No. 15-1792

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

BRUCE JONES,
Defendant-Appellant.

On Appeal from the United States District Court
For the Southern District of Indiana, Indianapolis Division
The Honorable Tanya Walton Pratt
Case No. 1:12-CR-00072-TWP-DML-1

BRIEF OF APPELLANT

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DISCLOSURE STATEMENT

I, the undersigned counsel for the Defendant-Appellant, Bruce Jones, furnish the following list in compliance with FED. R. APP. P. 26.1 and CIR. R. 26.1:

1. The full name of every party or amicus the attorney represents in the case: BRUCE JONES.

2. Said party is not a corporation.

3. The names of all law firms whose partners or associates are expected to appear for the party before this Court: Sarah O'Rourke Schrup (attorney of record) of the Bluhm Legal Clinic at the Northwestern Pritzker School of Law. The names of all law firms whose partners or associates have appeared for the party in the district court and are not expected to appear:

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Pursuant to Circuit Rule 3(d), I am the Counsel of Record for the above-listed party.

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JURISDICTIONAL STATEMENT

The United States District Court for the Southern District of Indiana had jurisdiction over Appellant Bruce Jones's federal criminal prosecution pursuant to 18 U.S.C. § 3231, which states that the "district courts of the United States shall have original jurisdiction . . . of all offenses against the laws of the United States." This jurisdiction was based on a four-count second superseding indictment charging Jones with violations of 18 U.S.C. §§ 922(g)(1) and 1347.

The government initially indicted Jones on May 5, 2012. (R.1.) The district court severed the firearms counts from the healthcare fraud count, and the former went to trial first, in October 2013. (R.150; R.153.) The jury convicted Jones on all three counts. (R.161.) The district court sentenced Jones to 100 months' imprisonment on each count to be served concurrently, (R.186; A.1), and entered judgment on March 27, 2014, (A.1). Jones filed a timely notice of appeal that same day. (R.189.)

As these counts proceeded on appeal, the trial on the severed healthcare fraud count occurred in October 2014. (R.257.) Following a three-day trial, the jury convicted Jones on this count as well. (R.298.) The case once again proceeded to sentencing. The Probation Office prepared a second Presentence Investigation Report ("PSR"), which calculated Jones's sentence based on all four counts of conviction, including the three firearms convictions on which he had already been sentenced, then pending on appeal in this Court. (R.307.) Recognizing this, the government moved to stay briefing in this Court, and asked for a remand so that

Jones could be sentenced on all four counts. (14-1665, Gov. Mot., 1/13/2015, ECF No. 26.) Jones objected, arguing that a stay would substantially prejudice him. (14-1665, Resp., 1/20/15, ECF No. 27.) This Court dismissed the case for lack of jurisdiction, holding there was not an appealable final order until after the defendant had been sentenced on all counts. (14-1665, Order, 1/29/15, ECF No. 28.)

Once all four counts were back before the district court, it held sentencing on April 3, 2015. The district court sentenced Jones to 90 months' imprisonment on the healthcare fraud count and 100 months' imprisonment on each of the firearms counts, all to be served concurrently. (A.7.) The district court entered an amended judgment on April 3, 2015, (A.7), and Jones filed a timely notice of appeal that same day, (R.327; R.330). This Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 1291, which grants courts of appeals jurisdiction over "all final decisions of the district courts of the United States," and 18 U.S.C. § 3742, which provides for review of the sentence imposed.

STATEMENT OF THE ISSUES

1. Whether the district court violated Jones's Sixth and Fifth Amendment rights by issuing a pretrial restraining order for Jones's life insurance policies without holding a hearing or requiring the government to prove that those assets were traceable to the alleged healthcare fraud.

2. Whether the district court erred in finding that Jones waived his right to testify when he repeatedly evinced his desire to do so, but when his lawyer actively opposed it.

3. Whether the district court erred in failing to appoint new trial counsel for Jones in his healthcare fraud trial.

4. Whether the district court miscalculated Jones's Guideline range based on an erroneous interpretation of the relevant-conduct provisions.

STATEMENT OF THE CASE

Bruce Jones was a popular psychiatrist in the Anderson, Indiana, area, an award-winning professor, an avid firearms collector since childhood, and a hunting instructor since the 1960s. (10/23/13 Trial Tr. 672–77; R.184.)[1] Jones taught health science and alcohol dependence courses at Ivy Tech and Ball State University, and while there he joined a program to teach Indiana prison inmates about criminal justice and mental health in an effort to reduce recidivism. (3/25/14 Sent. Hr'g Tr. 34–40; 10/23/13 Trial Tr. 689.) Described by friends and colleagues as a generous, caring person, he helped parolees find jobs and provided them with room and board. (3/25/14 Sent. Hr'g Tr. 52.) Jones is a deeply religious man; he conducted Bible study both in his home and while incarcerated at Marion County Jail during the pendency of this case. (3/25/14 Sent. Hr'g Tr. 21; 4/3/15 Sent. Hr'g Tr. 26.)

In early 2010 the FBI began investigating Jones for potential fraudulent healthcare billing arising from his counseling practice. (10/22/13 Trial Tr. 131.) On May 10, 2010, authorities obtained a warrant and searched his home in Anderson, Indiana. (R.49.) Agents eventually ended up in the master bedroom closet, where they discovered a loaded revolver in a drawer. (10/21/13 Trial Tr. 23–24.) Because twenty-five years earlier Jones had been convicted of selling prescription painkillers—a felony and his only criminal offense, (3/25/14 Sent. Hr'g Tr. 29)—he

[1] References to the sequentially paginated trial transcript are denoted as ([Date] Trial Tr. __), references to the sentencing hearing transcript as ([Date] Sent. Hr'g Tr. __), and references to the pretrial status hearings as ([Date] Hr'g Tr. __). All other references to the Record are denoted with the appropriate docket number as (R.__). References to the material in the Appendix are denoted as (A.__).

was not allowed to possess firearms, (10/21/13 Trial Tr. 40; 3/25/14 Sent. Hr'g Tr. 79).

While searching Jones's home office, agents learned that he owned other properties, including a cabin in Montana and a converted garage just around the corner from his home that he called his "treatment lodge." (10/21/13 Trial Tr. 44–45.) After completing the search of Jones's home, officers obtained another search warrant for the treatment lodge. (10/21/13 Trial Tr. 44–45.) During that search, they found over twenty guns, all locked in a safe. (10/21/13 Trial Tr. 77.) It is undisputed that when agents asked Jones for the combination to the safe, he told them that his wife—who was out of the country—had the combination and that he would have to call her to obtain it. (10/21/13 Trial Tr. 78.) He did so, and the agents were then able to access the contents of the safe. (10/21/13 Trial Tr. 78.) Almost a month later, agents obtained a third search warrant, this time for Jones's cabin in Montana. (10/23/13 Trial Tr. 428.) Agents ultimately recovered at least fifteen firearms from Montana. (10/23/13 Trial Tr. 467.)

On May 15, 2012, the government charged Jones with one count of healthcare fraud, 18 U.S.C. § 1347, and forty-seven counts of being a felon in possession of firearms and ammunition, 18 U.S.C. § 922(g)(1). (R.1.) It later filed a second superseding indictment that reduced the gun counts to three, based on where the firearms were found by authorities. (R.49.) As the case progressed, in early 2013, the government moved to sever the felon-in-possession charges from the healthcare charges, which the district court granted. (R.77; R.94.)

The felon-in-possession trial began on October 21, 2013. (R.153.) Jones's defense focused on the measures he took to ensure that others possessed his gun collection following his 1985 conviction. Evidence at trial showed that in the wake of his first felony conviction, Jones endeavored to separate himself from the collection of guns he had maintained since childhood. (10/23/13 Trial Tr. 606, 649, 675, 760.) Following his conviction, Jones had his wife and some friends lock the collection in safes that he could not access. (10/23/13 Trial Tr. 606–07, 758–62.) In 2001 he transferred to his wife, Larissa, by written agreement, the gun collection that had been stored at his friend's home. (10/23/13 Trial Tr. 604–06.) After a four-day trial, the jury found Jones guilty on all three counts of being a felon in possession. (10/24/13 Trial Tr. 866; R.161.)

The first sentencing hearing—on these three firearms counts—occurred on March 25, 2014. (3/25/14 Sent. Hr'g Tr.) Defense counsel objected to the PSR's suggestion that Jones's 1985 conviction be taken into account for the firearm crimes that occurred—according to the government's own indictment—in 2010, about twenty-five years later. (R.184 at 5.) Referring to Guideline § 2K2.1, which precludes the use of convictions that occurred more than fifteen years prior to the current offense conduct in calculating a defendant's base offense level and criminal history category, defense counsel argued that the prior conviction was simply too old. (R.184 at 6.) The district court nonetheless adopted the Probation Officer's suggestion, finding that Jones's possession of guns when he married Larissa and executed a prenuptial agreement and a transfer agreement in the 1990s and 2001,

respectively, was relevant conduct. (A.13.) Those time periods, which predated the conduct charged in the indictment by several years, nevertheless fell within fifteen years of the 1985 conviction. (A.13.) With that prior conviction, Jones's base offense level on the gun counts jumped to 20 and his criminal history rose from category I to category II. (A.14.) After applying enhancements for obstruction of justice and for the number of firearms, Jones's Guidelines range was 87 to 108 months' imprisonment. (3/25/14 Sent. Hr'g Tr. 18.) The judge sentenced Jones to 100 months' imprisonment on each of the three counts, to be served concurrently, along with three years of supervised release and a fine of $12,500, and also ordered that the entire collection of guns be forfeited. (A.15–16.)

While the appeal on the felon-in-possession counts progressed in this Court, the healthcare fraud count progressed towards trial in the district court. On April 15, 2014, the government filed an ex parte motion for a restraining order to freeze Jones's access to several of his life insurance policies.[2] (R.201.) The district court granted the government's motion that same day. (R.203.) Meanwhile, Jones had exhausted his available funds during the first trial, (3/25/14 Sent. Hr'g Tr. 85), and his retained attorneys moved to withdraw, (R.196). The district court granted that motion on April 16, 2014, (R.205), and, on April 17, 2014, appointed him new counsel: Mr. Mark Inman (R.207). Their relationship, however, deteriorated almost immediately.

[2] The government had also previously obtained *lis pendens* restrictions on Jones's real estate. (3/24/14 Sent. Hr'g Tr. at 83.)

Jones sent Mr. Inman letters from jail about the trial strategy that he wished to take, stating emphatically that his intention was to go to trial and present a robust defense. (R.281.) Jones stated that he wished to explain his billing practices at trial, and his letters to Mr. Inman specified witnesses that he wished for Mr. Inman to interview regarding his billing practices. (R.281 at 11–24.) Jones suggested that Mr. Inman obtain medical coding guidebooks that would be relevant to his defense. (R.281 at 15.) Jones specified questions that he wanted Mr. Inman to ask him when he eventually took the stand. (R.281 at 15–24.) Jones also sent letters asking Mr. Inman for details about his offered plea, the evidence that Mr. Inman planned to present at trial, and which expert witnesses Mr. Inman planned to call regarding medical billing codes. (R.281 at 26–27.) Jones's letters likewise referenced Mr. Inman's failure to appear at agreed-upon times and his failure to communicate with Jones in a timely manner. (A.92.) In August 2014 Jones asked Mr. Inman to postpone the case, citing the fact that as far as he knew, Mr. Inman had prepared no defense, despite Jones's desire to prepare for trial. (A.89–90.) Jones requested that Mr. Inman respond to his questions regarding his case in writing and reiterated that he did not want to take a deal, but intended to go to trial. (A.86.)

On October 6, 2014, three weeks before trial was set to begin, Jones wrote the district court, requesting new appointed counsel. (R.269; R.270.) In support of his request for new counsel, Jones cited Mr. Inman's failure to meet with him at agreed-upon times, his complete lack of preparation of evidence and witnesses, and the fact that Mr. Inman's sole focus in his representation was to recommend that

Jones accept a plea bargain. (R.270.) In response to this letter, a magistrate judge held a hearing on October 15, 2014. (R.273.) Jones reported that Mr. Inman had repeatedly ignored inquiries, refused to discuss the theory of defense, declined to meet with him, and generally attempted to avoid preparing for trial despite Jones's wish to move ahead. (A.52) ("I have spent less than four hours in six months with Mr. Inman, I have sent him at least six, maybe eight, letters and asked him questions, and he has refused, and continues to refuse, to answer any of those questions."); (A.52) ("He did not answer all the questions that I've asked him. I asked him about proceeding to trial. He said he wasn't going to trial and that we're not going to trial."); (A.53) ("All he tells me is that, 'You have to take this deal, you have to take this deal.' And it's being shoved down my throat.").

Jones then detailed specific examples of Mr. Inman's lack of responsiveness. First, he explained that he had asked Mr. Inman to develop charts and graphs concerning billing codes. (A.52.) The magistrate judge did not probe this complaint, and instead moved onto a different topic: Mr. Inman's failure to investigate the government's claim of fraudulent billing during vacations. (A.55–56.) Jones clarified for the judge that he had wanted his attorney to find out which dates the FBI had counted as unworkable vacation days so that he could show that he had in fact counseled patients on those dates. (A.55–56.) The magistrate judge, however, never turned to Mr. Inman for an explanation about this event. (A.55–56.) Rather, the court responded by asking Jones if he "underst[oo]d if I were to give you a new lawyer, it would result, I'm almost sure, in a delay of the trial?" (A.56.)

Jones replied that he was not trying to delay trial, but simply wanted a cooperative attorney. (A.56.) He referenced the series of letters he had sent to Mr. Inman "every month or every two weeks and asking him to meet with me . . . ," (A.56), and the lack of response. The judge did not respond to this complaint about the lack of communication, and instead reminded Jones that Mr. Inman was "one of the best lawyers we've got." (A.56–58.) In response, Jones pleaded, "[A]ll I'm asking is . . . I mean, I have been trying to get Mr. Inman to pursue my defense from day one." (A.59.) When the court asked Mr. Inman if any personal issues, specifically the death of his wife, were affecting his ability to represent Jones, Mr. Inman offered a vague response, before again stating his opinion that the plea offer was very desirable. (A.61) (Inman responding "Your Honor, I think there's times when perhaps I'm shorter with people than I was before . . ."). When Jones noted that Mr. Inman had not discussed during the hearing his preparation for trial, other than a general plan to cross-examine witnesses, the district court responded that Jones could "do what [he] wants to do," but denied his request for removal of counsel. (A.66–67.)

Because there was an open plea offer on the table, the district court held a reject-or-accept hearing ten days before trial, on October 17, 2014. (R.274; 10/17/14 Hr'g Tr.) Jones once again raised Mr. Inman's uncommunicativeness. After asking the district court about the extent to which he had to admit guilt, he said he was "confused" because his attorney "hasn't communicated anything to [him] about this part, about the trial or about what we're limited to now at all. [Jones had] no idea.

[Mr. Inman hadn't] communicated at all. The only thing he communicates is that he wants to accept this plea bargain." (A.68.) The district court did not respond, and simply set another hearing for the following Monday. In doing so, the district court recognized the perceived lack of communication between the two. (10/20/14 Hr'g Tr. 14) ("Mr. Inman, you need to go and meet with him, because I think one of his big complaints is that [he] wants [you] to spend some time with [him] to talk . . . .").

On October 20, 2014, Jones rejected the plea. (10/20/14 Hr'g Tr. 2.) The district court held an ex parte hearing so that Jones could elaborate on his decision. (A.71–72.) Jones explained that he did not feel comfortable signing the plea because his attorney had not fully informed him of its elements. (A.77.) Despite the judge's prior admonition to Mr. Inman that he should "meet" and "talk" with Jones, (10/17/14 Hr'g Tr. 14), Jones reported that "Mr. Inman did not come and speak to me Friday after court, Saturday, or Sunday; so nothing, again, was explained to me." (A.69.) Jones then provided to the court eight of the letters he had sent to Mr. Inman, asking him to communicate with him and to prepare his defense. (A.75.) The district court asked Mr. Inman if he was ready to help Jones exercise his right to call witnesses and otherwise assist in his defense, to which Mr. Inman replied that he was ready to go to trial but "[Jones] doesn't have a viable defense . . . . I can't create fiction out of thin air." (10/20/14 Hr'g Tr. 13.) Even when Jones pointed out "there's no chance I could possibly win a trial when my own attorney says I have no defense and he won't prepare a defense," (10/20/14 Hr'g Tr. 13), the district court

refused to grant his motion for new appointed counsel and suggested that Jones continue working with his attorney, (10/20/14 Hr'g Tr. 18).

Immediately before the jury was sworn in on the first day of the healthcare fraud trial, Jones again stated that Mr. Inman had failed to make an effort to prepare a defense. (A.80) ("My comments are that, as he said . . . he's tried as few as possible . . . I presented to you this morning lists of over 26 witnesses that I had mentioned to him to call; and evidence, 136 pieces of evidence. There's no way that I can possibly refute the charges if I don't have my files."). Mr. Inman offered no response apart from that he had already responded in prior hearings, and the judge concluded by once again noting that Mr. Inman was a good attorney and that Jones should "work with him as best you're able." (A.82.)

The healthcare fraud case went to trial as planned on October 27, 2014, with Mr. Inman serving as Jones's lawyer. The government alleged that Jones had fraudulently billed patients as a psychological counselor, improperly using the individual counseling service code for sessions with families, patients he did not actually see, and appointments that did not occur. (10/27/14 Trial Tr. 25–28.) Relying on patient and expert testimony, as well as billing code analysis evidence, the government theorized that Jones had knowingly devised and executed a healthcare fraud scheme. (10/27/14 Trial Tr. 29.) During another ex parte hearing at the close of the first trial day, Jones raised the importance of a particular coding issue to his defense, to which the district court responded that he would have an opportunity to present that information when he testified. (A.84.) Mr. Inman

quickly jumped in, asserting "[h]e is not going to testify if I have anything to do with it . . . ." (A.84.)

On the second day of trial, the district court asked Jones if he was going to testify. Jones responded: "[Mr. Inman] won't ask me any questions that I've written down, so it would do no good." (A.32.) Mr. Inman argued it was a strategic and ethical decision that he was entitled to make on Jones's behalf under Seventh Circuit precedent. (A.33–34.) Recognizing that the decision belonged to Jones, not Mr. Inman, the district court turned to Jones, asking: "And, Mr. Jones, you're not going to testify?" (A.32.) Jones once again voiced his desire to testify along with his concerns over Mr. Inman's unwillingness to present a defense. (A.33) ("I don't agree that I don't testify, but he has to ask me the questions if I testify, and he doesn't have any questions prepared."). Mr. Inman reiterated his belief that he was allowed to prevent Jones from testifying so long as Mr. Inman believed his client would offer false testimony. (A.33–34.) Jones stated he would not lie, but believing he had no choice in the matter he eventually "st[oo]d down." (A.34–35) (". . . I see that he's not going to do it, so I have no choice but to stand down.").

Unsatisfied with his first colloquy, the trial judge then revisited the issue after the end of the day. (10/28/14 Trial Tr. 333) ("He said—he said that he's going to take his attorney's advice. I think—I just need to feel confident. Let's do it again."). Mr. Inman again argued that the Seventh Circuit's decision in *United States v. Curtis*, 742 F.2d 1070 (7th Cir. 1984), permitted him to preclude Jones from testifying because he believed Jones would be making false statements.

(10/28/14 Trial Tr. 236.) In response, the district court required Mr. Inman to make a record of what he believed would be perjurious. (10/28/14 Trial Tr. 334.) Mr. Inman referenced the fact that Jones was found guilty in the felon-in-possession case, arguing that this meant Jones lied when he testified in that case, and he also broadly referenced "all of the evidence" the government presented, concluding that Jones's denial of "all of that is not going to work" and was, in his "estimation, perjury." (10/28/14 Trial Tr. 334–35.) The district court ultimately did not agree that *Curtis* applied. *See* (10/28/14 Trial Tr. 337) ("[B]ut it's his right to waive. I want him to waive it.").

The district court then called Jones to the stand again to engage in a second colloquy about his intent to testify. (10/28/14 Trial Tr. 338.) Jones began by stating he could not testify because no questions had been prepared, but the judge replied by telling him "you don't necessarily have to go over any questions. Your lawyer – I mean, he knows what questions to ask." (10/28/14 Trial Tr. 338–39.) Jones replied, "Your Honor, I bow to your – I mean, you're the boss. I respect you and I respect your position." (10/28/14 Trial Tr. 339.) The judge then concluded that Jones had acceded to the advice of his counsel not to testify. (10/28/14 Trial Tr. 339.)

Finally, on the next morning—the last day of trial—the district court once again revisited the waiver issue, asking Jones if he felt "comfortable with [his] decision." (A.36.) Jones simply replied "yes." (A.36.) That same day, October 29, 2014, the jury found Jones guilty of the single count of healthcare fraud. (10/29/14 Trial Tr. 387.) As sentencing approached, Jones attempted one final time to request

new counsel, citing Mr. Inman's refusal to call witnesses for his impending sentencing hearing. (A.39.) The district court denied his request once more based on the belief that Mr. Inman had not made errors serious enough to violate the Sixth Amendment. (A.44.)

In advance of this second sentencing, the probation office submitted another PSR in December 2014 that incorporated for sentencing Jones's prior felon-in-possession convictions, currently pending on appeal in this Court. (R.307.) As detailed above in the Jurisdiction Statement, *see supra* page 2, on January 13, 2015, the government moved to suspend briefing, vacate the firearms sentence, and remand for the district court to sentence Jones on all counts of the indictment at once. (14-1665, Gov. Mot., 1/13/15, ECF No. 26.) Jones objected, (14-1665, Def. Resp., 1/20/15, ECF No. 27), but this Court dismissed the appeal for lack of appellate jurisdiction, (14-1665, Order, 1/29/15, ECF No. 28), and the case proceeded to a second sentencing in April 2015, (R.326).

At the second sentencing hearing on April 3, 2015, the district court first calculated the offense levels for the two groups separately. For group one, the healthcare fraud, the district court used a base offense level of six, and added ten levels due to a loss of between $120,000 and $200,000. (A.18.) The district court added two levels because it found Jones had abused a position of trust as a medical provider, for a total adjusted offense level of 18. (A.18–19.) The district court reached a criminal history category of II by including Jones's 1985 conviction. (A.19–20.) With an offense level of 18 and a criminal history category of II, Jones's

sentencing range for group one was 30 to 37 months' imprisonment. U.S. Sentencing Guidelines Manual ch. 5, pt. A (2014) [hereinafter U.S.S.G. sentencing table].

For group two, the felon-in-possession counts, the district court adopted the same reasoning and calculations it had used when it first sentenced Jones on these counts. Specifically, the district court used the 1985 prior conviction of selling a controlled substance as relevant conduct in order to find a base offense level of 20. (A.19.) The district court then added six levels because 47 firearms were found in Jones's three properties. (A.19.) For the obstruction of justice during both the investigation and the trial, the district court applied a two-level enhancement, bringing the total offense level for the second group to 28. (A.19.)

Because the healthcare fraud and felon-in-possession counts were grouped, in the multiple-count adjustment the district court adopted the highest offense level and sentencing range previously calculated in the first sentencing for the felon-in-possession group—a total offense level of 28. (A.19.) The judge then calculated the criminal history score for both the healthcare fraud and the felony-in-possession offenses simultaneously. (A.19–20.) Here, again, the district court used Jones's prior 1985 conviction, and found that this placed him in category II. Combining the two factors together, the district court concluded that the criminal history category II and offense level of 28 resulted in a Guideline sentencing range of 87 to 107 months' imprisonment. (A.19–20.)

In delivering its sentence, the district court first enumerated the § 3553(a) factors it had considered. (A.27.) Given the voluminous number of letters and articles in support of the defendant, the district court acknowledged that Jones had indeed contributed greatly to the community both in and out of jail. (A.28–29) ("[H]e's being very honest when he says that he's done a lot of good things in the community, both here in Indianapolis and Anderson, Indiana. And the Court notes that he's also done good things since incarcerated in the Marion County Jail."). The district court ultimately sentenced Jones to a 90-month prison sentence on the healthcare fraud count to be served concurrently with his 100-month felon-in-possession sentence. (A.21.)

SUMMARY OF THE ARGUMENT

Bruce Jones's healthcare fraud conviction should be overturned and his sentence vacated for four reasons. First, pursuant to the Supreme Court's decision in *Luis v. United States*, 136 S. Ct. 1083 (2016), the district court violated Jones's Sixth Amendment right to secure counsel of his choice by restraining pretrial assets that the government never linked to the charged healthcare fraud. The district court also violated Jones's due process rights by issuing the restraining order based solely on the government's ex parte motion and without holding a hearing.

Second, the district court improperly denied Jones his constitutional right to testify. Specifically, the district court pressured Jones to defer to his lawyer's improper admonitions despite Jones's repeated requests to take the stand. Jones made it plain to the trial court that he wished to testify on his own behalf, but his efforts to do so were stymied by his own attorney. Later, and more problematically, the district court interfered with Jones's right when it assured him that he did not have to testify because the attorney had performed other elements of the trial. The gravity of the statements from the court taken together with his own attorney's resistance indicate that Jones did not make a personal, knowing, and voluntary waiver of his right as required by law, but rather was coerced to remain silent.

Third, the district court should have granted Jones's request for new counsel instead of repeatedly ignoring Jones's repeated, substantiated complaints about his attorney's failure to communicate. The record indicates that Jones's attorney routinely failed to discuss the case with his client, even when instructed to meet

with Jones by the district court. The record evidences a complete breakdown of communication between the two. The district court's failure in this respect constitutes an abuse of its discretion that this Court should automatically reverse or, in the alternative, should reverse if the government fails to prove beyond a reasonable doubt that Jones was not harmed by the district court's denial of new counsel.

Finally, the district court incorrectly calculated Jones's sentencing Guideline range based on errors in determining his criminal history category and the offense level on the gun charges. The court improperly considered stale evidence about Jones's gun possession as relevant conduct in sentencing. In doing so, the district court improperly double-counted conduct that had also served as the basis for his conviction. In any event, the evidence about gun possession in 1996 and 2001 lacked similarity, regularity, or temporal proximity to the charged conduct. The district court used its incorrect relevant conduct analysis to extend the look-back period for calculating Jones's criminal history score, and thus counted a 1985 conviction from more than fifteen years before the charged conduct in this case. The court also used the 1985 conviction to justify elevating Jones's offense level. The court then used the high offense level and criminal history category from the first sentencing hearing to set Jones's sentence on the healthcare count at the second sentencing hearing. The district court's errors resulted in a nearly threefold increase in Jones's sentence.

ARGUMENT

I. The district court violated Jones's constitutional rights by restraining untainted assets and doing so without holding a hearing.

The Supreme Court recently held that the government cannot, consistent with the Sixth Amendment, deprive an individual of his untainted assets, particularly when they would be used to hire counsel, a fundamental right. *Luis v. United States*, 136 S. Ct. 1083, 1085 (2016) ("[T]he pretrial restraint of legitimate, untainted assets needed to retain counsel of choice violates the Sixth Amendment."). In the present case, the government successfully obtained, ex parte, a restraining order restricting Jones's access to several life insurance policies, but it did so without having shown that those assets were tainted. This Court reviews constitutional violations de novo. *Anderson v. Milwaukee County*, 433 F.3d 975, 978 (7th Cir. 2006).

Luis dealt with a restraining order issued pursuant to 18 U.S.C. § 1345(a)(2)[3]—a federal statute permitting a court to freeze, pre-trial, certain assets belonging to a defendant accused of violating federal healthcare laws. *Luis*, 136 S. Ct. at 1088. Leading up to Luis's trial for healthcare fraud, she had $2 million in

[3] It is unclear why the government in Jones's case did not rely on § 1345's forfeiture provision when seeking its restraining order, (R.201), given that the charge at issue was, like *Luis*, healthcare fraud. Instead, the government invoked 21 U.S.C. § 853, which governs forfeiture in drug-related crimes. One reason may be because § 1345 requires a pre-restraint hearing, *see* 18 U.S.C. § 1345(b), and the government argued below in its ex parte motion that § 853 does not, (R.201 at 6). As discussed in more detail below, the absence of a hearing in this case violated Jones's due process rights. *See infra* page 24. Regardless, the government's choice of statute does not impact the *Luis* analysis because the Supreme Court's reasoning in *Luis* turned on the nature of the proceeds rather than any particular provision of the statute; therefore, it likewise extends to other forfeiture statutes like § 853.

assets, at least some of which were wholly unconnected to her alleged crimes. *Id.* The government sought an order prohibiting her dissipation of those funds, which the district court granted. *Id.* Luis was thus restricted from using at least some of her untainted funds—"funds not connected with the crime"—to hire counsel. *Id.*

The Supreme Court reversed and vacated Luis's conviction. The Court held that the district court's restraining order violated Luis's Sixth Amendment right to secure counsel of her choice by restricting her access to untainted funds. *Id.* at 1096. In so holding, the Court drew a sharp line between tainted and untainted assets—stating that a defendant has an imperfect property interest in "tainted" assets such as loot (which belongs to the victim), contraband (like drugs, which are "long considered forfeitable . . . wherever found"), or tools used to commit a crime (which by virtue of certain statutes often pass to the government at the time the crime is committed). *Id.* at 1090. Untainted assets, on the other hand, are those for which the government has not provided "a showing of any equivalent governmental interest in that property." *Id.* at 1092. Without such a showing, the Court likened the government to an unsecured creditor in a bankruptcy proceeding and stated that the district court could not freeze untainted assets simply because those assets—in the event of a conviction—would likely be forfeited to pay restitution or statutory penalties. *Id.*

Thus, under *Luis,* a defendant's assets may be placed beyond a defendant's reach for trial only if the government establishes probable cause that those assets are "tainted"—that is, traceable to the crime. *Kaley v. United States*, 134 S. Ct.

1090, 1095 (2014). The government bears the burden of establishing the facts supporting probable cause. *United States v. Santiago*, 227 F.3d 902, 907 (7th Cir. 2000). In the present context, the government's burden of probable cause has two required components: (1) the defendant has committed an offense permitting forfeiture; and (2) the property at issue has the requisite connection—a "nexus"—to that crime. *Kaley*, 134 S. Ct. at 1095. The second inquiry—the critical question for Jones's case—was one that the government never answered and the district court never considered before freezing Jones's life insurance policies. In short, the government needed to do more to show that pretrial restraint of the policies was warranted here. *See, e.g.*, *Santiago*, 227 F.3d at 907 (the government established probable cause of nexus with evidence of large infusions of cash into back accounts that coincided with the timing of the alleged drug dealing which could not be explained by the defendant's legitimate income, as well as informant testimony); *United States v. All Assets and Equipment of West Side Bldg. Corp.*, 58 F.3d 1181, 1189 (7th Cir. 1995) (finding probable cause for the pretrial forfeiture of a house when there were multiple informants connecting the property to drug dealing and where the defendant's verifiable income could not account for the purchase).[4]

The government never tried to show that Jones's life insurance assets were tainted or traceable to the fraud charge. (R.201.) In its motion for the restraining

[4] Indeed, the Supreme Court in *Luis* highlighted that the government's burden is an attainable one because it may use the same, long-established "tracing rules"—including the rules that will apply in the event of commingled accounts—that have frequently been used in other contexts. *Luis*, 136 S. Ct. at 1095 (acknowledging that the fungibility of cash complicates the inquiry, but concluding that "the law has tracing rules that help courts implement the kind of distinction we require in this case").

order, the government simply restated the broad allegations made against Jones in the indictment and then conclusorily stated:

> Based on the foregoing, there is probable cause to believe that the premiums and contributions made to the following accounts constitute or derived from proceeds obtained from the health care fraud, or represent a substitute asset, and are therefore subject to forfeiture[.]

(R.201 at 4.) Nothing in the remainder of the motion—or the pretrial and trial record—elucidates why the government sought those specific assets or why there was any reason to believe that Jones had put any proceeds from the alleged fraud toward those specific accounts. The government never provided the dates these policies were issued, the values of the policies, or when Jones contributed to them. (R.201.) The district court accepted wholesale the government's unsupported rationale, finding simply that the second superseding indictment established probable cause. (R.203 at 1–2.) Yet "[t]he existence of any sum of money, standing alone, is not enough to establish probable cause to believe the money is forfeitable." *United States v. $506,231 in U.S. Currency*, 125 F.3d 442, 452 (7th Cir. 1997). And although both the government and district court stated in passing that these policies "represent a substitute asset . . . subject to forfeiture," (R.201 at 3; *see also* R.203 at 2), the Supreme Court expressly rejected the notion that a district court can restrict "substitute" assets rather than property that has actually been shown to be connected to the crime. *Luis*, 136 S. Ct. at 1091 (rejecting Justice Kennedy's dissenting view that "property—whether tainted or untainted—is subject to pretrial restraint, so long as the property might someday be subject to forfeiture"). Given this absence of proof or findings, the pretrial restraint in this case runs afoul of

Luis, and this Court should vacate Jones's health care fraud conviction and remand to the district court. No showing of prejudice is required because denial of the Sixth Amendment right to hire counsel of choice constitutes structural error. *United States v. Gonzalez-Lopez*, 548 U.S. 140, 150 (2006).

Additionally, because the government filed its motion ex parte and because the district court granted it that same day, Jones was deprived his due process right of either objecting to the deprivation of this property generally or demonstrating that these assets should not be restrained so that he could secure counsel, a distinct liberty interest. Jones should have been afforded a hearing prior to the restraint on his property, and the district court's failure to do so violated his constitutional rights. The Supreme Court has expressly left open the question whether § 853(e)'s pre-conviction procedures comport with Fifth Amendment due process, *see United States v. Monsanto*, 491 U.S. 600, 615 n.10 (1989), and this Court has as well, *United States v. Kirschenbaum*, 156 F.3d 784, 792–93 (7th Cir. 1998). Other courts have split on the question. *Kirschenbaum*, 156 F.3d at 93 (collecting cases and opting not to decide this "close question"). Yet this Court has recognized the significant due process interests at stake. *See Kirschenbaum*, 156 F.3d at 792–93 (noting that the "core" of due process includes a meaningful opportunity to be heard and canvassing cases indicating that the absence of a post-indictment hearing under § 853 may violate the defendant's and interested third parties' rights to a meaningful hearing). And it has further

acknowledged that § 853 presents "a great opportunity for abuse by the prosecutorial arm of the government. It permits the government, on the basis of an ex parte application . . . to affect significantly the ability of the defendant to participate in the adversary process of the criminal trial." *United States v. Moya-Gomez*, 860 F.2d 706, 729 (7th Cir. 1988). Here, the district court was on notice that Jones did not have the funds to keep his retained lawyers; they informed the court as much at sentencing, (3/25/14 Sent. Hr'g Tr. 85) (Jones's lawyers stating that they may petition the court for a release of assets for their fees, which had remained unpaid), and this Court had approved Jones's motion to proceed *in forma pauperis* in his appeal from his firearms convictions just days before the government's ex parte motion, (R.199). Given this awareness of Jones's inability to pay his hired lawyers, the government acted imprudently in filing an ex parte motion and suggesting to the court that no hearing was warranted. (R.201 at 6.) And for its part, the district court erred in granting the government's motion the same day it was filed without any opportunity to be heard. (R.203.) Because Jones suffered both a Sixth Amendment deprivation of his right to hire counsel of choice, and an abridgement of his Fifth Amendment due process rights, this Court should vacate his healthcare fraud conviction.

II. The district court improperly denied Jones his constitutional right to testify after he expressly invoked this right and did not personally or voluntarily waive it.

It is well settled that a criminal defendant has a constitutional right to testify on his own behalf. *See, e.g.*, *Rock v. Arkansas*, 483 U.S. 44, 52 (1987) (noting that the right to testify is "[e]ven more fundamental to a personal defense than the right to self-representation"); *Alicea v. Gagnon*, 675 F.2d 913, 923 (7th Cir. 1982) (finding the right to testify embodied in the 5th, 6th, and 14th Amendments). Given the fundamental nature of this right, only the defendant may waive it, and he must do so voluntarily, knowingly, and intelligently. *See United States v. Curtis*, 742 F.2d 1070, 1076 (7th Cir. 1984).

Jones repeatedly affirmed to the district court that he wanted to testify. *See, e.g.*, (R.292 at 2); (A.32–35). His appointed counsel, however, refused to let him testify, preventing him from exercising this constitutionally guaranteed right. And although the district court construed Jones's statements at the end of the trial as a waiver of his right to testify, Jones's statements were not sufficiently clear and unequivocal to constitute such a waiver. Whether a defendant validly waived his right to testify is a mixed question of law and fact, which this Court reviews de novo. *United States v. Stark*, 507 F.3d 512, 516 (7th Cir. 2007). Further, with respect to a waiver of the right to testify, "[a] reviewing court must indulge every presumption against waiver." *Ortega v. O'Leary*, 843 F.2d 258, 262 (7th Cir. 1988).

Whether the defendant validly waived his right to testify is reviewed under the totality of the circumstances, considering all relevant factors. *See, e.g.*, *Ward v.*

Sternes, 334 F.3d 696, 707 (7th Cir. 2003). To be valid, a waiver must be personal, which means the decision not to testify must ultimately come from the defendant. *See Curtis*, 742 F.2d at 1076. Moreover, the waiver must be knowing and voluntary, which means the defendant is not coerced into waiving the right after he has been advised of it. *See Stark*, 507 F.3d at 518–19 (noting that evidence that defense counsel is "standing in the way" of the defendant's ability to testify is indicative that the waiver is not knowing and voluntary). In evaluating whether a defendant personally, knowingly, and voluntarily waived the right to testify, courts have discussed a variety of factors. Of greatest relevance here, this Court has examined whether defense counsel impeded the defendant's ability to testify as well as whether the district court's inquiry into the issue was sufficient. *See Curtis*, 742 F.2d at 1076 ("If a defendant insists on testifying, however irrational that insistence might be from a tactical viewpoint, counsel must accede."); *see also Ward*, 334 F.3d at 707 (evaluating whether the court's colloquy adequately elicited a knowing waiver).

Turning first to the role of defense counsel, although a lawyer may advise a defendant not to testify, he may not flatly preclude the defendant from doing so except in very narrow circumstances. *Ward*, 334 F.3d at 707; *see also Curtis*, 742 F.2d at 1076. Further, this Court has noted that "a clear indication that the defendant disagreed with [his] lawyer about testifying" supports a finding that a waiver was not knowing and voluntary. *Stark*, 507 F.3d at 518. In this case, Jones's lawyer, Mr. Inman, went beyond advising Jones not to testify; he affirmatively took

steps to preclude Jones from testifying. (A.84) (Mr. Inman stating that "[Jones] is not going to testify if I have anything to do with it . . . .").

Before the defense rested, the district court asked Jones if he was going to testify, and Jones responded that his counsel "won't ask [him] any questions that [he's] written down, so it would do no good." (A.32.) Jones added that his lawyer had not prepared any questions of his own. (A.33.) Jones's lawyer then weighed in, effectively confirming that he was precluding Jones from testifying. *See* (A.32–34.) Relying on this Court's decision in *Curtis*, Mr. Inman claimed he was entitled to prevent Jones from testifying if he knew that Jones would offer false testimony. Mr. Inman's basis for this assertion, however, was his belief that the government's case was so strong that any testimony challenging it would presumptively be perjurious. (10/28/14 Trial Tr. 335–36.)[5] Jones himself averred that his testimony would be truthful. (A.35.) In addition to refusing to ask Jones's questions, defense counsel had not prepared any questions of his own. (A.33.) Because defense counsel was neither prepared nor willing to facilitate Jones's testimony, defense counsel effectively precluded Jones from testifying. Thus, defense counsel went well beyond advising his client not to testify; through his reliance on *Curtis* and his lack of preparation, defense counsel imposed his own strategic decision on Jones, vitiating his constitutional rights.[6]

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[5] Defense counsel also noted that he assumed Jones had perjured himself in his felon-in-possession trial because Jones was ultimately found guilty by the jury. (10/28/14 Trial Tr. 334.)

[6] Had the court intervened by requiring defense counsel to prepare Jones's testimony, it could have remedied the effect of defense counsel's prior coercive action. *See United States v. Taylor*, 128 F.3d 1105, 1108 (7th Cir. 1997) (upholding the validity of a waiver, in part,

In addition to examining defense counsel's conduct, this Court looks to the adequacy of the trial court's questioning and its acknowledgement of this important constitutional right. *See Ward*, 334 F.3d at 707. When the trial court is aware of a conflict between the defendant and his counsel concerning whether the defendant should testify, the court should question the defendant to ensure that the defendant is personally, knowingly, and voluntarily waiving the right to testify. *See Stark*, 507 F.3d at 516. In conducting such a colloquy, the court may not "substitute the wisdom of . . . counsel's strategic decision that [the defendant] not testify for the requirement that" the defendant personally waive his right to testify. *Ward*, 334 F.3d at 705. Rather, the court must procure a clear and unequivocal statement from the defendant before finding a valid waiver. *See id.* at 707 (holding the waiver invalid, in part, based on the defendant's equivocal response to the court's questioning). Further, the court must not find a waiver valid if the circumstances indicate that it was not made knowingly or voluntarily. *See id.* (noting that the defendant's diminished capacity, of which the court was aware, belied the notion that the defendant's equivocal waiver was made knowingly or intelligently).

Although the trial court did question Jones about his right to testify, it ultimately substituted the strategic decision of defense counsel for a personal and unequivocal waiver from Jones. During the first colloquy, Jones repeatedly

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because the court granted a continuance to allow defense counsel to prepare questions so the defendant could testify). The court below did not do so, however, and instead simply concluded "[y]our lawyer – I mean, he knows what questions to ask. I mean, it's not that complicated of a trial." (10/28/14 Trial Tr. 338.) Notably, the court never confirmed that defense counsel was prepared to ask any questions or that he would otherwise accede to Jones's invocation of his right to testify.

informed the court that he wanted to testify. *See, e.g.*, (A.33) ("I don't agree that I don't testify . . . ."). Notwithstanding this clear invocation of this right, defense counsel continued to press the court to apply the narrow perjury exception in *Curtis* and continued to insist that the best strategic decision was for Jones not to testify. *See* (A.32–34.) The district court never accepted counsel's *Curtis* argument and stated that only Jones could waive the right. (A.34.) Yet in the next breath the district court seemingly took up defense counsel's cause, informing Jones that defense counsel "doesn't feel that he can ask you—he can't ask you any questions that would elicit what he believes would be perjurious testimony." (A.34.) Jones responded, in what could only be classified as complete and utter defeat: "I wouldn't expect him to, but I see that he's not going to do it, so I have no choice but to stand down." (A.34–35.) In other words, Jones informed the court that he was not personally or voluntarily choosing to waive his right, but rather felt that he was being forced to bow to counsel.

Implicitly acknowledging that this statement was not a valid waiver, the court began to inquire further. (A.35) ("I just need to feel confident that . . . ."). But before the court could complete its question, defense counsel interrupted and indicated that he was satisfied that the right was waived. (A.35) ("Your Honor, I think with that, we're prepared to go forward."). Ultimately, the court ended the inquiry based on Mr. Inman's position that he was comfortable with ending the colloquy, rather than by securing a clear and unequivocal waiver from Jones. (A.35) (concluding the colloquy immediately after defense counsel's interruption).

The deficiencies with this first colloquy were also present in the second colloquy conducted by the court after the defense rested. *See* (10/28/14 Trial Tr. 337.) At the outset of this second colloquy, Jones again asserted that his defense counsel's unwillingness to prepare or to ask him questions forced him not to testify. *See* (10/28/14 Trial Tr. 338) ("I can't testify if I—we haven't gone over any questions."). In response the district court again interposed itself into the decision-making process, adopting defense counsel's cause and assuring Jones that he did not need to testify because his defense counsel had "done a pretty good job of cross-examining the witnesses" and creating doubt. (10/28/14 Trial Tr. 339.) Such statements from the court, the ultimate authority figure for a criminal defendant, served to enhance the coercive pressure already applied by defense counsel, an approach that this Court disfavors. *See United States v. Manjarrez*, 258 F.3d 618, 624 (7th Cir. 2001) (discussing the need to prevent courts from inserting themselves into such a sensitive aspect of trial strategy). The coercive effect is evidenced in the record here; Jones responded to the court: "Your Honor, I bow to your – I mean, you're the boss." (10/28/14 Trial Tr. 339.) The district court then took over, unilaterally waiving Jones's right for him: "So you're going to *concede* to the advice of your counsel and not testify." (10/28/14 Trial Tr. 339) (emphasis added). Jones never affirmed the trial court's representation and, given the coercive nature of these exchanges, it cannot be deemed a clear and unequivocal waiver by Jones himself.

The court's third attempt[7] to get Jones to affirmatively waive his right to testify the following morning did not remedy the fact that Jones had not personally or voluntarily waived his right. The court, implicitly acknowledging that the prior two colloquies had not produced a satisfactory waiver, asked Jones if he was "comfortable with [his] decision," to which Jones simply replied "yes." (A.36.) Under the totality of the circumstances, however, Jones still had not personally waived his right to testify. At the time this question was posed to him, the court had already permitted the defense to rest, had informed the jury that all of the evidence was in, and had taken no steps to resolve defense counsel's refusal to prepare any questions so Jones could testify. *Cf. United States v. Taylor*, 128 F.3d 1105, 1108 (7th Cir. 1997). Having seen his pleas to the court about defense counsel impeding his ability to testify go unanswered, Jones's response can be seen as nothing more than an acknowledgment that he was submitting to the court's already-imposed decision.[8] The "waiver" imposed by the defense counsel and the court should be held invalid.

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[7] Indeed, the fact that the court had to conduct *three* colloquies to secure his "waiver" shows the lack of voluntariness inherent in it. In other contexts, the Supreme Court has acknowledged that once the defendant has unequivocally invoked a constitutional right, persistent attempts to convince him to waive it are inherently coercive. *See Miranda v. Arizona*, 384 U.S. 436, 473–74 (1966); *see also Davis v. United States*, 512 U.S. 452, 458 (1994). Similarly, once a defendant has unequivocally invoked the right to testify, persistent attempts by a court or counsel to secure a defendant's waiver are innately coercive. Jones told the court during the first colloquy that he wanted to testify, and this should have ended the inquiry. The second and third colloquy secured a waiver, if any, by compulsion, subtle or otherwise.

[8] This is further evidenced by Jones's letter to the court after trial, in which he articulated that he felt he was not "allowed" to testify. (R.309.) In this letter, Jones clarified how his counsel prevented him from testifying, indicating that he never voluntarily changed his mind about testifying. *See* (R.309.)

III. The district court improperly denied Jones's request for new counsel.

In his healthcare fraud case, Jones repeatedly requested new counsel, beginning weeks before trial and continuing into the sentencing phase. *E.g.* (R.270 at 5) (10/6/14 letter to trial judge); (R.289 at 2–3) (10/24/14 letter to trial judge); (A.43). The record makes plain that Jones and his attorney had a total breakdown in communication and that Jones was not trying to delay trial by this request. Yet the district court insufficiently addressed Jones's concerns, brushing aside his consistent, repeated, and detailed requests for substitute counsel. This Court reviews the question whether a trial court erroneously denied an indigent defendant's request for new counsel for an abuse of discretion. *United States v. Hall*, 35 F.3d 310, 313 (7th Cir. 1994).

A. The district court abused its discretion in failing to appoint new counsel.

In deciding whether the district court erroneously denied a defendant's request for new appointed counsel, this Court considers several non-exhaustive factors: (1) the timeliness of the defendant's motion; (2) the adequacy of the trial court's inquiry into the request; and (3) whether the conflict between the defendant and his trial counsel "was so great that it resulted in a total lack of communication preventing an adequate defense." *United States v. Volpentesta*, 727 F.3d 666, 673 (7th Cir. 2013); *United States v. Zillges*, 978 F.2d 369, 372 (7th Cir. 1992). Here, each of these factors weighs in Jones's favor, demonstrating that the district court abused its discretion in denying his requests to replace Mr. Inman.

1. Jones's timely requests.

First, Jones's requests to the trial court were timely; he sent his first letter requesting new counsel on October 6, 2014, three weeks before the start of the October 27th trial. (R.270.) This request fits comfortably within the span that this Court finds acceptable under this factor. *Compare, e.g.*, *United States v. Terrell*, 344 Fed. App'x 275, 279 (7th Cir. 2009) (request made two weeks before sentencing was timely); *United States v. Ryals*, 512 F.3d 416, 419 (7th Cir. 2008) (district court abused discretion when failing to appoint counsel at the defendant's request three weeks before sentencing); *Zillges*, 978 F.2d at 379 (letter requesting substitute counsel about a month before start of trial was timely), *with United States v. Simmons*, 582 F.3d 730, 735 (7th Cir. 2009) (motion made the morning of trial was untimely); *United States v. Burgos*, 539 F.3d 641, 646 (7th Cir. 2008) (second request for new counsel made on the morning of trial, after defendant's first request had been granted, was untimely).

The timeliness inquiry allows this Court to evaluate the motivations underlying the defendant's request; it may not be made for the purpose of delay or gamesmanship. *Zillges*, 978 F.2d at 372; *see also Hall*, 35 F.3d at 313–14. Here, the record shows not only that Jones's initial request was timely under this Court's precedent, it also shows that his requests were not contumacious or for the purpose of delay. First, because Jones was incarcerated at the time, a trial delay could not postpone a loss of liberty. Second, any suggestion of gamesmanship is undercut by proof that Jones's concerns with his attorney predated his request to the court. On

October 20, 2014, Jones renewed his request for a new lawyer, supplementing it with a series of letters he sent to Mr. Inman over the preceding five months—beginning in May 2014—in which he begged his lawyer to visit him and share details of his defense with him. (A.75–76); *see also* (A.88) (Jones letter to Mr. Inman stating, "I am sorry you lost your wife and mother recently. If you are not up to a rigorous defense just say so. With the lack of work I have seen you can't possibly represent me on October 27th, 2014."); (A.92) ("If you ignore me as you have, I will have no option but to notify the court."). The timeline of Jones's dissatisfaction with Mr. Inman belies a finding that Jones ginned up this rationale simply to delay the trial.

2. The district court's insufficient inquiry into Jones's concerns.

Turning to the second factor, although Jones's requests were proper, the lower court's inquiries into them were not—a sufficient reason on its own to merit reversal. *See United States v. Morrison*, 946 F.2d 484, 499 (7th Cir. 1991) (finding abuse of discretion on the sole basis that trial court's inquiry was insufficient). The district court engages in an adequate inquiry when it gathers a detailed grievance from the defendant as well as a response from the attorney, and then responds "thoughtfully and appropriately" before rendering its decision. *See United States v. Bjorkman*, 270 F.3d 482, 501 (7th Cir. 2001). The trial court cannot merely attempt to "elicit a general expression of satisfaction" from the defendant, *Zillges*, 978 F.2d at 372, or "dismiss the matter in a conclusory fashion," *Bjorkman*, 270 F.3d at 501. The sufficiency of the trial court's court inquiry is not based on length or volume,

but on the rigor of its analysis. *See Ryals*, 512 F.3d at 420 (concluding the court's failure to follow-up on the attorney's response stating that he could not adequately represent the client constituted an inadequate inquiry).

The record shows that the district court's inquiry fell far short of this standard. Two hearings were held specifically to address the substitute-counsel issue, and both were before magistrate judges rather than the presiding district court judge. During the first—a pre-trial hearing on October 15, 2014—before Magistrate Judge Tim A. Baker—the court failed to probe defense counsel to require specific responses to Jones's grievances, as it was required to do. *See Zillges*, 978 F.2d at 371–72. For example, Jones told the magistrate judge that he had asked Mr. Inman to prepare charts or graphs to explain the coding issue to the jury, which Mr. Inman refused to do. Yet the magistrate judge did not ask the attorney to respond. (A.52.) Instead, the judge weighed in, explaining that "I would have to agree that many of these things may not bear any fruit as it relates to the defense." (A.52–53.) This ignored the real issue presented by Jones's complaint: that defense counsel was not communicating with his client.

The second substitute-counsel hearing held in advance of sentencing before Magistrate Judge Mark J. Dinsmore is similarly troubling. (A.37–44.) There, the magistrate judge merely asked Jones to "summarize" a letter he sent to the trial judge reiterating his request for a new lawyer, and then directed the defendant and trial counsel to address the court. (A.38, 40, 43.) The trial judge asked neither Jones nor Mr. Inman a specific question in the 11-minute-long hearing, utterly failing to

probe the source and depth of their disagreements. (A.38, 43.) These cursory interactions—dismissive of Jones's consistent, repeated, and detailed requests for substitute counsel—rendered a conclusory and uninformed decision.

3. The total breakdown in communication between Jones and his lawyer.

Had the lower court appropriately attended to Jones's concerns, it would have recognized that Jones's complaint of poor—or altogether absent—communication with his attorney evinced a pervasive breakdown in their relationship. *See Morrison*, 946 F.2d at 498 (defining the conflict as two people "so at odds as to prevent presentation of an adequate defense") (internal quotations and citation omitted). Disagreements over trial strategy or personality conflicts, by themselves, are insufficient. *E.g.*, *Volpentesta*, 727 F.3d at 674. But here, Mr. Inman's failure to communicate and regularly meet with Jones does constitute a breakdown in communication. *Cf. Volpentesta*, 727 F.3d at 674 (regular meetings between trial counsel and client shows there was no breakdown in communication between trial counsel and defendant).

The lack of communication was patent to all, including the trial judge, who explicitly told defense counsel to go meet with his client: "Well, Mr. Inman, you need to go meet with him, because I think one of his big complaints is that you want him to spend some time with you to talk." (10/17/14 Hr'g Tr. 14.) The record shows that Jones and Mr. Inman met infrequently, and when they did, it was for short amounts of time, with little substance. *See, e.g.,* (A.68) (Jones reporting at plea hearing that Mr. Inman had not "communicated anything" about the plea offer);

(A.70) (Jones stating to Mr. Inman at subsequent plea hearing three days later that he "never had a chance to meet with you over the weekend, because you never came to see [him]"). Jones summarized his communication troubles with Mr. Inman for the district court at the plea hearing a week before trial:

> Mr. Inman did not come and speak to me Friday after court, Saturday, or Sunday; so nothing, again, was explained to me. I am told to accept the plea bargain by Mr. Inman. He said he would offer no defense, call no witnesses, use no expert witnesses, introduce no evidence. He said he just would object to government witnesses from time to time. He spoke with [Jones's wife] Larissa Jones and Russ Miller on the telephone this weekend and said that he—that there would be no defense, and I would need to plead guilty. He offered them to visit me in this morning at 9:00, but if they—only if they would help convince me to accept a guilty plea, which I think is wrong.

(A.75.) Notably Mr. Inman did not object to Jones's characterization of their interactions, including his failure to confer with his client after the district court explicitly directed it, (A.70, 75), and had even previously acknowledged his failure to communicate, *see* (A.63) (responding to Jones's statement that he didn't know his attorney had contacted a medical coder by stating: "That's because, since I've talked to her, he—before, he filed this letter. I was going to wait and see what happened.").

The record is replete with evidence that Jones and Mr. Inman had been at loggerheads for months. After the trial court denied his request for new appointed counsel, Jones sent the court copies of letters he had sent to his attorney in the months preceding trial for entry into the record. (A.75–76.) The letters report visits promised but never held, and meetings held but adjourned promptly. *E.g.* (A.94) ("When you came for 30 min in June . . . ."); (A.88) ("You have been my attorney for over six months now. You have visited me 4 times with possible 3.5 contact hours.

[Yo]ur office is across the jail. The trial is to be on October 27th, 2014 and I am unaware of any defense."); (A.92) ("You promised me you would come to see me Thursday morning so we could address many urgent questions and you never showed up. You could have spoken with me after hearing on Wednesday but again no communication."); (A.86) ("Your ten minute visit today was not what you promised.").

Five days after the magistrate judge denied Jones's request for new counsel at the October 15th hearing, he renewed his request. (A.74–75, 78.) Jones's reason for substitute counsel remained constant—Mr. Inman's failure to meet and communicate with him. (A.77) ("He will not even listen to my defense or discuss my case, and calls me a liar."). But Jones buttressed his claim by giving the district court new information that illustrated the breakdown in communication: copies of letters Jones had sent Mr. Inman in the previous six months that showed Mr. Inman's unresponsiveness, and news that Mr. Inman had failed to meet with him over the weekend despite the judge's call for him to do so. (10/20/14 Hr'g Tr. 70, 75–76.) The district court also denied this request but cautioned Mr. Inman that: "[Y]ou've got to keep meeting with your client and get everything ready." (10/20/14 Hr'g Tr. at 15.)

Jones's complaints even continued after trial, in the sentencing phase:

> And I have not seen anything from Mr. Inman on the report to see what his recommendation is based upon this document [the Presentencing Investigation Report]. So, because of those things, and continual inability to communicate with counsel, I have asked that he be replaced and a new attorney be assigned and we be given time to

> review the document and to call witnesses on my behalf to speak before Judge Pratt.

(A.39.)

Rather than trying to assuage his client's concerns, defense counsel expressed annoyance and exasperation in open court. *E.g.*, (10/28/14 Trial Tr. 234) (Mr. Inman stating at trial that he cannot keep answering Jones's complaint "every 75 minutes" and that Jones should represent himself because Jones's case was "indefensible")[9]; (10/28/14 Trial Tr. 332) (after the judge noted that she received another letter from Jones expressing his dissatisfaction, Mr. Inman said: "What a surprise."); (A.84–85) (Mr. Inman asserting that Jones's critical characterization of his representation was inaccurate and stating "that's why we can't have these hearings").

The serious breakdown of communication between defense counsel and his client left Jones without representation capable of providing an adequate defense. The district court abused its discretion in denying Jones's reasonable, timely request for new appointed counsel.

B. This Court should find erroneous denials of new-counsel motions structural error or, at a minimum, subject to Chapman harmless-error review.

Once this Court finds an abuse of discretion, it employs a standard of review that requires the defendant to make a showing of prejudice under the ineffective-assistance-of-counsel standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *See, e.g.*, *United States v. Harris*, 394 F.3d 543, 554–55 (7th Cir. 2005);

[9] Following this exchange the district court simply advised Jones to "keep[] talking to your lawyer." (10/28/14 Trial Tr. 235.) Jones responded, "He won't do anything," and the court said "okay." (10/28/14 Trial Tr. 235.)

Zillges, 978 F.2d at 372–73. Respectfully, this Court should revisit that approach for three reasons.

First, requiring a defendant to prove *Strickland* prejudice effectively eliminates the viability of new-counsel claims on direct appeal because it requires defendants to shoulder a task on direct review that this Court has labeled a "vertical climb": that but for trial counsel's errors, there is a reasonable probability the trial outcome would have been different. *Harris*, 394 F.3d at 547. As this Court has repeatedly acknowledged, *Strickland* is "ill-suited to resolution on direct appeal" because it requires the reviewing court to evaluate trial counsel's decisions and strategy in light of the circumstances at trial. *United States v. Rucker*, 766 F.3d 638, 646–47 (7th Cir. 2014). Because no rational defendant would choose to "use up" her one chance of raising ineffective assistance of counsel in a venue that this Court has explicitly warned to be the wrong one, *United States v. Wallace*, 753 F.3d 671, 676 (7th Cir. 2014), this Court's approach to new-counsel claims virtually eliminates it as an issue for review on direct appeal, even in the face of egregious abuses of discretion by the district court in denying the request.[10]

Second, new-counsel claims are distinct from ineffective-assistance-of-counsel claims. The former are a form of judge error, while the latter focus on attorney conduct. And the former are single, discrete errors reviewed for an abuse of discretion, while the latter require an examination of the trial as a whole. Indeed,

[10] That is, if a defendant raises a lower court's denial of a substitute-counsel motion on direct appeal, he is precluded from raising an ineffectiveness claim on collateral review at a later time. But if a defendant instead raises an ineffectiveness claim on collateral review, as this Court encourages, his substitute-counsel claim would be barred for failure to raise it on direct appeal.

the trial court's decision occurs before trial even starts, unlike ineffective-assistance claims, which in the mine-run of cases become ripe only after a full evaluation of the trial and sentencing. Thus, the *Strickland* test is inapposite because it almost always requires the examination of an entire trial to determine whether the alleged ineffective assistance of counsel precluded fundamental fairness. *United States v. Lott*, 310 F.3d 1231, 1251–52 (10th Cir. 2002).

Third, this Court's approach creates a lacuna between indigent defendants and those who can afford lawyers of their choice. This gap is unfair and incompatible with the reasoning of the Supreme Court decision in *United States v. Gonzalez-Lopez*, 548 U.S. 140 (2006).[11] Specifically, defendants should not be required to show outcome-determinative prejudice because a new-counsel claim is rooted in the Sixth Amendment right to counsel, not the Fifth Amendment right to a fair trial as in the case of ineffective-counsel claims. *Id.* at 146 ("The Constitution guarantees a fair trial through the Due Process Clause, but it defines the basic elements of a fair trial largely through the several provisions of the Sixth Amendment, including the Counsel Clause." (quoting *Strickland*, 466 U.S. 684–85)); *Glasser v. United States*, 315 U.S. 60, 76 (1942) ("[The Sixth Amendment] right to have assistance of counsel is too fundamental and absolute to allow courts to

[11] Significantly, this Court and the others that apply *Strickland* to new-counsel claims developed this approach nearly a decade before the Supreme Court's decision in *Gonzalez-Lopez*. This Court, however, is the only circuit to have explicitly reaffirmed its commitment to the approach in the wake of *Gonzalez-Lopez*. *Wallace*, 753 F.3d at 675–76. *Cf. United States v. Blackledge*, 751 F.3d 188, 197 (4th Cir. 2014) (adopting Seventh Circuit's approach without considering *Gonzalez-Lopez* and without reconciling its own precedent in *United States v. Smith*, 640 F.3d 580, 588–89 (4th Cir. 2011) (holding that a defendant does not bear the burden of proving prejudice in this context.).

indulge in nice calculations as to the amount of prejudice arising from its denial."); *United States v. Smith,* 640 F.3d 580, 589 (4th Cir. 2011) ("Sixth Amendment right to successor appointed counsel arises because the initial appointment has ceased to constitute Sixth Amendment assistance of counsel.").

Critically, moreover, the ineffective-assistance approach illogically and unfairly places paying and indigent defendants at diametric poles. A paying client who is denied his Sixth Amendment right to assistance of counsel automatically receives a new trial. *Gonzalez-Lopez*, 548 U.S. at 152. It is inequitable and arbitrary to require an indigent defendant likewise seeking a new trial to prove that: (1) his or her lawyer was not competent; and (2) the outcome at trial would have been different with different counsel. *See Griffin v. Illinois*, 351 U.S. 12, 19 (1956) ("There can be no equal justice where the kind of trial a man gets depends on the amount of money he has."); *Lee v. Habib*, 424 F.2d 891, 899–900 (D.C. Cir. 1970) (enumerating this Court's holdings intended "to equalize the conditions of the adversary process" for indigent and paying defendants).

Rather than applying *Strickland*, then, this Court should find—as other circuits have—that an erroneous denial of an indigent defendant's request for new appointed counsel constitutes either structural error, requiring automatic reversal, *Daniels v. Woodford*, 428 F.3d 1181, 1197–98 (9th Cir. 2005), or at a minimum that the error should be reviewed under the standard typically applied to constitutional error, *see Chapman v. California*, 386 U.S. 18, 23–25 (1967); *see also Lott*, 310 F.3d at 1250 (applying *Chapman* to these types of claims). As for structural error, denial

of such new-counsel claims falls within its ambit, as the Supreme Court found with respect to paying defendants in *Gonzalez-Lopez*, 548 U.S. at 148–49. It is virtually impossible to quantitatively assess the effects of the erroneous denial of substitute counsel or to meaningfully separate this error from the fabric of the entire proceeding, so automatic reversal in such circumstances is appropriate. This Court should at a minimum require the government to prove harmless error beyond a reasonable doubt, as is required for most constitutional claims, including those arising under the Sixth Amendment. *Lott*, 310 F.3d at 1250 (listing the various Sixth Amendment violations where *Chapman* is applied).

IV. The district court incorrectly calculated Jones's sentencing Guideline range and criminal history category.

The district court improperly calculated Jones's sentencing Guideline range for his felon-in-possession counts and erred in applying his criminal history, which inflated the sentence the court imposed on both the felon-in-possession and the healthcare fraud counts. These errors resulted in a nearly threefold increase in Jones's sentence. This Court reviews the district court's application of the Sentencing Guidelines de novo, and its findings of fact for clear error. *United States v. Santoro*, 159 F.3d 318, 320 (7th Cir. 1998).

The errors began in the first sentencing hearing. There, the district court improperly included Jones's 1985 felony conviction when calculating his base offense and criminal history levels, despite defense counsel's objection that the prior conviction fell outside § 2K2.1's fifteen-year look-back period for including relevant conduct. (3/25/14 Sent. Hr'g Tr. 88–89.)

The applicable guideline for a violation of 18 U.S.C. § 922(g)(1) is U.S. Sentencing Guidelines Manual § 2K2.1. Under that section, a "prohibited person"—as Jones was at the time of the offense—starts with a base offense level of 14. U.S.S.G. § 2K2.1(a)(6). If, however, "the defendant committed any part of the instant offense subsequent to sustaining one felony conviction of . . . a controlled substance offense," then the base offense level jumps to 20. *Id.* § 2K2.1(a)(4)(A).[12] In defining the applicable "prior felony conviction," this section cross-references the criminal history Guideline, § 4A1.2. The only qualifying convictions for purposes of criminal history points are those that fall within fifteen years of the defendant's "commencement of the instant offense." *Id.* § 4A1.2(e)(1).

The district court found that Jones had "possessed" the firearms for decades, and thus accounted for it in computing Jones's sentence. The district court, however, erred for two reasons. First, as a threshold matter, the district court improperly double-counted the possession when it treated the possession not only as conduct that formed an element of the charged counts but also regarded it as relevant conduct. The Guidelines explicitly forbid such double-counting. U.S.S.G. § 1B1.3 cmt. background (excluding from relevant conduct that which is "an element of the offense of conviction").

Second, the district court's inclusion of Jones's "possession" does not satisfy any of the criteria this Court employs in determining relevant conduct. Generally, the date alleged in the indictment pegs the timing of the "commencement of the

[12] The Guidelines commentary to § 2K2.1 defines "prior felony conviction" as only "those felony convictions that receive criminal history points under § 4A1.1(a), (b), or (c)." U.S.S.G. § 2K2.1 cmt. n.10.

instant offense" for purposes of the fifteen-year look-back, but the commencement date may be moved backward based on "relevant conduct." *Id.* § 4A1.2 cmt. n.8. This Court has made clear that relevant conduct is limited to acts that bear "similarity, regularity, and temporal proximity" to the charged offense. *United States v. Ortiz*, 431 F.3d 1035, 1040 (7th Cir. 2005) (quoting *United States v. Acosta*, 85 F.3d 275, 281 (7th Cir. 1996)). The fact the district court treated as "relevant conduct"—that Jones had possessed the guns for decades—does not fit any of the three prongs that comprise the relevant conduct test.

With respect to the similarity and regularity requirements, the conduct must be separate and/or iterative in order to qualify. *United States v. Sumner*, 325 F.3d 884, 889–90 (7th Cir. 2003) (considering for similarity whether the charged offense and alleged relevant conduct have comparable characteristics and facts); *United States v. Spry*, 190 F.3d 829, 837 (7th Cir. 1999) (defining regularity as discrete acts conducted at consistent intervals); *cf. United States v. Powell*, 124 F.3d 655, 666 (5th Cir. 1997) (noting that "isolated and sporadic" incidents would not be considered regular conduct). Yet the district court, Probation Office, and the government regarded Jones's gun possession as a single, decades-long possession rather than separate, iterative conduct. *See* (R.182 at 7) (Jones engaged in a "continued possession of at least one firearm charged in each count dating back to 1983"); (A.13) (district court accepting that characterization).

The temporal proximity prong is also not met. Conduct is relevant when it occurs no more than a few months before the date charged in the indictment. *See,*

e.g., *Ortiz*, 478 F.3d at 802 (eight months too temporally remote); *United States v. Sykes*, 7 F.3d 1331, 1336 (7th Cir. 1993) (fourteen months too temporally remote).[13] The dates the court relied on in finding relevant conduct, however, took place at least eight and a half years before the indictment. *See* (A.13) (looking at evidence that showed Jones possessed firearms "as early as 1996" because a prenuptial agreement between Jones and his wife listed several firearms among his "assets"); (A.13) (relying on a 2001 agreement in which Jones transferred ownership of the guns from his lawyer to his wife as proof of Jones's possession). A gap of more than eight years cannot be deemed temporally proximate for the purposes of relevant conduct even under the most expansive definition of the term.

The look-back period from Jones's 1985 felony conviction expired in 2003, fifteen years after Jones's 1988 release. (A.13.) The indictment failed to allege that the conduct resulting in Jones's felon-in-possession convictions or his healthcare fraud dated back to 2003 or earlier, *see* (R.49) (alleging gun possession in 2010 and healthcare fraud from 2005 to 2009), and, as discussed above, the 1996 and 2001 conduct does not qualify as relevant conduct, so § 2K2.1(a)(4)(A) does not apply. Thus, at most, Jones's base offense level should have been based on § 2K2.1(a)(6), which sets an offense level of 14 for "prohibited persons." Similarly, Jones's criminal history category should have been I because Jones finished serving his sentence for

[13] In cases where this Court has upheld temporally remote conduct of more than a year, it has generally done so only when the lapse is due to events outside of the participants' control, such as an intervening arrest and incarceration. *See, e.g.*, *United States v. Cedano-Rojas*, 999 F.2d 1175, 1180 (7th Cir. 1993).

the 1985 conviction more than fifteen years prior to the dates of the charges in the indictment. *See* (R.1); U.S.S.G. § 4A1.1, cmt. n.1.

Yet based on its inclusion of the old conviction, the district court enhanced Jones's base offense level to 20 and his criminal history to category II. (A.13–14.) After factoring in other enhancements for the number of firearms and for obstruction of justice, the district court settled on an offense level of 28, which yielded a Guidelines range of 87 to 108 months. (3/25/14 Sent. Hr'g Tr. 18.) During the first sentencing, the district court imposed concurrent 100-month sentences on each gun count. (A.15.) Had the district court not included this prior conviction and kept all other enhancements the same, Jones's sentencing range on the gun counts would have dropped to 41 to 51 months' imprisonment.[14] *See* U.S.S.G. sentencing table.

The district court's improper inclusion of the 1985 conviction carried another consequence: it rendered Jones ineligible for a collection or sporting reduction under § 2K2.1(b)(2). Even the district court acknowledged that Jones possessed the guns as part of a collection. (3/25/14 Sent. Hr'g Tr. 82) ("[H]e continued to collect and possess the firearms for investment purposes, and maybe for hunting."); *see also* (4/3/15 Sent. Hr'g Tr. 19) (judge referencing Jones's "gun collection"). Yet the court applied a six-level enhancement based on the number of guns Jones possessed,

[14] This assumes Jones's offense level would be 22 (from a base level of 14, plus 8 levels of enhancement) with a criminal history category of I. U.S.S.G. sentencing table.

rather than reducing the offense level to a level 6, as it should have under § 2K2.1(b)(2).[15]

The district court imported its errors from the first sentencing on the gun charges into the second sentencing on the healthcare fraud count. Based on its mistaken analysis of Jones's criminal history score and offense level for the gun charges, the court relied on the Guidelines range it had determined at the first sentencing hearing to set Jones's healthcare fraud sentence: 90 months, to run concurrent with an 100-month sentence on the felon-in-possession counts. (A.29, 31.) The 90-month sentence was nearly three times higher than the Guidelines range for that count.

The district court had previously calculated a base offense level of 6 for the healthcare fraud, plus a 10-level enhancement for loss amount and a 2-level enhancement for abuse of a position of trust. (A.18–19.) With an offense level of 18, the healthcare fraud count should have been the most serious offense, not the felon-in-possession counts. And because Jones finished serving his sentence for the 1985 conviction more than fifteen years prior to the commencement of the healthcare fraud, no criminal history points should have been counted against him for the purpose of the healthcare fraud offense. U.S.S.G. § 4A1.2(e). A combined adjusted offense level of 18, with a criminal history category of I, yields a Guidelines range of 27 to 33 months. The district court provided no justification for the dramatic

[15] With a base-offense level of 6 and a criminal history category of I, Jones's sentencing range would have been 0 to 6 months. U.S.S.G. sentencing table. The district court also imposed a 2-level enhancement for obstruction of justice. Even with the obstruction enhancement, Jones's offense level for Counts 2 through 4 should have been level 8, not 28.

upward shift from what should have been Jones's Guidelines range; indeed, it expressly evinced its desire to sentence at the *low* end of the range. (A.29) (the court "believe[d] that a sentence near the bottom of the advisory guideline is sufficient").

By improperly treating Jones's gun possession as "relevant conduct," the district court inflated Jones's criminal history score and his offense level on the gun charges. That mistake from the first sentencing hearing infected the second sentencing as well, and resulted in Jones receiving a sentence triple his Guidelines range, despite the court's desire to sentence him at the low end of the range. Therefore, this Court should vacate Jones's sentence and remand for resentencing. *See, e.g.*, *Ortiz*, 431 F.3d at 1043.

CONCLUSION

For the foregoing reasons, Jones respectfully requests that this Court reverse his healthcare fraud conviction and remand for a new trial or, at a minimum, remand for resentencing.

Respectfully submitted,

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Defendant-Appellant

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CERTIFICATE OF COMPLIANCE WITH FEDERAL RULE OF APPELLATE PROCEDURE 32(a)(7)

1. This brief complies with the type-volume limitation of FED. R. APP. P. 32(a)(7)(b) because this brief contains 13,841 words, excluding the parts of the brief exempted by FED. R. APP. P. 32(a)(7)(b)(iii).

2. This brief complies with the typeface requirements of Circuit Rule 32 and FED. R. APP. P. 32(a)(5) and the type style requirements of FED. R. APP. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2011 with a 12-point Century Schoolbook font, and footnotes in 11-point Century Schoolbook font.

/s/ Sarah O'Rourke Schrup

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Dated: April 25, 2016

CERTIFICATE OF SERVICE

I, the undersigned, counsel for the Defendant-Appellant, Bruce Jones, hereby certify that I electronically filed this brief, required appendix, and separate appendix with the clerk of the Seventh Circuit Court of Appeals on April 25, 2016, which will send the filing to counsel of record in the case.

/s/ Sarah O'Rourke Schrup

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CIRCUIT RULE 30(d) STATEMENT

I, the undersigned, counsel for the Defendant-Appellant, Bruce Jones, hereby state that all of the materials required by Circuit Rules 30(a), 30(b), and 30(d) are included in the proper appendices to this brief.

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Dated: April 25, 2016

RULE 30(a) APPENDIX TABLE OF CONTENTS

UNITED STATES DISTRICT COURT

SOUTHERN District of **INDIANA**

UNITED STATES OF AMERICA
V.
BRUCE JONES

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:12CR00072-001

USM Number: 11614-046

Charles David Pumphrey and John D. Manley
Defendant's Attorney

THE DEFENDANT:

G pleaded guilty to count(s) _____

G pleaded nolo contendere to count(s) _____ which was accepted by the court.

X was found guilty on count(s) 2, 3, and 4 after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count(s)
18 U.S.C. § 922(g)(1)	Felon in Possession of a Firearm or Ammunition	5/10/10	2
18 U.S.C. § 922(g)(1)	Felon in Possession of a Firearm or Ammunition	5/10/10	3
18 U.S.C. § 922(g)(1)	Felon in Possession of a Firearm or Ammunition	6/30/10	4

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

G The defendant has been found not guilty on count(s) _____

G Count(s) _____ G is G 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.

3/25/2014
Date of Imposition of Judgment

Hon. Tanya Walton Pratt, Judge
United States District Court
Southern District of Indiana

03/27/2014
Date

A CERTIFIED TRUE COPY
Laura A. Briggs, Clerk
U.S. District Court
Southern District of Indiana
By _____ Deputy Clerk

DEFENDANT: BRUCE JONES
CASE NUMBER: 1:12CR00072-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 100 months

100 months on each of Counts 2, 3, and 4, all to be served concurrently

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

X The defendant is remanded to the custody of the United States Marshal.

G The defendant shall surrender to the United States Marshal for this district:

G at _____ G a m. G p m. on _____ .

G as notified by the United States Marshal.

G The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

G before 2 p.m. on _____ .

G as notified by the United States Marshal.

G 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: BRUCE JONES
CASE NUMBER: 1:12CR00072-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of : 3 years

3 years on each of Counts 2, 3, and 4, all to be served concurrently

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter.

X The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

X The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

X The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

G The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.)* as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. (Check, if applicable.)

G The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant shall 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

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: BRUCE JONES
CASE NUMBER: 1:12CR00072-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall pay any fine that is imposed by this judgment and that remains unpaid at the commencement of the term of supervised release.

2. The defendant shall provide the probation officer access to any requested financial information.

3. The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer.

4. The defendant shall submit to the search (with the assistance of other law enforcement as necessary) of his person, vehicle, office/business, residence and property, including computer systems and peripheral devices. The defendant shall submit to the seizure of contraband found. The defendant shall warn other occupants the premises may be subject to searches.

Upon a finding of a violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed)

_____ _____
Defendant Date

_____ _____
U.S. Probation Officer/Designated Witness Date

DEFENDANT: BRUCE JONES
CASE NUMBER: 1:12CR00072-001

CRIMINAL MONETARY PENALTIES

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

	Assessment	Fine	Restitution
TOTALS	$ 300.00	$ 12,500.00	$

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

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

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

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

G Restitution amount ordered pursuant to plea agreement $ _____

The defendant shall 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).

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

X the interest requirement is waived for the X fine G restitution.

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

* 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: BRUCE JONES
CASE NUMBER: 1:12CR00072-001

SCHEDULE OF PAYMENTS

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

A G Lump sum payment of $ _____ due immediately, balance due

G not later than _____ , or
G in accordance with G C, G D, G E, or G G below; or

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

C G 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 G 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 G 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 G If this case involves other defendants, each may be held jointly and severally liable for payment of all or part of the restitution ordered herein and the Court may order such payment in the future.

G G Special instructions regarding the payment of criminal monetary penalties:

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

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

G 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.

Defendant Name	Case Number	Joint & Several Amount

G The defendant shall pay the cost of prosecution.

G The defendant shall pay the following court cost(s):

X The defendant shall forfeit the defendant's interest in the following property to the United States:
all firearms and ammunition involved in the offense and seized by the government.

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.

AO 245C (Rev. 09/13) Amended Judgment in a Criminal Case Sheet 1 (NOTE: Identify Changes with Asterisks (*))

UNITED STATES DISTRICT COURT

Southern District of Indiana

UNITED STATES OF AMERICA
V.
BRUCE JONES

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 1:12CR00072-001
USM Number: 11614-046

Date of Original Judgment: 3/25/14
(Or Date of Last Amended Judgment)

Mark Inman *
Defendant's Attorney

Reason for Amendment:

- ☐ Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
- ☐ Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
- ☒ Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
- ☐ Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)
- ☐ Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
- ☐ Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
- ☐ Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
- ☐ Direct Motion to District Court Pursuant ☐ 28 U.S.C. § 2255 or ☐ 18 U.S.C. § 3559(c)(7)
- ☐ Modification of Restitution Order (18 U.S.C. § 3664)

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, and 4* after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 1347*	Health Care Fraud *	8/16/2009*	1*
18 U.S.C. § 922(g)(1)	Felon in Possession of a Firearm or Ammunition	5/10/2010	2
18 U.S.C. § 922(g)(1)	Felon in Possession of a Firearm or Ammunition	5/10/2010	3
18 U.S.C. § 922(g)(1)	Felon in Possession of a Firearm or Ammunition	6/30/2010	4

The defendant is sentenced as provided in pages 2 through 5 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.

A CERTIFIED TRUE COPY
Laura A. Briggs, Clerk
U.S. District Court
Southern District of Indiana
By Laura R Jarvis
Deputy Clerk

April 3, 2015
Date of Imposition of Judgment

Tanya Walton Pratt
Hon. Tanya Walton Pratt, Judge
United States District Court
Southern District of Indiana
4/10/2015
Date

DEFENDANT: BRUCE JONES
CASE NUMBER: 1:12CR00072-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of : 100 months
90 months on Ct. 1*, and 100 months per count on Cts. 2, 3, and 4, all to be served concurrently

☒ The court makes the following recommendations to the Bureau of Prisons:
that the defendant be designated to a facility in Terre Haute, Indiana*

☒ 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: BRUCE JONES
CASE NUMBER: 1:12CR00072-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of : 3 years
3 years on each of Cts. 1*, 2, 3, and 4, to be served concurrently

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall 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 the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the conditions listed below:

CONDITIONS OF SUPERVISION*

1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
2) The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer.
3) The defendant shall answer all inquiries by the probation officer and follow the instructions of the probation officer.
4) The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons.
5) The defendant shall notify the probation officer prior to any change in residence or employer.
6) The defendant shall not meet, communicate, or otherwise interact with a person whom the defendant knows to be engaged, or planning to be engaged, in criminal activity, or whom the defendant knows to have been convicted of a felony, unless granted permission to do so by the probation officer.
7) The defendant shall permit a probation officer to visit him at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer.
8) The defendant shall notify the probation officer within 72 hours of being arrested or having any law enforcement contact.
9) As directed by the probation officer, the defendant shall notify third parties of the nature of the defendant's current offense conduct and conviction and shall permit the probation officer to make such notifications and confirm the defendant's compliance with such notification requirement.
10) The defendant shall provide the probation officer access to any requested financial information.
11) The defendant shall submit to the search of his person, vehicle, office/business, residence and property, including computer systems and Internet-enabled devices, whenever the probation officer has a reasonable suspicion that a violation of a condition of supervision or other unlawful conduct may have occurred or be underway involving the defendant. Other law enforcement may assist as necessary. The defendant shall submit to the seizure of any contraband that is found, and should forewarn other occupants or users that the property may be subject to being searched.

DEFENDANT: BRUCE JONES
CASE NUMBER: 1:12CR00072-001

Upon a finding of a violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the condition of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed)

Defendant	Date
U.S. Probation Officer/Designated Witness	Date

DEFENDANT: BRUCE JONES
CASE NUMBER: 1:12CR00072-001

CRIMINAL MONETARY PENALTIES

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

	Assessment	Fine	Restitution
TOTALS	$ 400.00*	$ 12,500.00	$ 152,453.48*

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

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

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

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
Anthem Blue Cross Blue Shield*	$150,024.34*	$150,024.34*	
Wabash Valley Benefits, LLC*	$2,429.14*	$2,429.14*	

TOTALS	$ 152,453.48*	$ 152,453.48*

☐ 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 and/or ☒ restitution*.

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

* 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: BRUCE JONES
CASE NUMBER: 1:12CR00072-001

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 _____ due immediately, balance due

☐ not later than _____, or
☐ in accordance ☐ C ☐ D ☐ E, or ☐ G below; or

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

C ☐ Payment in _____ *(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 _____ *(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 _____ *(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* ☒ If this case involves other defendants, each may be held jointly and severally liable for payment of all or part of the restitution ordered herein and the Court may order such payment in the future. The victims' recovery is limited to the amount of loss, and the defendant's liability for restitution ceases if and when the victims receive full restitution.

G* ☒ Special instructions regarding the payment of criminal monetary penalties:

Any unpaid restitution balance shall be paid during the term of supervision at a rate of not less than 10% of the defendant's gross monthly income.

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

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

Defendant Name	Case Number	Joint & Several Amount

☐ 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:*
Western Reserve Life Insurance Policy No. 01B0323768, AXA Financial Insurance Policy No. 13121069, and all firearms and ammunition involved in the offense and seized by the government.

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.

THE COURT: The Court will accept the Presentence Report for the record under seal. In the event of appeal, counsel on appeal will have access to the report, but not the recommendation portion, which shall remain confidential.

Counts 2, 3, and 4 group, and the aggregate number is used. The United States Sentencing Commission guideline for the offense charged, the Court is going to find, does call for a base offense level of 20, because the firearm and ammunition possession was committed subsequent to sustaining a conviction for a felony, a controlled substance offense.

Defense counsel argued in their memo that the 15-year look-back does not apply because Mr. Jones was released from custody in 1988. However, application note 8 relevant to conduct under 4A1.2(e) does apply. Mr. Jones was released from prison in October of 1988, which would date the 15 years up to 2003.

There is evidence that he possessed firearms and ammunition as early as 1996, that being the 1996 prenuptial agreement, which outlined Mr. Jones' assets as 15 pistols, nine shotguns and 14 rifles. In 2001, the transfer of receipts, signed by both Bruce Jones and Larissa Jones involving Bob, transferred several firearms listed in the document, and Mr. Jones requested that Larissa not sell three guns until after his death, which the Court believes indicates possession.

For these reasons, the Court finds that the base offense level is 20. For the specific offense characteristic that the defendant possessed between 25 and 99 firearms, there's a six-level increase. The Court is not awarding the 2.2 -- I'm sorry, the 2K2.1(b)(2) specific offense characteristic and two-level reduction that counsel argued for, that being that the defendant possessed the firearms and ammunition solely for lawful sporting and collection purposes, because it does not apply since the base offense level is 20. This specific offense characteristic only applies if the base offense level is 12 or 14.

And even if the Court were allowed under the guidelines to give the 2K2.1(b)(2) reduction, the Court would not, because, although the majority of the firearms were collector firearms, there is substantial evidence that the firearm inside his bedroom drawer and the one that he carried on his waist in Montana were carried or possessed for personal protection. The Court has sustained the objection and found that the adjustment for role in the offense does not apply, so there's not a two-level increase.

The adjustment for obstruction of justice applies, and so a two-level increase is given because Mr. Jones obstructed justice numerous times during the investigation and trial. Specifically, the Court is going to find that he obstructed justice by not -- by failing to appear for his jury

MR. PUMPHREY: In regards to his health, some of the 353353 (sic) conditions, we've heard evidence, Judge, I think the PSR speaks eloquently as to his health condition. It's deteriorating as we speak. Other than that, I think we have no other comment. Whereas Mr. Shepard limited his comments to what the record presented, the inferences are for Your Honor to decide.

THE COURT: All right. Thank you.

All right. Does Mr. Jones need to remain seated? Do you need to stay seated?

MR. PUMPHREY: Please, Judge.

THE COURT: Okay. All right. The Court is prepared to state what the sentence in this case will be. And, Counsel, you will each have a final opportunity to state any legal objections before sentence is finally imposed.

Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant, Bruce Jones, is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of 100 months on Counts 2, 3, and 4, to be served concurrently. This sentence addresses the history and characteristics of the defendant, as well as the nature and circumstances of the offenses, and is sufficient but not greater than necessary to achieve the goals of sentencing.

The defendant shall pay to the United States a fine of $12,500 based upon the defendant's financial resources and

future ability to pay. The Court finds that the defendant does not have the ability to pay interest and waives the interest requirement. The defendant shall notify his probation officer of any material change in economic circumstances that might affect his ability to pay the fine.

The defendant shall forfeit all -- was it 47 firearms?

MR. SHEPARD: Yes, Your Honor.

THE COURT: And 14,000 rounds of ammunition involved in the offense and seized by the government.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of three years, concurrent. Within 72 hours of release from the custody of the Bureau of Prisons, the defendant shall report in person to the Probation Office in the district to which he is released.

While on supervised release, the defendant shall not commit another federal, state, or local crime, shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon, shall cooperate with the collection of a DNA sample, and shall refrain from any unlawful use of a controlled substance.

The defendant is suspended from drug testing mandated by the Crime Control Act of 1994 based on the Court's determination that Mr. Jones poses a low risk of future substance abuse.

Further, the defendant shall comply with the standard conditions as adopted by the Judicial Conference of the United States, as well as the following additional conditions: The defendant shall pay any portion of the fine imposed by this judgment that remains unpaid at the commencement of the term of supervised release; the defendant shall provide his probation officer access to any requested financial information; he shall not incur new credit charges or open additional lines of credit without the approval of the Probation Department; the defendant shall submit to the search, with the assistance of other law enforcement as necessary, of his person, vehicle, office, business, residence, and property, including computer systems and peripheral devices; the defendant shall submit to the seizure of any contraband found and shall warn other occupants the premises may be subject to searches.

The defendant shall pay to the United States a special assessment of $300. Payment of the fine and special assessment shall be due immediately and is to be made payable directly to the Clerk, United States District Court.

The sentence that the Court intends to impose is at the mid range of the applicable sentencing guideline. The Court believes this sentence accomplishes the purposes of 3553(a). The Court has considered the nature and circumstances of the offense, the defendant's criminal

prior -- there was discussion of the obstruction -- well, that was -- we've already done that. I'm sorry.

THE COURT: I think we've covered everything.

MR. INMAN: I think we've covered everything we covered in the last -- that was covered. I wasn't part of the last hearing, sentencing hearing, so if there's something we missed, once again, Your Honor, I would just ask that that record be incorporated.

THE COURT: Okay. And the arguments and the rulings from the prior hearing, sentencing hearing, are all incorporated.

MR. INMAN: All right. Thank you, Your Honor.

THE COURT: Do you agree with that, Mr. Shepard?

MR. SHEPARD: Yes, Your Honor.

THE COURT: Okay. All right. So the Court will accept the Presentence Report for the record under seal, with the corrections and rulings as noted. In the event of appeal, counsel, on appeal, will have access to the report, but not the recommendation portion, which shall remain confidential.

With respect to group one, healthcare fraud, the base offense level is six. For the specific offense characteristic that the loss was $152,453.48, ten levels are added because the loss is more than $120,000, but less than $200,000. For the adjustment for role in the offense, because Dr. Jones was -- abused a position of trust as a medical

provider with the insurers, two levels are added. The adjusted offense level is 18.

Group two, or the felon in possession of a firearm or ammunition counts, Counts 2 through 4, the Court is finding that the base offense level remains 20. For the specific offense characteristic that the offense involved greater than 25 but less than 99 firearms, there were 47 firearms, six levels are added. The adjustment for obstruction of justice, the two levels are added for the reasons previously stated. This defendant obstructed justice numerous times during the investigation and trial. So the adjusted offense level subtotal is 28.

Under the multiple-count adjustment, group one is 18; group two is level 28. The total number of units is one. And the greater of the adjusted offense levels is 28. The combined adjusted offense level is level 28, and the total -- oh, the defendant has never accepted any responsibility, so he's not allowed the -- he's not clearly demonstrated acceptance of responsibility for the offenses, so he is not allowed the two-level reduction. So the total offense level is 28. And that produces a guideline sentencing range of 87 to 107 months' imprisonment.

Oh, and then he does have his prior conviction for dealing in a Schedule IV substance, which was a 1985 conviction. He was released to parole October 3rd, 1988, and

discharged from parole October 30th, 1990. And that conviction does warrant three criminal history points. So the total criminal history score is 3. That puts him at criminal history category II. And, again, criminal history category II, offense level 28, is 87 to 107 months' imprisonment. And the fine range would be $12,500 up to $125,000 under the guideline.

So at this time, Mr. Inman, you may present any argument or evidence on your client's behalf.

And, Dr. Jones, you're allowed to make a statement of allocution.

MR. INMAN: He's going to make a statement, Your Honor, and then I'll have brief argument.

THE COURT: Okay. Is Dr. Jones going to go first? Is he going to go first?

MR. INMAN: Yes.

THE COURT: Okay. You may.

THE DEFENDANT: Your Honor, I thank you for the opportunity to talk today. Sorry about the last time when Larissa fell down and passed out. I kind of fell apart, because she's very close to me.

THE COURT: I hope she's doing well.

THE DEFENDANT: I'm sorry?

THE COURT: I hope she's doing well.

THE DEFENDANT: She is. Thank you.

THE COURT: Thank you, Counsel.

MR. SHEPARD: Thank you.

THE COURT: All right. Do you want to come back up to the lecturn? Can you stand, Dr. Jones, for your sentencing?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. Come on up.

THE DEFENDANT: Come on up?

THE COURT: Come on up right there to the lecturn with your lawyer, and I'm going to pronounce sentence.

(Counsel and defendant approach the podium.)

THE COURT: Did you have any final comments, Mr. Inman?

MR. INMAN: I do not, Your Honor.

THE COURT: Okay. The Court is prepared to state what the sentence in this case will be. And, Counsel, you will each have a final opportunity to state any legal objections before sentence is finally imposed.

Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant, Bruce Jones, is hereby committed to the custody of the Bureau of Prisons, to be imprisoned for a concurrent term of 90 months on Count 1 and 100 months on Counts 2, 3, and 4.

The defendant shall make restitution to the following victims in the following amounts, which shall be

paid immediately: Anthem Blue Cross Blue Shield, $150,024.34; Wabash Valley Benefits, LLC, $2,429.14. Any payment that is not payment in full shall be divided proportionately among the named victims. The payment is to be made directly to the Clerk, United States District Court, for disbursement to the victims.

The defendant shall notify the United States Attorney for this district within 30 days of any change of mailing or residence address that occurs while any portion of the restitution remains unpaid. Any unpaid restitution balance shall be paid during the term of supervision at a rate of not less than ten percent of the defendant's gross monthly income.

The defendant shall notify his probation officer of any material change in economic circumstances that might affect his ability to pay restitution. The Court finds that the defendant does not have the ability to pay interest and waives the interest requirement.

The defendant shall pay to the United States a fine of $12,500. The Court finds that the defendant does not have the ability to pay interest since he will be incarcerated, and waives the interest requirement. The defendant shall notify the probation officer of any material change in economic circumstances that might affect his ability to pay the fine.

The defendant shall forfeit the following property:

Western Reserve life insurance policy, number 01B0323768; the AXA Financial insurance policy, number 13121069; and all firearms and ammunition involved in the offense and seized by the government.

The Court is imposing a three-year term of supervised release upon release from imprisonment based on the nature of the offenses and to assist the defendant in reentry into the community. Within 72 hours of release from the custody of the Bureau of Prisons, Dr. Jones shall report in person to the Probation Office in the district to which he is released.

While on supervised release, he shall not commit another federal, state, or local crime; shall not possess a firearm, no more firearms, no more ammunition, destructive device, or any other dangerous weapon; shall cooperate with the collection of a DNA sample; and shall refrain from any unlawful use of a controlled substance. The defendant is suspended from drug testing mandated by the Crime Control Act of 1994 based on the Court's determination that this defendant poses a low risk of future substance abuse.

To promote respect for the law, prevent recidivism, and aid in adequate supervision, the defendant shall comply with the following conditions of supervision as referenced in the Presentence Report.

And, Mr. Inman, did you and Dr. Jones review those

conditions of supervision?

MR. INMAN: Of probation? Of supervised release, you mean?

THE COURT: Correct.

MR. INMAN: Yes.

THE COURT: Do you want the Court to read those into the record, or do you have --

MR. INMAN: It's not necessary, Your Honor.

THE COURT: Do you have any objection to any of the conditions which were suggested by Probation?

MR. INMAN: I don't recall if the suspicion with search provision that's causing a lot of sentences to come back --

THE COURT: We don't do suspicion with searches anymore.

MR. INMAN: Thank you.

THE COURT: So I'll clarify that one. But they are that he's not allowed to leave the judicial district without permission of his probation officer. He will have to report to Probation, answer inquiries by his probation officer truthfully.

They want him to maintain employment unless excused by his probation officer. He may want to retire. He shall notify his probation officer prior to any change in residence and employment.

There's a condition that he not meet, communicate, or otherwise interact with persons known to be engaged or planning to be engaged in criminal activity, or that he knows to be convicted of a felony.

He's to permit his probation officer to do visits and notify them within 72 hours of being arrested for any offenses. And he shall notify third parties of his conviction, shall provide his probation officer access to requested financial information.

And here's the search condition. The defendant shall submit to the search of his person, vehicle, office/business, residence, and property, including computer systems and Internet-enabled devices, whenever the probation officer has a reasonable suspicion that a violation of a condition of supervision or other unlawful conduct may have occurred or be underway involving the defendant. Other law enforcement may assist as necessary.

The defendant shall submit to the seizure of any contraband that is found and should forewarn other occupants or users that the property may be subject to search. And this condition is imposed based on this offense involving a large number of firearms, and it's also for officer safety; that if there is suspicion, that they're allowed to search. Do you have any objection to that condition?

MR. INMAN: Not to the way that's worded, no, Your

Honor.

THE COURT: Okay. Does the government have any objections to any of the conditions of supervision?

MR. SHEPARD: No. I just wanted to clarify that it's my understanding, Your Honor, that the Court individually consider all the conditions which are contained in paragraph 100(a) through (m) and 101(a), (b), and (c), and felt that the 3553(a) factors, which you said before, respect for the law, the fact that these offenses involved firearms, and the use of the Internet, deterrence in criminal country -- conduct, officer safety, justified the imposition of all the conditions.

THE COURT: And you have no objection to any of the conditions in the PSR?

MR. INMAN: Not the way they're worded, no, Your Honor.

THE COURT: For those reasons, okay. All right, that's noted for the record.

MR. SHEPARD: Thank you, Your Honor.

THE COURT: It is further ordered that the defendant pay the special assessment of $400, which is due immediately; payment to be made directly to the Clerk, United States District Court.

The sentence that the Court intends to impose is the minimum -- near the minimum of the advisory guideline range.

The Court has considered the 3553(a) factors, including the nature and circumstances of the offense, the defendant's criminal history, his characteristics, the need for the sentence to reflect the seriousness of these offenses, to promote respect for the law, to provide just punishment, and to provide adequate deterrence to criminal conduct of this nature by others who might try to do similar things.

Dr. Bruce Jones is now a 67-year-old man before the Court for previously being a felon in possession of 47 firearms that were in three different locations after he had been convicted of a felony offense. That offense was dealing in a controlled substance, a Schedule IV substance back in 1985. And today he's before the Court for sentencing for the healthcare fraud count.

Dr. Jones, as we've all noted, is very well educated, very intelligent. He has two bachelor degrees in social studies and criminal justice and criminology, as well as his master's degree in political science, all from a very good university, Ball State. He has a Doctor of Philosophy degree from Kensington University, as well as numerous professional licenses and certifications, including a certification as an addiction specialist.

Regarding the healthcare fraud, this defendant billed for services he did not provide and overbilled for other services. And although Dr. Jones has stated today that

he did not intend to overbill, as the government argued, he is very intelligent, and the government is correct, that there was overwhelming testimony at trial that does not evidence -- provide evidence that it was mistaken.

What the Court believes happened is that Dr. Jones had to be well aware that his actions were illegal, and that apparently greed got to the better of him, because Dr. Jones was perfectly capable of making a very good living without committing criminal acts of fraud in his billing.

He had acquired a great deal of property. He had that fabulous cabin in Montana. There was a home in Florida, the properties here in Indiana. So he -- you know, even without doing the fraud, this defendant clearly had the means and the intelligence to be a law abiding, very productive citizen.

That said, Dr. Jones is of advanced age. He's now 67. He does have a number of health conditions. The Court notes that he suffers from hypertension, degenerative disk disease, asthma, as well as the depression, which hopefully is being controlled.

Dr. Jones does have a great deal of support from friends, patients, and associates. The Court would note that in the record, there are lots of articles that he sent me, and letters and testimony from people who he has done good. So he's being very honest when he says that he's done a lot of

good things in the community, both here in Indianapolis and Anderson, Indiana. And the Court notes that he's also done good things since incarcerated in the Marion County Jail.

When the defendant was originally sentenced on Counts 2 through 4, he received a 100-month sentence of imprisonment. And the Court does believe that a sentence near the bottom of the advisory guideline is sufficient. So the 90 months is sufficient, but not greater than necessary, to meet the goals of sentencing. Dr. Jones will be in his 70s upon release. And given his age and health, this is plenty of time to serve with regard to these charges.

With respect to the fine, the Court does believe he's got the ability to pay the fine, so the Court is imposing the fine. The defendant does have numerous properties that can be sold to pay the outstanding restitution, as well as the fine within the advisory guideline range. And because he is currently incarcerated, the Court is waiving all interest requirements to allow him time to dispose of assets.

And in addition to the mandatory conditions of supervision, the Court has ordered the supervision requirements that he not leave the district, that he report to his probation officer, that he answer inquiries of his probation officer, maintain employment unless excused, notify of change in residence or employer, no known association with felons, permit his probation officer to perform the home

visits, notify his probation officer within 72 hours of being arrested, notify third parties of risk. And all of these conditions are ordered to assist the probation officer in supervising the defendant and to facilitate his reentry into the community, to promote respect for the law, and reduce recidivism.

The financial disclosure condition is ordered because Dr. Jones has committed fraud-related offenses, and this condition will allow his probation officer to verify the legitimacy of his income and ensure that he's paying the maximum towards the fines and restitution.

And, again, the search and seizure condition is ordered because of the significant number of firearms, the enormous quantity of ammunition, which Dr. Jones tried to conceal, and it will allow his probation officer to investigate any allegations or reasonable suspicions that he has returned to any criminal activity.

And, Counsel, those are the reasons the Court intends to impose the stated sentence. Government, do you know of any reason, other than those already argued, why sentence should not be imposed as stated?

MR. SHEPARD: No, Your Honor.

THE COURT: Do you, Mr. Inman?

MR. INMAN: Your Honor, did you say 90 months on the health -- on Count 1?

THE COURT: Didn't I say 90?
MR. SHEPARD: Yes, Your Honor.
THE COURT: Yes.
MR. INMAN: Okay. I mean --
THE COURT: They're all running concurrent.
MR. INMAN: I understand how the grouping works, but -- okay. All right. No, Judge, I have no --
THE COURT: He was at 87 to 108, and I gave him 90.
MR. INMAN: On each count, okay. I have no objection at this point.
THE COURT: Okay. All right. The Court now orders the sentence imposed on the defendant, Bruce Jones, as stated.
Dr. Jones, you do have a right to appeal your conviction -- I need you to listen. I'm going to give you your appellate rights, okay?
You have a right to appeal your conviction if you believe your guilty plea was somehow -- I'm sorry. You have a right to appeal your conviction if you believe there was a fundamental defect in the proceedings. You also have a right to appeal your sentence if you believe it is contrary to law.
With few exceptions, any notice of appeal must be filed within 14 days after written judgment is entered in your case. If you cannot afford the filing fee or cannot afford to hire a lawyer to appeal for you, the Court will appoint a lawyer to represent you in an appeal.

has rested. Are you going to present any evidence, Counsel?

MR. INMAN: Your Honor, we're not presenting any evidence. We're going to rest. I've conferred with my client and that's what we're choosing to do.

THE COURT: Okay. Is that correct, Dr. Jones?

THE DEFENDANT: That's what he's choosing to do, Your Honor.

THE COURT: And you agree with your attorney?

THE DEFENDANT: No. I wanted to call witnesses.

THE COURT: All right. Well, we've already talked about the fact that your attorney gets to make the strategy decisions.

And so Mr. Inman has -- for strategy purposes, you don't intend to call any witnesses --

MR. INMAN: Correct, Your Honor.

THE COURT: -- as a tactical decision; correct, Mr. Inman?

MR. INMAN: That's correct. I'm comfortable with my call, and I stand by it.

THE COURT: Okay. And, Mr. Jones, you're not going to testify?

THE DEFENDANT: He won't ask me any questions that I've written down, so it would do no good.

MR. INMAN: Once again, Your Honor, it's strategy and ethics. So I think, under the analysis of *U.S. v. Curtis*,

742 F.2d 1070, I think I'm well within my ethical and professional obligations in making this call.

THE COURT: Well, for tactical reasons, you can't make that decision. Dr. Jones would have to agree to that decision.

MR. INMAN: That's not what *U.S. v. Curtis* says.

THE COURT: Yes, it --

MR. INMAN: But -- well, I -- I don't think so, Judge. But the fact is, I think he's comfortable. He understands we've protected the record. There's going to be a sufficiency argument. It protects his argument against my competency in the cleanest fashion.

THE COURT: Okay. It is Dr. Jones' decision, though?

And you agree with your lawyer?

THE DEFENDANT: I don't agree with anything he's done, Your Honor. I mean, I don't agree with the fact that we haven't called witnesses, I don't agree with the fact that we haven't called evidence. I have tons of it here, more than he should have. I don't agree that I don't testify, but he has to ask me the questions if I testify, and he doesn't have any questions prepared.

THE COURT: Well, I mean, he could prepare questions. He can't ask you any --

MR. INMAN: I'm sorry to interrupt, Judge, but the

federal rule under *Curtis* is that the exercise of the right to testify is subject to the determination of competent trial counsel and varies with the facts of each case.

THE COURT: Why don't you approach. I want to do an ex parte hearing. So why don't you all step out.

(Government lawyers and representatives left the courtroom).

THE COURT: And come on up, and we'll put the white noise on.

(Bench conference on the record.)

THE COURT: Okay. What *Curtis* says is that the defendant has no constitutional right to testify perjuriously in his own behalf. So if your client would -- I mean, you have to be honest. You can't -- and your lawyer believes that your testimony would not be truthful. And the --

THE DEFENDANT: That's the whole problem with my attorney. He hasn't believed in me, Your Honor, and --

THE COURT: Well, it's not believing in you. Mr. Inman has investigated the witnesses, he's investigated your defense, and he's stated on a couple of occasions that he believes your defense is doctored or made up and that your testimony would be false. And on that basis, he doesn't feel that he can ask you -- he can't ask you any questions that would elicit what he believes would be perjurious testimony.

THE DEFENDANT: I wouldn't -- I wouldn't expect him

to, but I see that he's not going to do it, so I have no choice but to stand down.

THE COURT: And take your attorney's advice, which is fine, okay? I just need to feel confident that --

MR. INMAN: Your Honor, I think with that, we're prepared to go forward.

THE COURT: Okay. Okay.

THE DEFENDANT: But I wasn't lying, nor would I lie. Thank you, Your Honor.

THE COURT: Okay.

MR. INMAN: Thank you, Judge.

THE COURT: All right.

(Open court.)

THE COURT: Okay. Let's take about five minutes, and then we'll send the jury -- I guess we'll send the jury home. You can bring the lawyers back in.

(Off the record.)

(Government lawyers and representatives entered the courtroom).

THE COURT: Okay. We're back on the record. And Mr. Inman has -- are you going to present any evidence?

MR. INMAN: No, Your Honor, we're not.

THE COURT: Okay. So we need to decide, lawyers, are we going to finish up today or come back tomorrow? I think it's going to take us about at least an hour to get

(In open court.)

THE COURT: Good morning, everyone. We are on the record. This is the United States of America versus Bruce Jones, Dr. Bruce Jones. Our case number is 1:12-cr-72. And we have a few matters to take care of before we bring the panel in.

First of all, Mr. Inman, I need to -- the Court needs to be comfortable that your client is comfortable with his waiver of his right to testify. And you've talked with him about that?

MR. INMAN: We have, Your Honor. We've talked this morning.

THE COURT: And, Dr. Jones, are you comfortable with your decision?

THE DEFENDANT: Yes.

THE COURT: Thank you. All right. And then the forfeiture issue. If, in fact, there is a guilty verdict, you have a right to have a trial by jury on the forfeiture issue, also, but you can waive that right. Do you want to have a jury on the forfeiture?

MR. INMAN: Preliminarily, Your Honor, I just -- what I've talked to Dr. Jones about this morning is the fact that the government and we had some discussions about a resolution on the forfeiture, that if there is a guilty finding by the jury, would not necessitate a hearing at all.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,	)	
	)	Cause No.
Plaintiff,	)	1:12-CR-0072-TWP-DML
	)	Indianapolis, Indiana
vs.	)	**January 7, 2015**
	)	3:39 p.m.
BRUCE JONES,	)	
	)	
Defendant.	)	

Before the Honorable
MARK J. DINSMORE

OFFICIAL REPORTER'S TRANSCRIPT OF
EX PARTE HEARING ON DEFENDANT'S REQUEST FOR NEW COUNSEL

For Defendant: Richard Mark Inman, Esq.
Suite 200
141 East Washington Street
Indianapolis, IN 46204

Court Reporter: David W. Moxley, RMR, CRR, CMRS
United States District Court
46 East Ohio Street, Room 340
Indianapolis, Indiana 46204

PROCEEDINGS TAKEN BY AUDIO RECORDING
TRANSCRIPT CREATED BY COMPUTER-AIDED TRANSCRIPTION

(In open court.)

THE COURT: It is 3:39 p.m., Wednesday, January 7, 2015. We're here in the matter of United States versus Bruce Jones, 1:12-cr-72. Present in the courtroom are Mr. Jones and his counsel, Mark Inman. This is an ex parte hearing on Mr. Jones' request for review of counsel, so counsel for the United States is not present. Good afternoon, gentlemen.

So, Mr. Jones, we're here pursuant to your letter to Judge Pratt, dated December 16, 2014.

You've seen that letter, Mr. Inman?

MR. INMAN: I have, Judge.

THE COURT: Okay. Can you -- I've read the letter, so you don't need to tell me what's in there, but can you kind of briefly summarize what seems to be the problem?

THE DEFENDANT: Well, Your Honor, the problem seems to be that I can't -- I have no direction over what happens in this case whatsoever. I have asked to call witnesses for the trial; I was denied. I was asked to produce evidence for the trial; I was denied. I was asked -- I mean, I asked to do a PowerPoint so I could show that what was being said wasn't true; and I was denied. So I had no witnesses, no ability to defend myself, and all the other side was able to hear was the witnesses that was produced by the government.

And during the sentencing part, I asked to have witnesses to speak on my behalf; and I was denied. I asked to

have letters from -- people presented; and I was denied. So by virtue of the fact that I can't -- I mean, how can you possibly win anything if you can't produce witnesses, if you have no defense, if your attorney refuses to do all those things, and you have written your attorney and asked him to produce evidence and to do those things, and it doesn't happen?

So before sentencing, before I wrote the letter, there wasn't even a Presentence Investigation Report, and I asked to have one of those completed. I asked for the opportunity to review that and to make changes or additions, and I got it five minutes ago.

And my attorney does not want to call witnesses. My wife has contacted him to testify. Other people wanted to be able to testify, but several of them have already changed their schedules because he made it emphatic that I cannot call witnesses and there will be no evidence admitted.

And I have not seen anything from Mr. Inman on the report to see what his recommendation is based upon this document. So, because of those things, and continual inability to communicate with counsel, I have asked that he be replaced and a new attorney be assigned and we be given time to review the document and to call witnesses on my behalf to speak before Judge Pratt.

And when your attorney doesn't believe in you -- I

would hate to go to surgery with a surgeon that doesn't believe in me and telling me that -- well, I don't want to say those things in court.

THE COURT: Mr. Inman?

MR. INMAN: Thank you, Your Honor. First of all, as far as the presentence was concerned, I told Mr. Jones probably December 10th or 11th I was going to be gone from the 13th until the end of the year. The report wasn't even finished until the 23rd. I didn't get back in town until after New Year's, and I printed out a copy and he's got it. And we have until the 15th to file objections, because I filed a motion to extend the time. So that's taken care of. I told him I would take care of it, and I did.

This is an unusual case, Judge, in that he's already been sentenced in front of Judge Pratt once with all of these letters and all of these things that he's talking about. This case was filed as a healthcare fraud case and a felon in possession of guns case. Those two subject matters were severed.

He went to trial on the gun charges first. He was convicted on that. And he had a full-blown sentencing on that in which a lot of these character witnesses that he had write letters -- all of that has already been presented to Judge Pratt.

More importantly, he got two levels increase on that

first sentencing on obstruction of justice. And he could have gotten a lot more because there are -- he faked a heart attack before the first trial, he and his wife got up and concocted a defense that the jury did not believe at all in the first trial. And they would do the same thing if they testified at their sentencing in this case.

What has happened in the Presentence Report is that -- it's something that's even more in our favor than I thought it would be. The ultimate guideline on the healthcare fraud case is a lot lower than what the guideline was on the gun case. On the gun case, it was level, I believe, 28, guideline 87 to 103 months. He got 100 months. On the healthcare fraud case, it comes in at 16.

And what the probation officer has done is, instead of talking about whether those sentences could run consecutive or concurrent, she has just grouped them because they're part of the same indictment. And so what the Presentence Report shows is that he essentially shouldn't get any more time, and that any sentence that might come on this would be grouped into that 87 to 103 guideline range. So we can't help ourselves by presenting stuff.

And what he wants to do, and the way that he and his wife would do it, would only hurt him. So this is probably the tenth time we've been through this type of allegation with him. We did it before the trial, we did it at a pretrial, we

did it at every break in the trial. We did it every morning, and we did it at the end of the day, the same stuff, the same things to Judge Pratt.

Sentencing is set on the 23rd, he's in great shape to not get any more time, and I'm ready to do the sentencing and get this done.

THE DEFENDANT: Your Honor?

THE COURT: Go ahead.

THE DEFENDANT: I know Mr. Inman is a good attorney, I know he's been around for a long time. I know Mr. Inman has done a lot of positive things and helped a lot of people. I don't dislike Mr. Inman as a person. I dislike Mr. Inman as the way he's handled my case.

I have had a very difficult time. I did not ever fake a heart attack. That is an outright lie. And there's no information in the record that shows that I faked a heart attack. He continues to bring up facts that he thinks are true, that aren't true at all.

My wife, ex-wife, did not do anything, say anything illegal, nor did I. And I have a -- I mean, I feel like I have every right in the world to produce evidence at the sentencing. I don't know anything about this sentencing. I don't -- I didn't know anything about what was said until it was just now said.

I would have thought that the sentencing report

would have been out in November so I would have had a chance to look at it before he left on vacation, but I didn't know. And had I not asked about it, I don't think we would have probably even had a new sentencing, because I asked you, when you came on the 10th or whatever it was, about that, and you told me that you didn't think we would be getting a new one.

MR. INMAN: That isn't -- that's just not true.

THE DEFENDANT: What did you say, sir?

MR. INMAN: I told you it would come at the end. I talked to Stephanie Ivie before I left town so I would know when the Presentence Report would be done, so I would make sure that I would have time to file objections, which is what I've done.

THE DEFENDANT: Okay. But --

MR. INMAN: I told you that before I left.

THE COURT: Do you have anything else you would like to add, Mr. Jones?

THE DEFENDANT: Yes. I think it would -- I mean, I respectfully request that he be replaced and that I have an attorney that will believe in me and will call the witnesses. And those witnesses have not been called, nor have they testified, nor have all the letters been used to explain my character to the judge.

THE COURT: Okay. Thank you, Mr. Jones. Mr. Inman is appointed counsel in this matter. Because you are

proceeding with appointed counsel, you are entitled to a competent attorney, not to the attorney of your choice. In order to demonstrate that Mr. Inman's representation has been deficient, you have to show that he's made errors so serious -- and this is at this juncture -- errors so serious that he's not functioning as your counsel guaranteed by the Sixth Amendment.

I find Mr. Inman's representations entirely credible and I do not find that you've made that showing, nor that you've been prejudiced by any of those deficiencies. Therefore, your request for new counsel is denied.

Anything further?

MR. INMAN: Nothing, Your Honor. Thank you.

THE COURT: All right. Thank you very much. We're adjourned.

THE COURTROOM DEPUTY: All rise.

(Proceedings adjourned at 3:50 p.m.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:12-cr-0072-TWP-DML
	)	
BRUCE JONES,	)	
	)	
Defendant.	)	

POST INDICTMENT RESTRAINING ORDER
ENJOINING PROPERTY SUBJECT TO FORFEITURE

This matter is before the Court on an *ex parte* application of the United States made pursuant to 21 U.S.C. § 853(e)(1)(A), for a Restraining Order to preserve the availability of certain property that is subject to forfeiture, and the court being duly advised in the premises finds that the Motion should be, and hereby is, **GRANTED**.

WHEREAS, a Second Superseding Indictment has been filed charging the Defendant with one count of health care fraud (Count One), in violation of 18 U.S.C. § 1347; and

WHEREAS, the Second Superseding Indictment notified the Defendant that it intends to seek forfeiture of any and all property constituting or derived from gross proceeds the Defendant obtained as a result of the health care fraud offense set forth in the Second Superseding Indictment of which the Defendant is convicted, or a sum of money equal to the total amount of money involved in the health care fraud offense, or substitute assets therefore, and specifically identified, among other things, the following financial and insurance accounts:

a) all funds in Western Reserve Life Universal Life Policy, Account Number 01B0323768, in the name of Bruce Jones;

b) all funds in Protective Life Insurance Company (formerly MONY Life Insurance/AXA Financial) Whole Life Policy, Account Numbers 9275481 and 13121069, in the name of Bruce E. Jones;

c) all funds in AXA Financial Variable Life Policy, Account Number 048214254, in the name of Bruce E. Jones; and

d) all funds in John Hancock Whole Life Policy, Account Numbers 061557106 and 004616879, in the name of Bruce E. Jones;

(collectively, the "subject property") (see Dkt. 49 at 6); and

WHEREAS, the Government asserts that the subject property, in the event of the conviction of the Defendant would be subject to forfeiture under 18 U.S.C. § 982(a)(7) and 21 U.S.C. § 853; and

WHEREAS, 21 U.S.C. § 853(e)(1) authorizes the Court to take any action necessary to preserve the availability of property subject to forfeiture; and

WHEREAS, the Second Superseding Indictment establishes sufficient probable cause for the issuance of this restraining order; and

WHEREAS, any third party claims to the subject property may be properly brought and resolved in ancillary proceedings conducted by this Court following the execution of a Preliminary Order of Forfeiture in accordance with the provisions of federal forfeiture law; and

WHEREAS, the need to preserve the availability of the subject property through the entry of this Order outweighs the hardship on any party against whom the Order is enters; and

WHEREAS, the Court notes that this Order is granted pursuant to an *ex parte* Motion, however, Defendant may petition for a pre-trial hearing if he can demonstrate that he has no other assets available with which to retain counsel and Defendant makes a *prima facie* showing that the restrained property is not subject to forfeiture. See *United States v. Farmer*, 274 F.3d

800, 804-05 (4th Cir. 2001) and *United States v. Michelle's Lounge*, 39 F.3d 684, 693 (7th Cir. 1994).

THEREFORE, IT IS

ORDERED AND DECREED that effective immediately, the Defendant and his agents, servants, employees, attorneys, family members and those persons in active concert or participation with them, and those persons, financial or insurance institutions, or entities who have any interest or control over the subject property, including Western Reserve, Protective Life Insurance Company, AXA Financial Insurance, and John Hancock Insurance are hereby RESTRAINED, ENJOINED, AND PROHIBITED, without prior approval of this Court and upon notice to the United States, from withdrawing, selling, transferring, assigning, pledging, distributing, encumbering, wasting, secreting, depreciating, damaging, or in any way diminishing the value of, all or part of the funds or interest, direct or indirect, held in the aforementioned subject property. And it is further

ORDERED that any financial or insurance institution that is served with a copy of this Order shall inform the Government agents who serve copies of this Order of the account balances on the date of service. The respective financial or insurance institutions are further DIRECTED to continue to receive and credit monies to the subject accounts. And it is further

ORDERED that the United States Marshals Service shall promptly serve a copy of this Post Indictment Restraining Order Enjoining Property Subject to Forfeiture upon counsel for the Defendant, Western Reserve, Protective Life Insurance Company, AXA Financial Insurance, John Hancock Insurance, and any other entity or individual the Government believes may be in control or possession of the subject property, and shall make a return thereon reflecting the date and time of service.

This RESTRAINING ORDER shall remain in full force and effect until further Order of this Court, pursuant to 21 U.S.C. § 853(3)(1).

This **Order** is not under seal and should be docketed with no security restriction.

SO ORDERED.

Date: 04/15/2014

Hon. Tanya Walton Pratt, Judge
United States District Court
Southern District of Indiana

DISTRIBUTION:

Bruce E. Jones
T00729295-1342095
Marion County Jail, Bed T-6-1
40 South Alabama Street
Indianapolis, Indiana 46204

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No. 15-1792

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

BRUCE JONES,
Defendant-Appellant.

On Appeal from the United States District Court
For the Southern District of Indiana, Indianapolis Division
The Honorable Tanya Walton Pratt
Case No. 1:12-CR-00072-TWP-DML-1

RULE 30(b) APPENDIX OF DEFENDANT-APPELLANT BRUCE JONES

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BRUCE JONES

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request any extensions of that date? You're ready to go?

MR. SHEPARD: We are ready. We have all of our witnesses subpoenaed, we have made their travel arrangements, we're flying witnesses in from, I believe, Texas, Iowa; hotel reservations made. We're ready, Your Honor.

THE COURT: All right. Anything else, Mr. Shepard?

MR. SHEPARD: No, Your Honor. And I assume you want us to step outside?

THE COURT: I am going to ask you to step outside unless there's anything you want to cover, Mr. Inman or Mr. Jones, while they're here.

MR. INMAN: There's not, Your Honor.

THE COURT: Okay. Why don't you all step outside for the moment. Thanks.

MR. SHEPARD: Thank you, Your Honor.

THE COURT: So let the record reflect that the prosecutors are leaving the courtroom so I can have a discussion with the defendant and his counsel with respect to the issue in front of the Court, which is Mr. Jones' request, by way of a letter dated October 6, 2014, requesting that Mr. Inman be removed from the case and that new counsel be appointed to represent him.

(Plaintiff's counsel left the courtroom.)

THE COURT: Mr. Inman, do you have anything to say with respect to that request?

MR. INMAN: Just generally, Your Honor, that, you know, it's my job to put Mr. Jones in the best position that he possibly can be in. And it would be absolutely -- it would just be absolutely foolish for him to go to trial, especially given what the offer of the government is. That offer has been conveyed to him on more than one occasion.

THE COURT: Right, but it's his right to go to trial, right?

MR. INMAN: Yeah, it's his right to go to trial, but it's foolish to go to trial. And the witnesses he wants to call are not going to help him.

THE COURT: Okay. If he asserts his right to proceed to trial, will you be ready to defend him?

MR. INMAN: Yes, but it's not going to be in the way that he thinks it ought to be, because what he thinks exists in the way of testimony for him doesn't.

THE COURT: And do you believe you are able to continue to represent Mr. Jones?

MR. INMAN: Judge, it will be difficult, but yes.

THE COURT: All right. Mr. Jones, I suspect you want to be heard on this. Why don't you go ahead and tell me what else you want to say.

THE DEFENDANT: May I refer to my notes?

THE COURT: If you're able.

THE DEFENDANT: I can't get to them.

THE COURT: Can you help him there, Mr. Inman?

THE DEFENDANT: Thank you.

Your Honor, I have been -- since Mr. Inman was appointed -- and I really don't want to say anything bad about Mr. Inman, because I respect his position as an attorney, but I want to say that since he's been appointed, I let him know, from day one, that I want this case to go to trial and I want him to prepare for trial.

I understand Mr. Inman has lost his mother and has lost his wife and has lost his sister-in-law in the last few months, and I have compassion for that. And I'm sorry that that's happened. But it seems like that he is kind of -- he doesn't want to take this to trial. He told me he is not going to trial.

And I've asked him to bring the evidence. I have not even seen the list of witnesses yet. I have asked to see the list of witnesses, I've asked questions. I asked specific questions of him and I asked him to write the answers so that I will know what the answers mean, and he has never sent me a single communication in six months. I have not gotten the first bit of paperwork from Mr. Inman.

On occasions dating back to June 25th, I wrote Mr. Inman a series of questions and I asked -- and I have those here. And I asked Mr. Inman to please answer those questions for me so I would know how to proceed. He's refused

to answer any questions.

I have spent less than four hours in six months with Mr. Inman. I have sent him at least six, maybe eight, letters and asked him questions, and he has refused, and continues to refuse, to answer any of those questions.

A plea bargain was brought to me for $179,000 and basically time served, as I understand it to be. And I sent him questions on that plea bargain aspect, and he only partially answered the questions. He did not answer all the questions that I've asked him. I asked him about proceeding to trial. He said he wasn't going to trial and that we're not going to trial.

I sent him a specific list of information about codes, which is what this entire case is about, coding, which means are you seeing individuals or are you seeing them as a family? I explained on the coding about why I'm right. I even do charts, graphs. I asked him to prepare those, a whole series of things I've asked him to do. And I haven't asked him to do anything that's unreasonable. I've been answering the questions in writing. It's not unreasonable.

THE COURT: Right. Well, I've got your letter dated October 6th, 2014, which is in the file at number 270. And there you've set forth -- it looks like there's about 12 things set forth in detail that you had wanted. You know, I would have to agree that many of these things may not bear any

fruit as it relates to the defense of your case. I mean, you're asking for him to prepare charts and PowerPoint presentations for the jury. You know, that may or may not be effective.

I think a lawyer has some -- has wide discretion in deciding how to present facts and arguments to the jury. If you're wanting him to give you advance review of PowerPoint presentations, that doesn't sound like anything that's --

THE DEFENDANT: No, sir, I'm not asking for that. I've made some charts that explains the different billing codes and asked him to look at those. And he hasn't even looked at them yet. When I've asked -- when I try to discuss those with him, he doesn't want to discuss it. All he tells me is that, "You have to take this deal, you have to take this deal." And it's being shoved down my throat. And I've asked him --

THE COURT: No one is going to make you take any deal. It has to be knowing and voluntary. No one is going to make you take a deal.

The question before me is: Can Mr. Inman represent you? Can you be provided with a defense that will assist with respect to the charges against you? And can he be effective and be an advocate for you?

And so I have to balance those concerns with the things you've raised. And, I mean, you have raised -- I mean,

at the bottom, it sounds like you believe Mr. Inman is not meeting with you sufficiently, not responding to your inquiries, and not doing the types of things -- putting the details of those things aside for a minute, not doing the types of things that you think a defense counsel needs to do to get you ready for trial, presumably because he thinks it's in your best interest to take a plea; whereas you think you don't want to take a plea and you want to go to trial, and you think Mr. Inman has to do X, Y, and Z to get ready for trial. And that's what it's about, right?

THE DEFENDANT: Well, it's not only about that, but there are some examples that I've asked for. I can't make a comment -- I mean, I can't review the evidence that I haven't talked to him about it, and we haven't talked about any of the witnesses. We haven't talked about the witnesses that I wish him to call and what I would like for him -- who I would like for him to subpoena. And the date was already over last -- I think the 10th of the month, and -- the last time to call witnesses. And I gave him information on what I would like to call, and he refuses to take any action at all to go to trial.

Now I think he says that he wants -- that he might be able to go to trial or can go to trial, but how can he go to trial when he doesn't understand my defense, when he hasn't -- there's some questions in here, some scenarios that I brought out. And there's some information that I didn't

bring out, because I didn't want the prosecutor to have it, that I have sent him privately, concerning the trial and concerning the codes and concerning those issues. And I'm not getting anyplace.

THE COURT: Well, one of your points here is, you asked, "Please do an analysis of FBI deleting scenarios." I -- number "1, Saturdays, Sundays, and holidays, and only use while on vacation. Delete scenario 2, 3, and 4, and recalculate." What is that?

THE DEFENDANT: Okay. Your Honor, there are four scenarios that they came up with, that he presented me, about the billing issue. Scenario number 4 was that I was not allowed to do testing. That's an incorrect scenario. The law says that I am allowed to do testing, and I've been doing testing for 24 years. It's called testing and assessment. So that scenario is totally inaccurate.

The second scenario is that --

THE COURT: Number eight, you said, "Provide me with analysis of how FBI selected my vacation times and dates of charges so I can determine if they're accurate."

THE DEFENDANT: Exactly. They said -- that was scenario number 1. Scenario number 1 says that I did not see patients on Saturdays or Sundays, and it listed vacation times that they said that I was on vacation. So I asked him for the vacation dates that they said I was on vacation, and I asked

him how they arrived at those vacation dates, because those are dates over the last five years ago, that I don't even remember which were on vacation. And they said, "They were on vacation, and I can show that because of his Visa charges." And I asked to see those Visa charges to determine what time they were charged.

For example, on the 19th of October, they said that I was on vacation. Well, many times, my wife and I left for vacation at 4:00 in the afternoon, and I could have seen patients that morning; yet they're saying that I couldn't have seen patients on that day. I can't know that unless I see the evidence that they have.

THE COURT: You understand -- or do you understand if I were to give you a new lawyer, it would result, I'm almost sure, in a delay of the trial?

THE DEFENDANT: Your Honor, it's not my desire to delay the trial. My desire is that if I would have had an attorney that would have worked with me from day one and would have come back and visited me in June, July, August -- I mean, I have been sending these letters to Mr. Inman every month or every two weeks and asking him to meet with me to do those things. The last court date we had, I asked Mr. Inman if he would come and see me, and he said he would the next day --

THE COURT: Just a second, Mr. Jones. All I asked you was --

THE DEFENDANT: I'm sorry.

THE COURT: -- are you aware that if I grant your request, in all likelihood, it will result in a continuance of the trial date? It's not my trial date, so I can't make that decision, but it would appear likely that would result. That's why the government is opposing it. That's why they took time to show up today and state strongly for the record their opposition to any continuance of the trial date. You understand that's a likely result?

THE DEFENDANT: Yes, Your Honor, if that's what has to happen. All I'm asking for is an attorney that will sit down, go over the case with me, look at my evidence, listen to my side of the case, let me present my information, my documents, and build a defense based upon that.

THE COURT: You know, it's not unusual for a lawyer and their client to have a strong difference of opinion as to what evidence should be presented. Are you aware of that?

THE DEFENDANT: Yes, I am.

THE COURT: When the government was here, they indicated that your prior requests -- some of your prior requests for continuances were denied, that Judge Pratt found that there was an intentional pattern of delay in your conduct, in your behavior, including taking medicines. Was that, in any way, inaccurate?

THE DEFENDANT: Yes, it was inaccurate, Your Honor.

THE COURT: How?

THE DEFENDANT: Let me explain why. First of all, all I asked for was -- my brother passed away the last of June, and he and I were very, very close. And my attorney came in and asked for a postponement because I had been up for six days attending his funeral in Marco Island, Florida, and attending his funeral in Anderson, Indiana, and I was exhausted.

And my doctor gave me medication to let me relax and sleep. My doctor came to court and testified in court that he brought -- that he prescribed that medicine. Nothing I took was an illegal medication. It was -- every one of it was prescribed. That's the first issue.

Now, what was the other question you asked, Your Honor, about the --

THE COURT: I think you've answered the question. Are you aware that I have no idea, as I sit here right now, who I would appoint for you if I did appoint a new lawyer? You know that? I couldn't even tell you who it would be right now. It might be somebody who has less experience than Mr. Inman, someone who, frankly, may not be as good a lawyer, because he's one of the best lawyers we've got. Are you aware of that?

THE DEFENDANT: Your Honor, I'm -- all I'm asking is that I have -- I mean -- okay, the second part you dealt with

is the specifics. I mean, I have been trying to get Mr. Inman to pursue my defense from day one. If you will read the -- I mean, I can provide you with copies of every single letter right here in my file. I have them. If you would read those letters, you would read the same thing over and over, "Would you please prepare for the defense? Would you please bring forth this information? Would you please call these witnesses?"

And I outlined the entire defense, 14 pages that I sent to him, typed, going over the case information and going over the billing scenarios. I can give you one simple billing scenario right now that would show you that what I'm saying is true, but he won't listen to it.

THE COURT: Mr. Inman, do you have anything else?

MR. INMAN: Your Honor, I need to make the record clear on a couple things. The letters that he sent me, I've read, I've followed up on. I told him that this case was so paper intensive and record intensive that I needed to get my arms around all of that to be able to make a judgment as to what he was telling me about this coding.

His wife, Larissa, approached a company called SuperCoder.com, which is potentially a -- does medical billing and coding that's complex, although it's not in this case. She sent some inquiries to a woman named Jennifer Godreau about certain coding questions. Of course, Ms. Jones didn't

tell Ms. Godreau, who I've talked to, that it wasn't about her, that it was about Bruce. And she also neglected to tell her that this is a healthcare fraud case.

Ms. Godreau's answers that she sent Ms. Jones are not the answers that Mr. Jones gave me as being sent by Ms. Godreau. So, once I talked to Ms. Godreau last week, I realized that not only would she not -- that if I called her as a witness, it would be the -- one of the biggest cases of malpractice ever, because she would just lay out Mr. Jones' analysis of his coding.

And it's that type of stuff that he thinks he has, that he doesn't have, that will just come and backfire on him extraordinarily badly. That's just an example of what I've been asked to do and what I've had to fend off.

THE COURT: All right.

MR. INMAN: Anyway, Your Honor, I will do whatever the Court wants.

THE COURT: I know.

MR. INMAN: I'm prepared to cross-examine the government's witnesses. Much of the evidence that the government presents is Mr. Jones' own billing records and records that he's familiar with.

THE COURT: Let me ask you one other question, and I ask this carefully, and with, hopefully, proper deference, but you know how sorry I am of the loss of your wife.

MR. INMAN: Yeah.

THE COURT: And your client has raised an issue about whether your personal issues have impacted your ability to represent him. I just want to be sure, from your standpoint, you don't feel that would impact your ability to represent him?

MR. INMAN: Your Honor, I think there's times when perhaps I'm shorter with people than I was before; and I was pretty short with people before. But it's only because I just -- I'm straightforward.

And I have been through -- I've been through every piece of paper that the government has now. Have I been through everything that I need to figure out what's going on? Yes. And, once again, I -- his sentence -- you know, he hired -- so I've had some issues, Judge, but, no, nothing when it relates --

THE COURT: All right. So --

MR. INMAN: Let me just --

THE COURT: Sure.

MR. INMAN: Let me just, once again, make a record on what this offer is, because it's a very good offer. You know, he was charged with possession of -- felon in possession of firearms and healthcare fraud. His original trial was severed, so he went to trial on the guns. He testified, his wife testified, the jury found him guilty in less than an

hour. So he knows what it's like to present the defense that he thinks is going to work and have it slammed down his throat. That's what happened. He got eight and a half years on that.

The government is offering him a below-guideline sentence. The loss figure could be above 400,000. We've agreed on a loss figure of 179,000 and change. The guideline would be 24 to 30 months. The government is offering a C plea to 18 months, which he served, concurrent, and to give him back everything above $179,000 if he pleads, the real estate that he has equity in. He's got five pieces of property and a couple of life insurance policies.

So if he wins his appeal -- which the Northwestern Law School Clinic has been appointed to do, and just met with him last week. So he's not going to get a better group working on it or a more dedicated group working on his appeal. This is done. And that's why I'm just urging him to get this done and clear the debts for whatever positive results he can get from this appeal.

So I think I put him in a great position, and that's why I'm frustrated about him wanting to go to trial.

THE COURT: All right. Thank you.

THE DEFENDANT: Your Honor?

THE COURT: Yes, Mr. Jones?

THE DEFENDANT: I would like to state that the other

case is a case that stands by itself. This case is a different case. So what kind of a deal I may or may not get with the other case, with going to the Appellate Court, has no bearing on this, in my opinion, Your Honor.

THE COURT: Well, it does from the standpoint of if you've already served the time. Then if you got an acquittal on appeal on that case, you stand, as I understand the deal as it's been explained to me, to be done with any further prison time. So it actually could be very relevant from that perspective.

THE DEFENDANT: From that perspective, Your Honor, I understand, but I didn't know anything about him either contacting this person -- he hasn't even told me about the person that contacted me. We've not had any conversation about that.

MR. INMAN: That's because, since I've talked to her, he -- before, he filed this letter. I was going to wait and see what happened.

THE COURT: All right. So, anyway, I appreciate very much the perspectives of both of you. And so you all obviously have a disagreement, but applying the standards, I don't think it's that complicated. From my viewpoint, what we're left here is one count on the healthcare side of things with a trial that's quickly approaching on October 27th.

You have a lawyer who's been appointed for you,

Mr. Inman, who, in my experience, is one of the most skilled lawyers we have on our panel. In fact, we use Mr. Inman to train other lawyers in terms of how to go about the defense of folks like yourself.

Mr. Inman has indicated to me, in open court, that he is able to represent you in connection with this case, although obviously there are difficulties associated with that, as there would be in any case. There are obvious disagreements between you, Mr. Jones, and Mr. Inman, in terms of how you and how he thinks the case should be defended. That's not unusual. If counsel and their client agreed on the appropriate line of defense in every case, I would be rather surprised. So that's not different.

What is significant, I think, is that Mr. Inman believes that proceeding in the way that you would like to proceed would be absolutely foolish. And given his experience, his extensive experience with the law, I suspect that that's probably pretty good advice. I can't say that definitively, but from my standpoint here, I suspect that's probably pretty good advice.

There is evidence in the record, including findings by Judge Pratt herself, of a pattern of delay by you, Mr. Jones, and that that -- the fact is, if I appoint a new lawyer for you now, it's going to delay the trial, almost for sure, and that's nothing I'm prepared to do at this point.

THE DEFENDANT: Your Honor, can I ask --

THE COURT: Just a minute, just a minute. The bottom line is, based upon what's presented during this hearing, there certainly haven't been grounds for removal presented for Mr. Inman. Doing so would almost certainly delay the trial for no reason. And what I'm hearing is not that he can't represent you; that he's, in fact, prepared to represent you, but is giving you his heartfelt most knowledgeable advice he can give you, that it would be foolish to go forward with a trial.

That is your right to do so, and he's prepared to defend you on that, but looking at your letter of October 6, 2014, in the record at 270, I'm certainly left with the impression that you want to go down a lot of roads that skilled trial counsel would think would be unnecessary. And Mr. Inman appears to have that view, and I agree with him. So there are certainly not grounds to remove him.

Now, were you going to say something else, Mr. Jones?

THE DEFENDANT: Yes. May I -- may I ask that the record include the letters that I sent Mr. Inman?

THE COURT: Well, have you filed them?

THE DEFENDANT: I haven't been able to file them. I have them here today.

THE COURT: I've got 270 in the record. If you want

to file anything else, you obviously know how to file stuff. So you're welcome to file anything else you think you need to. I can't accept a filing right here from the bench, but you can file stuff with the court if you want to or have your lawyer file them.

THE DEFENDANT: And also I'm asking, Your Honor, that what I heard him saying is that he would question the defense -- I mean the government's witnesses, but I didn't hear him say anything about preparing for a trial or any defense, calling witnesses.

THE COURT: Right. Well, I think we heard different things. What I heard is a skilled lawyer indicating how he plans to defend the case with the admonition that he thinks you ought to think seriously about the plea. I think it raises a question about what would be good evidence.

Now, I'm not in a position to say, definitively, who you ought to be calling at trial, but I think Mr. Inman's point was a good one from the standpoint that you felt strongly about -- I guess you felt strongly. Anyway, you went to trial on the underlying charges, and a four-day jury trial resulted in a pretty swift conviction. He's trying to give you some advice on the remaining charge.

Again, you're free to do what you want to do, but I can't sit here, having heard everything, and there's nothing that he is telling you that strikes me as just trying to get

you to take a plea that would be against your interests. It sounds consistent with what I know about him and his skills as a lawyer.

So I'm going to deny the request for removal of counsel and have the case proceed. If there's any additional issues about trial, you can raise those with Judge Pratt, but the issue before me, in terms of removing Mr. Inman, that is denied.

All right. Anything else, Mr. Inman?

MR. INMAN: No, sir.

THE COURT: Okay. Thank you.

THE COURTROOM DEPUTY: All rise.

(Proceedings adjourned at 11:43 a.m.)

CERTIFICATE OF COURT REPORTER

I, David W. Moxley, hereby certify that the foregoing is a true and correct transcript from reported proceedings in the above-entitled matter.

/S/ David W. Moxley May 11, 2015
DAVID W. MOXLEY, RMR/CRR/CMRS
Official Court Reporter
Southern District of Indiana
Indianapolis Division

individuals in the room and a billing submitted for everyone when it's our contention it should have been a group billing, one unit for the group.

THE COURT: All right. Well, you all can talk. And I agree, he should only -- you can only admit guilt to what you're guilty of. So -- if, in fact, you're guilty of anything. Because you are clothed in the presumption of innocence. And in this great country, everyone has that right to be presumed innocent. And I know you're a patriot, you're a good citizen, so --

THE DEFENDANT: I'm just confused about -- I didn't know about that. I thought we were still -- my attorney hasn't communicated anything to me about this part, about the trial or about what we're limited to now at all. I have no idea. He hasn't communicated at all. The only thing he communicates is that he wants me to accept this plea bargain.

THE COURT: Okay. Well, you all can talk today, okay?

THE DEFENDANT: Thank you.

THE COURT: All right. So you'll talk and we'll see everyone on Monday at 10:00 a.m. And we'll need a final decision then. And if, in fact, you're going to plea, let's go ahead and take that plea on Monday. If he's not going to plea, I'll give you the rulings on the -- we have two motions in limine that are still pending, and I'll get those rulings

issued and we'll go on and get ready for trial.

THE DEFENDANT: Can I see what those are? Because I don't even know what we're limiting or not limiting.

THE COURT: Okay. Mr. Inman, you talk to him about the motions in limine, also, please. Okay?

THE DEFENDANT: Thank you.

THE COURT: All right. We are adjourned.

THE COURTROOM DEPUTY: All rise.

(Proceedings adjourned at 11:25 a.m.)

CERTIFICATE OF COURT REPORTER

I, David W. Moxley, hereby certify that the foregoing is a true and correct transcript from reported proceedings in the above-entitled matter.

/S/ David W. Moxley May 11, 2015
DAVID W. MOXLEY, RMR/CRR/CMRS
Official Court Reporter
Southern District of Indiana
Indianapolis Division

THE COURT: You may read your reason. Let him have a mic. Don't you need to read it?
THE DEFENDANT: I have a copy.
THE COURT: You want to file it, also?
THE DEFENDANT: Yes, please.
MR. INMAN: I have not seen this, Judge, but --
THE COURT: Why don't you let Mr. Inman look at it first, because we don't want you to incriminate yourself. Because anything you say right now could also be used against you in your trial, so let your lawyer read it before you --
MR. INMAN: You're going to read this into the record? That's what you want to do?
THE DEFENDANT: Yes.
MR. INMAN: Are you sure?
THE DEFENDANT: Well, you can read it if you'd like.
THE COURT: Let Mr. Inman read it and make sure you don't say anything you don't have to say.
THE DEFENDANT: I never had a chance to meet with you over the weekend, because you never came to see me.
THE COURT: All right. Listen. We're not going to -- is that all it is?
MR. INMAN: That's what it's about.
THE COURT: Okay.
MR. INMAN: I mean, that's fine if he wants to continue to --

THE COURT: Go ahead.

MR. INMAN: If he wants to --

THE COURT: He's got his own mic, Mr. Inman.

Go ahead, Mr. Jones, quickly.

THE DEFENDANT: Your Honor, I considered your recommendation that Mr. Inman knew you and wanted me to accept a plea bargain of 18 months and two policies --

MR. SHEPARD: Judge --

THE DEFENDANT: -- of the 78,000 --

MR. SHEPARD: Mr. Jones, please stop for a second.

Should this just be filed under seal, ex parte, for your review? I'm just concerned if he talks about any dealings or lack of dealings between counsel, that's attorney-client relationship, which is something we, the opposing party, shouldn't hear.

MR. INMAN: I agree 100 percent, Your Honor.

THE COURT: Okay.

MR. INMAN: This is just going to be -- from reading the first two paragraphs, it's another recitation of what a lousy job I've done so far, which he continues to make that record time and time again.

THE COURT: Okay. What we should do, then, Mr. Jones, is after we finish with this portion of the hearing, we'll have the government leave. And if you want to discuss those other issues very briefly, I'll allow you to do

that.

THE DEFENDANT: Yes, ma'am.

THE COURT: The Court does want to go ahead and make a ruling on the motions in limine. I'll make an oral ruling on those. These were -- let's see, there's two pending motions in limine, docket number 251.

And the Court is going to grant the motion in limine as to the effectiveness of the defendant's counseling methods. This is not relevant. And if it does become relevant or admissible during trial, if you believe that it does, Mr. Inman, you need to approach and we'll have a hearing outside the presence of the jury on that issue.

As to the nonpayment of the healthcare benefit programs, the Court is going to deny the motion in limine as to the nonpayment of healthcare benefits. As defense counsel has argued, this may -- Mr. Inman has argued that the decision by these benefit programs to withhold payment is the crux of his case. So in the event that that is, in fact, the defendant's defense, the Court will allow evidence in that regard. And if you believe it is not relevant and inadmissible, you can make that objection at the time of trial.

The other pending motion -- let's see. I think there's one more pending motion.

MR. SHEPARD: I believe it's just the summary of

witnesses, if I'm correct, Your Honor.

THE COURT: Right, the summary of witnesses.

MR. INMAN: And I didn't file an objection to that, Your Honor.

THE COURT: All right. And so --

MR. INMAN: We don't have a valid objection to that.

THE COURT: And that one will be granted. And what docket -- was that -- what docket number is that one, Mr. -- does anybody know the docket number, for the record?

MR. SHEPARD: Not off the top of my head, Your Honor, I don't.

THE COURT: I think it's 250 -- Tanesa can see what has a flag. 252 is granted.

Okay. Any other matters? I think, lawyers, you have met and conferred, and you've got the instructions on file. Have you done your verdict forms?

MR. SHEPARD: I believe those were attached to the instructions. I think it was a final one.

THE COURT: Okay. All right, then. So we will see you, government attorneys, on the morning of trial, okay?

MR. SHEPARD: Do you want us to just wait outside just in case -- pending the, I guess, review of counsel?

THE COURT: No. You can go on back to work. I don't think he's trying to fire his lawyer.

You're not trying to fire your lawyer, are you?

THE DEFENDANT: Yes.

THE COURT: Oh. Well, then wait outside.

MR. SHEPARD: Thank you, Your Honor.

THE COURT: Okay.

(Plaintiff's attorneys leave the courtroom.)

THE COURT: All right. Mr. Jones, the Court is going to conduct an ex parte hearing on your letter. You've given a copy to the bailiff and she's file stamped it, so we're going to put it in the record ex parte, which means only myself and you and your lawyer will have access to this document.

Now, what do you want to say?

THE DEFENDANT: Your Honor, I considered your recommendation that Mr. Inman knew what you wanted me to do and accept because of his long time working with you, and the 18 months and two policies, the $79,000 and the $75,000, and no parole. I thank you for helping me to understand that a little bit.

I explained that I could not admit all the things that I'm charged with, and you directed Mr. Inman to narrow what was correct. Mr. Shepard -- it was -- Mr. Shepard said it was a scheme. I said I was not aware of the motions in limine or the charges of the district attorneys' attack that changed for the third time, or the coding or billing for each patient as a family or individual session.

Mr. Inman did not come and speak to me Friday after court, Saturday, or Sunday; so nothing, again, was explained to me. I am told to accept the plea bargain by Mr. Inman. He said he would offer no defense, call no witnesses, use no expert witnesses, introduce no evidence. He said he just would object to government witnesses from time to time.

He spoke with Larissa Jones and Russ Miller on the telephone this weekend and said that he -- that there would be no defense, and I would need to plead guilty. He offered them to visit me this morning at 9:00, but if they -- only if they would help convince me to accept a guilty plea, which I think is wrong.

I seek a trial where witnesses will be called on my behalf, evidence will be shared with me, writing lists -- witnesses lists given to me, and I understand the charges and what I did to violate the law. I still don't know what the -- what they're saying I specifically did, because he indicated that they have changed the defense -- or changed their attack. And I have no idea what that is.

I ask that I be -- that Mr. Inman be released and that I be appointed an attorney that will prepare for a trial, explain everything to me, review the evidence with me, and use due diligence.

Today you received in the United States Mail eight communications that I have sent to Mr. Inman, starting in May,

requesting him to prepare my defense, defense diagrams, explanations, strategy, clearly explaining why the district attorney's theory is incorrect. It is not my fault that we are here without a plan for defense at the last minute.

My right to -- my Constitutional rights under the Bill of Rights is more important than schedulings to keep. People like Monica Foster, Gwendolyn Biaz (sic), and Michael Donahoe of the Indiana Federal Community Defenders prepare for trials and work with their clients.

David Sokal was scheduled to be my witness in my last case, but he was gleaned as -- named as a target of the grand jury, so he couldn't testify for me. Mrs. Biaz is his attorney, so there seems to be a conflict. Mr. Sokal's FBI statement clearly stated that I had no contact with firearms, and would have cleared me. Could one of those people please be representing me at the trial?

They say that the defendant's scheme resulted in a loss of $178,000. I have no idea where that came from. Mr. Inman said at trial they would try to take everything I own. Plea or trial, the amount that they said that was lost shouldn't change because I ask for a trial. That's like blackmail.

I was asked to sign a document called "Petition to Enter a Plea of Guilty," paragraph 5. I have told my -- quote: "I have told my attorneys the facts and surrounding

circumstances that's known to me concerning the matters mentioned in the second superseding indictment, why I believe and feel that my attorney is fully informed in all so -- such matters." This is not true at all. He will not even listen to my defense or discuss my case, and calls me a liar.

"My attorney has since informed me" -- I'm sorry. "My attorney has since informed me of any possible defenses that I have in this case." Again, this is totally false. He has refused to listen to my defense and he has mentioned no defense; only accepting a plea bargain and that he will not take this to jury trial.

Because I didn't understand the elements of the plea bargain, which have -- and have not been informed of what I did to violate the law, I must plead innocent. My God will not allow me to agree to something false. If you allow the trial to continue, my Constitutional rights will be violated.

Please appoint an attorney that will work with me, listen to my defense, call witnesses, introduce my evidence, and help to exercise my rights. I know you and Mr. Inman are friends of 13 years and you like him. He is a likable person. Please do not force me into a trial with him. No one can possibly win if there's no defense witnesses, no evidence, no defense plan, or no desire to have a trial. He has told me that he will not prepare a defense.

After you review the items I -- that you receive

this morning through the United States Mail, I ask you to please, clearly, see my position and grant me a new attorney, respectively.

And the other question I have, Your Honor, he keeps referring to me as "mister." I have a doctorate degree, it's an earned doctorate degree, and that's what the Court should refer me to, just like we refer to you as the Honorable Tanya Walton Pratt, because you are.

THE COURT: All right. Mr. Jones, I'll refer to you as "Dr. Jones," okay?

THE DEFENDANT: Thank you.

THE COURT: All right. First of all, the Court wants to correct that its recommendation was not that, as you've stated in your letter, "I considered your recommendation that Mr. Inman knew you wanted me to accept the plea bargain of 18 months." I have no position whatsoever with respect to whether you accept the plea or proceed to trial.

My job is to -- you know, I'm a trial judge. And if you want to have a jury trial, I will be here on October 27th, and I'll give you a trial, just like you had a trial before. I have no problem whatsoever with you having a trial.

And the Court's recommendation was that you should listen to your attorney, because attorneys, as you know -- because you're a professional, also. They go to school,

MR. INMAN: Okay.

THE COURT: I'm sure she will let us know. But she had already made arrangements for today, so she's okay for today.

MR. INMAN: Oh, okay. All right.

(Plaintiff's counsel and representative exited the courtroom.)

THE COURT: Cassandra, would you make sure Tanesa doesn't bring the jury in until we're finished?

All right. Mr. Inman, we've asked the government to leave. And, Dr. Jones, you did file another document this morning, a letter. Unfortunately, you all didn't have a good experience on Friday when you went to prepare, but you are prepared, Mr. Inman?

MR. INMAN: Yes, Your Honor.

THE COURT: Okay. And, Mr. Inman, how long have you been an attorney?

MR. INMAN: 32 years.

THE COURT: And how long have you done criminal defense?

MR. INMAN: 32 years.

THE COURT: How many jury trials have you done in those 32 years?

MR. INMAN: I don't know. As few as possible, but probably -- you know, Judge, between bench trial and trials, a

hundred, probably.

THE COURT: Okay. At least 100. How many have you done in federal court? You did one with me last year, Jordan.

MR. INMAN: I've had around ten, including six- to eight-week multi-defendant trials with Judge McKinney. And I've handled more federal cases than state cases the last seven or eight years, especially.

THE COURT: Okay. And do you feel prepared?

MR. INMAN: Yes, Your Honor.

THE COURT: Okay.

MR. INMAN: Yeah.

THE COURT: All right. Dr. Jones, did you want to make any -- state anything other than what you've already indicated in your letters? Which have been docketed, okay? So they're on the record.

THE DEFENDANT: Thank you, Your Honor. My comments are that, as he said, he tries as few as -- I'm sorry -- that he's tried as few as possible. And that's what my issue was. I presented to you this morning lists of over 26 witnesses that I had mentioned to him to call; and evidence, 136 pieces of evidence. There's no way that I can possibly refute the charges if I don't have my files. And they don't have the files here. I don't have the files here. So I would be -- it would be impossible for me to discuss whether the patient was there at that particular point in time.

The other issue that we have, and we're -- I respect his position as an attorney, but coding is not a law, but coding is an opinion. And I have given him information, and I have it right here on the desk, that says I could either bill it as a family counseling -- and it even has a 90846. The patient does not have to be there with 90846 to be billed.

It also says that 90847 is billed per person. That's a patient in the family. So it wouldn't make any difference if I billed it 90808 with family present or 9080 -- '47 or '46. Either one is permissible. And there's no -- I mean, like I say, it's an opinion. And even if 90808 was determined to be wrong, the coding manual allows for me to rebill and change the code to one that they like.

THE COURT: Okay. And --

THE DEFENDANT: And that's important that we -- that all that evidence is brought out. And we don't have it. We have no witnesses and no evidence to be introduced.

THE COURT: Well, you've got some witnesses listed.

Go ahead, Mr. Inman. Do you want to respond to that?

MR. INMAN: I have in the past, Judge. I already have, several times.

THE COURT: That you are prepared?

MR. INMAN: Yes.

THE COURT: Okay. And, Dr. Jones, the charges are

very, very specific, so you need to see what evidence the government produces, because a lot of the things that you've talked about may not be relevant or admissible in this trial, because they've got a very specific thing they have to prove. And your attorney has indicated he's ready to provide a defense in those areas.

And, you know, he's been a criminal defense attorney for 32 years, and he said that most of his practice has been in the federal court the last seven to ten years. And he says he's prepared. He's a very competent attorney, and I trust that he's going to be a good, competent, effective attorney for you in this case, okay?

So you work with him as best you're able. And I think you got a really great panel, and we'll see what happens, okay?

THE DEFENDANT: Am allowed to raise an objection or, if there are questions that ought to be asked, may I ask a question?

THE COURT: No. You need to pass your lawyer a note. You can't be co-counsel. You've got an attorney, so you pass your lawyer a note, and he can ask those questions for you, okay?

THE DEFENDANT: Could we take a brief -- if I need to talk with him about that, can we take a few moments to do that?

THE COURT: Yes. You all can talk as much as -- well, not as much as you like, but for a reasonable amount of discussion, the two of you can engage in, okay? All right.

Okay. Well, I think the panel is ready to come in and be sworn, so let's get them in here and get them sworn.

Could you ask the government lawyers to come back in? Tell Tanesa to hold up about two minutes until we get the lawyers back in.

(Plaintiff's counsel and representative entered the courtroom.)

THE COURT: Okay. Is the government ready for the panel?

MR. SHEPARD: We are, Your Honor.

THE COURT: Defense ready?

MR. INMAN: We are.

THE COURT: You may tell Tanesa to bring in the panel.

(Jury in at 11:55.)

THE COURT: Ladies and gentlemen of the jury, and alternate juror, would you please raise your right hand?

(The jury is sworn.)

THE COURT: All right. Ladies and gentlemen, at this time, I'm going to send you to lunch. During your lunch hour, if you have not already, you should go ahead and inform your family and your employers that you're on jury duty.

THE COURT: Okay. What do --

THE DEFENDANT: And 90808 says that each patient is billed, and it says you can have family members present. So whether I billed 90808 or 90847, either one is an individual billing for each patient attending, so it doesn't make any difference. And this is AMA coding, this is AMA coding, and --

THE COURT: Well, you will have an opportunity -- you still have an opportunity to present whatever you want to present.

THE DEFENDANT: I asked Mr. Inman, and he refused. I asked him to ask her, when she was here, if that wasn't the case, and he refused. And he will not talk about that.

THE COURT: Well, you all have a difference in strategy, and I assume you're going to testify. You have a right to testify or not.

MR. INMAN: He is not going to testify if I have anything to do with it, because --

THE DEFENDANT: He doesn't want me to testify. He said that if I testify, you will make it a consecutive sentence.

MR. INMAN: No, I didn't say that. Judge, that's why we can't have these hearings. He can't tell you the truth, okay?

THE COURT: Okay --

MR. INMAN: So I have nothing else to say about my strategy or anything else. I'm doing the best I can given what I've got to work with.

THE COURT: Okay. And I have to trust him to do that. So you all try to talk and get along, and we'll see what happens tomorrow, okay? All right. Okay. We are adjourned.

THE COURTROOM DEPUTY: All rise.

(Proceedings adjourned at 4:48 p.m.)

CERTIFICATE OF COURT REPORTER

I, David W. Moxley, hereby certify that the foregoing is a true and correct transcript from reported proceedings in the above-entitled matter.

/S/ David W. Moxley May 11, 2015
DAVID W. MOXLEY, RMR/CRR/CMRS
Official Court Reporter
Southern District of Indiana
Indianapolis Division

Dr. Bruce E. Jones
T00729295-1342095
Marion County Jail Bed 2T-6-1
40 South Alabama Street
Indianapolis, IN 46204

Thursday, October 9th, 2014

Mark Inman
Attorney at Law
141 East Washington Street suite 200
Indianapolis, IN 46204

Mr. Inman

Your ten minute visit today was not what you promised. Last Wednesday after court you promised to visit with me and discuss 15 questions about the plea bargain and 15 questions about the case in general. You said you would make copies of sentencing guide line chart and the chart of restitution levels. Disappointedly, you showed me a book but did not make copies.

As a matter of fact you have never met not a single request. Not a single communication on written form. As I explained I forget things and need direct answers.

I asked you about restitution amount today and you mentioned they would come down $30,000 to $149,000 if I would accept it. I asked how they computed a loss and you don't know. I tried to explain case, billing, and reason why they are in error and you said No. "I will not try this case". You demanded a take plea bargain of 18 months and said I could be sentenced to 22-28 months for something I did not do.

Since you refused to prepare for trial then please excuse yourself and stop aside advising the court. I told you in May that I wanted a trial with a strong defense yet you have done nothing even after several letters requesting action. I expect a defense attorney not Monte Hall "let's make a deal" man. Once Mr. Sheppard understands my billing he might dismiss the case. You can't present that because you will never listen to my side of case.

Today, my appellate team from Northwestern Law school came here and we had hours of discussion. They brought documents, asked questions, and even took time to visit my home and Lodge. What a concept an attorney actually caring enough to visit the alleged crime scene. The team also met with Larissa and a close friend that Pumphrey refused to contact to testify. What a concept a caring attorney. Had you handled appeal you would have done nothing you have in this case. I have received more written correspondence, time on case, research, witness interviewed, and physical visitation from an appeal attorney that cares than any trial attorney.

Please answer questions stated 30 and send documents previously requested ASAP i.e. evidence requested, patient's files, witness list, restitution guidelines and sentencing guidelines.

It is your duty to represent me and meet my reasonable requests. You advise and I make decisions. I can't even make an informal decision without written answers. I first must understand options.

Please send me a written response.

Sincerely,

Bruce E. Jones, PhD.

Dr. Bruce E. Jones
Marion County Jail 2-T
729295
40 South Alabama street
Indianapolis, IN 46204

September 24th, 2014
Mr. Mark Inman
Attorney at Law
141 east Washington Street
Suite 200
Indianapolis, IN 46204

Dear Mr. Inman:

You have been my attorney for over six months now. You have visited me 4 times with possible 3.5 contact hours. Our office is across the jail. The trial is to be on October 27th, 2014 and I am unaware of any defense.

Again, I will not accept anything but a vigorous, strong, well planned defense. The perfunctory job many attorneys' use is not acceptable. This is the life of one Dr. Bruce e. Jones you have in your hands. I expect the best and so far I have seen nothing. You don't even have answers to questions that you should have long time ago.

I am sorry you lost your wife and mother recently. If you are not up to a rigorous defense just say so. With the lack of work I have seen you can't possible represent me on October 27th, 2014.

I wrote you January 25th, 2014 with twenty-seven questions. You were asked to write answers. You refused and said you don't write answers to questions. These questions answers are essential to my defense. I direct you to answer these question in writing immediately. Your job is to do as I ask not what you want and if you want. My requests are reasonable.

Larissa sent you volumes of material to read and you always say you never read it. She called you and you raised your voice at her. She is doing your work. You are released and directed to work with Larissa.

I asked you to get 5 coding manuals, did you? What about the patients I asked you to interview? Did you meet with Jack Surface?

On August 23rd 2014 you were mailed and e-mailed a 14 page typed letter giving directions. I have yet to learn anything from you.

I want to make 8 by 10 color photos of patients plus presentation of these photos for jury. The key is getting the jury to understand what I do and why I do it. How I do it. Admittedly, my counseling sessions are not "normal" or "in the box". They are clinically acceptable and quite successful. You must first understand and you don't have a clue.

On September 8th, you were sent a transcript critical to my case, yet nothing from you. You have promised to meet and get these weeks since visit.

I feel your plan is to do little and when trial date arrives come up with an excuse. Since June I have been pushing you to a trial. If you think I will allow this do nothing attitude to prevail, I will not.

Either realize you don't like me or case and withdraw or postpone until you have prepared a defense like I have repeatedly asked for. I always treated my patients like they were my family. Treat me like that and work as if I were a family member.

Please communicate with me and write me your answers. I want a proper trial. If you don't do a good job than I will have recourse.

You have never given me answers about your potential conflict of interest not did you address asking judge to recuse herself. She has formed her opinion of me already.

Points to Ponder:

a. Where is your attack on Search warrant being too broad etc?
b. Where is your attack of a probable cause?
c. Where is Wabash America's recording
d. What experts have you consulted and who do you intend to call to testify?
e. Have you contacted the 12 witnesses I want to testify?
f. Have you read over all information presented to you by Larissa, Russ, and myself?
g. What claims on what days are questioned about fraud?
h. 90808-90847 ho care both bills out the same $220.00. One is timed and one not-could use either.
i. Have you deposed Tracy Williams?
j. Have you deposed 5 patients' witnesses for District attorney?

Blue cross and Blue Shield authorized all visits, testing with ongoing treatment plans. Who at Blue Cross and Blue shield have you spoken with or deposed?

Is it BCBS and Wabash that claim fraud? So let them explain where the fraud is?

It is my desire you pull it together, communicate with me, prepare to win, and fight with all you have. Seek proper postponing and let's work together. I have the evidence, witnesses, just need someone to pull it together. Just don't attempt a last minute defense in October, when you know it can't be done.

This is not personal. This is my life in your professional hands. Again, drop me a note when you plan to visit so I can be prepared a couple of days before.

Maybe you need help to prepare, then seek it. I expect to be kept informed.

Witnesses have various photos that need to be copied, power point presentation needs to be made, and witnesses interviewed.

Please let me know of your intentions.

Respectfully,

Bruce. E. Jones, Ph.D.

Dr. Bruce E. Jones
Marion County Jail 799295
40 South Alabama Street
Unit 2T Bed 6-1
Indianapolis, IN 46204

October 3rd, 2014

Mr. Mark Inman
Attorney at Law
141 East Washington Street suite 200
Indianapolis, IN 46204

Dear Mr. Inman:

You promised me you would come to see me Thursday morning so we could address many urgent questions and you never showed up. You could have spoken with me after hearing on Wednesday but again no communication.

I have prepared 15 questions, I need answered in writing and then all for oral input concerning plea bargain. Likewise I have 15 general case questions concerning my case in general in preparation for trial. I need written answers and time for oral input on those too.

You waited until October to start working on my case and that is unacceptable. You have showed me no diligence. It is not my fault you waited so long to prepare for my case, it is yours. I have been pushing since June.

Please, please, again READ all the letters from me and act immediately. If you ignore me as you have, I will have no option but to notify the court. I am very disappointed that you are only a Monte Hall attorney, Let's Make a Deal. You are not aggressive, ignore my evidence and witnesses, and ignore my requested plan of action.

Sincerely,

Bruce E. Jones, Ph. D.

CC Larissa V. Jones

Russell Miller

Bruce Jones
T00729295-1342095
Marion County Jail Bed 2T-6-1
40 South Alabama Street
Indianapolis, IN 46204

August 10th, 2014

To: Mark Inman
Attorney at Law
141 E Washington Street suite 200
Indianapolis, IN 46204

Dear Mark Inman:

When you came for 30 min in June you mentioned there was a scheduling July 31st and you would be here to discuss case before that date. You said you would find out why appeal was put on hold by Pumphrey as I wanted to know. It was indicated that you would look into it and further you and someone in your office would do appeal next year. You said the court had sent you the transcript. Next, Larissa told me that she spoke with you and you would come to see me n first week in August.

It is good you were able to spend time with your daughter in Chicago. My daughter Amber lives there across the Navy Pier. Again. I am sure you had much grief losing your wife and mother. My brothers died in June last year and my oldest brother died this June 2014.

On June 25th and 24th, and 18th, I sent you via US mail and e-mail as follows:

1. Questions and requests to mark Inman from Bruce E. Jones, June 25th, 2014.

It is very important that I have the written answers so I can evaluate any recommendations you might have. I am older and want it in writing so I can better understand and share with Larissa to get her opinion.

2. List of Items dated June 24th, 2014 consisted of 20 pieces of evidence and information

Relation to this case with several items added 5 days later. There were also letters from patients, friends, neighbors, relatives, as well as more than 100 pieces of written information. There are also over 50 random photos of my patients taken during my back to nature counseling, mainly on weekends.

Before we meet, it is my hope you will have answers to these questions, read all documents, and have an idea of how Federal Government will proceed. Please drop me a memo a couple of days before you come so I can be ready and have related information available. It would be that way if I were at home and you wanted to work on strategic plans.

I want to know and understand what your defense is, where is the evidence, and hopefully investigators will look into their witnesses, our witnesses, coding rules, opinions, and other issues related to my case. I am NOT GUILTY of FRAUD. I worked very hard and treated my patients as family. I only wish attorneys that I had in the past, cared 25% as much as I do for my patents. I am not a number but a person charged with a crime I am innocent off.

Next I want to mention Dr. Sarah Schrup, professor at northwestern University law school. She sent me a letter explaining that the Seventh Circuit, U.S. Court of Appeals, appointed her to represent me in the appeal on the firearm case. She and three of her fall semester students will be working on my appeal, preparing a brief reply and making oral arguments before the three member court. In 2012 she won a complete reversal on a similar case with Indiana's Justice Hamilton agreeing. She has spoken to me on the phone here for 30 minutes and will speak with Larissa next week. The three students will accompany her on a visit to me I late September or early October. She also indicated she and students would attend the Health Care Fraud case in late October.

Dr. Schrup is professional, caring, and a fighter. Whatever you did to get appeal moving, thanks.

Larissa and I will work with you to help explain my practice, produce whatever is needed and be open and honest with you. During her research the Indiana layer. Com January2, 2013 article Specialized units target Medicare, Medicaid swindles in Indiana Bradley Sheppard said," One of the most prevalent

fraud schemes Shepard described is " up-coding"-vendors billing for procedures, products or prices based on billing code patterns found in reams of documents in Bankers Boxes worth evidence". "Sometimes the investigation is a lot easier than coming up with a compelling way to take it to the jury and make it make sense", Shepard said.

So why did he investigate me, no federal Dollars, no Medicaid, no Medicare? Maybe if we understood that we would see why he is motivated to destroy me. Sees like maybe a grudge or an insurance company is pushing it for their own reasons.

There was no way to "up code" and in fact I could have billed for individual and family counseling but didn't. Patients knew of my billing and signed approval letter.

The court places les pens on several of my condos. Last week one condo in Noblesville and one condo in Alabama was released. It is a matter directly concerning this case and you my attorney. The Sailboat Bay condo in Gulf Shores, AL needs to be released immediately for a short sale or it will be foreclosed on. Action must take place this month or I will be stuck with huge deficits. Please ask Mr. Sheppard to release and communicate with Larissa and her attorney Dennis Zahn.

Your assistance and cooperation is really appreciated.

Sincerely,

Bruce E. Jones, Ph.D.
Cc Larissa V. Jones

CERTIFICATE OF SERVICE

I, the undersigned, counsel for the Defendant-Appellant, Bruce Jones, hereby certify that I electronically filed this brief, required appendix, and separate appendix with the clerk of the Seventh Circuit Court of Appeals on April 25, 2016, which will send the filing to counsel of record in the case.

/s/ Sarah O'Rourke Schrup

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Dated: April 25, 2016