No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

EARLIE DICKERSON,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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EARLIE DICKERSON

QUESTIONS PRESENTED

Question One: Whether new evidence that Government witnesses provided untruthful statements during a trial can ever satisfy the requirements for a motion for new based on newly discovered evidence under FED. R. CRIM. P. 33.

Question Two: Whether impeachment evidence can ever satisfy the requirement for a motion for new trial based on newly discovered evidence under FED. R. CRIM. P. 33.

Question Three: Whether a bald conclusionary statement in a Presentence Investigation Report provides indicia of reliability by stating that the statement is based on law-enforcement investigation without supporting evidence.

PARTIES TO THE PROCEEDINGS

The parties to the proceedings are named in the caption of the case before this Court.

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

OPINION BELOW

On November 16, 2018, the United States Court of Appeals for the Fifth Circuit entered its judgment and opinion affirming the judgment of conviction and sentence. *United States v. Dickerson*, 909 F.3d 118 (5th Cir. 2018). Appendix A. On January 30, 2019, the United States Court of Appeals for the Fifth Circuit denied Petitioner's Petition for Rehearing and Rehearing En Banc. Appendix B.

STATEMENT OF THE BASIS FOR JURISDICTION IN THIS COURT

On January 30, 2019, the United States Court of Appeals for the Fifth Circuit denied Petitioner's timely filed Petition for Rehearing and Rehearing En Banc. Appendix B. This petition, filed within 90 days of the denial of the Petition for Rehearing and Rehearing En Banc, is therefore timely. *See* SUP. CT. R. 13(3). This Court's jurisdiction is invoked through 28 U.S.C.A. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THE CASE

FED. R. CRIM. PROC. 33. NEW TRIAL

(a) **Defendant's Motion.** Upon the defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires. If the case was tried without a jury, the court may take additional testimony and enter a new judgment.

(b) **Time to File.**

(1). **Newly discovered evidence.** Any motion for new trial grounded on newly discovered evidence must be filed within 3 years after the verdict or finding of guilty. If an appeal is pending, the

court may not grant a motion for new trial until the appellate court remands the case.

(2). **Other Grounds.** Any motion for new trial grounded on any reason other than newly discovered evidence must be filed within 14 days after the verdict or finding of guilty.

STATEMENT OF THE CASE

(a) Relevant Facts

Earlie Dickerson (hereinafter "Dickerson" or Petitioner), worked as the office manager of the Sanjoh Law Firm. ROA.17-20161.2519. The government alleged that Dickerson recruited individuals who were allegedly involved in automobile accidents to be represented by the Sanjoh Law Firm. ROA.17-20161.2519. It was alleged that Dickerson then sent individuals to a chiropractor, Chase Lindsey (hereinafter "Lindsey"), at one of the clinics to be evaluated. ROA.17-20161.2519. Additionally, the Government alleged that the Sanjoh Law Firm submitted fraudulent billing statements to various third party insurance companies. ROA.17-20161.2519. Dickerson allegedly instructed employees to document patient treatment, even if the treatment was not performed. ROA.17-20161.2519.

In appellant's Third Motion Under Federal Rule Criminal Procedure 33, appellant alleged that newly discovered evidence, obtained after the conclusion of the jury trial, revealed that a co-defendant and key government witness, Marion Young (hereinafter "Young"), presented false testimony at trial regarding his understanding of his plea agreement. ROA.17-20161.585-92. During the Government's direct examination of Young, the following exchange occurred:

[PROSECUTOR:] And when you pled guilty, you pled guilty to something that we refer to as a plea agreement, correct?

[YOUNG:] Yes, sir.

[PROSECUTOR:] I want to show you what is Government's Exhibit 406, marked only for identification, and ask you if you recognize that document?

[YOUNG:] Yes, sir.

[PROSEUCTOR:] What is it?

[YOUNG:] It's my plea agreement.

[PROSECUTOR:] What is your obligation under that plea agreement?

[YOUNG:] To be honest and tell the truth.

[PROSECUTOR:] And what happens to that agreement if you are not honest and you don't tell the truth?

[YOUNG:] The plea agreement is no good.

[PROSECUTOR:] What – who ultimately decides whether or not you, aside from the jury, whether or not you are telling the truth here today?

[YOUNG:] The judge.

[PROSECUTOR:] Which judge?

[YOUNG:] Judge Hoyt.

[PROSECUTOR:] You signed and swore to this plea agreement; is that correct?

[YOUNG:] Yes, sir.

[PROSECUTOR:] Were you hoping – what are you hoping to get out of it?

[YOUNG:] Just sympathy for – you know, and accept responsibility for my actions.

[PROSECUTOR:] That's why you entered into the agreement, right?

[YOUNG:] Yes.

[PROSECUTOR:] But you are hoping to get less time, right?

[YOUNG:] Yes, sir.

ROA.17-20161.1172-73.

Additionally, during cross-examination, the following exchange occurred:

[DEFENSE COUNSEL:] The plea agreement, which for the record is Government's Exhibit 406, it doesn't say anything in here about you getting less time in prison, does it?

[YOUNG:] No, not that I know of.

[DEFENSE COUNSEL:] Well, is that sort of an understanding, that you will get less time in prison if you testify?

[YOUNG:] No. That's not the understanding that I got.

[DEFENSE COUNSEL:] That's not your understanding?

[YOUNG:] No, ma'am.

ROA.17-20161.1208-09 (emphasis added).

However, after the trial concluded, Sylinna Johnson (hereinafter "Johnson") signed a sworn affidavit stating that several months before Dickerson's trial was scheduled to begin, Young contacted her and made it clear that he was offered a plea deal where he would not receive more than five years in prison in exchange for his plea of guilty. ROA.17-20161.598. Dickerson attached this affidavit to his Third Motion under Federal Rule of Criminal Procedure 33 as "Attachment – A." ROA.17-20161.599. According to her affidavit, after the trial concluded, Young

contacted Johnson to ask if she heard that Dickerson and Edward (hereinafter "Graham"), were convicted on all counts. ROA.17-20161.599. Young informed Johnson that if Dickerson had accepted the deal, he would have received no more than five years in prison, but now he is facing up to twenty years in prison. ROA.17-20161.599. Johnson confronted Dickerson and asked him why he did not take the plea deal so that he would receive no more than five years in prison like his co-defendants. ROA.17-20161.599. Dickerson replied, "'what deal for no more than five years.'" ROA.17-20161.599. Dickerson informed Johnson that he was never informed of this offer. ROA.17-20161.599. Dickerson showed Johnson a copy of Young's plea deal, which did not contain any language referring to an agreement to cap his sentence at five years in prison. ROA.17-20161.600. Dickerson asked Johnson if she would be willing to record Young regarding his agreement with the government, and she agreed to do so. ROA.17-20161.600.

Johnson recorded several conversations with Young where he referred to his agreement to plea in exchange for the punishment cap of five years in prison. ROA.17-20161.600. Additionally, Johnson provided Dickerson with a copy of the phone call recordings of her conversations with Young, which Dickerson attached to his motion as exhibit "Attachment – C." ROA.17-20161.601, 604. Dickerson provided transcribed excerpts from the recordings within his Reply to United States' Memorandum in Opposition to Application for Writ of Habeas Corpus Ad Testificandum. ROA.17-20161.770. In Track 1 of the recordings, Young states, "I'm a five time loser, Sylinna, you see what I'm saying so I got to cop. And then especially, when a man comes to me and tells me the most you can get is five years

for copping out . . ." ROA.17-20161.582-83, 604. Additionally, the following exchange occurs later in the recording between Marion Young and Sylinna Johnson,

> Young: . . . you get found guilty of a crime and you a five-time loser, you starting out at 25 right?
>
> Johnson: Yah.
>
> Young: Ok, even though if you right or wrong, you see what I'm saying? They telling you the max you can get is five years, what you gonna do?
>
> Johnson? Cop out.
>
> Young: Exactly, exactly. That's what I'm trying to tell you.

ROA.17-20161.582-83, 604. Moreover, in Track 4, Young stated again that he was guaranteed that his sentence would not be over five years. ROA.17-20161.582-83, 604.

Additionally, Young contacted Johnson and informed her that he had posted information regarding his plea agreement on Facebook. ROA.17-20161.601. Dickerson attached a copy of this Facebook post to his motion as "Attachment – B." ROA.17-20161.602. In his Facebook post, Marion Young stated, " . . . they told us if we copout to that they will give us know [sic] more [than] five years . . ." ROA.17-20161.603. Dickerson also attached an excerpt from the jury trial transcript regarding Marion Young's testimony (referenced above) as "Attachment – D." ROA.17-20161.605.

Based on this new evidence, appellant asserted in his motion that although Young testified that he only hoped for a lesser sentence in exchange for his

testimony, he had actually negotiated a capped five-year prison sentence in exchange for his testimony. ROA.17-20161.585-88.

(b) District Court Proceedings

On November 28, 2012, a thirty-one (31) count Indictment was returned by a grand jury in the United States Distric Court for the Southern District of Texas, Houston Division, naming Dickerson, Lindsey, Young, Graham, and Brittany Jessie as the defendants. as the defendants. Count 1 charged all defendants with conspiracy to commit mail fraud, beginning on or about February 2007 and continuing through December 2009, in violation of 18 U.S.C. § 1349. Counts 2-31 charged all defendants with mail fraud beginning on or about February 2007 and continuing through December 2009, a violation of 18 U.S.C. § 1341.

On October 3, 2013, Graham and petitioner appeared for a jury trial before the Honorable Kenneth M. Hoyt. On October 11, 2013, Graham and petitioner were found guilty of Counts 1, and 2 through 31 of the Indictment. On September 15, 2014, a sentencing hearing was held before the Honorable Kenneth M. Hoyt. Based on petitioner's offense level of 33 and his criminal history category of III, Dickerson's guideline imprisonment range was calculated to be 168 to 210 months of imprisonment. Petitioner was sentenced to one hundred and sixty-eight (168) months in a federal correctional facility, a three-year period of supervised release, no fine, restitution of $1,192,382.94, and a hundred-dollar special assessment.

On September 22, 2015, petitioner filed a *pro se* Motion to Vacate and Reinstate Criminal Judgments pursuant to 28 U.S.C. § 2255. In his motion, petitioner alleged that his trial attorney, Katherine Scardino, provided ineffective

assistance of counsel by failing to file a timely notice of appeal from his conviction and sentence. On September 8, 2016, counsel for petitioner was appointed to represent Dickerson in the district court.

On October 13, 2016, petitioner filed a *pro se* Third Motion under Federal Rule of Criminal Procedure 33. On October 18, 2016, counsel for petitioner filed a motion to adopt petitioner's *pro se* motion and to make the motion part of the record, which was granted on October 31, 2016.

On February 10, 2017, petitioner filed a Motion for Writ of Habeas Corpus *ad testificandum* for Marion Young. On February 27, 2017, the court entered an order denying petitioner's Third Motion under Federal Rule of Criminal Procedure 33 and petitioner's Motion for Writ of Habeas Corpus *ad testificandum* for Marion Young. On March 6, 2017, petitioner filed a notice of appeal from the court's order denying petitioner's Third Motion under Federal Rule of Criminal Procedure 33 and petitioner's Motion for Writ of Habeas Corpus *ad testificandum* for Marion Young.

An evidentiary hearing was scheduled for April 4, 2017 before the Honorable Kenneth M. Hoyt for Dickerson's Motion to Vacate and Reinstate Criminal Judgments pursuant to 28 U.S.C. § 2255. At the hearing on April 4, 2017, Dickerson and the Government came to an agreement that the Government would not oppose Dickerson filing an untimely notice of appeal. The intent of the agreement was to allow Dickerson to proceed with an appeal on the merits in the Fifth Circuit. On April 12, 2017, the district court entered an order confirming this

agreement. On April 13, 2017, Dickerson filed his notice of appeal from the final judgment of conviction and sentence entered on September 22, 2014.

(b) The Appeal

The panel heard oral argument on June 4, 2018. In a published opinion, the panel affirmed the district court. *United States v. Dickerson*, 909 F.3d 118 (5th Cir. 2018). Dickerson challenged the district court's denial of his motion for new trial on the basis of new evidence.[1] The trial found that the new evidence of an undisclosed agreement to cap a material government witness's sentence at five years spoke "only to the credibility of Young's testimony." *Id.* at 125. The panel found that it is impeaching evidence, failing the third *Berry* rule condition; therefore, Dickerson's motion fails. *Id.* at 125-26. Additionally, Dickerson argued that the district court erred in enhancing Dickerson's offense level by 18-levels pursuant to U.S.S.G. §2B1.1(b)(1)(J), and erred in enhancing Dickerson's offense level pursuant to U.S.S.G. § 2B1.1(b)(2)(B) for an offense involving 50 or more victims. The panel found that the PSR's assertion that the scheme had intended losses of $5,768,070, in connection with over fifty victims had the "indicia of reliability, as they were adopted from the FBI's direct investigation of the conspiracy, as well as the FBI's review of information gathered by investigators at the National Insurance Crime Bureau." *Id.* at 128. Dickerson also challenged the district court's restitution and forfeiture orders, "repeating an objection made at sentencing that the orders were based on insufficient evidence, and should have accounted for legitimate claims intertwined with

[1] Only information and issues relevant to this Petition for Writ of Certiorari are included.

fraudulent ones." *Id.* at 129. The panel found that the restitution figure bears the requisite indicia of reliability since it stated it was acquired from "FBI's case file and victim insurers." *Id.* at 130. The panel found no reversible error. *Id.*

REASONS FOR GRANTING THE PETITION

> Question One: Whether new evidence that Government witnesses provided untruthful statements during a trial can ever satisfy the requirements for a motion for new based on newly discovered evidence under FED. R. CRIM. P. 33.
>
> Question Two: Whether impeachment evidence can ever satisfy the requirement for a motion for new trial based on newly discovered evidence under FED. R. CRIM. P. 33.

By deciding that new evidence that a government witness provided untruthful statements during a trial cannot satisfy the requirement for a motion for new trial based on newly discovered evidence, the decision conflicts with the decision of the United States Supreme Court in *Mesarosh v. United States*, 352 U.S. 1 (1956).

The panel's decision that impeachment evidence can never satisfy the requirement for a motion for new trial based on newly discovered evidence conflicts with authoritative decisions of other United States Courts of Appeals including the Ninth Circuit in *United States v. Davila*, 428 F.2d 465 (9th Cir. 1970), and the Sixth Circuit in *United States v. Lewis*, 338 F.2d 137 (6th Cir. 1964).

Dickerson challenged the district court's denial of his motion for new trial on the basis of new evidence. In petitioner's Third Motion Under Federal Rule Criminal Procedure 33, petitioner alleged that newly discovered evidence, obtained after the conclusion of the jury trial, revealed that a co-defendant and key

government witness, Marion Young, presented false testimony at trial regarding his understanding of his plea agreement. ROA.17-20161.585-92. The panel found that this "is impeachment evidence, failing the third *Berry* rule condition" and therefore, there was no need for an evidentiary hearing to consider an asserted *Napue* violation and the district court did not abuse its discretion in denying the motion for a new trial and evidentiary hearing. *Dickerson*, 909 F.3d at 125.

In *Mesarosh v. United States*, the Supreme Court differentiated between untruthful statements made subsequent to a trial and untruthful statements made during a trial when it comes to a motion for new trial based on newly discovered impeachment evidence. *See Mesarosh v. United States*, 352 U.S.1 (1956). The Court stated,

> It must be remembered that we are not dealing here with a motion for new trial initiated by the defense, under Rule 33 of the Federal Rules of Criminal Procedure, presenting untruthful statements by a Government witness subsequent to the trial as newly discovered evidence affecting his credibility at the trial. Such an allegation by the defense ordinarily will not support a motion for a new trial, because new evidence "which is merely cumulative or impeaching" is not, according to the often-repeated statement of the courts, an adequate basis for the grant of a new trial."

Id. at 9. In *Mesarosh,* the Court found that the government witness's testimony, which the Government subsequently questioned the credibility of, "poisoned the water in this reservoir, and the reservoir cannot be cleansed without first draining it of all impurity . . . Pollution having taken place here, the condition should be remedied at the earliest opportunity." *Id.* at 14.

Since the Supreme Court distinguished between untruthful statements made by a Government witness subsequent to trial and untruthful statements made by a

Government witness during trial, and the untruthful statements in Dickerson's case were made *during* Petitioner's trial, the panel erred by finding that the argument failed the third *Berry* rule condition. *See id.* at 9-14.

Additionally, the panel's decision that impeachment evidence never satisfy the requirement for a motion for new trial based on newly discovered evidence conflicts with authoritative decisions of other United States Courts of Appeals. The Ninth Circuit found in *United States v. Davila*, "When newly discovered evidence is the ground for a Motion for New Trial, and the introduction of such evidence would be material only for the purpose of impeaching a witness, the court may properly deny a new trial unless it appears that had the impeaching evidence been introduced, it is likely that the jury would have reached a different result." 428 F.2d 465, 466 (9th Cir. 1970). Additionally, the Sixth Circuit in *United States v. Lewis*, stated, "The granting or refusing of a new trial upon newly discovered evidence of an impeaching character, including the recantation of a witness, rests in the sound discretion of the trial court; and a new trial will not be granted on the grounds of newly discovered evidence, unless such evidence is of a nature that, on a new trial, it would probably bring about a different result." 338 F.2d 137, 139 (6th Cir. 1964).

> Question Three: Whether a bald conclusionary statement in a Presentence Investigation Report provides indicia of reliability by stating that the statement is based on law-enforcement investigation without supporting evidence.

By deciding that a bald conclusionary statement in a Presentence Investigation Report provides indicia of reliability by stating that the statement is based on a law-enforcement investigation without supporting evidence, the panel

decision conflicts with its own opinion in *United States v. Zuniga*, 720 F.3d 587, 590-91 (5th Cir. 2013), finding that bald conclusionary statements in a PSR are not sufficiently reliable, and *United States v. Narviz-Guerra*, 148 F.3d 530 (5th Cir. 1998). Additionally, the Fifth Circuit has decided an important question of federal law that has not been, but should be, settled by the Supreme Court of the United States.

Dickerson argued that the district court erred in enhancing Dickerson's offense level by 18-levels pursuant to U.S.S.G. §2B1.1(b)(1)(J), and erred in enhancing Dickerson's offense level pursuant to U.S.S.G. § 2B1.1(b)(2)(B) for an offense involving 50 or more victims. The panel found that the PSR's assertion that the scheme had intended losses of $5,768,070, in connection with over fifty victims had the "indicia of reliability, as they were adopted from the FBI's direct investigation of the conspiracy, as well as the FBI's review of information gathered by investigators at the National Insurance Crime Bureau." *Dickerson*, 909 F.3d at 128. Dickerson also challenged the district court's restitution and forfeiture orders, "repeating an objection made at sentencing that the orders were based on insufficient evidence, and should have accounted for legitimate claims intertwined with fraudulent ones." *Id.* at 129. The panel found that the restitution figure bears the requisite indicia of reliability since it stated it was acquired from "FBI's case file and victim insurers." *Id.* at 130.

However, the Fifth Circuit has previously stated,

> When making factual findings for sentencing purposes, a district court 'may consider any information which bears sufficient indicia of reliability to support

> its probable accuracy.' 'Generally, a PSR bears sufficient indicia of reliability to be considered as evidence by the sentencing judge in making factual determinations.' However, '[b]ald, conclusionary statements in a PSR are not sufficiently reliable. 'If the factual recitation [in the PSR] lacks sufficient indicia of reliability, then it is error for the district court to consider it at sentencing – regardless of whether the defendant objects or offers rebuttal evidence.'

United States v. Zuniga, 720 F.3d 587, 590-91 (5th Cir. 2013)(internal citations omitted)(emphasis added); *see also United States v. Rome*, 207 F.3d 251, 254 (5th Cir. 2000)(per curiam)(determining that "the statement that the defendant and his accomplice would have stolen all the guns if they had not been interrupted" was a bald assertion); *United States v. Williams*, 22 F.3d 580, 581 n.3 (5th Cir. 1994)(determining that law enforcement's statement that the defendant was "the muscle" behind the conspiracy was a bald assertion). That is exactly what we have in this case – bald, conclusionary statements that are not sufficiently reliable

"When sentencing a defendant, 'the court may consider relevant information without regard to its admissibility under the rules of evidence applicable at trial, *provided that the information has sufficient indicia of reliability to supports its probable accuracy.*'" *United States v. Rico*, 864 F.3d 381, 385 (5th Cir. 2017)(quoting U.S.S.G. § 6A1.3(a)(emphasis added)). Additionally, this court has previously "clarified that '[w]hile a PSR generally bears sufficient indicia of reliability, '[b]ald, conclusionary statements do not acquire the patina of reliability by mere inclusion in the PSR.'" *Id.* (quoting *United States v. Narviz-Guerra*, 148 F.3d 530, 537 (5th Cir. 1998)(second alteration in original)(citation omitted)(quoting *United States v. Elwood*, 999 F.2d 814, 817-18 (5th Cir. 1993)). "The PSR in *Narviz-Guerra* stated that

the total amount was 'based primarily on information contained in various debriefings, recorded meetings and telephone calls, and on the amount of marijuana seized in the different arrests of the co-conspirators' and that the defendant was only being held accountable for 'those amounts of drugs that have been substantiated.' [The Fifth Circuit] noted that there was no way to determine if the information was reliable because none of the enumerated sources for the information was attached to the PSR nor was there an explanation of how the information in the PSR was corroborated." *Rico*, 864 F.3d at 385 (citing *Narviz-Guerra*, 148 F.3d at 537).

The panel in this case cites to *United States v. Scher*, 601 F.3d 408 (5th Cir. 2010). However, in *Scher*, the Court noted that the "PSR relied on the evidence submitted at trial, specifically spreadsheets produced by Continental's fraud investigator, *detailing the fraudulent tickets issued* and their corresponding value to Continental. *Id.* at 413 (emphasis added).

In this case, there was no evidence presented in the PSR to support the numbers provided other than conclusionary statements. It is impossible for a defendant to contradict a loss amount, restitution amount, or the number of victims, when he is unable to determine how these numbers were calculated in the first place. This places an unreasonable burden on a defendant. Dickerson is not arguing that the court cannot consider information in the PSR if the PSR reveals enough information about how the numbers were calculated to determine the reliability of the calculation. However, we do not have that here.

CONCLUSION

For the foregoing reasons, petitioner, Earlie Dickerson prays that this Court grant certiorari to review the judgment of the Fifth Circuit in this case.

Respectfully submitted,

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APPENDIX

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United States v. Dickerson

United States Court of Appeals for the Fifth Circuit

November 16, 2018, Filed

No. 17-20270 Consolidated with: 17-20161

Reporter
909 F.3d 118 *; 2018 U.S. App. LEXIS 32520 **

UNITED STATES OF AMERICA, Plaintiff - Appellee v. EARLIE DICKERSON, Defendant - Appellant

Prior History: [1]** Appeals from the United States District Court for the Southern District of Texas.

United States v. Graham, 613 Fed. Appx. 430, 2015 U.S. App. LEXIS 14765 (5th Cir. Tex., Aug. 20, 2015)

Core Terms

district court, sentence, clinic, restitution, enhancement, fraudulent, chiropractic, calculation, new trial, co-defendant, participants, recommended, settlements, challenges, billing, forfeiture, organizer, new evidence, actual loss, insurers, levels, losses, evidentiary hearing, non-testifying, reliability, argues, offense of conviction, criminal activity, implicate, waived

Case Summary

Overview

HOLDINGS: [1]-The court affirmed defendant's conviction and sentence for conspiracy and mail fraud because an alleged government agreement to cap a witness's sentence at five years was not new evidence warranting a new trial under *Fed. R. Crim. P. 33*; [2]-Statements of his non-testifying co-defendant were properly admitted and did not violate the *Sixth Amendment* because they only implicated the defendant when added to other trial evidence; [3]-His sentence was properly enhanced as an organizer under *U.S. Sentencing Guidelines Manual § 3B1.1(a) (2013)* where the evidence showed he recruited accomplices and organized a series of sham chiropractic clinics; [4]-The district court did not err in enhancing his offense level on the basis of its reasonable-estimate calculation from the PSR that his fraud involved a loss of more than $2.5 million and 50 or more victims.

Outcome

Conviction and sentence affirmed.

LexisNexis® Headnotes

Criminal Law & Procedure > Appeals > Procedural Matters > Time Limitations

HN1 **Time Limitations**

Fed. R. App. P. 4(b)'s time limit for criminal appeals is not jurisdictional, and can be waived.

Criminal Law & Procedure > Postconviction Proceedings > Motions for New Trial

Criminal Law & Procedure > ... > Standards of Review > Abuse of Discretion > New Trial

HN2 **Motions for New Trial**

Under *Fed. R. Crim. P. 33*, a defendant can move for vacatur of any judgment and for a new trial on the basis of new evidence. *Fed. R. Crim. P. 33*. Such motions are disfavored and reviewed with great caution. To succeed they must meet the Berry rule conditions: first, the evidence must be newly discovered, unknown to the defendant at the time of trial; second, the failure to detect the evidence must not have been due to a lack of diligence; third, the evidence cannot be merely cumulative or impeaching; fourth, the evidence must be material; and, fifth, if the evidence were introduced at a new trial, the probable result must be an acquittal. Where new evidence indicates that the government

knowingly used false testimony—a Napue violation—the fifth condition is not required. The appellate court reviews the district court's denial of a motion for new trial and its denial of a motion for an evidentiary hearing for abuse of discretion.

Criminal Law & Procedure > Postconviction Proceedings > Motions for New Trial

HN3[↓] Motions for New Trial

Hearings under *Fed. R. Crim. P. 33* are reserved for unique situations typically involving allegations of jury tampering, prosecutorial misconduct, or third-party confession.

Criminal Law & Procedure > Trials > Examination of Witnesses > Admission of Codefendant Statements

Evidence > ... > Hearsay > Exemptions > Confessions

Constitutional Law > ... > Fundamental Rights > Criminal Process > Right to Confrontation

Criminal Law & Procedure > Trials > Defendant's Rights > Right to Confrontation

HN4[↓] Admission of Codefendant Statements

The *Sixth Amendment's Confrontation Clause* provides a criminal defendant the right to be confronted with the witnesses against him, *U.S. Const. amend. VI*, and to cross-examine these witnesses. In Bruton v. United States, the U.S. Supreme Court held that a defendant's confrontation right is violated when, during a joint trial, the court admits a non-testifying co-defendant's confession that incriminates the defendant. Bruton violations pose a substantial risk that juries, despite any instructions to the contrary, will improperly use a non-testifying co-defendant's inculpatory statements against the defendant—so powerful is this form of evidence. In Bruton, a non-testifying co-defendant's confession facially implicated the defendant in an armed postal robbery. This must be distinguished from a non-testifying co-defendant's admission implicating the defendant in the crime only when taken together with other evidence in the trial. Admitting into evidence the admissions of a non-testifying co-defendant that only implicate the defendant when added to other trial evidence is not a Bruton violation.

Criminal Law & Procedure > Trials > Examination of Witnesses > Admission of Codefendant Statements

Evidence > ... > Hearsay > Exemptions > Confessions

Criminal Law & Procedure > ... > Standards of Review > Plain Error > Definition of Plain Error

Criminal Law & Procedure > ... > Standards of Review > Plain Error > Evidence

HN5[↓] Admission of Codefendant Statements

Where defendant did not object to trial testimony, the appellate court's review of the district court's admission of this testimony is for plain error. Defendant must show (1) an error; (2) that was plain; (3) affecting substantial rights; (4) that seriously affects the fairness, integrity or public reputation of judicial proceedings. A Bruton violation cannot constitute plain error when the court is convinced beyond a reasonable doubt that, in light of other evidence presented at trial, there is no reasonable probability the defendant would be acquitted absent the improper evidence.

Criminal Law & Procedure > Appeals > Procedural Matters > Briefs

Criminal Law & Procedure > ... > Reviewability > Waiver > Triggers of Waivers

HN6[↓] Briefs

Arguments raised for the first time in a reply brief are waived.

Criminal Law & Procedure > ... > Sentencing Guidelines > Adjustments & Enhancements > Aggravating Role

Criminal Law & Procedure > ... > Appeals > Standards of Review > Clear Error Review

HN7[↓] Aggravating Role

The district court's determination that a defendant was a leader or organizer under *U.S. Sentencing Guidelines Manual § 3B1.1(a) (2013)* is a factual finding that the court reviews for clear error.

Criminal Law & Procedure > Sentencing > Sentencing Guidelines > Adjustments & Enhancements

Criminal Law & Procedure > ... > Appeals > Standards of Review > Clear Error Review

HN8 **Adjustments & Enhancements**

A district court's loss calculation under the Sentencing Guidelines is a factual finding reviewed for clear error.

Criminal Law & Procedure > ... > Sentencing Guidelines > Adjustments & Enhancements > Aggravating Role

HN9 **Aggravating Role**

Under the Sentencing Guidelines, the district court must increase a defendant's offense level by 4 levels if the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive. *U.S. Sentencing Guidelines Manual § 3B1.1(a) (2013)*. To trigger the enhancement, the defendant need only have been the organizer, leader, manager, or supervisor of one or more other participants, *§ 3B1.1, cmt., application n.2.*, and need not have supervised or organized all five participants in the criminal enterprise. A participant is a person who is criminally responsible for the commission of the offense, but need not have been convicted. *§ 3B1.1, cmt., application n.1*. The district court is free to count the defendant himself as one participant in the criminal transaction.

Criminal Law & Procedure > Sentencing > Sentencing Guidelines > Adjustments & Enhancements

Evidence > Burdens of Proof > Allocation

Criminal Law & Procedure > Sentencing > Presentence Reports

HN10 **Adjustments & Enhancements**

Under the 2013 Guidelines, the district court must increase a defendant's offense level by 18 levels when the offense involves a loss of more than $2,500,000, but not more than $7,000,000. *U.S. Sentencing Guidelines Manual § 2B1.1(b)(1)(J) (2013)*. The district court must also increase the offense level by four levels if the offense involved 50 or more victims. *§ 2B1.1(b)(2)*. Loss under the Guidelines is the greater of actual loss or intended loss. § 2B1.1, cmt., application n. 3(A). In calculating loss for sentencing enhancement purposes, the district court looks to all criminal acts that were part of the same course of conduct or common scheme or plan as the offense of conviction, including acts beyond the specific offenses of conviction. *§ 1B1.3(a)(2)*. The court need only make a reasonable estimate of the loss. § 2B1.1, cmt., application n. 3(C). It is entitled to rely upon information in the pre-sentence report (PSR) as long as the information bears some indicia of reliability, for example, when it is based on a law-enforcement investigation. The defendant bears the burden of presenting rebuttal evidence to demonstrate that the information in the PSR is inaccurate or materially untrue. Presenting plausible arguments will not carry the burden.

Criminal Law & Procedure > Sentencing > Sentencing Guidelines > Adjustments & Enhancements

HN11 **Adjustments & Enhancements**

In calculating losses for sentencing enhancement purposes, the district court looks to all criminal acts part of the same course of conduct or common scheme or plan as the offense of conviction. *U.S. Sentencing Guidelines Manual § 1B1.3(a)(1)(A)*.

Criminal Law & Procedure > ... > Appeals > Standards of Review > Abuse of Discretion

Criminal Law & Procedure > Sentencing > Restitution

Criminal Law & Procedure > ... > Fraud Against the Government > Mail Fraud > Penalties

Criminal Law &

Procedure > Sentencing > Forfeitures

Evidence > Burdens of Proof > Burden Shifting

HN12[↓] **Abuse of Discretion**

Under the Mandatory Victim Restitution Act, the district court must award restitution to victims directly and proximately harmed by a defendant's offense. *18 U.S.C.S. § 3663A*. Restitution cannot exceed actual losses. When sentencing a defendant for mail fraud, the district court is also obligated to order forfeiture of any proceeds obtained from the fraud. *18 U.S.C.S. § 982(a)(2)*. In making its factual findings for sentencing, a district court may adopt the findings of the pre-sentence report without additional inquiry if those facts have an evidentiary basis with sufficient indicia of reliability and the defendant does not present rebuttal evidence or otherwise demonstrate that the information is materially unreliable. The government bears the burden to establish amounts for restitution and forfeiture, at which point the burden shifts to the defendant to prove the inaccuracy of the loss calculation. Where the defendant has preserved the argument at the district court, the appellate court reviews the quantum of a restitution award for abuse of discretion.

Counsel: For UNITED STATES OF AMERICA, Plaintiff - Appellee: Jason B. Smith, Carmen Castillo Mitchell, Assistant U.S. Attorney, U.S. Attorney's Office, Southern District of Texas, Houston, TX.

For EARLIE DICKERSON, Defendant - Appellant: Brittany Carroll Lacayo, Houston, TX.

Judges: Before HIGGINBOTHAM, DENNIS, and COSTA, Circuit Judges.

Opinion by: PATRICK E. HIGGINBOTHAM

Opinion

[*122] PATRICK E. HIGGINBOTHAM, Circuit Judge:

This appeal arises from defendant Earlie Dickerson's participation in a scheme to defraud insurance companies by submitting claims for fraudulent chiropractic treatments. Dickerson was convicted of conspiracy and several counts of mail fraud. He challenges his conviction and his sentence. We affirm the district court.

I.

Defendant Earlie Dickerson managed the Bryan, Texas office of Sanjoh & Associates, a law firm. The firm specialized in representing clients involved in car accidents. It prepared and submitted claims to insurers on behalf of clients who had been in accidents, then negotiated settlements. The firm's sole attorney, Divine Sanjoh, visited the office every few months to review settlements and receive payment.

At some point **[**2]** between 2004 and 2005, Dickerson and Edward Graham, a Bryan radio disc jockey and wing-shop proprietor, agreed that Graham would open a chiropractic clinic. They agreed that Sanjoh & Associates would refer clients to Graham's clinic, that the clinic would generate bills for chiropractic treatment, the firm would submit them to insurers, and negotiate a settlement. The client, clinic, and firm would divide the proceeds equally.

Dickerson and Graham were not interested in providing effective chiropractic care to Sanjoh & Associates clients. The plan was to generate larger settlements with insurers by fraudulent means. In March 2005, Graham opened the Texas Avenue Chiropractic Clinic immediately next door to the Sanjoh firm's office. Graham invested $15,000 to $16,000 in chiropractic equipment for the clinic, and hired a chiropractor, Olva Ryan, to work there part time. Within months, Ryan left the clinic due to his objections to billing irregularities. He was replaced, and over the next two years Dickerson referred clients **[*123]** to Graham's clinic, insisting that treatment at this particular clinic was necessary for the pursuit of claims. Dickerson openly encouraged clients to visit the clinic **[**3]** as often as possible to increase future settlements. At the clinic, treatment sessions were often carried out by staff untrained and unqualified to practice chiropractic therapy, in some cases risking client injury. Sometimes Dickerson and Graham submitted claims for treatment never done. The clinic would generate "treatment notes" or "daily notes" to evidence appointments or treatments. The Sanjoh firm would then use these notes to support demand letters to insurers. Dickerson would negotiate settlements, dividing the payments between the firm, the clinic and client. In early 2007, after another chiropractor quit, Graham and Dickerson recruited chiropractor Chase Lindsey to continue the scheme, periodically relocating equipment and operations to new clinics. The conspirators also involved Marion Young, a former Sanjoh & Associates client, as well as Brittany Jessie,

who was Dickerson's assistant at the firm. The scheme was successful. From March 2005 to November 2009, Sanjoh & Associates submitted $5,768,070 in "claims" to 55 insurance companies, receiving $2,140,839.27 from settlements.

Alerted by a tip from a nurse at the clinic, the FBI began investigating in late 2008. In November **[**4]** 2012, a grand jury indicted Dickerson, Graham, Lindsey, Young, and Jessie on one count of conspiracy to commit mail fraud and 30 counts of mail fraud, committed between February 2007 and December 2009. Lindsey, Young, and Jessie reached plea agreements. Graham and Dickerson proceeded to trial.

Young was called to the stand as the Government's first witness in a seven-day joint trial. He testified to Dickerson's participation in the fraudulent scheme based on his experience as a four-time client and chiropractic patient, a collaborator with Dickerson in orchestrating staged accidents, and later an organizer of a sham clinic. Questioned about the terms of his cooperation with the Government, Young testified that he was "hoping" to reduce his sentence, but that he had no "understanding that [he would] get less time in prison" by taking the stand.

The Government called FBI Special Agent Hopp to testify. He testified that he interviewed Graham in December 2009, that Graham then admitted (1) that he had engaged in inaccurate billing, reflecting treatments that had not occurred; (2) that he had generated bills for patients his clinic did not treat; (3) that patients referred to him by Sanjoh **[**5]** & Associates did not appear to be injured; (4) that his clinic engaged in improper billing, (5) including overbilling; (6) that he had submitted fraudulent bills to insurers; and (7) that he had brought the issue of overbilling to Dickerson's attention. After hearing the testimony of others, including numerous clients of the clinics, the jury found Dickerson and Graham guilty on all counts of the indictment. Dickerson appeals his conviction.

The presentencing report for Dickerson included information from the United States Attorney's Office, FBI investigators, and National Insurance Crime Bureau investigators. The PSR calculated that in total the conspirators had submitted claims for $5,768,070 to over 50 different insurance companies, resulting in payments totaling $2,140,839.27 in settled claims. The PSR recommended enhancement of the total offense level by four levels due to Dickerson's status as a leader or organizer within a conspiracy involving five or more individuals, by another four levels due to the criminal scheme affecting more than 50 victims, and finally, a further **[*124]** 18 levels due to the $5,768,0700 in "intended losses" attributable to the scheme. The PSR also recommended **[**6]** a restitution order in the amount of $1,192,382.94, equivalent to "actual losses" resulting from the offenses of conviction. The district court adopted the PSR's recommendations over Dickerson's objections, sentencing him to 168 months' imprisonment and ordering restitution of $1,192,382.94, to be paid jointly and severally with his co-conspirators Jessie, Young, and Lindsey, and forfeiture in the same amount[1]

On October 13, 2016, Dickerson filed a pro se motion seeking a new trial on the basis of new evidence, attaching an affidavit of Sylinna Johnson, who swore that before Dickerson's trial, Young had told her about an agreement with the Government capping his sentence at five years. As part of this agreement, "if [Young] . . . did not testify against [Dickerson] it would invalidate [his] plea deal." Johnson only shared Young's description with Dickerson after the conclusion of the trial. Dickerson had persuaded Johnson to record Young describing his agreement with the Government, which she did. Johnson also brought to Dickerson's attention a Facebook post in which Young described a plea deal for no more than five years. Both the Facebook post and Johnson's recordings—attached to the **[**7]** Motion—describe a deal with the Government for a five-year sentence, though the speaker in the recording also concedes that the length of the sentence ultimately remained at the discretion of the sentencing court: "the prosecutor . . . he can't even offer you nothing, he can only recommend it . . . it's up to the judge—the judge and the Guidelines." Dickerson argued that his new evidence—affidavit, recordings, and Facebook post—showed that Young had perjured himself; exposure of perjury and Young's incentives to cooperate with the prosecution would have impeached his testimony.

Dickerson requested an evidentiary hearing to examine Young's agreement with the prosecution.[2] The district court denied Dickerson's motion, persuaded that

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[1] When Graham was later sentenced, the district court ordered the same restitution jointly and severally with his four co-conspirators.

[2] Dickerson also sought a writ of habeas corpus *ad testificandum* to secure Young's presence at an evidentiary hearing.

Young's plea agreement included no five-year cap on his sentence—that it could not, because the length of the sentence remained at the court's discretion up to a statutory maximum. The new evidence, it held, failed to demonstrate that Young's trial testimony was false. Dickerson appealed.[3]

II.

Dickerson's appeal raises four groups of issues. He argues that the district court erred in denying his motion for a new trial and request for an evidentiary **[**8]** hearing. He also challenges the district court's admission of Special Agent Hopp's testimony regarding the admissions of co-defendant Graham, assertedly in violation of the *Confrontation Clause of the Sixth Amendment*. He then challenges his sentence, arguing the district court misapplied the Sentencing Guidelines in enhancing his offense level, and that the restitution and forfeiture **[*125]** orders were unsubstantiated and improper.

A.

Dickerson challenges the district court's denial of his motion for a new trial on the basis of new evidence. *HN2*[↑] Under *Rule 33*, a defendant can move for vacatur of any judgment and for a new trial on the basis of new evidence.[4] Such motions are disfavored and reviewed with great caution.[5] To succeed they must meet the "*Berry* rule conditions": first, the evidence must be newly discovered, unknown to the defendant at the time of trial; second, the failure to detect the evidence must not have been due to a lack of diligence; third, the evidence cannot be merely cumulative or impeaching; fourth, the evidence must be material; and, fifth, if the evidence were introduced at a new trial, the probable result must be an acquittal.[6] Where new evidence indicates that the Government knowingly used false testimony—a *Napue* violation **[**9]** [7]—the fifth condition is not required.[8] We review the district court's denial of a motion for new trial and its denial of a motion for an evidentiary hearing for abuse of discretion.[9]

Dickerson's argument is unclear. At times, it is that Johnson's conversations with Young and Young's Facebook post expose a Government agreement to cap Young's sentence at five years. While the length of Young's sentence was determined by the district court, not the Government, the recording, purportedly of Young, acknowledges this reality. Construed liberally, Dickerson's motion might argue that, in consideration of Young's testimony, the Government would recommend a five-year sentence. Young's plea agreement did provide that the Government would seek a downward departure if it was satisfied with Young's cooperation, but with no mention of a recommended five years. Dickerson replies that the Government ultimately did recommend a five-year sentence when the district court sentenced Young. Yet such a deal—testimony for a recommendation—in any event would not carry his motion.

Dickerson's new evidence contravenes no element of the Government's case; it speaks only to the credibility of Young's testimony. **[**10]** As Dickerson concedes, it is impeachment evidence, failing the third *Berry* rule condition. Young's plea agreement expressly provided that the Government would seek a downward departure if satisfied with Young's cooperation. The new evidence adds nothing of moment.

HN3[↑] Hearings under *Rule 33* are reserved for "unique situations" typically involving allegations of jury tampering, prosecutorial misconduct, or third-party confession.[10] There was no need for an evidentiary

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[3] On September 19, 2017, we granted an unopposed motion to consolidate Dickerson's appeal of the denial of his motion for a new trial (case number 17-20161) and his appeal of the judgment (case number 17-20270). The United States waived the timeliness requirements with respect to the latter appeal. *HN1*[↑] ***Federal Rule of Appellate Procedure 4(b)***'s time limit for criminal appeals is not jurisdictional, and can be waived. *United States v. Martinez, 496 F.3d 387, 388 (5th Cir. 2007)*.

[4] *Fed. R. Crim. P. 33*.

[5] *United States v. Wall, 389 F.3d 457, 467 (5th Cir. 2004)*.

[6] *Id. at 467* (listing five *Berry* rule factors); *id. at 473*.

[7] *Id. at 472*.

[8] *Id.*

[9] *Id. at 465* ("A district court's decision to grant or deny a motion for new trial pursuant to *Rule 33* is reviewed for an abuse of discretion."); *United States v. Hamilton, 559 F.2d 1370, 1375 (5th Cir. 1977)*. (reviewing denial of hearing for abuse of discretion).

[10] *Hamilton, 559 F.2d at 1375*.

hearing to consider an asserted *Napue* violation, as it could not have changed the outcome: on either track of the *Berry* rule, Dickerson's motion fails. The district court did not abuse its discretion **[*126]** in denying the motion for a new trial and evidentiary hearing.

B.

We turn now to Dickerson's challenge to the district court's admission of statements of his non-testifying co-defendant Graham. *HN4*[↑] The *Sixth Amendment's Confrontation Clause* provides a criminal defendant "the right . . . to be confronted with the witnesses against him,"[11] and to cross-examine these witnesses.[12] In *Bruton v. United States*, the Supreme Court held that a defendant's confrontation right is violated when, during a joint trial, the court admits a non-testifying co-defendant's confession that incriminates the **[**11]** defendant.[13] *Bruton* violations pose a "substantial risk that juries, despite any instructions to the contrary, will improperly use a non-testifying co-defendant's inculpatory statements against the defendant—so powerful is this form of evidence."[14] In *Bruton*, a non-testifying co-defendant's confession facially implicated the defendant in an armed postal robbery.[15] This must be distinguished from a non-testifying co-defendant's admission implicating the defendant in the crime only when taken together with other evidence in the trial.[16] Admitting into evidence the admissions of a non-testifying co-defendant that only implicate the defendant when added to other trial evidence is not a *Bruton* violation.[17]

HN5[↑] Nor did Dickerson object to the trial testimony of Special Agent Hopp. Our review of the court's admission of this testimony is for plain error.[18] Dickerson must show (1) an error; (2) that was plain; (3) affecting substantial rights; (4) that seriously affects the fairness, integrity or public reputation of judicial proceedings.[19] A *Bruton* violation cannot constitute plain error when the court is "convinced beyond a reasonable doubt" that, in light of other evidence presented at trial, **[**12]** there is no reasonable probability the defendant would be acquitted absent the improper evidence.[20]

Dickerson challenges seven statements in Special Agent Hopp's testimony, each regarding Graham's admissions. The first six of these statements do not facially implicate Dickerson, and speak only to Graham's involvement in fraudulent activity.[21] In the seventh statement, Hopp described **[*127]** Graham's admission that he had "brought . . . to the attention of Earlie Dickerson" "a problem, that patients weren't getting their treatments[,] that [Graham] was aware that there was billing that was not reflecting that that was going out." This statement does not facially implicate Dickerson in criminal activity. It rather describes him learning information that should have alerted him to fraudulent conduct. The other evidence against Dickerson was overwhelming. Olva Ryan, chiropractor at Graham's first clinic, testified to his observation of fraud and quitting as a result of its persistence. Young provided a detailed account of Dickerson's involvement with the chiropractic clinics' operation and billing practices, speaking both as a four-time client and a later co-conspirator. Numerous other clients testified **[**13]** to fraudulent treatments, submission of false claims, and Dickerson's involvement in the scheme. We are "convinced beyond a reasonable doubt" there is no reasonable probability the jury would

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[11] ***U.S. Const. amend. VI.***

[12] *Richardson v. Marsh, 481 U.S. 200, 206, 107 S. Ct. 1702, 95 L. Ed. 2d 176 (1987).*

[13] *United States v. Bruton, 391 U.S. 123, 126, 88 S. Ct. 1620, 20 L. Ed. 2d 476 (1968).*

[14] *United States v. Powell, 732 F.3d 361, 378 (5th Cir. 2013).*

[15] *Bruton, 391 U.S. at 124.*

[16] *Richardson, 481 U.S. at 211 (1987).*

[17] *Id.*; *see also United States v. Morales, 477 F.2d 1309, 1314 n.13 (5th Cir. 1973)* (holding that admission of a statement was not a *Bruton* violation where it "does not directly inculpate anyone").

[18] *United States v. Medina-Anicacio, 325 F.3d 638, 643 (5th Cir. 2003).*

[19] *United States v. Garza, 429 F.3d 165, 169 (5th Cir. 2005).*

[20] *Powell, 732 F.3d at 379.*

[21] Dickerson challenges three additional statements from Hopp's testimony for the first time in his reply brief. Arguments regarding these statements are waived. *United States v. Jackson, 426 F.3d 301, 304 n.2 (5th Cir. 2005)* *HN6*[↑] ("Arguments raised for the first time in a reply brief . . . are waived."). Even if they had not been waived, assuming they were *Bruton* violations, the errors would have been harmless given the ample evidence supporting the conviction.

have acquitted Dickerson in the statement's absence. There was no error, plain or otherwise.

C.

Dickerson argues that the district court erred in applying the Guidelines. First, Dickerson challenges the district court's decision to enhance his offense level on the basis of his role as an organizer of criminal activity involving five or more participants. Second, Dickerson argues that the district court erred in enhancing his offense level by 18 and 4 levels on the basis of its calculation that his fraud involved a loss of more than $2.5 million and 50 or more victims. Dickerson raised these issues at sentencing, and we review the factual findings for clear error.[22]

1.

HN9[↑] Under the Guidelines, the district court must increase a defendant's offense level by 4 levels "[i]f the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive."[23] To trigger the enhancement, the defendant need only "have been the organizer, leader, manager, or **[**14]** supervisor of one or more other participants,"[24] and need not have supervised or organized all five participants in the criminal enterprise. A "participant" is a "person who is criminally responsible for the commission of the offense, but need not have been convicted."[25] The district court is "free to count the defendant himself as one 'participant' in the criminal transaction."[26]

Here, the evidence supports Dickerson's role as organizer. He recruited accomplices and organized a series of sham chiropractic clinics; orchestrated clients' "treatments" at these clinics; arranged the submission of false insurance claims on their behalf; and negotiated their settlement. His scheme involved at least five participants, some of whom he supervised. First, the district court was free to count **[*128]** Dickerson as one participant in the criminal transaction. Second, Dickerson supervised Brittany Jessie, his assistant at the Sanjoh firm, who assisted in preparation of fraudulent demand letters. Third, Lindsey worked as the chiropractic practitioner, aware that he was facilitating fraudulent billing. Fourth, Young opened a clinic at Dickerson's request and otherwise advanced the scheme via referrals and **[**15]** staging of accidents. Fifth, Graham participated, establishing clinics and engaging in fraudulent billing. We find no error in the district court's enhancement on the basis of Dickerson's role as organizer of a criminal enterprise of five participants.

2.

HN10[↑] Under the 2013 Guidelines, the district court must increase a defendant's offense level by 18 levels when the offense involves a loss of more than $2,500,000, but not more than $7,000,000.[27] The district court must also increase the offense level by four levels if the offense involved 50 or more victims.[28] Loss under the Guidelines "is the greater of actual loss or intended loss."[29] In calculating loss for sentencing enhancement purposes, the district court looks to all criminal acts that were "part of the same course of conduct or common scheme or plan as the offense of conviction," including acts beyond the specific offenses of conviction.[30] "The court need only make a reasonable estimate of the loss."[31] It is entitled to rely upon information in the PSR as long as the information bears

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[22] United States v. Cabrera, 288 F.3d 163, 173 (5th Cir. 2002) HN7[↑] ("The district court's determination that a defendant was a leader or organizer under subsection 3B1.1(a) is a factual finding that this court reviews for clear error."); United States v. Scher, 601 F.3d 408, 412 (5th Cir. 2010) HN8[↑] ("A district court's loss calculation under the Sentencing Guidelines is a factual finding reviewed for clear error."); United States v. Brooks, 681 F.3d 678, 715 (5th Cir. 2012) (reviewing district court's finding that scheme involved fifty or more victims for clear error).

[23] U.S.S.G. § 3B1.1(a) (2013).

[24] Id. § 3B1.1, cmt. n.2.

[25] Id. § 3B1.1, cmt. n.1.

[26] United States v. Barbontin, 907 F.2d 1494, 1498 (5th Cir. 1990).

[27] **U.S.S.G. § 2B1.1(b)(1)(J)** (2013).

[28] Id. **§ 2B1.1(b)(2)**.

[29] Id. **§ 2B1.1, cmt.3(A)**.

[30] Id. § 1B1.3(a)(2).

[31] Id. **§ 2B1.1 cmt. 3(C)**.

some indicia of reliability,[32] for example, when it is based on a law-enforcement investigation.[33] "The defendant bears the burden of presenting rebuttal evidence **[**16]** to demonstrate that the information in the PSR is inaccurate or materially untrue."[34] Presenting plausible arguments will not carry the burden.[35]

The district court's loss calculation is a "reasonable estimate." The district court relied on the PSR's quantification of intended losses, specifically that between 2007 and 2009 Dickerson submitted $3,400,950 in claims, that prior to the acts for which Dickerson was convicted, from 2005 to 2007 he submitted another $2,367,120 in claims as part of the same criminal scheme. The PSR stated that in total the scheme had intended losses of $5,768,070, in connection with over fifty victims. These figures had the indicia of reliability, as they were adopted from the FBI's direct investigation of the conspiracy, as well as the FBI's review of information gathered by investigators at the National Insurance Crime Bureau.[36]

Dickerson challenges the enhancements in two ways. First, he argues that the loss calculation and enumeration of victims improperly included losses and victims associated with acts beyond the offenses of conviction. This contention fails. ***HN11***[↑] In calculating losses for sentencing enhancement purposes, the district court looks to **[**17]** all criminal acts "part of the same course of conduct or common scheme or plan as the **[*129]** offense of conviction."[37] Dickerson also argues the PSR posits an inaccurate equivalence between intended losses and the totality of conspirators' submitted claims. Dickerson argues that some portion of the claims were unconnected to fraudulent conduct and should not have been counted as losses attributable to fraud. But this plausible argument was not supported by evidence.[38] Dickerson provides none to rebut the PSR. We find no error in the district court's enhancement on the basis of loss and number of victims.

3.

Addressing both of the district court's enhancement determinations, Dickerson raises differences between his and his co-defendant Graham's cases. While the district court found that Dickerson's criminal activity involved at least five participants, including Dickerson and Graham, when sentencing Graham two months later, it also found that Graham's criminal activity involved fewer than five people, refusing to count Dickerson and Graham as participants. Similarly, the district court was not evenhanded in quantifying the total loss for enhancement purposes: with Dickerson, **[**18]** it calculated an intended loss of $5,768,070, in connection with over fifty victims; with Graham, it found a lower loss figure, and fewer than fifty victims. The difficulty with Dickerson's argument is that any mistake here redounded to the benefit of a co-defendant, and did not injure him. The differences between the two sentencings do not change our finding of no error in the district court's application of the Guidelines.

D.

Dickerson finally challenges the district court's restitution and forfeiture orders, repeating an objection made at his sentencing that the orders were based on insufficient evidence, and should have accounted for legitimate claims intertwined with the fraudulent ones. ***HN12***[↑] Under the *Mandatory Victim Restitution Act*, the district court must award restitution to victims "directly and proximately harmed" by a defendant's offense.[39] Restitution cannot exceed actual losses.[40] When sentencing a defendant for mail fraud, the district court is also obligated to order forfeiture of any proceeds

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[32] *Scher, 601 F.3d at 413*.

[33] *United States v. Vela, 927 F.2d 197, 201 (5th Cir. 1991)*.

[34] *Scher, 601 F.3d at 413*.

[35] *Id. at 413-14*.

[36] *Vela, 927 F.2d at 201*.

[37] *U.S.S.G. § 1B1.3(a)(1)(A)*. Dickerson's reliance on *United State v. Benns* is mistaken. *Benns* stands for the requirement that actual losses must be tied to criminal—as opposed to non-criminal—acts within a common scheme. *740 F.3d 370, 375 (5th Cir. 2014)* ("Only conduct that is criminal may be used as 'relevant conduct' to determine a defendant's offense level").

[38] *Scher, 601 F.3d at 413-14*.

[39] *18 U.S.C. § 3663A*.

[40] *United States v. Sharma, 703 F.3d 318, 323 (5th Cir. 2012)*.

obtained from the fraud.[41] "In making its factual findings for sentencing, a district court may adopt the findings of the PSR without additional inquiry if those facts have an evidentiary **[**19]** basis with sufficient indicia of reliability and the defendant does not present rebuttal evidence or otherwise demonstrate that the information is materially unreliable."[42] The Government bears the burden to establish amounts for restitution and forfeiture,[43] at **[*130]** which point the burden shifts to the defendant to prove the inaccuracy of the loss calculation.[44] Where the defendant has preserved the argument at the district court, we review the quantum of a restitution award for abuse of discretion.[45]

The district court calculated restitution of $1,192,382.94 relying on the PSR's analysis of actual losses, and ordered forfeiture in the same amount. The PSR's actual loss analysis was presented in a systematic and detailed set of tables, relating the claims submitted by conspirators to individual insurers and the corresponding settlements paid.[46] As with other information in the PSR, the inputs were acquired from the FBI's case file and from victim insurers. The PSR's methodical reconstruction of the numbers involved in the offenses of conviction bears the requisite indicia of reliability. Dickerson's argument about hypothetical bona fide treatments provides no evidence to cast doubt on the PSR's analysis. **[**20]** The Government established actual losses, and Dickerson has not moved his burden to contravene its analysis. We find no abuse of discretion in the district court's restitution and forfeiture orders.

III.

For the reasons stated above, we AFFIRM the district court.

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[41] *18 U.S.C. § 982(a)(2)*.

[42] *United States v. Valles, 484 F.3d 745, 759 (5th Cir. 2007)*; *Fed. R. Crim. P. 32.2(b)(1)* (requiring reliance on record evidence and or other relevant and reliable information in issuing forfeiture order).

[43] *Sharma, 703 F.3d at 325*; *Fed. R. Crim. P. 32.2(b)(1)* (requiring the Government to "establish[] the requisite nexus between the property and the offense").

[44] *Valles, 484 F.3d at 759-60*; *Sharma, 703 F.3d at 325-26*.

[45] *United States v. De Leon, 728 F.3d 500, 507 (5th Cir. 2013)*.

[46] The PSR includes an error, listing at places recommended restitution sums that differ by $500. The error does not undermine the reliability of the PSR or its underlying data.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-20270

Consolidated with: 17-20161

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

EARLIE DICKERSON,

Defendant - Appellant

Appeals from the United States District Court
for the Southern District of Texas

ON PETITION FOR REHEARING EN BANC

(Opinion November 16, 2018, 5 Cir., _____, _____ F.3d _____)

Before HIGGINBOTHAM, DENNIS, and COSTA, Circuit Judges.

PER CURIAM:

(✓) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

( ) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

Patrick Higginbotham

UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	
	§	
VS.	§	CRIMINAL NO. 4:12-CR-732-2
	§	
EARLIE DICKERSON	§	

ORDER

Earlie Dickerson has filed a motion to vacate his sentence. The Court has scheduled an evidentiary hearing on this motion.

Dickerson has also filed a motion for a new trial pursuant to Rule 33 of the Federal Rules of Criminal Procedure, and a motion for a writ of habeas corpus *ad testificandum* to secure the presence of a witness relevant to his Rule 33 motion at the evidentiary hearing. The basis of Dickerson's Rule 33 motion is Dickerson's contention that newly discovered evidence shows that a key witness against him lied under oath about having a sentencing agreement with the government. The witness, Marion Young, testified that he hoped his cooperation would result in a shorter sentence. Citing an audio recording of Young and a Facebook post by Young, Dickerson claims that Young actually had an agreement for a five year sentence.

The record, and established sentencing procedures, dictate against granting relief. Young's plea agreement, which appears as Docket Entry # 92 in this case, clearly states that Young faces a statutory sentence of up to 20 years on each of the two counts to which he agreed to plead guilty. Young also specifically acknowledged that the Court had authority to impose any sentence up to the statutory maximum. The government agreed to seek a downward departure if it was satisfied that Young provided substantial cooperation. Dickerson points to nothing curtailing the Court's discretion in imposing sentence on Young.

Crediting Dickerson's characterization of his newly discovered evidence, Dickerson nonetheless fails to demonstrate that Young's trial concerning his plea agreement testimony was false. Young's agreement with the government contains no provision capping his sentence at five years, and Dickerson points to nothing preventing the Court from imposing a longer sentence if the Court decided that such a sentence was warranted.

For the foregoing reasons, it is ORDERED that Dickerson's third motion under rule 33 (DKT. No. 356), and Dickerson's motion for a writ of habeas corpus *ad testificandum* (Dkt. No. 369) are DENIED.

SIGNED on this 27th day of February, 2017.

Kenneth M. Hoyt
United States District Judge

AO 245B (Rev. 09/08) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

Southern District of Texas
Holding Session in Houston

UNITED STATES OF AMERICA
V.
EARLIE DICKERSON

JUDGMENT IN A CRIMINAL CASE

CASE NUMBER: 4:12CR00732-002
USM NUMBER: 08369-380

☐ See Additional Aliases.

Katherine Scardino
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

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

☒ was found guilty on count(s) 1 through 31 on October 2, 2013. 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. § 1349	Conspiracy to commit mail fraud	12/31/2009	1
18 U.S.C. § 1341	Mail fraud	12/04/2007	2-4
18 U.S.C. § 1341	Mail fraud	12/13/2007	5
18 U.S.C. § 1341	Mail fraud	12/28/2007	6

☐ See Additional Counts of Conviction.

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the .

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

September 15, 2014
Date of Imposition of Judgment

Signature of Judge

KENNETH M. HOYT
UNITED STATES DISTRICT JUDGE
Name and Title of Judge

9-22-14
Date

MSB JGW
17-20161.359

DEFENDANT: **EARLIE DICKERSON**
CASE NUMBER: **4:12CR00732-002**

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 1341	Mail fraud	01/14/2008	7-9
18 U.S.C. § 1341	Mail fraud	02/22/2008	10-11
18 U.S.C. § 1341	Mail fraud	04/04/2008	12
18 U.S.C. § 1341	Mail fraud	04/28/2008	13
18 U.S.C. § 1341	Mail fraud	06/03/2008	14
18 U.S.C. § 1341	Mail fraud	07/31/2008	15-16
18 U.S.C. § 1341	Mail fraud	09/26/2008	17-20
18 U.S.C. § 1341	Mail fraud	10/23/2008	21-22
18 U.S.C. § 1341	Mail fraud	12/19/2008	23-24
18 U.S.C. § 1341	Mail fraud	02/12/2009	25-26
18 U.S.C. § 1341	Mail fraud	09/15/2009	27-29
18 U.S.C. § 1341	Mail fraud	12/14/2009	30-31

☐ See Additional Counts of Conviction.

17-20161.360

DEFENDANT: **EARLIE DICKERSON**
CASE NUMBER: **4:12CR00732-002**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 168 months.
This term consists of ONE HUNDRED AND SIXTY-EIGHT (168) MONTHS as to each of Counts 1-31, all such terms to run concurrently, for a total of ONE HUNDRED AND SIXTY-EIGHT (168) MONTHS.

☐ See Additional Imprisonment Terms.

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

☒ 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

17-20161.361

DEFENDANT: **EARLIE DICKERSON**
CASE NUMBER: **4:12CR00732-002**

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: 3 years
This term consists of THREE (3) YEARS as to each of Counts 1-31, all such terms to run concurrently, for a total of THREE (3) YEARS.

☐ See Additional Supervised Release Terms.

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. *(for offenses committed on or after September 13, 1994)*

☐ 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 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 registration in which he or she resides, works, is a student, or was convicted of a qualifying offense. (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 standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

☒ See Special 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 and shall submit a truthful and complete written report within the first five days of each month;
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.

17-20161.362

DEFENDANT: **EARLIE DICKERSON**
CASE NUMBER: **4:12CR00732-002**

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall provide the probation officer access to any requested financial information. If a fine or restitution amount has been imposed, the defendant is prohibited from incurring new credit charges or opening additional lines of credit without approval of the probation officer.

The defendant shall submit to periodic urine surveillance and/or breath, saliva, and skin tests for the detection of drug abuse as directed by the probation officer. The defendant will incur costs associated with such detection efforts based on ability to pay as determined by the probation officer.

☐ See Additional Special Conditions of Supervision.

DEFENDANT: **EARLIE DICKERSON**
CASE NUMBER: **4:12CR00732-002**

CRIMINAL MONETARY PENALTIES

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

	Assessment	Fine	Restitution
TOTALS	$3,100.00		$1,192,382.94

A $100 special assessment is ordered as to each of Counts 1 through 31, for a total of $3,100.

☐ See Additional Terms for Criminal Monetary Penalties

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

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

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

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
SEE ATTACHED		$1,192,382.94	

☐ See Additional Restitution Payees.

TOTALS	$0.00	$1,192,382.94

☐ Restitution amount ordered pursuant to plea agreement $ _____

☒ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

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

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

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

☐ Based on the Government's motion, the Court finds that reasonable efforts to collect the special assessment are not likely to be effective. Therefore, the assessment is hereby remitted.

* 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.

17-20161.364

DEFENDANT: **EARLIE DICKERSON**
CASE NUMBER: **4:12CR00732-002**

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 $1,195,482.94 due immediately, balance due
- ☐ not later than _____, or
- ☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below; or

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

C ☐ Payment in equal _____ installments of _____ over a period of _____, to commence _____ days after the date of this judgment; or

D ☐ Payment in equal _____ installments of _____ over a period of _____, to commence _____ days after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ days after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☒ Special instructions regarding the payment of criminal monetary penalties:

Payable to: Clerk, U.S. District Court, Attn: Finance, P.O. Box 61010, Houston, TX 77208

The defendant's restitution obligation shall not be affected by any payments that may be made by other defendants in this case, except that no further payment shall be required after the sum of the amounts paid by all defendants has fully covered all the compensable losses.

* In reference to the amount below, the Court-ordered restitution shall be joint and several with any co-defendant who has been or will be ordered to pay restitution under this docket number.

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

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
(SEE ABOVE) Earlie Dickerson 4:12CR00732-002	$1,192,382.94	$1,192,382.84	
Chase Lindsey, D.C. 4:12CR00732-001	$1,192,382.94	$1,192,382.94	
Marion Young 4:12CR00732-003	$1,192,382.94	$1,192,382.94	

☒ See Additional Defendants and Co-Defendants Held Joint and Several.

☐ 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:
As set forth in the Preliminary Order of Forfeiture executed by this Court on September 15, 2014.

☐ See Additional Forfeited Property.

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.

17-20161.365

DEFENDANT: **EARLIE DICKERSON**
CASE NUMBER: **4:12CR00732-002**

ADDITIONAL DEFENDANTS AND CO-DEFENDANTS HELD JOINT AND SEVERAL

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
Brittany Jessie 4:12CR00732-005 (SEE ALSO ATTACHMENT)	$1,022,316.58	$1,022,316.58	