No. _____
In the Supreme Court of the United States

ADAMS JOEL FORTY-FEBRES, a/k/a Adams Forty-Febres,
PETITIONER

v.

UNITED STATES,
RESPONDENT

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether Evidence was Totally Insufficient for the Conviction to Fairly Stand.

PARTIES TO THE PROCEEDINGS

The Parties to the Instant Proceedings Are Contained in the Caption of the Case.

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Petitioner Adams Joel Forty-Febres (hereinafter Petitioner) respectfully petitions for a writ of certiorari to review and vacate the judgment of the U.S. Court of Appeals for the First Circuit.

OPINION BELOW

The Judgment (App., *infra*, 1a) was entered on December 8th, 2020, in *U.S. v. Adams Joel Forty-Febres*, under docket number 18-2106.

JURISDICTION

After the judgment was entered, no petition for rehearing was filed in this case. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1). The district court had jurisdiction pursuant to 18 U.S.C. § 3231, and the court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the U.S. Constitution provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, . . .nor be deprived of life, liberty, or property, without due process of law . . .

The Sixth Amendment to the U.S. Constitution provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

The Eighth Amendment to the U.S. Constitution provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

STATEMENT OF THE CASE

A. District Court Proceedings:

On June 1st, 2016, a District of Puerto Rico Grand Jury rendered a two count indictment against Petitioner, charging among others violations of 18 U.S.C. § 2119(1) and § 924(c)(1)(DE 9).

After the initial arraignment (DE 12) and after Petitioner was ordered detained (DE 13), on June 29th, 2016, a four count superseding indictment was rendered(DE 15), charging violations of 18 U.S.C. § 2119(1) and § 924(c)(1). Arraignment was held on July 8th, 2016 (DE 19).

Thereafter, the district court held several status conferences (DE 20, 23, 26, 32, 67). Meanwhile, the parties exchanged discovery and on October 19th, 2016, the government moved for order to obtain DNA and hair samples from the Petitioner (DE 27) which was granted (DE 28). This report was provided to the defense (DE 32).

On January 9th, 2017, government filed an amended motion for reciprocal discovery and another amended motion under Rule 12 defendant's defenses(DE 34 & 35).

Thereafter, the defense moved to quash a search warrant for Petitioner's pubic hair (DE 62) and government responded (DE 63). District Court denied this motion to quash (DE 64).

On May 18th, 2017, Petitioner's counsel moved to withdraw(DE 65), however, the District Court entered Opinion and Order denying same (DE 74).

On June 12th, 2017, a second superseding indictment was rendered against Petitioner and another individual, charging them with violations of 18 U.S.C. § 2119(1) and § 924(c)(1)(DE 68).

After the arraignment (DE 76) and another status conference (DE 79), on July 21st, 2017, Petitioner's counsel moved again to withdraw (DE 80) and on July 26th, 2017, the government responded (DE 83). On August 17th, 2017, this motion to withdraw was granted (DE 89).

After several additional status conferences (DE 91, 94, 96), on January 9th, 2018, a scheduling order was entered (DE (DE 97). Subsequently, on April 11th, 2018, the government filed a motion in limine No. 2 regarding records (DE 100) and on April 17th, 2018, submitted a supplemental motion in this regard (DE 101).

On April 24th, 2018, the government filed a notice of failure to notify alibi defense (DE 103), on April 25th, 2018, a notice of intent to use expert (DE 104); on April 30th, 2018, its designation of evidence (DE 105); and on May 5th, 2018,

its proposed jury instructions (DE 109). On this last day as well, May 5th, 2018, the government filed a second motion to preclude the defense from raising suppression issues during trial (DE 110).

On May 7th, 2018, a pretrial hearing was held (DE 113) and on May 11th, 2018, an Opinion and Order was entered, granting the government's motion in limine to admit the proffered business record evidence (DE 100 & 115).

On May 12th, 2018, the government amended its designation of evidence (DE 118) and on May 14th, 2018, opposed co-defendant's motion to suppress his identification under docket entry 119 (DE 125).

On May 14th, 2018, the jury trial began and continued until May 22nd, 2018 (DE 128, 132, 130, 138, 133, 139, 140, 142, 152, 153, 178, 196, 197, 198, 199, 200).

Meanwhile, on May 20th, 2018, the government moved to preclude the testimony of Special Agent Joshua Lesieur (DE 151) and on May 22nd, 2018, the defense submitted its proposed jury instructions (DE 154). On this same day, May 22nd, the jury entered guilty verdict as to counts 1 and 2 and acquitted him on counts 3 and 4 (DE 160).

On June 5th, 2018, defense moved for acquittal and/or new trial (DE 170) and on June 19th, 2018, the government opposed (DE 172) and on June 21st, 2018, the defense replied (DE 173).

On July 17th, 2018, the presentence investigation report (hereinafter PSR) was disclosed (DE 179) and on September 17th, 2018, the District Court entered Opinion and Order denying defense's motion for acquittal and/or new trial (DE 182).

On October 16th, 2018, an amended PSR was disclosed and same was filed with its addendum on this same day (DE 183 & 184).

On October 23rd, 2018, the government filed its sentencing memorandum (DE 183) and on October 25th, 2018, Petitioner was sentenced to a 63 months imprisonment term as to count one and to 84 months as to count two, to be served consecutively with each other (DE187). Upon release, he must serve a 3 year term of supervised release as to count one and 5 years as to count two, to be served concurrently with each other.

On October 25th, 2018, judgment was entered (DE 188) and on October 26th, 2018, the instant notice of appeal was filed.

On November 6th, 2018, the record below was certified and transmitted to the Court of Appeals below (DE 192).

B. Appellate Proceedings:

On November 1st, 2019, Petitioner, through his defense counsel, submitted his brief and on February 13th, 2020, the government submitted its brief.

Subsequently, on October 29th, 2020, oral arguments were presented and on December 8th, 2020, the Court of Appeals entered Opinion and Judgment, affirming the conviction and sentence imposed at the district court level.

REASONS FOR GRANTING THE PETITION

In the whereby case, the U.S. Court of Appeals (USCA) affirmed the district court judgment, concluding among others "[T]he fact that the government did not present certain kinds of evidence does not [necessarily] mean that there was insufficient evidence for conviction." *U.S. v. Rivera-Rodríguez*, 617 F.3d 581, 599 (1st Cir. 2010). Hence, “viewed in the light most favorable to the verdict, a reasonable factfinder could have found that the victims' testimony at trial described earlier was sufficient to convict Petitioner beyond a reasonable doubt.”

USCA further found that “the district court did not abuse its discretion when it refused to compel Petitioner’s co-defendant to testify and by denying Petitioner’s motion to delay the trial until after his co-defendant was sentenced. USCA additionally found that "[c]onsistency in the verdict is not necessary." *Dunn v. U.S.*, 284 U.S. 390, 393 (1932); *see also U.S. v. Powell*, 469 U.S. 57, 69 (1984)

Despite the findings made by the USCA, Petitioner still believes that the district court committed a miscarriage of justice against him. In this regard, Petitioner believes that the record and available transcripts reveal that the evidence considered by the jury was insufficient for his conviction to validly stand and the District Court abused its discretion in not permitting codefendant David Alexander

Vázquez-De León to served as a defense witness. Likewise, the verdicts entered by the jury were inconsistent and not supported by the evidence.

The record at hand reveals that the government did not meet its burden of proof as it failed to establish the elements of the offense of conviction beyond a reasonable doubt. *See, e.g.*, DE 153 at 143- (Closing Statement). Hence, the evidence presented by the United States failed to establish that Petitioner's alleged involvement in the offense of conviction.

First, the evidence introduced at trial in the government's case in chief fails to place Petitioner at the alleged crime scene. As a matter of fact, no fingerprint evidence was produced to link Petitioner to such offense charged. Likewise, no DNA evidence whatsoever was either brought against Petitioner in trial. Therefore, no scientific or forensic evidence was introduced at trial against Petitioner to connect him to the scene of the offense of conviction.

Second, the main government witness, Ms. Delmarie Muriel-Colón, could not accurately identify Petitioner as he did not meet the description she initially provided of her assailant. She described her assailant as being dark brown, slash brown, with black messy hair, that is, bulky hair, and to be five six. This fact is aggravated by the time and darkness of the night, which contrary to the witness testimony did not permit her to view her assailant well.

Thirdly, the testimony of his then girlfriend Xaimara and of his ex-mother in law Yahaira clearly placed Petitioner at their home at the time of the alleged offense. Hence, he could not be in two places at the same time. And their testimony was not impeached at trial by the government.

In this particular case, Petitioner must concede that "a sufficiency of the evidence challenge to a jury's verdict will not succeed unless no rational jury could have concluded that the government proved all of the essential elements of the offense beyond a reasonable doubt." *U.S. v. Rogers*, 714 F.3d 82, 86 (1st Cir. 2013). Hence, "the facts and all reasonable inferences must be drawn and evaluated in favor of the verdict." *Rogers*, 714 F.3d at 86; *U.S. v. Rodríguez-Marrero*, 390 F.3d 1, 6 (1st Cir.2004); *U.S. v. Rodríguez-Milián*, 820 F.3d 26, 29 (1st Cir.2016)(We recite the facts in the light most favorable to the verdict.); *U.S. v. Rodríguez-González*, 2019 WL 2635618 (1st Cir.2019). However and even though the issue has been duly preserved, Petitioner does believe that there is clear and gross injustice in this case. *See, e.g., Rodríguez-González*, 2019 WL 2635618 *3; *U.S. v. Ponzo*, 853 F.3d 558, 580 (1st Cir.2017).

In sum, in this case, the evidence was insufficient to convict Petitioner beyond a reasonable doubt.

Furthermore, in this particular case, the defense requested on several occasions the appearance of codefendant David Alexander Vázquez-De León as a defense witness due to his candid, voluntary and unsolicited statements in open court during his change of plea hearing (DE 194 at 27). Specifically, codefendant Vázquez-De León provided the following statements after the government read for the record the plea agreement version of facts (DE 134):

> THE DEFENDANT: May I say something to you, Your Honor? This person, I do not know him (DE 194 at 27).

This statement clearly revealed that codefendant Vázquez-De León did not know Petitioner. As a consequence, the defense moved the district court for the appearance of codefendant Vázquez-De León as a defense witness (DE 133 at 4-13).

Based on this motion requesting codefendant Vázquez-De León to be brought as a defense witness, the court below addressed this matter in an evidentiary hearing(DE 133 at 15-24). However, codefendant Vázquez-De León raised his 5th Amendment right not to self incriminate himself and based on this posture, the defense moved the court below for a brief continuance of the jury trial in order to wait until the expedited PSR and sentencing of this individual(DE 133 at 13, 21-22). The District Court nonetheless denied such request pursuant to

Namet v. U.S., 373 U.S. 179, 83 S.Ct. 1151(1963); *U.S. v. Johnson*, 488 F.2d 1206 (1973), U.S. v. Castro, 129 F.3d 226 (1st Cir.1997)(DE 133 at 33).

Petitioner again re-raised this matter arguing inter alia that the court below abused its discretion when it denied the continuance of trial requested because codefendant Vázquez-De León was sentence on May 31st, 2018, that is, 9 days after the instant jury trial ended (DE 170 at 5-6). This means that the continuance of trial requested would not have unduly delayed the proceedings pending before the court below. Instead, such continuance of trial until Vázquez-De León had been sentenced would have certainly guaranteed a fair process for Petitioner, who was abusively denied the opportunity to defend and present his case theory with the aid of Vázquez-De León's testimony.

Moreover, the discretionary denial of Vázquez-De León's testimony as a defense witness due to the assertion of his 5th Amendment rights, notwithstanding his highly exculpatory and voluntary statements in open court, constitutes a clear abuse on the part of the court below. Vázquez-De León's testimony should not have been categorically excluded in the "interests of justice" standard. What is fair is fair. We do not need to drink the water from the well if we are aware that it is poisonous. In this sense, how could we deny to an accused individual the opportunity to prove his innocence. Imagine, the same judge that listened to the

exculpatory statement in open court and under oath, denying its admission in a subsequent proceeding. Is the system so blind that has forgotten why we are here? Or is the notion of justice and sound and fair administration of process so abstract premises that we should ignore them? It is simply so abusive to be aware that this exculpatory testimony exist and to deny its employment on a mere technicality that could have been cured with a brief trial continuance.

Again, codefendant Vázquez de León testimony would have been highly beneficial for Petitioner's defense and which would have certainly provoked a different result in the jury's verdict, inasmuch as (1) the evidence in the case showed that his DNA was indeed found in items found in the second car-jacked blue Toyota Corolla; (2) as a matter of fact he pled guilty in the case and (3) he candidly and voluntarily stated that he did not know Petitioner.

In addition, irregardless of Vázquez-De León's willfulness to be a defense witness, Petitioner was certainly and undeniable denied his fundamental constitutional right under the 6th Amendment and Due Process Clause to defend himself and to introduce exculpatory evidence for the jury's evaluation. In the balance of factor, the lower court should have given more weight to continuing the jury trial until and after Vázquez-De León had been sentence.

In sum, Vázquez-De León voluntarily provided a statement proving Petitioner's innocence without any pressure or threat under oath. Secondly, before being detained at MDC Guaynabo, Vázquez-De León's had never met and/or shared any time with Petitioner, whom he met and/or saw for the first time in his life at such institution. He took responsibility in the Federal Court, again under oath, giving faith that Petitioner did not participate during the offense of conviction. And the only available forensic evidence, such as the fingerprints found at the 2003 blue Toyota Corolla plate number FBK-181 and 2005 green Toyota Corolla, did not belong to Petitioner, corroborating Vázquez-De-León's main exculpatory statement. Therefore, Petitioner's request for a brief continuance of the trial to be able to call his codefendant Vázquez-De-León as a defense witness after his sentencing hearing would have adequately addressed any 5th Amendment issues pertaining to this codefendant and would have permitted the jury to reliable and trustworthy exculpatory evidence.

Finally, a criminal defendant already is afforded protection against jury irrationality or error by the independent review of the sufficiency of the evidence undertaken by the trial and appellate courts. This review should not be confused with the problems caused by inconsistent verdicts. Sufficiency-of-the-evidence review involves assessment by the courts of whether the evidence adduced at trial

could support any rational determination of guilt beyond a reasonable doubt. *See Glasser v. U.S.*, 315 U. S. 60, 315 U. S. 80 (1942); Fed.Rule Crim.Proc. 29(a). This review should be independent of the jury's determination that evidence on another count was insufficient. The Government must convince the jury with its proof, and must also satisfy the courts that given this proof the jury could rationally have reached a verdict of guilt beyond a reasonable doubt. No further safeguards against jury irrationality are necessary. *U.S. v. Powell*, 469 U.S. 57 (1984)

In this particular case, the record is clear, the verdicts are simply inconsistent. First, the first car-jacked car, belonging to Ms. Mena-Valera, was obviously the same vehicle employed in the second car-jacking and duly identified by both victims at trial. However, the jury acquitted Petituoner of this first car-jacking of the green Corolla which creates a great inconsistency in both the government's case in chief and version of events, leaving a void and lack of evidence as to the possibility of his presence and/or participation as the person who later on car-jacked Ms. Muriel-Colón's blue Toyota Corolla. This gap in the government's prosecutorial theory and jury's determination will certainly lead this Court to find that the verdicts herein are simply inconsistent in light of the applicable law, the facts brought to its attention as well as the evidence introduced at trial. This means that the only logical explanation for these inconsistent verdicts

is that either the jury irrationally acted or committed error in its factual and legal analysis. And the record at bar does not support any distinction made by the jury.

CONCLUSION

For the reasons set forth above, it is hereby hence very respectfully requested for this Honorable Court to grant this petition for a writ of certiorari.

RESPECTFULLY SUBMITTED.

At San Juan, Puerto Rico, this 21st day of December, 2020.

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United States Court of Appeals
For the First Circuit

No. 18-2106

UNITED STATES OF AMERICA,

Appellee,

v.

ADAMS JOEL FORTY-FEBRES, a/k/a Adams Forty-Febres,

Defendant, Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

[Hon. Aida M. Delgado-Colón, U.S. District Judge]

Before

Lynch, Thompson, and Kayatta,
Circuit Judges.

Ovidio E. Zayas-Pérez for appellant.
Gregory B. Conner, Assistant United States Attorney, with whom W. Stephen Muldrow, United States Attorney, and Mariana E. Bauzá-Almonte, Assistant United States Attorney, Chief, Appellate Division, were on brief, for appellee.

December 8, 2020

LYNCH, **Circuit Judge**. In 2018, a jury convicted Adams Joel Forty-Febres of one count of stealing a motor vehicle in violation of 18 U.S.C. § 2119 and one count of brandishing a firearm in violation of 18 U.S.C. § 924(c)(1)(A)(ii) for a carjacking committed on November 5, 2015, in Canóvanas, Puerto Rico. Forty-Febres argues that the evidence at trial was insufficient to support his conviction, that the district court abused its discretion in rulings related to his co-defendant's testimony, and that the jury's verdict was inconsistent. We affirm.

I. Facts

There were two carjackings on November 5, 2015. The first occurred at around 9:30 PM. Pamela Mena-Varella, the victim, owned a mint green 2005 Toyota Corolla. She worked at a store in an outlet mall. At trial, she testified that, after leaving work, she walked to her car in the mall parking lot. She got in, turned it on, and began backing out of her parking spot. She said she then noticed two men walking toward her. One of the men was pointing a gun at her. She said that before she could drive away, the man with the gun came up to the window of her car and said, "you either get out of the car or I'll shoot your head off." She testified that the man with the gun had dark lips, pointed ears, bangs, and a long rat tail. He was wearing a red and white Chicago Bulls shirt, short black pants, and black tennis shoes. She said

the other man had a lot of hair and was wearing a gray, long-sleeved shirt with black pants. As instructed, Mena-Varella got out of her car. The two men got in and drove away.

The second carjacking occurred approximately thirty minutes later in the same neighborhood. Delmarie Muriel-Colón testified that, on November 5, 2015, she was picking up her son. He was with his paternal grandparents and she drove to their house to pick him up. Their house was about a five-minute drive from the store where Mena-Varella worked. Muriel-Colón said that, after arriving, she stopped in front of the gate to the house and waited for it to open. She noticed a mint green Toyota Corolla coming down the street. She knew the car was a Toyota Corolla because she was also driving a Toyota Corolla. The street was a dead end, and she said that as she was waiting, she saw the same Corolla pass her again going in the opposite direction. She picked up her son and started driving home. She said she made two turns before noticing that a car was following her very closely. She kept driving until a mint green Toyota Corolla crossed in front of her and blocked her way. She testified that a man got out of the passenger side of the Corolla, pointed a gun at her, and ordered her out of the car. She said that the area was well lit and that she could see the man with the gun. She described him as having dark skin and dark, unruly hair and said he was wearing a t-shirt and basketball shorts. She said he had "a penetrating look" she

"can't forget." Muriel-Colón's son, who had been seated in the back of the car, jumped into her lap. They got out of the car. The man with the gun got in the car and drove away, following the mint green Corolla.

Six days later, on November 11, 2015, the police found Mena-Varella's car. They contacted Mena-Varella and asked her to identify her carjacker in a lineup. At the lineup, she said Forty-Febres was the man who had pointed the gun at her and ordered her out of the car. She also identified Forty-Febres at trial. Additionally, Mena-Varella identified Forty-Febres's accomplice at trial as David Alexander Vázquez-De León.

The police also found Muriel-Colón's car, which had been destroyed. Like Mena-Varella, Muriel-Colón identified Forty-Febres in a lineup as the man who had pointed the gun at her and ordered her out of her car. She also identified him as her carjacker at trial.

II. Procedural History

Forty-Febres and Vázquez-De León were indicted on four counts related to the two carjackings: (1) violating 18 U.S.C. § 2119 by carjacking Muriel-Colón; (2) brandishing a firearm to steal Muriel-Colón's car in violation of 18 U.S.C. § 924(c)(1)(A)(ii); (3) violating 18 U.S.C. § 2119 by carjacking Mena-Varella; and (4) brandishing a firearm to steal Mena-Varella's car in violation of 18 U.S.C. § 924(c)(1)(A)(ii).

The trial began on May 15, 2018. Forty-Febres and Vázquez-De León were set to be tried together, but after the first day of trial, Vázquez-De León pleaded guilty to the two carjacking counts. The government dismissed the two counts of brandishing a firearm against him. During his change-of-plea hearing, Vázquez-De León claimed not to know Forty-Febres. Forty-Febres wanted Vázquez-De León to testify in his defense. Vázquez-De León later invoked his Fifth Amendment right against self-incrimination and did not testify at Forty-Febres's trial. The judge instructed the jury to draw no inferences from the fact that Vázquez-De León was no longer at the defense table.

Both Mena-Varella and Muriel-Colón testified for the prosecution as described earlier. The government called three police officers to testify about their investigations and introduced evidence that both Mena-Varella's and Muriel-Colón's Toyota Corollas were manufactured in Japan and moved through interstate commerce.

Forty-Febres called one police officer to testify that fingerprints found on Mena-Varella's Corolla did not match Forty-Febres's fingerprints. He called two additional witnesses -- his ex-fiancée and her mother -- to testify that he was with them on the night of November 5, 2015.

The jury returned its verdict on May 22, 2018. It found Forty-Febres guilty of carjacking Muriel-Colón and brandishing a

firearm while doing so. It acquitted him of the charges related to the carjacking of Mena-Varella.

Forty-Febres appeals from the verdict against him for the charges related to the Muriel-Colón carjacking.

III. Legal Analysis

Forty-Febres makes three arguments on appeal. First, he says that the evidence at trial was insufficient to support his conviction. Next, he says that the district court abused its discretion by refusing to delay the trial until Vázquez-De León was sentenced and by allowing Vázquez-De León to assert his Fifth Amendment right. Third, he argues that the fact that the jury acquitted him of one carjacking but convicted him of the other makes the jury's verdict inconsistent.

A. The Evidence Was Sufficient to Support Forty-Febres's Conviction

In reviewing sufficiency-of-the-evidence challenges, "we consider whether any rational factfinder could have found that the evidence presented at trial, together with all reasonable inferences, viewed in the light most favorable to the government, established each element of the particular offense beyond a reasonable doubt." United States v. Ridolfi, 768 F.3d 57, 61 (1st Cir. 2014) (quoting United States v. Rodríguez, 735 F.3d 1, 7 (1st Cir. 2013)).

Forty-Febres was convicted of the carjacking of Muriel-Colón under 18 U.S.C. § 2119. The crime has four elements: (1) taking or attempting to take "from the person or presence of another"; (2) "by force and violence or by intimidation"; (3) with "intent to cause death or serious bodily harm"; (4) "a motor vehicle that has been transported, shipped, or received in interstate or foreign commerce." 18 U.S.C. § 2119; see also United States v. Velázquez-Aponte, 940 F.3d 785, 797 (1st Cir. 2019). Forty-Febres argues that there was insufficient evidence to conclude beyond a reasonable doubt that these elements were satisfied. He says that no DNA or fingerprint evidence at trial placed him at the crime scene, that he did not meet Muriel-Colón's initial description of the man who carjacked her, and that the testimony of Forty-Febres's ex-fiancée and her mother showed that he was with them on the night of November 5, 2015. We hold that a reasonable factfinder could have found that the evidence at trial, viewed in the light most favorable to the government, established each of these elements beyond a reasonable doubt.

As to the first element, a reasonable factfinder could have found Muriel-Colón's testimony at trial sufficient to establish that Forty-Febres was the person who took her car from her. Muriel-Colón testified at trial that it was Forty-Febres who carjacked her. She identified him at the trial and said that he was the man who got out of the mint green Toyota Corolla and

pointed a gun at her. She said she could see him clearly. She described his appearance at trial and said that she "can't forget his look." She also identified Forty-Febres in a lineup after her car was stolen.

There was other evidence corroborating Muriel-Colón's trial testimony that Forty-Febres was her carjacker. Mena-Varella[1] said that her mint green Toyota Corolla was stolen at around 9:30 PM, thirty minutes before Muriel-Colón was carjacked by someone driving a mint green Corolla. Mena-Varella testified that Forty-Febres, whom she had identified at a lineup and at trial, was one of the men who had stolen her car. The two carjackings occurred about a five-minute drive away from each other. It is reasonable to infer that Mena-Varella's car was later used in the carjacking of Muriel-Colón.

Muriel-Colón's testimony also supports a finding that the second and third elements of the crime were met. She said that Forty-Febres came up to the door of her car, pointed a gun at her, and ordered her out of her vehicle. From this testimony, a reasonable factfinder could infer that Forty-Febres, by aiming a deadly weapon directly at Muriel-Colón while stealing her car,

[1] The jury did not convict Forty-Febres on the counts related to Mena-Varella's carjacking. But sufficiency-of-the-evidence review for the counts on which a defendant was convicted is "independent of the jury's determination that evidence on another count was insufficient." United States v. Powell, 469 U.S. 57, 67 (1984).

took her vehicle through force or intimidation and with the intent to cause death or serious bodily harm. This same evidence also supports Forty-Febres's conviction for brandishing a firearm under 18 U.S.C. § 924(c)(1)(A)(ii).

Finally, the prosecution certified that Muriel-Colón's Toyota Corolla was manufactured in Japan. Her car had thus "been transported, shipped, or received in interstate or foreign commerce," 18 U.S.C. § 2119, satisfying the final element of the crime.

Forty-Febres's argument that the evidence at trial was insufficient because the government did not present DNA or fingerprint evidence placing him at the crime scene goes nowhere. "[T]he fact that the government did not present certain kinds of evidence does not [necessarily] mean that there was insufficient evidence for conviction." United States v. Rivera-Rodríguez, 617 F.3d 581, 599 (1st Cir. 2010) (second alteration in original) (quoting United States v. Liranzo, 385 F.3d 66, 70 (1st Cir. 2004)). Viewed in the light most favorable to the verdict, a reasonable factfinder could have found that the victims' testimony at trial described earlier was sufficient to convict Forty-Febres beyond a reasonable doubt.

Forty-Febres's other two arguments are similarly unavailing. He says that he did not meet Muriel-Colón's original

description of the man who pointed a gun at her[2] and that the time of day prevented Muriel-Colón from getting a good look at her carjacker. He also argues that his ex-fiancée and her mother provided him with an alibi. Whether the jury believed Muriel-Colón's testimony identifying Forty-Febres or the testimony that Forty-Febres was with his ex-fiancée and her mother turns on the witnesses' credibility. In reviewing a challenge to the sufficiency of the evidence, "[i]t is not our role to assess the credibility of trial witnesses or to resolve conflicts in the evidence" and "we must resolve all such issues in favor of the verdict." United States v. Gaudet, 933 F.3d 11, 15 (1st Cir. 2019) (quoting United States v. Hernández, 218 F.3d 58, 66 n.5 (1st Cir. 2000)). The jury, having heard all of the evidence at trial, credited Muriel-Colón's identification and did not believe testimony about Forty-Febres's alibi. It was entitled to do so.

B. The District Court Did Not Abuse Its Discretion

Forty-Febres next argues that the district court abused its discretion in two ways: by refusing to compel Forty-Febres's co-defendant to testify and by denying Forty-Febres's motion to delay the trial until after his co-defendant was sentenced. We find no abuse of discretion.

[2] In his brief to us, Forty-Febres does not explain how or why Muriel-Colón's initial description was inaccurate.

"[A] witness may invoke the Fifth Amendment if testifying might incriminate him on direct or cross-examination, despite a defendant's Sixth Amendment interests in presenting that testimony." United States v. Ramos, 763 F.3d 45, 53 (1st Cir. 2014). The burden on the witness is "not a particularly onerous" one. United States v. Castro, 129 F.3d 226, 229 (1st Cir. 1997). He must show that there is a "reasonable possibility that, by testifying, he may open himself to prosecution." Id. When a district court rules favorably on a witness's invocation of his Fifth Amendment right, we review its ruling for abuse of discretion. See id. Under this standard, we will reverse the district court's ruling "only when it is 'perfectly clear . . . that the answers [sought from the witness] cannot possibly incriminate.'" United States v. Acevedo-Hernández, 898 F.3d 150, 169 (1st Cir. 2018) (quoting United States v. De La Cruz, 996 F.2d 1307, 1312 (1st Cir. 1993) (alterations in original)).

At Vázquez-De León's change-of-plea hearing, he told the trial judge that he did not know Forty-Febres. Forty-Febres wanted Vázquez-De León to repeat this statement at trial. But Mena-Varella testified that Forty-Febres and Vázquez-De León were the two men who carjacked her. She identified both men at trial. Mena-Varella's testimony directly contradicts any statement that Vázquez-De León did not know Forty-Febres. On the record here, it is reasonable to suspect that, at trial, Vázquez-De León would be

compelled to testify that he did know Forty-Febres. This testimony would constitute an admission that Vázquez-De León committed perjury at his change-of-plea hearing. The trial judge recognized this risk when she said that Vázquez-De León has the "right not to have to admit that what he said during the plea is not true" and that she could not "expose this defendant to be[ing] charged with perjury" by forcing him to testify. Cf. United States v. Zirpolo, 704 F.2d 23, 25 (1st Cir. 1983) ("Given the substantial evidence presented at the trial which contradicted the statements in [his] affidavit, it was hardly unreasonable for the district court to believe it possible that [the witness's] in-court testimony would tend to incriminate him of perjury.").

Forty-Febres's second argument on this point is that the district court erred by refusing to delay his trial until after Vázquez-De León was sentenced. We review a refusal to grant a continuance for abuse of discretion. See United States v. Rodriguez-Marrero, 390 F.3d 1, 22 (1st Cir. 2004). In our review, we do not apply a mechanical test but instead "evaluate each case on its own facts." Id. (quoting United States v. Torres, 793 F.2d 436, 440 (1st Cir. 1986)).

Forty-Febres argues that if the district court had delayed the trial and waited until after Vázquez-De León had been sentenced, any Fifth Amendment barriers to his testimony would have disappeared. Not so. Sentencing for the carjackings would

not have removed Vázquez-De León's risk of perjuring himself if he testified at Forty-Febres's trial. We have rejected reasoning like Forty-Febres's as "overly simplistic" because it "ignores what the government might bring up during cross examination that the conviction does not shield from criminal liability." Acevedo-Hernández, 898 F.3d at 169-70 (citing Castro, 129 F.3d at 229).

C. Alleged Jury Inconsistency

Forty-Febres's final argument is that, because the jury convicted him of the charges related to carjacking Muriel-Colón but acquitted him of those related to carjacking Mena-Varella, the jury's verdict was inconsistent and his conviction should be vacated. We see no inconsistency. But even if we did, the argument misses the mark. As the Supreme Court has stated, "[c]onsistency in the verdict is not necessary." Dunn v. United States, 284 U.S. 390, 393 (1932); see also United States v. Powell, 469 U.S. 57, 69 (1984) (affirming Dunn and "insulat[ing] jury verdicts from review" on inconsistency grounds); United States v. Alicea, 205 F.3d 480, 484 (1st Cir. 2000). Precedent forecloses Forty-Febres's inconsistency argument.

IV.

Affirmed.