

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

February 4, 2020

No. 19-10065

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

ASTON CHARLES BUTLER,

Defendant - Appellant

Appeal from the United States District Court
for the Northern District of Texas

Before KING, COSTA, and HO, Circuit Judges.

GREGG COSTA, Circuit Judge:

Added to the statute books in 1934 just a few months after Bonnie and Clyde's crime spree came to an end, bank robbery is now one of the classic federal crimes. The first section of the "Bank robbery and incidental crimes" statute covers what most would think of as bank robbery—using force, violence, or intimidation to steal property from a bank. 18 U.S.C. § 2113(a). Less well known is that the same section of the statute also makes it a crime to burglarize a bank—that is, to enter a bank with the intent to commit a felony or larceny inside the bank. *Id.* This appeal requires us to decide whether bank robbery and bank burglary are separate offenses or only different means of committing the same offense.

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The question no doubt sounds academic. But the answers to academic questions have serious consequences under the categorial approach that governs much of modern federal sentencing. So it is with this question about the bank robbery statute, which determines whether a defendant should be sentenced under the Armed Career Criminal Act.

I.

Aston Charles Butler pleaded guilty to being a felon in possession of a firearm. *See* 18 U.S.C. § 922(g)(1). Although that crime ordinarily carries a maximum penalty of ten years in prison, *id.* § 924(a)(2), the Armed Career Criminal Act imposes a fifteen-year minimum when the defendant has three prior convictions for violent felonies or serious drug offenses, *id.* § 924(e)(1). Butler had four convictions for federal bank robbery and two convictions for Texas robbery. The sentencing court concluded that Butler's federal bank robbery convictions constituted violent felonies. That qualified Butler as an armed career criminal, so the court sentenced him to the fifteen-year minimum sentence.

II.

Butler's appeal turns on whether the federal bank robbery statute describes two different offenses or two different means of committing the same offense. Some background on the categorical approach we use to determine if a crime counts as a violent felony is necessary to understand why this distinction matters.

The Armed Career Criminal Act provides multiple definitions for "violent felony." The relevant definition for this appeal is: any crime punishable by more than one year of imprisonment that "has as an element the use, attempted use, or threatened use of physical force against the person of another." *Id.* § 924(e)(2)(B)(i). That definition is called the "elements clause." *Welch v. United States*, 136 S. Ct. 1257, 1261 (2016).

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The analysis a court applies to determine if a conviction satisfies the elements clause depends on whether the offense statute is divisible. *United States v. Burris*, 920 F.3d 942, 947 (5th Cir. 2019). An indivisible statute lays out “a single . . . set of elements to define a single crime.” *Mathis v. United States*, 136 S. Ct. 2243, 2248 (2016). We evaluate indivisible statutes using the categorical approach, assessing whether the elements of the crime include the use of force. *Burris*, 920 F.3d at 947. Our focus on the elements means that we “ignor[e] the particular facts of the case.” *Mathis*, 136 S. Ct. at 2248. Put differently, we ask: Does the defendant’s conviction for this crime mean he must have used, attempted to use, or threatened to use physical force to commit it?

A divisible statute, by contrast, “list[s] elements in the alternative, and thereby define[s] multiple crimes.” *Id.* at 2249. When a statute describes multiple crimes, the modified categorical approach permits courts to “look[] to a limited class of documents (for example, the indictment, jury instructions, or plea agreement and colloquy)” to figure out which of the statute’s crimes the defendant was convicted of. *Id.* Once the court has narrowed down the crime of conviction to a specific offense, it then applies the same analysis as the categorical approach, asking whether the elements of that specific crime include the use of force. *Burris*, 920 F.3d at 947.

The modified approach makes a difference when a statute describes one offense that qualifies as a violent felony and another that does not. Any doubt about whether a defendant committed a violent felony allows him to avoid the enhanced punishment for armed career criminals because the categorical approach requires “certainty.” *Shepard v. United States*, 544 U.S. 13, 21 (2005); *see also Taylor v. United States*, 495 U.S. 575, 602 (1990). But the modified approach provides that certainty if it can narrow the defendant’s conviction to a single qualifying offense. So it is invariably the government

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that argues a statute is divisible and subject to narrowing via the modified approach.

That is the situation here. The government asserts that section 2113(a) describes two separate offenses. The statute reads:

Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another, or obtains or attempts to obtain by extortion any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association; or

Whoever enters or attempts to enter any bank, credit union, or any savings and loan association, or any building used in whole or in part as a bank, credit union, or as a savings and loan association, with intent to commit in such bank, credit union, or in such savings and loan association, or building, or part thereof, so used, any felony affecting such bank, credit union, or such savings and loan association and in violation of any statute of the United States, or any larceny

18 U.S.C. § 2113(a).

If these paragraphs describe separate crimes, then the indictment charging Butler's bank robberies can be used to narrow his offense to the first paragraph. That indictment alleges that each of his four bank robberies involved taking property from a bank employee "by force, violence and intimidation." Bank robbery by intimidation is a crime of violence, *United States v. Brewer*, 848 F.3d 711, 716 (5th Cir. 2017), and a crime of violence is also a violent felony, *United States v. Moore*, 635 F.3d 774, 776 (5th Cir. 2011) (per curiam). So if the modified categorical approach applies, then Butler has at least three violent felonies and he was properly sentenced to fifteen years.

But if section 2113(a) describes a single offense, and its two paragraphs just set out two different means of committing that offense, then Butler contends he is not an armed career criminal. That is because, he maintains,

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one method of violating the statute—the unlawful entry method—does not require the use of force. If he is right, then a conviction under section 2113(a) does not necessarily mean that the defendant used physical force when he committed the crime. And that would mean four of Butler’s six felony convictions would not be violent felonies, allowing him to escape the armed career criminal classification and its minimum sentence.

III.

We reject the first link in Butler’s argument and determine that section 2113(a) is divisible.¹ Recall that an indivisible statute lays out “a single . . . set of elements to define a single crime” while a divisible statute “list[s] elements in the alternative, and thereby define[s] multiple crimes.” *Mathis*, 136 S. Ct. at 2248–49. Distinguishing between the two is sometimes difficult because statutes often use alternative language not just to spell out different elements but also to provide “various factual means of committing a single element.” *Id.* at 2249. A statute that merely articulates alternative means of committing the same crime is indivisible. A statute that sets out alternative elements creates different crimes and is thus divisible.

How can we tell the difference between elements and means? An element is a “constituent part[]’ of a crime’s legal definition” that a jury must find to be true to convict the defendant. *Id.* at 2248 (quoting *Elements of Crime*, BLACK’S LAW DICTIONARY (10th ed. 2014)). For example, imagine a statute “that makes it a crime (1) to take (2) from a person (3) through force or the threat of force (4) property (5) belonging to a bank.” *Richardson v. United States*, 526 U.S. 813, 817 (1999). Each numbered prerequisite is an element—something the government must prove to secure a conviction. *Id.* Means, by contrast, are different ways a defendant can satisfy an element. *See id.* A

¹ We thus need not decide if the “unlawful entry” paragraph describes a violent felony.

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defendant could meet the hypothetical statute's third element, for instance, by using a knife or a gun. *Id.* The government does not need to prove particular means. *See id.* As long as each juror agrees that the defendant used "force or the threat of force," a jury could still convict even if it disagrees as to how he did so. *Id.*

Now to the question Butler's case presents: Does section 2113(a) outline two different means of committing the same crime (making it indivisible) or two different crimes with their own sets of elements (making it divisible)?

We first look to the text and structure of the statute. The intimidation language and the unlawful entry language appear in separate paragraphs, separated by a disjunctive "or." 18 U.S.C. § 2113(a). Each paragraph also uses the word "or" internally. One example from the intimidation paragraph is its description of the object of the crime as "any property **or** money **or** any other thing of value." *Id.* (emphasis added). An example from the unlawful entry paragraph is its requirement that the defendant have the "intent to commit . . . any felony . . . **or** any larceny." *Id.* (emphasis added). And an example common to both paragraphs is language limiting their scope to situations when the victim is a "bank, credit union, **or** . . . savings and loan association." *Id.* (emphasis added).

Comparing the statute's use of "or" between the two paragraphs to its use of the same word within each paragraph demonstrates that the paragraphs are meant to be different offenses with their own elements. The paragraphs use "or" internally to set out alternative means. They do not delineate different crimes for stealing computers as opposed to cash reserves or for robbing a bank as opposed to a credit union. To illustrate the point differently, a defendant commits an offense under the first paragraph only if he takes something (an element), and that thing can be property, money, or anything else that has value (the means).

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But the “or” between paragraphs—one preceded by a semicolon rather than commas—represents a sharper divide. Indeed, the typical means-versus-elements inquiry focuses on disjunctive words within a single sentence. The Iowa burglary statute in *Mathis* is an example. That law forbade unlawful entry into “any building, structure, [or] land, water, or air vehicle,” with those various locations serving only as different means of committing the same offense. *Mathis*, 136 S. Ct. at 2250 (alteration in original) (emphasis omitted) (quoting IOWA CODE § 702.12 (2013)); *see also*, e.g., *Gomez-Perez v. Lynch*, 829 F.3d 323, 328 (5th Cir. 2016) (holding that the Texas misdemeanor assault statute lists different means of committing the same offense when it describes “intentionally, knowingly, or recklessly” causing bodily injury). Butler does not identify any case holding that separate paragraphs of a statute merely describe different means of the same offense. That is not surprising. In writing, a paragraph break often signals that a new idea is coming. It is likewise logical to conclude that a paragraph break in a statute signals a new offense.

The different conduct each paragraph proscribes confirms what grammar suggests. The two paragraphs evoke two different traditional crimes. In criminalizing the taking of property from another by force or intimidation, the first paragraph resembles traditional robbery. *See Robbery*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“The illegal taking of property from the person of another, or in the person’s presence, by violence or intimidation; aggravated larceny.”). The second paragraph’s prohibition on entry with the intent to commit a felony or larceny resembles traditional burglary. *See Taylor*, 495 U.S. at 598 (“[T]he generic, contemporary meaning of burglary contains at least the following elements: an unlawful or unprivileged entry into, or remaining in, a building or other structure, with intent to commit a crime.”).

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We have recognized that these traditionally distinct crimes, as applied to the context of a bank, have different elements. To convict a defendant under section 2113(a)'s first paragraph, the government must show:

(1) an individual or individuals (2) used force and violence or intimidation (3) to take or attempt to take (4) from the person or presence of another (5) money, property, or anything of value (6) belonging to or in the care, custody, control, management, or possession (7) of a bank, credit union, or savings and loan association.

United States v. McCarty, 36 F.3d 1349, 1357 (5th Cir.1994). By contrast, the second paragraph requires the government to prove:

(1) an entry or an attempt to enter (2) any bank, credit union, or any savings and loan association (or building used in whole or part as such), (3) with the intent to commit there (4) any felony (5) affecting such bank, credit union, or savings and loan association.

United States v. Dentler, 492 F.3d 306, 310 (5th Cir. 2007). Other than a bank or other covered financial institution being the victim, there is no overlap between these elements. *Contrast Mathis*, 136 S. Ct. at 2250 (explaining that the Iowa burglary statute “defines one crime, with one set of elements . . . while specifying multiple means of fulfilling its locational element”).

We have not previously addressed the statute's divisibility, but in addition to ascribing different elements to each paragraph, we have remarked that section 2113(a) “describes two separate offenses.” *Dentler*, 492 F.3d at 309; *see also United States v. McGhee*, 488 F.2d 781, 784 (5th Cir. 1974) (“The two parts of the subsection are separable.”). And other circuits have uniformly treated section 2113(a) as divisible; in only one unpublished case did the parties even dispute the issue. *See United States v. Moore*, 916 F.3d 231, 238 (2d Cir. 2019) (“The parties do not contest that § 2113(a) of the federal bank robbery statute is divisible, and we agree.”); *United States v. Watson*, 881 F.3d 782, 785 n.1 (9th Cir. 2018) (explaining that although the unlawful entry

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paragraph “is not a crime of violence, it is irrelevant . . . because it is divisible from the § 2113(a) bank robbery offense” the defendants were convicted of); *United States v. Rinker*, 746 F. App’x 769, 772 (10th Cir. 2018) (rejecting the same argument that Butler makes because “the bank-robbery statute is divisible”); *United States v. McGuire*, 678 F. App’x 643, 645 (10th Cir. 2017) (“Because § 2113(a) is divisible, we apply the modified categorical approach . . .”).

Prince v. United States, 352 U.S. 322 (1957), does not support a contrary decision. Prince was convicted of two bank robbery counts—one under the robbery paragraph of section 2113(a) and the other under the burglary paragraph—and was given consecutive sentences. *Id.* at 324. The Court explained that unlawful entry was a preparatory act and held that if the defendant actually completed the robbery, the punishments would “merge[]” such that he could not be sentenced consecutively. *Id.* at 328–29. According to Butler, *Prince* suggests that section 2113(a) creates one indivisible crime with a single punishment.

If anything, *Prince* supports the view that section 2113(a) establishes separate crimes. It describes section 2113 as “creat[ing] and defin[ing] several crimes incidental to and related to thefts from banks.” *Id.* at 323. “If the Justices had a ‘one offense’ view of § 2113, then they should have held the separate counts of Prince’s indictment to be multiplicitous.” *United States v. Loniello*, 610 F.3d 488, 494 (7th Cir. 2010). As the Seventh Circuit has explained, “the *Prince* line of decisions requires merger of sentences, not of offenses.” *Id.* at 496. Merger of sentences may be required even when there is more than one underlying crime. *See United States v. Vasquez*, 867 F.2d 872, 875 (5th Cir. 1989) (“When Congress creates different crimes aimed at successive stages of a single criminal undertaking, the defendant can properly be charged and tried for multiple offenses, but may be punished only for the

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commission of one offense.”); *United States v. Forester*, 836 F.2d 856, 861 (5th Cir. 1988) (“Separate charges were permissible. Separate convictions were possible. But only one sentence is appropriate.”).

* * *

Section 2113(a) is divisible. The sentencing court thus properly used the bank robbery indictment to narrow Butler’s robbery convictions to the violent felonies of taking bank property from another through intimidation. With at least three such violent felonies, he was properly sentenced as an armed career criminal.

The judgment is AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-10065

United States Court of Appeals
Fifth Circuit

FILED

February 4, 2020

Lyle W. Cayce
Clerk

D.C. Docket No. 3:17-CR-562-1

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

ASTON CHARLES BUTLER,

Defendant - Appellant

Appeal from the United States District Court
for the Northern District of Texas

Before KING, COSTA, and HO, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the judgment of the District Court is affirmed.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

UNITED STATES OF AMERICA

v.

ASTON CHARLES BUTLER

§ JUDGMENT IN A CRIMINAL CASE
§
§
§ Case Number: **3:17-CR-00562-N(1)**
§ USM Number: **42209-177**
§ **Lara Meghan Wynn**
§ Defendant's Attorney

THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input checked="" type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	Count 1 of the Indictment filed October 24, 2017.
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense	Offense Ended	Count
18 USC §§ 922(G)(1) and 924(E) Felon In Possession Of A Firearm	03/15/2017	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s)
 Count(s) is are dismissed on the motion of the United States

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

JANUARY 14, 2019

Date of Imposition of Judgment



DAVID C. GODBEY, UNITED STATES DISTRICT JUDGE
Name and Title of Judge

JANUARY 22, 2019

Date

19-10065.130

DEFENDANT: ASTON CHARLES BUTLER
CASE NUMBER: 3:17-CR-00562-N(1)

IMPRISONMENT

Pursuant to the Sentencing Reform Act of 1984, but taking the Guidelines as advisory pursuant to United States v. Booker, and considering the factors set forth in 18 U.S.C. Section 3553(a), the defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

180 (One Hundred Eighty) months as to count 1. This sentence shall run concurrently to any sentence imposed in Case No. F-1740515 in Dallas County Criminal Court 8; This sentence shall also run concurrently to any sentence imposed in Case No. MA1740876 in the 204th Judicial District Court of Dallas County Texas.

The court makes the following recommendations to the Bureau of Prisons:
That the defendant be designated to either FCI Seagoville, Texas, FCI Texarkana, Texas or FCI El Reno, Oklahoma, if possible.

The defendant is remanded to the custody of the United States Marshal.
 The defendant shall surrender to the United States Marshal for this district:

at a.m. p.m. on

as notified by the United States Marshal.

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

before 2 p.m. on
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____

DEPUTY UNITED STATES MARSHAL

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DEFENDANT: ASTON CHARLES BUTLER
CASE NUMBER: 3:17-CR-00562-N(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **Four (4) years as to Count 1.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

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DEFENDANT: ASTON CHARLES BUTLER
CASE NUMBER: 3:17-CR-00562-N(1)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at www.txnp.uscourts.gov.

Defendant's Signature _____ Date _____

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DEFENDANT: ASTON CHARLES BUTLER
CASE NUMBER: 3:17-CR-00562-N(1)

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall participate in a program (inpatient and/or outpatient) approved by the U.S. Probation Office for treatment of narcotic, drug, or alcohol dependency, which will include testing for the detection of substance use or abuse. The defendant shall abstain from the use of alcohol and/or all other intoxicants during and after completion of treatment. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$25 per month.

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DEFENDANT: ASTON CHARLES BUTLER
CASE NUMBER: 3:17-CR-00562-N(1)

CRIMINAL MONETARY PENALTIES

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

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	\$100.00	\$.00	\$.00	\$.00

The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

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

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

- Restitution amount ordered pursuant to plea agreement \$
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
 - the interest requirement is waived for the fine restitution
 - the interest requirement for the fine restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: ASTON CHARLES BUTLER
CASE NUMBER: 3:17-CR-00562-N(1)

SCHEDULE OF PAYMENTS

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

- A Lump sum payments of \$ _____ due immediately, balance due
 not later than _____, or
 in accordance C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal 20 (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:
It is ordered that the Defendant shall pay to the United States a special assessment of \$100.00 for Count 1, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

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

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

- Joint and Several
See above for Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
 - Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
 - 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:
the Kahr, Model TP 45, .45-caliber pistol bearing Serial No. SA66300.

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) JVTA Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

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United States District Court

NORTHERN DISTRICT OF TEXAS

Dallas Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

ASTON BUTLER

Case Number: 3:10-CR-201-O (01)

U.S. Marshal's No.: 42209-177

John Kull, Assistant U.S. Attorney

Laura Harper, Attorney for the Defendant

On October 7, 2010, the defendant, ASTON BUTLER, entered a plea of guilty to Counts One, Two, Three and Four of the Four Count Indictment filed on July 20, 2010. Accordingly, the defendant is adjudged guilty of such Counts, which involve the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 U.S.C. § 2113(a)	Bank Robbery	May 12, 2010	1
18 U.S.C. § 2113(a)	Bank Robbery	May 21, 2010	2
18 U.S.C. § 2113(a)	Bank Robbery	June 1, 2010	3
18 U.S.C. § 2113(a)	Bank Robbery	June 9, 2010	4

The defendant is sentenced as provided in pages two through four of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$400.00 for Counts One, Two, Three and Four of the Four Count Indictment filed on July 20, 2010.

The defendant shall notify the United States Attorney for this district within thirty 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.

Sentence imposed on January 20, 2011.



REED O'CONNOR
U.S. DISTRICT JUDGE

Signed January 31, 2011.

IMPRISONMENT

The defendant, ASTON BUTLER, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a period of THIRTY-SIX (36) months on Counts One through Four, which shall run concurrently, for **a total term of THIRTY-SIX (36) months**. The court orders this sentence to run concurrently with any sentence imposed in any of the following cases: Case No. F-1041442, which is pending out of the 363rd Judicial District Court of Dallas County, Dallas, Texas; Case No. MB1041854, which is pending in the Dallas County Criminal Court 6, Dallas, Texas; and, Case No. F-2010-0647, which is pending in the 367th Judicial District Court of Denton County, Denton, Texas.

The Court would recommend to the Bureau of Prisons that the defendant participate in the Institution Residential Drug Treatment Program, if eligible. The Court further recommends that the defendant be incarcerated at facility in the D/FW area, if possible.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **THREE (3) years** on Counts One, Two, Three and Four of the Four Count Indictment filed on July 20, 2010, which shall run concurrently, for **a total term of THREE (3) years**.

While on supervised release, in compliance with the standard conditions of supervision adopted by the United States Sentencing Commission, the defendant shall:

- (1) not leave the judicial district without the permission of the Court or probation officer;
- (2) report to the probation officer as directed by the Court or probation officer and submit a truthful and complete written report within the first five (5) days of each month;
- (3) answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (4) support the defendant's dependents and meet other family responsibilities;
- (5) work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- (6) notify the probation officer within seventy-two (72) hours of any change in residence or employment;
- (7) refrain from excessive use of alcohol and not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- (8) not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- (9) not associate with any persons engaged in criminal activity and not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- (10) permit a probation officer to visit the defendant at any time at home or elsewhere and permit confiscation of any contraband observed in plain view by the probation officer;
- (11) notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;
- (12) 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) notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement, as directed by the probation officer.

In addition the defendant shall:

- not commit another federal, state, or local crime;
- not possess illegal controlled substances;
- not possess a firearm, destructive device, or other dangerous weapon;

cooperate in the collection of DNA as directed by the U.S. probation officer;

report in person to the probation office in the district to which the defendant is released within seventy-two (72) hours of release from the custody of the Bureau of Prisons;

submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer;

pay any remaining balance of restitution in the amount of \$23,864.00, as set out in this Judgment;

refrain from incurring new credit charges or opening additional lines of credit without approval of the probation officer unless the probation officer makes a determination that the defendant has fully satisfied the restitution obligation;

provide to the probation officer any requested financial information;

participate in a program (inpatient and/or outpatient) approved by the U.S. Probation Office for treatment of narcotic, drug, or alcohol dependency, which will include testing for the detection of substance use or abuse. The defendant shall abstain from the use of alcohol and/or all other intoxicants during and after completion of treatment;

participate in mental health treatment services as directed by the probation officer until successfully discharged. These services may include medications prescribed by a licensed physician. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$5 per month; and,

participate in workforce development programs and services involving activities relating to occupational and career development, including but not limited to assessments and testing, educational instruction, training classes, career guidance, counseling, case management, and job search and retention services, as directed by the probation officer until successfully discharged from the program.

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Pursuant to the Mandatory Victims Restitution Act of 1996, the defendant is ordered to pay restitution in the amount of \$23,864.00, payable to the U.S. District Clerk, 1100 Commerce Street, 14th Floor, Dallas, Texas, 75242. Restitution shall be payable immediately and any unpaid balance shall be payable during incarceration. Restitution shall be disbursed to:

BBVA Compass Bank
Attention: Security
\$2,700
Reference No.: 10-02980, May 12, 2010 Robbery

Wells Fargo
Attention: Dan Everingham, Vice President
\$1,963
Reference No.: AU-41803, May 21, 2010, Robbery

BBVA Compass Bank
Attention: Security
\$4,720
Reference No.: 10-03218, May 24, 2010, Robbery

American Bank of Texas
Attention: Patsy Mauldin, Vice President
\$6,099

Reference: Aston Butler, June 1, 2010, Robbery

Wells Fargo
Attention: Dan Everingham, Vice President
\$7,660
Reference No.: AU-72349 June 5, 2010, Robbery

Bank of Texas
Attention: Mike Criswell, Security Services Manager
\$722
Reference: Aston Butler, June 9, 2010, Robbery

If upon commencement of the term of supervised release any part of the restitution remains unpaid, the defendant shall make payments on such unpaid balance in monthly installments of not less than 10 percent of the defendant's gross monthly income, or at a rate of not less than \$50 per month, whichever is greater. Payment shall begin no later than 60 days after the defendant's release from confinement and shall continue each month thereafter until the balance is paid in full. In addition, at least 50 percent of the receipts received from gifts, tax returns, inheritances, bonuses, lawsuit awards, and any other receipt of money shall be paid toward the unpaid balance within 15 days of receipt. This payment plan shall not affect the ability of the United States to immediately collect payment in full through garnishment, the Treasury Offset Program, the Inmate Financial Responsibility Program, the Federal Debt Collection Procedures Act of 1990 or any other means available under federal or state law. Further, it is ordered that interest on the unpaid balance is waived pursuant to 18 USC § 3612(f)(3).

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 Marshal