

# GUIDELINE SCENARIOS – CHAPTER 3 ADJUSTMENTS

**For the following scenarios, assume that the defendants were over 18 years old when they committed the offenses, and that they all accepted responsibility for their offenses. Additionally, use the information in Appendix A to answer the questions regarding the scenarios:**

## **Aggravating Role**

### **Scenario #1**

The Court determined there were more than 5 participants in a drug conspiracy that spanned several years. At sentencing, the Court determined that the defendant was a manager of the drug conspiracy, based upon his recruitment of others; however, then chose not to apply a role enhancement. If, after the Court determines that a defendant played an aggravating role, can the Court then either refuse to provide a role enhancement? Or would the court be permitted to apply only a 2-level enhancement for being an organizer or leader in the criminal activity?

### **Scenario #2**

Defendant grew more than 1,000 kilograms of marijuana in CA. Over the course of several months he hired another defendant to cultivate and harvest the marijuana. At least 2 additional defendants flew the marijuana to Maryland in their own private airplane. Once the marijuana arrived in Maryland, several other defendants distributed the marijuana.

### **Scenario #3**

Defendant prepared tax returns. She recruited her 2 sisters to help locate identifying information (names, DOB's, and SSN's) necessary to file fraudulent returns. However, the defendant's 2 sisters were only involved for a short period of time and made very little money. Can the defendant still receive an aggravating role enhancement?

## **Mitigating Role**

### **Scenario #4**

Multiple defendants operate a tax fraud scheme from inside a correctional institution. They garner the assistance of others on the outside. One of those defendants outside of prison helps by mailing completed tax forms and receiving refunds on debit cards, which are then provided to the incarcerated defendants.

The outside help receive a nominal amount of money for their assistance on relatively few occasions - \$100 per tax return.

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## **Scenario #5**

Defendant Davies was convicted of one count Conspiracy to Possess with Intent to Distribute Cocaine and one count Attempt to Possess with Intent to Distribute Cocaine. The conspiracy lasted for approximately 18 months. Defendant Davies's role in the offense did not extend beyond the scope of receiving a delivery of cocaine at the request of a co-defendant and turning the package over to the person who was to pay him. Defendant Davies was only held accountable for the amount of drugs in that one package. There were 28 defendants in the instant case, most of whom were found to be more culpable than the defendant.

Are there any Chapter 3 Adjustments that are applicable in this case?

## **Scenario #6**

Defendants Stevens, Joel, Robins, Tierra, and Marjorie were charged in a 12-count Indictment that included the following counts:

- Count 1 – Conspiracy to Commit Bank Fraud - 18 U.S.C. §§ 1344 and 1349;
- Counts 2 – Aiding and Abetting Bank Fraud - 18 U.S.C. §§ 1344 and 2
- Counts 3 – Aggravated Identity Theft - 18 U.S.C. § 1028A

Defendant Stevens, Joel, and Robins were named in Counts 1, 2, and 3; Defendant Tierra and Marjorie were named in Counts 2 and 3. They were each convicted on all counts in which they were charged.

This case consists of a criminal enterprise that was engaged in numerous criminal activities involving bank fraud with losses exceeding \$2,000,000. The overall conspiracy to fraudulently obtain money included passing fraudulent checks at retail stores and returning the items for cash and also depositing fraudulent checks in bank accounts and withdrawing cash. Checks, identification cards, and identification papers were created fraudulently to facilitate the passing and depositing of fraudulent checks. The conspiracy was based on a need for stolen information that would be used to create fraudulent checks and identification documents, which could then be used to obtain money through various methods of check passing, cashing, and deposits/withdrawals. Stevens and others including Joel were proficient in using check creation software. They began doing so in 2006 and did not stop until their arrest in 2011. Information taken from stolen, legitimate checks was entered into a computer program, which would then print checks on specialized check paper stock.

On January 2, 2011, a burglary of the Edible Arrangements retail store in Shoreview, Minnesota, occurred when Stevens and Joel stole a fire safe. Within the safe was information related to employees of the company, including their applications for employment, which listed their name, address, date of birth, Social Security number, and direct deposit forms authorizing their paychecks to be deposited into their personal bank account. As a result, this paperwork held the account and routing numbers of the victims' bank accounts. This stolen information was used during the conspiracy to create fraudulent checks and driver's licenses, which were used to obtain money fraudulently from banks.

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At trial, two victims testified about a home burglary and the theft of a motor vehicle, which occurred in August and September 2011 by Marjorie. Checks and documents stolen during the burglaries were linked to participants in the conspiracy when they were used to make approximately \$24,000 in fraudulent deposits and \$12,000 in fraudulent cash withdrawals.

Robins worked at the Minnesota Board of Psychology. Robins had access to checks that were received through the mail from licensed psychologists to pay their annual licensing fees. Robins originally began copying information from checks, such as names, addresses, and account and routing numbers, to provide to Joel. Joel was connected to others in the conspiracy and recruited Robins to provide this information, which was initially used to create and pass fraudulent checks and obtain credit at Walmart and Sam's Club. Robins also recruited 7 friends and acquaintances to deposit fraudulent and stolen checks at the request of Joel. Joel also provided transportation and direction to the recruited individuals during various check cashing transactions.

Tierra was a bank teller and was recruited by Stevens to provide financial information from victims' accounts, which she had access to in the capacity of her employment. As well as providing financial information, Tierra was sometimes recruited as a specific teller who would accept a fraudulent check without calling management or raising alarms about the authenticity of the check being presented.

Stevens had a contact at a paper shredding company, which contracted with other companies to pick up and destroy their confidential documents en masse. Through this avenue, Stevens could obtain information meant for destruction that could instead be used to make fraudulent checks and identification documents. Stevens had a paid subscription to publicdata.com. He used this website to corroborate information obtained by other means and to obtain valid driver's license numbers that could be used to validate fraudulently created checks. Another website, uniqueIDs.com, was identified by participants as a site where driver's license numbers could be obtained to facilitate the acceptance of fraudulent checks.

Are there any Chapter 3 Adjustments that are applicable for Defendants Stevens, Joel, Robins, Tierra, and Marjorie?

### **Vulnerable Victim**

#### **Scenario #7**

Defendant Richards was convicted of two counts Wire Fraud, two counts Mail Fraud, and one count Making and Subscribing False Income Tax Returns. The defendant was licensed as a Certified Financial Planner and was also a self-employed tax return preparer. Over the course of several years, Defendant Richards induced a number of clients to invest their retirement funds and other savings into investment vehicles he created, using self-directed Individual Retirement Accounts (IRAs). The defendant selected tax preparation clients who he knew, from their tax information and his interactions with them, were financially unsophisticated, had available retirement funds, and/or had developed a relationship of trust in him. He knew that the majority of the clients were retired, due to age or disability, or were otherwise

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out of work, and that some were nearing retirement. Defendant Richards also knew that many clients entrusted him with all or a substantial portion of their retirement savings.

The defendant misled clients to believe that their funds would be placed and were placed in safe, guaranteed-return investments, when, in fact, he intended to divert and did divert the funds to pay personal and business expenses and to invest in highly-leveraged, risky investments for which he had a consistent history, both before and during the scheme, of incurring large losses. During the course of the scheme, Defendant Richards lost almost all of the client money that he placed in his high-risk investments, while continuing to solicit new clients and to lead his current clients to believe that their investments were doing well.

The defendant was initially charged in county court for the same conduct, and he was arrested on the Indictment. While he was in jail, Defendant Richards instructed his wife to hide a laptop computer which he knew had important financial data and would facilitate his return to criminal activity upon his release from custody. The defendant's wife complied with his request, but after significant further investigation the laptop was recovered.

### **Scenario #8**

Defendant was convicted of Conspiracy to Defraud the Government and Monetary Transactions in Criminal Derived Property (Money Laundering). The defendant used the identification of numerous victims that included inmates serving a prison sentence, as well elderly victims, all without their knowledge. Over the course of several years, the defendant utilized these victim's personal information to secure more than \$100,000 from the IRS.

### **Scenario #9**

Defendant was involved in the sexual exploitation of a minor who was 14 years old. The victim had behavioral problems and would often cut herself and threaten suicide. Would an enhancement be applicable in this case a defendant's victim was 14 years old?

### **Obstruction of Justice**

### **Scenario #10**

Would an enhancement be applicable in this case where the defendant lied when she entered a plea of guilty?

Defendant Jackson was convicted of one count Conspiracy to Defraud the Government with Respect to Claims and one count False, Fictitious or Fraudulent Claims. She initially pled guilty to the offenses, but subsequently filed a motion to withdraw her plea of guilty. At the Motion Hearing the defendant testified that at the time she entered a plea guilty, she was aware she was under oath to tell the truth. She then testified that she lied when she entered her plea of guilty and indicated that she only entered the plea of

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guilty in order to obtain a sentence of probation. Defendant Jackson also testified that she was not guilty of the charges pending against her. The Court denied the defendant's Motion to Withdraw her plea of guilty.

### **Scenario #11**

Would an enhancement be applicable when a defendant lies about his personal and family background during a PSI interview? For example, the defendant lied about having additional children and being married previously.

### **Scenario #12**

Defendant Bradley was convicted of one count Possession with Intent to Distribute Heroin and one count Felon in Possession of Firearm. After his arrest for the offenses, he began making telephone calls from the jail that included threats to his girlfriend, a witness in this matter. Defendant Bradley was aware of his girlfriend's cooperation with police in this matter, and during one call told her "You act like I ain't gonna get out of here and do something to you over that s\*\*t." In other calls, Defendant Bradley attempted to get his girlfriend to go out and collect his drug profits while he was in jail. In another call he attempted to try and figure out who he believed set him up in this matter, and discussed killing that person when he got out.

Are there any Chapter 3 Adjustments that are applicable in this case?

### **Scenario #13**

Defendants Andrews, Bates were charged in a 12-count Indictment that included the following counts:

- Count 1 – Armed Bank Robbery - 18 USC §§ 2113(a) and (d)
- Counts 2 and 3 – Kidnapping - 18 USC § 1201(a)(1)
- Counts 4 and 5 - Kidnapping of a Minor - 18 USC §§ 1201(a)(1) and 1201(g)
- Count 6 – Possession of Ransom Money - 18 USC § 1202
- Counts 7 through 10 – Hostage Taking - 18 USC § 1203
- Count 11 – Possessing a Firearm in Furtherance of a Crime of Violence - 18 USC § 924(c)(1)(A)(ii)
- Count 12 - Tampering with a Witness, Victim, or an Informant- 18 U.S.C. § 1512

Defendant Andrews was named in Counts 1 through 11; Defendant Bates was named in Counts 1 through 10 and Count 12. They were each convicted on all counts.

Defendant Cross was charged in a separate Indictment with Misprision of a Felony [18 USC § 4] in relation to all of the counts listed above, and Receipt of Ransom Money [18 USC § 1202(a)]. She was convicted of both counts.

The offenses began when Defendants Andrews and Bates began planning to rob the bank where Defendant Andrews had an account. They obtained home address of several bank employees by recruiting Defendant Cross, who had access to the law enforcement data system through her employment, to look up this information.

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Defendants Andrews and Bates conducted surveillance on the employees and chose the bank manager as the target after learning that he had a wife and two small children. Defendant Bates subsequently broke into the home of the bank manager and hid in a closet until the manager's wife and children returned to the home. Defendant Bates then exited the closet, pointed a gun at the manager's wife and children, and informed them that he would kill them if they didn't cooperate in his robbery plans. Defendant Bates held the manager's wife and children hostage throughout the afternoon and into the evening. The bank manager eventually came home and he was taken hostage as well.

The family was held hostage through the night. The following morning, defendant Andrews went with the bank manager to the bank and withdrew money while Defendant Bates held the manager's family hostage. Once the bank manager returned home, Defendant Andrews picked Defendant Bates and they left the residence.

The following morning, Defendants Andrews and Bates drove to Defendant Cross's residence, where all three of them counted the money. Defendants Andrews and Bates each took a portion of the money and had Defendant Cross hide the rest in Defendant Cross's home. Defendants Andrews and Bates obtained some of the hidden money from Defendant Cross approximately one week later. However, Defendants Andrews and Bates were arrested for the offenses a few weeks later. The next day, Defendant Cross turned over the majority of the remaining money to the police. However, Defendant Cross did not turn over a portion of the money that was still hidden at Defendant Cross's residence. The remaining funds were ultimately recovered during a search of Defendant Cross's home.

Are there any Chapter 3 Adjustments that are applicable for Defendants Andrews, Bates, and Cross?

### Acceptance of Responsibility

#### **Scenario #14**

Defendant pled guilty to Felon in Possession of a Firearm on June 15, 2016. Prior to his guilty plea, the defendant called a friend and told her she should call detectives and report the firearm possessed by the defendant in fact belonged to an ex-boyfriend of hers. While incarcerated after his guilty plea, the defendant utilized other inmates pin numbers in order to make telephone calls to friends and family. Also, during a cell search, officers located .24 grams of marijuana. Should this defendant receive +2 for obstruction and also lose acceptance of responsibility reduction?

#### **Scenario #15**

Defendant pled guilty to Felon in Possession of a Firearm on June 15, 2016. Prior to his guilty plea, the defendant called a friend and told her she should call detectives and report the firearm possessed by the defendant in fact belonged to an ex-boyfriend of hers. The defendant's girlfriend did as asked and was subsequently interviewed by federal agents. However, they soon learned she was lying. While incarcerated after his guilty plea and up until sentencing, the defendant remained law abiding. Can a defendant receive +2 for obstruction and also lose acceptance of responsibility reduction?