, knowledge, or absence of mistake to conspire to possess and to possess with the intent to distribute cocaine. DE 26 at 6. In response, Defendant argues that the text messages are not relevant, as they refer to the alleged distribution of marijuana at another time and place and have no bearing on Defendant's knowledge of the contents of the package containing cocaine in the instant case. DE 38 at 2. Defendant further argues that even if the messages were relevant, "any probative value is outweighed by undue prejudice." *Id.* Defendant does not provide further support for these propositions.

Defendant's objections are unpersuasive. First, the Government's proffered evidence is not irrelevant. The Eleventh Circuit has held that "[a] defendant who enters a not guilty plea makes intent a material issue which imposes a substantial burden on the government to prove intent, which it may prove by qualifying Rule 404(b) evidence absent affirmative steps by the defendant to remove intent as an issue." *United States v. Zapata*, 139 F.3d 1355, 1358 (11th Cir. 1998). The Eleventh Circuit has also found that a defendant's prior drug trafficking offense is admissible to prove that he acted with the requisite intent in connection with the charged offense. *United States v. Edouard*, 485 F.3d 1324, 1345 (11th Cir. 2007). The prior offense is admissible even if previous crime "involves a different type and amount of drug." *United States v. Colston*, 4 F.4th 1179, 1192 (11th Cir. 2021) (holding that the district court did not abuse its discretion when the government

admitted the defendant's prior text messages related to the distribution of prescription pills even though the defendant was charged with possession with intent to distribute cocaine).

Here, Defendant has entered a plea of not guilty to the instant offenses, placing his intent and knowledge at issue. Defendant has made no affirmative steps to remove intent as an issue. Additionally, while Defendant's prior drug trafficking activity likely involved marijuana, the text messages are still admissible to prove that he acted with the requisite intent and knowledge to commit the charged offenses. Therefore, the Government's evidence is relevant.

Second, the Government's evidence includes sufficient proof for a jury to find that Defendant committed the extrinsic act. "An extrinsic act does not need to result in criminal liability to be admissible under Rule 404(b), nor does the government have to prove the extrinsic offense beyond a reasonable doubt." *United States v. Theramene*, 517 F. App'x 789, 794 (11th Cir. 2013). Here, the Government's evidence includes several text messages from Defendant indicating that he was possessing a controlled substance, negotiating prices, and travelling to distribute the substance. Therefore, the Court finds it reasonable that a jury could find that Defendant committed the extrinsic act of distributing marijuana.

Third, the probative value of the Government's evidence is not substantially outweighed by undue prejudice. To determine the probative value of "other crimes" evidence, courts consider the degree of similarity between the 404(b) evidence and the charged offense. *United States v. Delgado*, 56 F.3d 1357, 1366 (11th Cir. 1995). Evidence of prior drug distribution is "highly probative of intent to distribute a controlled substance, as well as involvement in a conspiracy." *United States v. Cardenas*, 895 F.2d 1338, 1344 (11th Cir. 1990) (quoting *United States v. Hitsman*, 604 F.2d 443 (5th Cir. 1979) (quotations omitted)). Additionally, the Eleventh Circuit has held that "extrinsic drug offenses do not tend to incite a jury to an irrational decision" and thus


do not result in undue prejudice to the defendant. *Delgado*, 56 F.3d at 1366; see *United States v. Zapata*, 139 F.3d 1355, 1358 (11th Cir. 1998) (finding that extrinsic marijuana trafficking offenses were not “heinous acts which would have produced an irrational response from the jury nor were likely to mislead or confuse the jury”).

Here, Defendant’s text messages demonstrate that Defendant has previously engaged in the distribution of marijuana, a crime with a high degree of similarity to the instant case’s distribution of cocaine. Furthermore, the risk of undue prejudice to Defendant is low, as the messages demonstrate an extrinsic drug offense rather than a more heinous act.

Therefore, for all the foregoing reasons, the Government’s motion is **GRANTED**.

DONE and ORDERED in Chambers, West Palm Beach, Florida, this 11th day of December, 2023.

Copies furnished to:
Counsel of Record


ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE

APPENDIX C

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

UNITED STATES OF AMERICA

v.

MITCHELLE DERWIN ROBINSON

§ **JUDGMENT IN A CRIMINAL CASE**
 §
 §
 § Case Number: **9:23-CR-80097-RLR(1)**
 § USM Number: **59701-510**
 §
 § Counsel for Defendant: **Peter Vincent Birch**
 § Counsel for United States: **Brian Ralston**

THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input checked="" type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	2ss and 3ss of the second superseding indictment

The defendant is adjudicated guilty of these offenses:

<u>Title & Section / Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21:846, 841(B)(1)(B)(Ii)(Ii) - Conspiracy Distribute Contrl Subst	05/17/2023	2ss
18:924(C)(1)(A) - Violent Crime/Drugs/Machine Gun	05/17/2023	3ss

The defendant is sentenced as provided in pages 2 through 7 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) 1ss
- 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.

March 5, 2024

Date of Imposition of Judgment



Signature of Judge

**ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE**

Name and Title of Judge

March 6, 2024

Date

IMPRISONMENT

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

60 months as to count 2ss and 60 months as to count 3ss both terms to run consecutive.

The court makes the following recommendations to the Bureau of Prisons:
That the defendant be incarcerated in a facility in South Florida or as close to South Florida as possible.

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

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **four (4) years as to each of counts 2ss and 3ss both terms to run concurrent.**

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 which 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 additional conditions on the attached page.

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. I understand additional information regarding these conditions is available at www.flsp.uscourts.gov.

Defendant's Signature _____

Date _____

SPECIAL CONDITIONS OF SUPERVISION

Financial Disclosure Requirement: The defendant shall provide complete access to financial information, including disclosure of all business and personal finances, to the U.S. Probation Officer.

Permissible Search: The defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

Unpaid Restitution, Fines, or Special Assessments: If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

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

- The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. 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 the schedule of payments page 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:

Restitution with Imprisonment - It is further ordered that the defendant shall pay restitution in the amount of **\$.00**. During the period of incarceration, payment shall be made as follows: (1) if the defendant earns wages in a Federal Prison Industries (UNICOR) job, then the defendant must pay 50% of wages earned toward the financial obligations imposed by this Judgment in a Criminal Case; (2) if the defendant does not work in a UNICOR job, then the defendant must pay a minimum of \$25.00 per quarter toward the financial obligations imposed in this order. Upon release of incarceration, the defendant shall pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney’s Office shall monitor the payment of restitution and report to the court any material change in the defendant’s ability to pay. These payments do not preclude the government from using other assets or income of the defendant to satisfy the restitution obligations.

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, 18 U.S.C. §2259.
 ** Justice for Victims of Trafficking Act of 2015, 18 U.S.C. §3014.
 *** 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.

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 payments of \$200.00 due immediately, balance due

It is ordered that the Defendant shall pay to the United States a special assessment of \$200.00 for Counts 2ss and 3ss , which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court. Payment is to be addressed to:

**U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 8N09
MIAMI, FLORIDA 33128-7716**

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

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

- Joint and Several
See above for 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 forfeit the defendant's interest in the following property to the United States:
FORFEITURE of the defendant's right, title and interest in certain property is hereby ordered consistent with the plea agreement. The United States shall submit a proposed Order of Forfeiture within three days of this proceeding.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTAs assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.