

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2021

ERIC BEVERLY,
Petitioner.

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

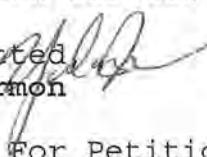
PETITION FOR WRIT OF CERTIORARI

On Petition for Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Petitioner, **ERIC BEVERLY**, pursuant to Rule 39 and 18 U.S.C. § 3006A(d)(6), asks leave to file the accompanying Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit without prepayment of costs and to proceed in forma pauperis. Petitioner was represented by counsel appointed under the Criminal Justice Act, 18 U.S.C. § 3006A (b) and (c), on appeal to the United States Court of Appeals for the Fifth Circuit.

Date:
November 24, 2021.

Respectfully submitted,

/s/Yolanda Jarmon
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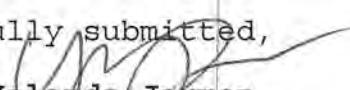
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QUESTIONS PRESENTED

I. On Appeal ERIC BEVERLY challenged the sufficiency of the evidence for the following jury convictions: (1) four counts of aiding and abetting armed bank robbery (2) one count of aiding and abetting attempted armed bank robbery and (3) five counts of aiding and abetting the brandishing a firearm during the commission of a crime of violence.

The Fifth Circuit affirmed the convictions.

In light of the foregoing, the question presented is as follows:

Whether the appeals court conducted an adequate review of facts and evidence upon which the jury reached its decision to convict. Because the proper weighing of the evidence and the application of the beyond reasonable doubt standard of review is of exceptional importance to the administration of justice in federal criminal cases, this Court should grant certiorari in this case to decide this question and, and upon review, should reverse the judgment of the Fifth Circuit.

PARTIES TO THE PROCEEDINGS

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

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<p>This Court should grant certiorari because the Fifth Circuit rendered only a cursory review of facts and evidence leading to the jury's conclusion to convict and because the proper weighing of the evidence and application of the beyond reasonable doubt standard is of exceptional importance to the administration of justice in federal criminal cases, this Court should grant certiorari in this case to decide this question, and upon review, should reverse the judgment of the Fifth Circuit.</p>	
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Appendix and Attachments

**Appendix A: Original Judgment and Sentence of the District Court,
United States v. Beverly, 4:16-CR-251-1, (S.D. Tex. September 23,
2020).**

Appendix B: Opinion of the Court of Appeals in United States v. Beverly, 857 Fed.Appx. 807 (5th Cir. 2021).

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PRAYER

The petitioner, ERIC BEVERLY (Hereinafter "BEVERLY"), respectfully prays that a writ of certiorari be granted to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit issued on August 26, 2021.

OPINIONS BELOW

The original judgment United States v. Eric Beverly, No. 4:16:CR:215-1 (S.D. Tex. September 23, 2020) is attached as (Exhibit A). On August 26, 2021, the United States Court of Appeals for the Fifth Circuit entered its judgment and opinion affirming Beverly's convictions. United States v. Beverly, 857 Fed.Appx. 807 (5th Cir. 2021 (affirmed)). (Exhibit B).

On appeal, Beverly contended that the evidence was insufficient to support his convictions for armed bank robbery, attempted armed bank robbery, and brandishing a firearm because (1) the Government was unable to provide cell phone data that linked him to the first two robberies, or that conclusively established that he was in any of the other banks at the time of the robberies; (2) bank employees testified that they could not identify the masked robbers; (3) the Government presented no DNA evidence; and (4) the accomplices who testified against him were not credible.

For the same reasons, Beverly argued that there was insufficient evidence supporting his convictions for brandishing a firearm during a crime of violence considering that the robbery

offenses were the predicate crimes for those convictions. United States v. Beverly, 857 F. App'x 807, 807 (5th Cir. 2021).

Because Beverly did not preserve his sufficiency challenges, the Fifth Circuit reviewed for plain error. United States v. Beverly, 857 F. App'x 807 (5th Cir. 2021). The Fifth Circuit affirmed Beverly's convictions and sentence concluding that there was no manifest miscarriage of justice. In rendering its decision, the Fifth Circuit emphasized that: (1) two of Beverly's accomplices provided detailed testimony about how Beverly planned and committed the crimes of conviction; (2) they identified Beverly in surveillance videos of the robberies that were played for the jury; (3) their testimony was corroborated by a text message sent by Beverly about the robberies and by the available cell phone data. According to the Fifth Circuit, in light of this testimony and evidence, Beverly failed to demonstrate a miscarriage of justice under the plain error standard of review. Id. at 808.

No petition for rehearing was filed.

BASIS OF JURISDICTION

On August 26, 2021, the United States Court of Appeals for the Fifth Circuit entered its unpublished judgment and opinion affirming the judgment of conviction and sentence in this case. United States v. Beverly, 857 F. App'x 807 (5th Cir. 2021) (affirmed). This petition is filed within ninety days after entry of the judgment. See. Sup. Ct. R. 13.1 and 13.3. Jurisdiction of the Court is invoked under Section 1254(1), Title

FEDERAL STATUTES INVOLVED

18 U.S.C. § 2(a)

Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

18 U.S.C. § 2113 (a)

Bank robbery and incidental crimes

(a) 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-

Shall be fined under this title or imprisoned not more than twenty years, or both.

18 U.S.C. § 2113 (d)

(d) Whoever, in committing, or in attempting to commit, any offense defined in subsections (a) and (b) of this section, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, shall be fined under this title or imprisoned not more than twenty-five years, or both.

18 U.S.C. §§ 924 (c) (1) (A) (ii)

(c) (1) (A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of

violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—

- (i) be sentenced to a term of imprisonment of not less than 5 years;
- (ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

STATEMENT OF THE CASE

A. Course of Proceedings And Facts

On May 25, 2016, Beverly was charged by Superseding Indictment with multiple offenses stemming from the government's unproven allegations that he participated in a series of armed bank robberies and attempted bank robberies in the Houston area from approximately July of 2014 to approximately May of 2015. Gregory Barbers, Julien Francis, and Jarrick Hoskins were charged in the same indictment. (ROA.24-50).

On October 25, 2017, Beverly alone was charged in a Fourteen Count Superseding Indictment with armed bank robbery, attempted bank robbery, and brandishing a firearm during a crime of violence in the Houston area from approximately August 25, 2014 to approximately May 2, 2015. (ROA.161-171).

In counts One, Three, Five, Seven ,Nine, and Thirteen of the Superseding Indictment, Beverly, was charged with armed bank robbery. In Count 11S, Beverly was charged with attempted armed

bank robbery. The alleged robbery crimes were in violation of 18 U.S.C. §§ 2113 (a), (d), and 2. In counts Two, Four, Six, Eight, Ten, Twelve, and Fourteen of the Superseding Indictment, Beverly was charged with the related firearm offenses, brandishing a firearm during the commission of a crime of violence, in violation of 18 U.S.C. §§ 924 (c) (1) (A) (ii).

On May 28, 2015, the government filed an application pursuant to 18 U.S.C. § 2703(c), 18 U.S.C. § 2703(d), and 47 U.S.C. § 1002 directing the service provider for telephone number (346) 932-1846, to provide records and other information for that telephone number. The government alleged in the 2703(d), application that the telephone number belonged to Jeremy Davis who is not charged in the instant case. United States Magistrate Judge Francis Stacey signed an order on May 28, 2018 directing the telephone service provider, T-Mobile, to disclose the information set forth in the order provided as part of the 18 U.S.C. § 2703(d) application. (ROA.236-252).

As a result of the information obtained via § 2703(d) for telephone number (346) 932-1846, the government then filed a subsequent application on July 8, 2015, requesting the identical information be provided for five other telephone numbers, including two telephone numbers which are alleged to belong to Appellee. (ROA.208, 249-252).

In a motion to suppress, Beverly argued that the Government prepared cell phone data charts which it intended to introduce

during the trial were inadmissible. The charts displayed historical cell phone location data in order to show that a telephone registered to Beverly was in the vicinity of the banks at issue on the dates and times the banks were robbed. (ROA.227).

On June 22, 2018, the United States Supreme Court released its opinion in Carpenter v. United States, 138 S. Ct. 2206 (2018). Carpenter held that the Fourth Amendment requires a warrant based upon probable cause be issue by a neutral magistrate in order to obtain historical cell site data. Id. In response, to Carpenter, the government applied for a search warrant with a supporting affidavit intending to create sufficient probable cause for the issuance of the warrant to obtain the identical information that had previously been obtained via the 2703 (d) order. (ROA.209, 253-259, 260-265).

The Motion to Suppress and the First Appeal

On August 8, 2018, Beverly moved to suppress cell site location information ("CSLI") and other cell phone data, relying heavily on Carpenter. (ROA.226-235). It is undisputed in this case that Carpenter was decided by the U.S. Supreme Court before the district court's decision on Appellee's motion to suppress and therefore before any trial or conviction on the allegations in this case.

In his motion to suppress, Appellee argued that the evidence obtained by the government should be suppressed because *inter alia* the information contained in the affidavit to establish probable

cause included misleading information which led the Magistrate issuing an order for the search of the telephone number 281-623-8877, alleged to have belonged to Beverly. (ROA.228-234).

The district court suppressed the warrant and the order. (ROA.295-298). The government appealed. (ROA.306). This Court reversed the district court's suppression order. United States v. Beverly, 943 F.3d 225 (5th Cir. 2019). A trial ensued on remand.

The Trial

After a two-day trial, on February 26, 2020, the jury found Beverly not guilty on Counts Three and Four of the Superseding Indictment, but rendered guilty verdicts on the remaining Counts. (ROA.426-429, 449-450).¹

Sentencing

Ultimately, Beverly was sentenced to time served on Counts One, Five, Seven, Nine, Eleven, and Thirteen to run concurrently, and 84 months as to each of the remaining Counts to run consecutively for a total of 504 months (42 years). (ROA.451,1328). Beverly was ordered to serve three years of supervised release on all Counts to run concurrently. (ROA.452,1328). No fine was imposed. However, Beverly was ordered to pay \$91,600.06 in restitution. (ROA.454,1328-1329).

¹ The jury acquitted Eric Beverly of the charges of Counts Three and Four, Armed Robbery and Brandishing a Firearm respectively ,alleged to have occurred at Chase Bank on December 27, 2014 with a loss amount of 11, 597.00. (ROA.168-169,427,1126).

A \$100.00 special assessment as to each Count of conviction was assessed for a total of \$1200.00. On the government's motion the \$1200.00 special assessments were remitted. (ROA.454).

Appointed counsel now files the instant petition for writ of certiorari on Beverly's behalf.

B. The Facts Adduced at Trial

The Alleged Robberies And Attempted Robbery

The August 25, 2014 Armed Robbery of Chasewood Bank located at 20333 State Highway 249 in Houston Texas (Count 1S and 2S)

Jeremy Davis (Hereinafter "Davis"), who pled guilty to two counts of bank robbery and two counts of brandishing a firearm testified for the Government.² (ROA.930). Davis identified Beverly as one of the robbers in open court. (ROA.932). Davis testified that he had participated in a series of bank robberies with Beverly, sometimes referred to as Big E; Terrance Brown, sometimes referred to as T. Brown; Davis, sometimes referred to JD; Jarrick Hoskins, also sometimes referred to as JD; Gregory Babers, sometimes referred to as Lil Greg or GJ; and Julien Francis; also known as Julo. (ROA. ROA.916,933-934,936,937,1057).

Davis also stated that guns were used in all the robberies. (ROA.941). Davis testified that Eric Beverly and T. Brown planned out the robberies. (ROA.943). Davis testified that he served as a lookout while Beverly and T. Brown went inside to rob the bank.

² Davis had not been sentenced at the time of trial. (ROA.930).

(ROA.959-960,964). Davis testified that during the robbery, Beverly, had a .357 magnum that Davis later purchased from Beverly. (ROA. 961-962).

Special Agent Justin Widup, the lead FBI agent assigned to investigate the robberies, testified that approximately \$21,146.00 was taken from the bank. (ROA.1124-1126). Widup testified that the bank was located in the Southern District of Texas. (ROA.1125). He testified that the bank was FDIC insured. (ROA.1128,1358-1362).

Michelle Hollier worked as a customer service agent at Chasewood Bank located at 20333 State Highway 249 on August 25, 2014 and testified for the Government. (ROA.1062). She testified that she saw two men enter the bank and then she got down. One of the men jumped over the counter and had a gun in his hand. (ROA.1065-1066). Hollier pushed an alarm button to let the police know the bank was being robbed. (ROA.1068)

Gregory Babers (Hereinafter "Babers") testified that he was involved in this robbery with, Beverly, Brown, and Davis. He identified Beverly as the person with a bag and a gun in his hand. He claimed he could identify Beverly, Beverly by his body build. (ROA.1176).

The January 6, 2015 Armed Robbery of Comerica Bank located at 2401 Fountainview, Houston, Texas (Count 5S and 6S)

Davis testified that he went inside the Comerica Bank located at 2401 Fountainview Houston, Texas with Eric Beverly to rob the

bank. (ROA.979-980). Davis went behind the counter to grab the money and Beverly held down the lobby area. (ROA.980-981). Davis stated that Beverly had a gun in his hand. (ROA.982-983). Agent Widup testified that a total of 9,048.00 was taken during the robbery. (ROA.1126-1127). He also testified that the bank was located in the Southern District of Texas. (ROA.1125). Widup further testified that the bank was FDIC insured. (ROA.1128,1370-1376).

Aurora Benitez was the lead teller at this Comerica Bank on January 6, 2015. (ROA.1089). She testified that two men with masks on and carrying handguns ran into the bank. One of them jumped over the counter. (ROA.1090,1092). The men ran out of the bank with a bag of money. (ROA.1090). There was a car waiting outside for the men, but Benitez did not see who was in the car. (ROA.1091).

Babers testified that he was involved in this robbery as well. (ROA.1183). According to Babers, Davis was on the counter and Beverly was wearing the spiderman ski mask. (ROA.1184). He also testified that Beverly had a firearm in his hand. Babers stated that he served as a lookout during this robbery, while Beverly and Davis were inside the bank. (ROA.1185-1186).

The April 15, 2015 Armed Robbery of JP Morgan Chase Bank located on 5510 Memorial Drive in Houston, Texas (Count 7S and 8S)

Davis testified that he participated in a robbery of the Chase Bank located on Memorial Drive on April 15, 2015.

(ROA.973). Davis went into the bank with Eric Beverly and JD, also known as Jarrick. (ROA.973-974). Davis testified that his role was to hold the lobby down while the two others robbed the bank. Davis held a gun that belonged to T. Brown in his hand during the robbery. (ROA.976-977, 978-979). Davis unknowingly left a hand print behind on the glass door of the bank. (ROA.978).

Agent Widup testified that a total of approximately 34,260.00 was taken during the robbery. (ROA.1127). He also testified that the bank was located in the Southern District of Texas. (ROA.1125)

Guillermina Lopez was working at the Chase Bank as a teller operation specialist on April 15, 2015. (ROA.1108). She testified that she was working the teller line when three men barged into the bank. (ROA.1109, 1110). Two men jumped over the teller counter where she was working, and one stayed in the lobby. She was told to open her teller drawers and one of the men grabbed the money. (ROA. 1109). The one in the lobby had a gun in his hand. (ROA.1111). Lopez was unable to identify any of them men because they wore face coverings. (ROA.1112).

Babers testified that he was involved in this robbery with Beverly , Davis, and Hoskins. He testified that Hoskins and Beverly jumped over the counter and it was Davis holding the gun. (ROA.1182). Babers stated that he was not inside the bank with

Davis, Hoskins, and Beverly, but was sitting in a car two streets over. (ROA.1183).

**The April 24, 2015 Armed Robbery of Chasewood Bank located at 20333 State Highway 249 in Houston, Texas
(Count 9S and 10S)**

Davis testified that he used his Dodge Ram truck to drop Beverly and T. Brown off at the Chasewood Bank located at 2033 State Highway 249 in Houston, Texas. (ROA.964). According to Davis, Beverly and Brown went inside to rob the bank. (ROA.965). T. Brown had a gun in his hand. (ROA.969). Davis testified that Brown and Beverly had money and a gun upon leaving the bank. (ROA.970). Agent Widup testified that a total of approximately 34,260.00 was taken during the robbery. (ROA.1127). He also testified that the bank was located in the Southern District of Texas. (ROA.1125-1126). Widup also testified that the Chasewood Bank was FDIC insured. (ROA.1128,1358-1362).

Michelle Hollier worked as a customer service agent at the bank the second time it was robbed as well. (ROA.1062,1069). She testified that two masked men ran into the bank. One, with a gun in his hand, jumped the counter. (ROA.1070,1077). One man remained in the doorway in between the door and the lobby. (ROA.1071). The police were notified of the robbery using alarm buttons inside the bank. The men left with money from the bank. (ROA.1079).

Babers testified that he had no participation in this robbery, but that Beverly told him about it. (ROA.1177-1178). Babers

claimed that he was at work that day. (ROA.1177). He claimed Beverly told him that this was his second time robbing this bank. (ROA.1178). He identified the men in the videos robbing the bank as Beverly and Terrance Brown. (ROA.1179-1180).

The April 28, 2015 Attempted Armed Robbery of Wells Fargo Bank located at 6161 Savoy Drive, Suite 100 Houston, Texas (Count 11S and 12S)

Davis testified that he was involved in the April 28, 2015 attempted armed robbery of the Wells Fargo Bank located at 6161 Savoy Drive, Suite 100, Houston, Texas. (ROA.990). Davis testified that he entered the bank with Beverly, and J.D, also known as Jarrick. (ROA.991). Davis claimed that half of Beverly's nose was showing on the video clip. (ROA. 992). According to Davis, Julio, Babers, and T. Brown remained outside. (ROA.990). Davis had a gun in his hand during the attempted robbery. (ROA.994). Davis testified that he was supposed to jump the counter with Beverly and assist in grabbing the money. (ROA.991). Things did not go as planned and the men left without taking any money. (ROA.991, 993,1009,1010,1127).

Agent Widup testified that the bank was located within the Southern District of Texas. (ROA.1125-1126). Widup also testified that the Wells Fargo Bank was FDIC insured. (ROA.1128,1377-1383).

Mellissa Appleberry testified that three masks men ran in the bank shortly before noon on April 28,2015. The men came in quickly with masks over their face and guns out. One of the men held a security guard at gunpoint near the door. Two of the men tried to

get inside the teller door, but were unsuccessful because the door was protected by a cipher code. (ROA.1116-1117). A protective, tall plastic barrier prevented the men from jumping over the teller counter. (ROA.1117). All three of the men then fled the bank without any money. (ROA.1121). Appleberry was unable to identify any of the men who attempted to rob the bank. (ROA.1122).

Babers testified that he was a participant in this robbery with Beverly, Jeremy Davis, T. Brown, Jarrick Hoskins, and Julien Francis. Beverly, Davis, and Hoskins went inside the bank. Francis remained in the car with Babers. Terrance Brown was in another car on a different street. (ROA.1187). He also claimed that you could see Beverly's nose and a little bit of his forehead in the video clip. (ROA.1188).

The May 2, 2015 Armed Robbery, Aiding and Abetting of Comerica Bank located at 2401 Fountainview, Houston, Texas (Count 5S and 6S)

Davis testified that he was involved in robbing the Comerica Bank located at 2401 Fountainview Houston, on May 2, 2015. (ROA.983). Davis testified that he went into the bank with Beverly. Beverly went over the counter and Davis remained in the lobby area. (ROA.986). Davis also testified that both men had a gun. (ROA.987). According to Davis, Beverly took money from the bank that day. Agent Widup testified that a total of 5,000.06 was taken during the robbery. (ROA. 1127). Widup testified that the bank was located in the Southern District of Texas. (ROA.1125). Agent Widup also testified to the stipulation that all of the

banks, JP Morgan Chase, Chasewood, and Wells Fargo were FDIC insured. (ROA.1127-1129,1358-1343).

Aurora Benitez was the lead teller at this Comerica Bank on May 2, 2015. (ROA.1089). She testified that two men with guns ran into the bank and one of them jumped over the counter. (ROA.1098,1099). She felt a gun on the side of her and testified that the gun was held to her. (ROA.1101). The men wore masks and gloves. (ROA.1102). The man who jumped over the counter grabbed the money. (ROA.1101). The two men left the bank with the bank's money. (ROA.1103). She was unable to identify the robbers. (ROA.1102).

Special Agent Widup testified that Davis was identified as a suspect in this case because he left a palm print at the exit door of one of the scenes. (ROA.1129-1130). Davis' phone records and content on the phone were used to identify other suspects namely Terrance Brown, Beverly, Julien Francis, Babers, and Jarrick Hoskins. (ROA.1131-1132).

Babers testified for the Government as well. Pursuant to a plea agreement, Babers pleaded guilty to armed bank robbery and aiding and abetting the brandishing of a firearm. He had not been sentenced at the time of his testimony in this trial. (ROA.1155). When asked whether he knew Beverly, Babers identified Beverly in open court. (ROA.1157). Babers testified that he was involved in this robbery as well. (ROA.1185). According to Babers, Beverly

and Davis went inside the bank and it was Beverly who jumped over the counter. (ROA.1186).

Babers testified that he started robbing banks in 2014 and 2015. (ROA.1159). He testified that he, Beverly, Hoskins, Brown, and Davis all had firearms. He also testified that all of these individuals were involved in bank robberies between August 25, 2014 and May 2, 2015. The general plan was that two or three of the men would go inside the bank and the remaining would serve as lookouts. (ROA.1160). He stated that mostly Beverly, Davis and T. Brown would be the ones going inside the banks and that Beverly was the main one who would go inside. (ROA.1161). Babers never went inside the banks. (ROA.1162). According to Babers, Beverly would make the decision as to who would go inside these banks. (ROA.1162-1163). Babers testified that Beverly would call the others and tell them the plans for robbing the banks. Beverly, Brown, and Davis would typically have the firearms. (ROA.1163). Beverly would decide who would carry the firearms. Babers would telephone Beverly if he were to see an officer when serving as a look out. (ROA.1164). Everyone involved would use a phone as a method of communicating with each other during the robbery. The men would cover their faces with a rag, ski mask or shirt. (ROA.1166). Beverly would normally have a plastic bag to place the money in. (ROA.1167).

The Cell Phone Data

Mark Sedwick, an FBI agent with the Cellular Analysis Research Team (CAST), testified for the Government. (ROA.1211-1212). He explained that the CAST team is made up of specially-trained agents and task force officers who have been certified in the analysis of historical call detail records (CDR). (ROA.1212). CDR records are a part of a phone bill including phone calls, date, time, phone numbers involved, and the length of the calls. CDR also contains the cell tower and sector side of the cell tower that the phone utilized to make that call. Agent Sedwick testified that using the towers in existence, he could determine the approximate area the phone had to be when a particular call or text took place. (ROA.1212). He reviewed T-Mobile and AT&T phone records in this case. (ROA.1213).

Agent Sedwick took the cell phone records provided to him by the prosecution and took the phone list of the cell tower list for both AT&T and T-Mobile. He used this information to plot the location of all the cell towers on a map. He used the records to show the phone usage and placed symbology on the maps to show the approximate location and the approximate coverage area of the cell towers. (ROA.1215,1384,1399). He was then able to determine the approximate location of the phones involved in this case. (ROA.1216).

August 25, 2014	No cell phone record for this date.
-----------------	-------------------------------------

December 24, 2017	No cell phone records for this date.
January 6, 2015	No cell phone records for this date. (ROA.1222)
April 15, 2015	Cell phone records
April 24, 2015	Cell phone records: Beverly, Brown, Beverly, Davis, Francis and Babers. (ROA.1229).
April 28, 2015	Cell phone records: Beverly Davis, Hoskins and Babers. (ROA.1231-1232).
May 2, 2015	Cell phone records: Beverly Davis, Hoskins, Babers and Francis. (ROA.1223,1236)

There are no records for any activity alleged prior to April 15, 2015. (ROA.1224).

Sedwick could not say that Beverly, or any other individuals were actually physically at the locations identified on the map, but only that the phone associated with certain phone numbers were in those areas. (ROA.1227-1228). Sedwick could not determine who was using those phones or what was said on those phones. (ROA.1227-1228,1239). Sedwick testified that he could not place Beverly's phone inside any bank involved in this case. (ROA.1241). Sedwick was only able to include one of Beverly's

phones in his analysis because another one of Beverly's phones had no activity during the times of the bank robberies. (ROA.1245) .

After Agent Sedwick's testimony, the Government closed, and the defense rested. (ROA.1250) .

A charging conference was held, and no objections were lodged by the defense. (ROA.1256) . Furthermore, the defense lodge no objections to the verdict form. (ROA.1261)

BASIS OF FEDERAL JURISDICTION IN THE
UNITED STATES DISTRICT COURT

This case was brought as a federal criminal prosecution involving armed robbery, attempted armed robbery, and brandishing a firearm during a crime of violence in violation of 18 U.S.C. §§ 924 (c) (1) (A) (ii) 2113 (a), (d), and 2

The district court therefore had jurisdiction pursuant to 18 U.S.C. § 3231.

REASON FOR GRANTING THE WRIT

This Court should grant certiorari because the Fifth Circuit rendered only a cursory review of facts and evidence leading to the jury's conclusion to convict and because the proper weighing of the evidence and application of the beyond reasonable doubt standard is of exceptional importance to the administration of justice in federal criminal cases, this Court should grant certiorari to decide this question, and upon review, should reverse the judgment of the Fifth Circuit.

ARGUMENTS

I. ISSUE ONE RESTATED: WHETHER THE EVIDENCE IS SUFFICIENT TO ESTABLISH BEYOND A REASONABLE DOUBT THE CONVICTIONS FOR AIDING AND ABETTING ARMED BANK ROBBERY, AIDING AND ABETTING ATTEMPTED ARMED BANK ROBBERY, AND AIDING AND ABETTING BRANDISHING A FIREARM DURING A CRIME OF VIOLENCE.

A jury convicted Beverly of four counts of aiding and abetting armed bank robbery, one count of aiding and abetting attempted armed bank robbery, and five counts of aiding and abetting brandishing a firearm during a crime of violence. On appeal, Beverly contended that the evidence was insufficient to support his armed bank robbery and attempted armed bank robbery convictions because (1) the Government was unable to provide cell phone data that linked him to the first two robberies, or that conclusively established that he was in any of the other banks at the time of the robberies; (2) bank employees testified that they could not identify the masked robbers; (3) the Government presented no DNA evidence; and (4) the accomplices who testified against Beverly were not credible. For the same reasons, Beverly argued that there was insufficient evidence supporting his convictions for brandishing a firearm during a crime of violence considering the robbery offenses were the predicate

crimes for those convictions. United States v. Beverly, 857 F. App'x 807, 807 (5th Cir. 2021).

The instant petition for certiorari is brought because the Fifth Circuit's cursory review of the record overlooked key evidence demonstrating that neither conviction was substantiated with proof beyond a reasonable doubt.

Beverly was charged with the armed robbery or aiding and abetting the armed robbery of six banks and using a gun during those bank robberies as well as one attempted robbery, aiding and abetting, the attempted robbery, and using the gun during the attempt as well. (ROA.161-171). The men alleged to have been involved in these robberies include Beverly, sometimes referred to as Big E; Terrance Brown, sometimes referred to as T. Brown; Jeremy Davis; Jarrick Hoskins, sometimes referred to as JD; Babers, sometimes referred to as Lil Greg or GJ; and Julien Francis; also known as Julo. (ROA.916, 933-934).³

The Government's theory of the case is that because two of Beverly's childhood friends stated that they robbed banks with him and because his cell phone number was identified near a robbery, Beverly must be guilty of armed robbery, attempted armed robbery, and brandishing a firearm during the commission of the offense.

³ Terrance Brown was deceased at the time of trial. (ROA.957).

Beverly argued that he did not participate in any of the charged offenses. He argued further that the trial evidence showed that no bank employees could positively identify Beverly as participant in any of the charged offenses. Beverly also argued that the two key witnesses, were unreliable witnesses who created their stories in order to glean a benefit from the Government.

Elements For Aiding and Abetting

"In order to convict a defendant of aiding and abetting a crime under 18 U.S.C. § 2, 'the Government must prove (1) that the defendant associated with the criminal venture, (2) participated in the venture, and (3) sought by action to make the venture succeed.'" United States v. Sorrels, 145 F.3d 744, 753 (5th Cir. 1998) (quoting United States v. Gallo, 927 F.2d 815, 822 (5th Cir. 1991)).⁴ Association means that the defendant shared in the criminal intent of the principal. Sorrells at 753 (quoting United States v. Salazar, 66 F.3d 723, 729 (5th Cir. 1995)). "Participation means that the defendant engaged in some affirmative conduct designed to aid the venture. Although relevant, mere presence and association are insufficient to sustain a conviction of aiding and abetting." Id. In other words, "[t]here must be evidence that he engaged in some affirmative conduct designed to aid in the success of the venture

⁴ "(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or

with knowledge that his actions would assist the perpetrator....''

United States v. Cowart, 595 F.2d 1023, 1031 (5th Cir. 1919).

Inherent to aiding and abetting sufficiency analysis is the requirement that the substantive offense itself, be proven. See United States v. McDowell, 498 F.3d 303,313 (5th Cir. 2007) ('The Government must prove: the elements of the substantive offense occurred; and the defendant associate[d] himself with the venture,... participate[d] in it as something...he wishe[d] to bring about,...[and sought] by his actions to make it succeed.' (brackets and ellipses in original)(citations omitted)). As a result, Defendants' conviction requires that he ''must have aided and abetted each material element of the alleged offense[s].''' United States v. Morrison, 833 F.3d 491,501 (5th Cir. 2016) (brackets in original) (quoting United States v. Lambardi, 138 F.3d 559,561 (5th Cir. 1998)). That did not occur in this case.

Proof beyond a reasonable doubt will sustain a conviction; proof showing only reasonable suspicion will not. Newman v. Metrish, 543 F.3d 793 (6th Cir. 2008). ''[A] verdict may not rest on mere suspicion, speculation, or conjecture, or on an overly attenuated piling inference on inference. United States v. Pettigrew, 77 F.3d 1500,1521 (5th Cir. 1996). ''Needless to say, to

procures its commission, is punishable as a principal.'' 18 U.S.C. § 2 (a).

demonstrate sufficiency, the Government 'must do more than pile inference upon inference.'" United v. McDowell, 498 F.3d 308, 314 (5th Cir. 2007) (citing United States v. Maseratti, 1 F.3d 330, 337 (5th Cir. 1993)).

Elements For Armed Bank Robbery

To sustain the conviction for the aiding and abetting bank robbery offenses charged in Counts One, Five, Seven, Nine, and Thirteen, pursuant 18 U.S.C. § 2113(a), 2113(d) and 2, charges for aiding and abetting armed bank robbery, the Government must also prove beyond a reasonable doubt that: (1) Beverly or another intentionally took money from a person or in the presence of a person; (2) the money belonged to or was in the possession of a federally insured bank at the time of the taking; (3) Beverly or another took the money by means of force or intimidation; and (4) Beverly or another assaulted or jeopardized the life of a person by using a weapon while taking the money. See 18 U.S.C. §§ 2113 (a) and (d).

The punishment may be enhanced when, in committing or attempting to commit the offense, the defendant assaults another person or puts in jeopardy the life of another person by the use of a dangerous weapon or device, "thereby committing aggravated bank

robbery under § 2113(d).'' Id.⁵ United States v. Ferguson, 211 F.3d 878, 883 (5th Cir. 2000). A robber who does not display a dangerous weapon or an ostensibly dangerous weapon or device cannot be found guilty of aggravated bank robbery under § 2113(d) unless the evidence establishes that he had a concealed weapon and that he used it in the course of the bank robbery. Id.⁶

Elements For Attempted Armed Bank Robbery (Count 11S)

To sustain the conviction for aiding and abetting attempted bank robbery, the Government must prove the elements for aiding and abetting as outlined *supra*. Additionally, the Government must prove that Beverly willfully did some act (in this case armed bank robbery as outlined *supra*); and the act is part of an effort to cause or accomplish something the law forbids- in this case, armed robbery.⁷

1. The Two Key Witnesses, Davis, And Babers, Were Not Credible.

In affirming the convictions in this case, the Fifth Circuit emphasized that: (1) two of Beverly's accomplices provided

5 (d) Whoever, in committing, or in attempting to commit, any offense defined in subsections (a) and (b) of this section, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, shall be fined under this title or imprisoned not more than the twenty-five years, or both." 18 U.S.C. § 2113(d).

6 "(a) 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 of 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; ... Shall be fined under this title or imprisoned not more than twenty years, or both." 18 U.S.C. § 2113(a).

7 In order to prove a violation of 18 U.S.C. § 2113(a), the Government must prove: (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. Bellew, 369 F.3d 450, 454 (5th Cir. 2004).

detailed testimony about how Beverly planned and committed the crimes of conviction; (2) they identified Beverly in surveillance videos of the robberies that were played for the jury; (3) their testimony was corroborated by a text message sent by Beverly about the robberies and by the available cell phone data. The court went on to say that in light of this testimony and evidence, Beverly fails to demonstrate a miscarriage of justice under the plain error standard of review. Id. at 808.

The record establishes that Davis and Gregory Babers were the two key witnesses that testified for the Government in this case. The Fifth Circuit's opinion in this case ignores the fact that neither Babers nor Davis presented credible evidence when considering the record as a whole. The Government's theory of the case is that Beverly was part of a robbery crew comprised of five men. The Government asserted that Davis and Babers were a part of the crew, but the crew was led by Beverly. (ROA.913).

Davis, pled guilty to two counts of bank robbery and two counts of brandishing a firearm. (ROA.930,1030). He told the Government that he was involved in several other robberies, however he was never charged for them. (ROA.1030-1031). Davis has no credibility, and his testimony is implicating Beverly is unreliable. When Davis was initially arrested he lied about his participation in the charged offenses. He gave a recorded

statement to the Government vehemently denying any involvement in bank robberies or attempted bank robberies. He only admitted his involvement when he was confronted with a palm print that he left behind during one of his robberies. (ROA.1017). He even lied to his own mother about the fact that he was a bank robber. (ROA.1020-1021). Davis admitted that he told lies to protect himself. (ROA.1021). Davis tries to implicate Beverly in the robberies as video evidence of some of the robberies were played in open court. The men on the video clips wore masks or covered their faces with other items. Davis' testimony proves that Davis is a bank robber and that he lied about it when he thought no evidence existed to prove otherwise. However, the evidence is insufficient to show, beyond a reasonable doubt that Beverly participated in any robbery, attempted robbery or any other crimes charged in the Superseding indictment in this case.

Babers testified for the Government in this case. However, when he was first approached by the Government in his case, Babers lied just like Davis had done. (ROA.1192,1195-1196). Pursuant to a plea agreement, Babers pleaded guilty to armed bank robbery and aiding and abetting the brandishing of a firearm. He had not been sentenced at the time of his testimony in this trial. (ROA.1155). When asked whether he knew Beverly, Babers identified Beverly in open court. (ROA.1157). Babers testified that he started robbing

banks in 2014 and 2015. (ROA.1159). He testified that he, Beverly, Hoskins, Brown, and Davis all had firearms. He also testified that all of these individuals were involved in bank robberies between August 25, 2014 and May 2, 2015. The general plan was that two or three of the men would go inside the bank and the remaining would serve as lookouts. (ROA.1160). He stated that mostly Beverly, Davis and T. Brown would be the ones going inside the banks and that Beverly was the main one who would go inside. (ROA.1161). Babers never went inside the banks. (ROA.1162). According to Babers, Beverly would make the decision as to who would go inside these banks. (ROA.1162-1163). Babers testified that Beverly would call the others and tell them the plans for robbing the banks. Babers claimed that Beverly, Brown and Davis would typically have the firearms. (ROA.1163). Babers testified that Beverly would decide who would carry the firearms. Babers would telephone Beverly if he were to see an officer when serving as a look out. (ROA.1164). According to Babers, everyone involved would use a phone as a method of communicating with each other during the robbery. The men would cover their faces with a rag, ski mask or shirt. (ROA.1166). Neither Babers nor Davis gave credible testimony that could be corroborated by other independent trial evidence.

2. The Government's Purported Expert, Mark Sedwick Could Not Conclusively Link Beverly to the Charged Offenses Nor Could It Demonstrate That Beverly Used the Phone to Plan, Commit, Participate or Have Any Other Involvement In The Charged Offenses.

The Fifth Circuit erroneously concluded that Babers' and Davis' testimony was corroborated by a text message sent by Beverly about the robberies and by the available cell phone data. Babers testified that everyone involved would use a phone as a method of communicating with each other during the robbery. On this point, Mark Sedwick , an FBI agent with the Cellular Analysis Research Team (CAST), testified for the Government as to cell phone usage and cell towers. (ROA.1211-1212). Sedwick analyzed cell phone data in this case. Sedwick confirmed that there was no data available for allegations in this case for any conduct alleged to have occurred prior to April 15, 2015. (ROA.1224). Therefore, there were no records for the August 25, 2014 robbery, the December 27, 2014 robbery, or the January 6, 2015 robbery. (ROA.1222).

He explained that the CAST team is made up of specially-trained agents and task force officers who have been certified in the analysis of historical call detail records (CDR). (ROA.1212). CDR records are a part of a phone bill including phone calls, date, time, phone numbers involved, and the length of the calls. CDR also contains the cell tower and sector side of the cell tower that the phone utilized to make that call. Agent Sedwick testified that using the towers in existence, he could determine the approximate

area the phone had to be when a particular call or text took place. (ROA.1212). He reviewed T-Mobile and AT&T phone records in this case. (ROA.1213). Agent Sedwick took the cell phone records provided to him by the prosecution and took the phone list of the cell tower list for both AT&T and T-Mobile. He used this information to plot the location of all the cell towers on a map. He used the records to show the phone usage and placed symbology on the maps to show the approximate location and the approximate coverage area of the cell towers (Gov't Exhibit 44). (ROA.1215). He was then able to determine tower usage. (ROA.1224).

The Fifth Circuit ignored Sedwick's testimony that he could not say that Beverly or any other individuals were actually physically at the locations identified on the map, but only that the phone associated with certain phone numbers were in those areas. (ROA.1227-1228). Sedwick could not determine who was using those phones or what was said on those phones. (ROA.1227-1228,1239). Sedwick testified that he could not place Beverly's phone inside any bank involved in this case. (ROA. 1241). Sedwick was only able to include one of Beverly's phones in his analysis because another one of Beverly's phones had no activity during the times of the bank robberies. (ROA.1245).

3. Not One Single Bank Employee Could Identify Beverly As A Participant

At trial, the Government conceded that not one single bank teller could identify Beverly as a participant in the charged offenses. (ROA.916). Michelle Hollier worked as a customer service agent at Chasewood Bank located at 20333 State Highway 249 on August 25, 2014. (ROA.1062). She saw two men enter the bank and then she got down. One of the men jumped over the counter and had a gun in his hand. (ROA.1065-1066). She could not identify Beverly as one of the robbers. (ROA.1122).

Aurora Benitez was the lead teller at this Comerica Bank on January 6, 2015 when it was robbed. (ROA.1089). Aurora Benitez was also the lead teller at Comerica Bank on May 2, 2015 when it was robbed. (ROA.1089). She was unable to identify the robbers at trial. (ROA.1102).

Guillermina Lopez was working at the Chase Bank as a teller operation specialist on April 15, 2015. (ROA.1108). Lopez was unable to identify any of them men because they wore face coverings. (ROA.1112).

Mellissa Appleberry was unable to identify any of the men who attempted to rob the Wells Fargo bank on April 28, 2015. (ROA.1122).

In sum, no bank employee identity Beverly as a participant in any armed robbery or attempted armed robbery.

4. There Was No DNA Evidence Linking Beverly To The Crimes

In this case, there was no DNA evidence linking Beverly to the charged crimes. The evidence at trial showed that it was Davis who actually left a palm print at one of the banks included in the Superseding Indictment. (ROA.1017).

In this case, the Government piled inference upon inference to gain conviction as the record contained *insufficient* evidence that Beverly took any act at all to aid or abet, or participate in the offenses. "A conviction must be overturned if it is based on speculation alone: '[A] verdict may not rest on mere suspicion, speculation, or conjecture, or on an overly attenuated piling of inference on inference.'" Id. at 333-34 (alteration in original) (quoting United States v. Pettigrew, 77 F.3d 1500, 1521 (5th Cir. 1996))." Yet, that is exactly what occurred in this case. A manifest miscarriage of justice occurred. Therefore, Beverly's armed robbery convictions must be reversed.

Elements For Aiding and Abetting Others to Carry or Brandish a Firearm in Relation to a Violent Crime

Beverly is charged in counts Two, Four, Six, Eight, Ten, Twelve, and Fourteen with aiding and abetting others to carry or brandish a firearm in relation to a violent crime. See 18 U.S.C. §

924 (c) (I) (A) (ii) and 2. Each count of robbery or the attempted robbery is followed by its related firearm count. Beverly could not be found guilty of a firearm offense unless, he was found guilty of the corresponding offense of aiding and abetting bank robbery or aiding and abetting attempted bank robbery. To sustain the firearm convictions, the Government must prove beyond a reasonable doubt that: (1) Beverly committed the crimes in Counts, One, three Five, Seven, Nine Eleven, or Thirteen (bank robbery is a crime of violence); and (2) Beverly aided and abetted others to knowingly carry or brandish a firearm in relation to his robbing the banks. "When a combination crime is involved, an aiding and abetting conviction requires that the defendants' intent 'go to the specific and entire crime charged.'" United States v. Carbins, 882 F.3d 557, 565 (5th Cir. 2018) (citing Rosemond v. United States, 572 U.S. 65, 134 (2014)).

In the instant case, Beverly contended that he did not participate in any of the charged offenses: armed bank robbery, attempted armed bank robbery or brandishing a firearm. Beverly asserted his innocence and maintained that, Babers and Davis were untruthful in their testimony. The trial court admonished the jurors that they could not find Beverly guilty of the firearms crimes without finding him guilty of the related aiding and abetting armed robbery and attempted armed robbery crimes. (ROA.422-424).

Because the foregoing law and analysis establishes that the evidence is insufficient to sustain the aiding and abetting bank robbery and attempted bank robbery convictions, it necessarily follows, pursuant to the trial court's instructions, that all of the corresponding firearms convictions must be reversed as well. See United States v. Bellew, 369 F.3d 450, 457 (5th Cir. 2004) (holding because Defendant's conviction on the second count, carrying a weapon while committing the attempted bank robbery, necessarily hinged on his conviction of attempted bank robbery, reversal was required, and the district court was instructed to enter a judgment of acquittal as to the second count.). The Fifth Circuit's cursory review of the record in this case caused it to erroneously conclude that no manifest miscarriage of justice occurred in this case.

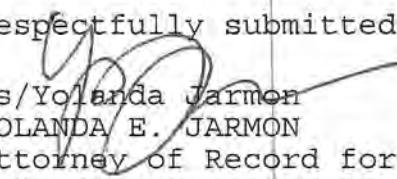
This Court should grant certiorari because the proper weighing of trial evidence and the application of the "beyond reasonable doubt standard" is of exceptional importance to the administration of justice in federal criminal cases, this Court should grant certiorari in this case to decide this question and, and upon review, should reverse the judgment of the Fifth Circuit.

CONCLUSION

For the foregoing reasons, petitioner ERIC BEVERLY respectfully prays that this Court grant certiorari, to review the judgment of the Fifth Circuit in this case and upon review, reverse the Fifth Circuit's judgment.

Date: November 24, 2021.

Respectfully submitted,


/s/Yolanda Jarmon
YOLANDA E. JARMON
Attorney of Record for Petitioner
2429 Bissonnet # E416
Houston, Texas 77005
Telephone: (713) 635-8338
Fax: (713) 635-8498

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2021

ERIC BEVERLY,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI

On Petition for Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

CERTIFICATE OF SERVICE

YOLANDA E. JARMON, is not a member of the Bar of this Court but was appointed under the Criminal Justice Act 18 U.S.C. § 3006 A(b) and (c), on appeal to the United States Court of Appeals for the Fifth Circuit, certifies that, pursuant to Rule 29.5, On November 24, 2021, she served the preceding Petition for Writ of Certiorari and the accompanying Motion for Leave to Proceed in Forma Pauperis on counsel for the Respondent by enclosing a copy of these documents in an envelope, first-class postage prepaid. Certified Mail No. 7011 0110 0000 9045 8201, return receipt requested, and depositing the envelope in the United States Postal Service located at 3740 Greenbriar, Houston, TX 77098 and further certifies that all parties required to be served have been served and copies addressed to:

The Honorable Elizabeth Prelogar
Solicitor General of the United States
Room 5614, Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001



s/ Yolanda Jarmon
YOLANDA E. JARMON

CERTIFICATE OF WORD COUNT

This petition for writ of certiorari contains 7,952 words in proportionally spaced typeface.

Yolanda E. Jarmon

/s/ Yolanda E. Jarmon

APPENDIX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
Holding Session in Houston
UNITED STATES OF AMERICA
v.
ERIC BEVERLY

United States District Court
Southern District of TexasENTERED
JUDGMENT IN A CRIMINAL CASE
September 23, 2020

David J. Bradley, Clerk

CASE NUMBER: 4:16CR00215-001
USM NUMBER: 13934-479Cornel A. Williams
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) 1S, 2S, 5S, 6S, 7S, 8S, 9S, 10S, 11S, 12S, 13S and 14S on February 26, 2020, after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 2113(d)	Armed Bank Robbery	08/25/2014	1S
18 U.S.C. § 924(c)(1)(A)(ii)	Brandishing a Firearm During a Crime of Violence	08/25/2014	2S
18 U.S.C. § 2113(d)	Armed Bank Robbery	01/06/2015	5S
18 U.S.C. § 924(c)(1)(A)(ii)	Brandishing a Firearm During a Crime of Violence	01/06/2015	6S

See Additional Counts of Conviction.

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) 3S and 4S

Count(s) _____ 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.

September 8, 2020
Date of Imposition of Judgment

Signature of Judge

LYNN N. HUGHES
UNITED STATES DISTRICT JUDGE
Name and Title of Judge

September 23, 2020
Date

Exhibit A

20-20514-449

DEFENDANT: **ERIC BEVERLY**
CASE NUMBER: **4:16CR00215-001****ADDITIONAL COUNTS OF CONVICTION**

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 2113(d)	Armed Bank Robbery	04/15/2015	7S
18 U.S.C. § 924(c)(1)(A)(ii)	Brandishing a Firearm During a Crime of Violence	04/15/2015	8S
18 U.S.C. § 2113(d)	Armed Bank Robbery	04/24/2015	9S
18 U.S.C. § 924(c)(1)(A)(ii)	Brandishing a Firearm During a Crime of Violence	04/24/2015	10S
18 U.S.C. § 2113(d)	Armed Bank Robbery	04/28/2015	11S
18 U.S.C. § 924(c)(1)(A)(ii)	Brandishing a Firearm During a Crime of Violence	04/28/2015	12S
18 U.S.C. § 2113(d)	Armed Bank Robbery	05/02/2015	13S
18 U.S.C. § 924(c)(1)(A)(ii)	Brandishing a Firearm During a Crime of Violence	05/02/2015	14S

DEFENDANT: **ERIC BEVERLY**
CASE NUMBER: **4:16CR00215-001****IMPRISONMENT**

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: 504 months.

This term consists of TIME SERVED as to each of Counts 1S, 5S, 7S, 9S, 11S, and 13S to run concurrently, and EIGHTY-FOUR (84) MONTHS as to each of Counts 2S, 6S, 8S, 10S, 12S, and 14S, to run consecutively to each other and to Counts 1S, 5S, 7S, 9S, 11S, and 13S, for a total of FIVE HUNDRED FOUR (504) MONTHS (42 years).

- 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 _____ 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

20-20514-451

DEFENDANT: **ERIC BEVERLY**
CASE NUMBER: **4:16CR00215-001****SUPERVISED RELEASE**Upon release from imprisonment, you will be on supervised release for a term of: 3 years.

This term consists of THREE (3) YEARS as to each of Counts 1S, 2S, 5S, 6S, 7S, 8S, 9S, 10S, 11S, 12S, 13S, and 14S to be served concurrently.

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 the location where 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 other conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

See Special 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.
14. If restitution is ordered, the defendant must make restitution as ordered by the Judge and in accordance with the applicable provisions of 18 U.S.C. §§ 2248, 2259, 2264, 2327, 3663A and/or 3664. The defendant must also pay the assessment imposed in accordance with 18 U.S.C. § 3013.
15. The defendant must notify the U.S. Probation Office of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines, or special assessments.

Sheet 3D – Supervised Release

Judgment — Page 5 of 7

DEFENDANT: **ERIC BEVERLY**
CASE NUMBER: **4:16CR00215-001**

SPECIAL CONDITIONS OF SUPERVISION**Substance Abuse Treatment, Testing, and Abstinence**

The defendant shall participate in a program of substance abuse aftercare at the direction of the probation officer to include urine, breath, or sweat patch testing; outpatient treatment. The defendant shall totally abstain from the use of alcohol and other intoxicants both during and after completion of any treatment program. The defendant shall not frequent bars, clubs, or other establishments where alcohol is the main business. The Court may order that the defendant contribute to the cost of services rendered (copayment) in an amount to be determined by the probation officer based on the defendant's ability to pay.

Mental Health Treatment

The defendant shall participate in a mental health treatment program and follow the rules and regulations of that program. The Court may order that the defendant contribute to the cost of services rendered (copayment) in an amount to be determined by the probation officer based on the defendant's ability to pay.

Cognitive Behavior Treatment

The defendant shall participate in a cognitive behavioral-treatment program as directed by the probation officer and follow the rules and regulations of that program. The Court may order the defendant to contribute to the cost of services rendered in an amount to be determined by the probation officer based on the defendant's ability to pay.

Financial Disclosure

The defendant shall not make application for any loan or enter into any credit arrangement without first consulting with the probation officer.

The defendant shall disclose all assets and liabilities to the probation officer. The defendant shall not transfer, sell, give away or otherwise convey any asset, without first consulting with the probation officer.

If the defendant maintains interest in any business or enterprise, the defendant shall, upon request, surrender and/or make available for review, any and all documents and records of said business or enterprise to the probation officer.

The defendant shall, upon request of the probation officer, authorize release of any and all financial information, to include income records, income tax records, and social security records, by execution of a release of financial information form, or by any other appropriate means.

The defendant shall notify the court and the Attorney General of any material change in economic circumstances that might affect the defendant's ability to pay a fine and/or restitution.

Education/Training Requirements

The defendant shall participate in an educational services program and follow the rules and regulations of that program. The Court may order the defendant to contribute the cost of services, based on the defendant's ability to pay.

Restitution

Pursuant to 18 U.S.C. § 3583(d), you shall make restitution in the amount of \$91,600.06 in accordance with 18 U.S.C. § 3663A. As part of this condition, you shall adhere to the Schedule of Payments sheet of the judgment.

DEFENDANT: **ERIC BEVERLY**
CASE NUMBER: **4:16CR00215-001****CRIMINAL MONETARY PENALTIES**

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

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment¹</u>	<u>JVTA Assessment²</u>
TOTALS	\$1,200	\$91,600.06	\$	\$	\$

A \$100 special assessment is ordered as to each of Counts 1S, 2S, 5S, 6S, 7S, 8S, 9S, 10S, 11S, 12S, 13S, and 14S, for a total of \$1,200.

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 victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss³</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Chasewood Bank		\$21,146.00	
Comerica Bank		\$5,000.06	
Chasewood Bank		\$22,146.00	
Comerica Bank		\$9,048.00	
JP Morgan Chase Bank		\$34,260.00	
TOTALS		\$91,600.06	

See Additional Restitution Payees.

TOTALS \$91,600.06

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.

¹ Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

² Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

³ 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: **ERIC BEVERLY**
CASE NUMBER: **4:16CR00215-001****SCHEDULE OF PAYMENTS**

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

A Lump sum payment of \$_____ due immediately, balance due
 not later than _____, or
 in accordance 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 _____ after the date of this judgment; or

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

E Payment during the term of supervised release will commence within _____ 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:

Payment is due immediately. If the entire balance is not paid in full, the defendant shall make payments of 10% of any wages earned while in prison in accordance with the Bureau of Prisons' Inmate Financial Responsibility Program. Any balance remaining after release from imprisonment shall be due in monthly installments of \$500.00 or 10% of the defendant's gross monthly income, whichever is greater, to commence 60 days after release from imprisonment to a term of supervision.

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

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment in the amount of 10% of any earned wages. 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.

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.

Joint and Several

Case Number

Defendant and Co-Defendant

Names

(including defendant number)

Eric Beverly-4:16CR00215-001

Joint and Several

Corresponding Payee,

Total Amount	Amount
\$91,600.06	\$91,600.06

if appropriate

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:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

A Neutral

As of: November 24, 2021 3:59 PM Z

United States v. Beverly

United States Court of Appeals for the Fifth Circuit

August 26, 2021, Decided

No. 20-20514 Summary Calendar

Reporter

857 Fed. Appx. 807 *; 2021 U.S. App. LEXIS 25734 **; 2021 WL 3817632

UNITED STATES OF AMERICA, Plaintiff—Appellee,
versus ERIC BEVERLY, Defendant—Appellant.

Notice: PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.*

Prior History: **1 Appeal from the United States District Court for the Southern District of Texas. USDC No. 4:16-CR-215-1.

United States v. Beverly, 943 F.3d 225, 2019 U.S. App. LEXIS 33977, 2019 WL 5997389 (5th Cir. Tex., Nov. 14, 2019)

Disposition: AFFIRMED.

Core Terms

robberies, armed bank robbery, accomplices, convictions, aiding and abetting, credibility, miscarriage of justice, violent crime, plain error, cell phone, brandishing, quotation, firearm, counts, marks

Judges: Before DAVIS, JONES, and ELROD, Circuit Judges.

Opinion

Exhibit B

[*807] PER CURIAM:*

A jury convicted Eric Beverly of four counts of aiding and abetting armed bank robbery, one count of aiding and abetting attempted armed bank robbery, and five counts of aiding and abetting brandishing a firearm during a crime of violence. On appeal, Beverly contends that the evidence was insufficient to support his armed bank robbery and attempted armed bank robbery convictions because (1) the Government was unable to provide cell phone data that linked him to the first two robberies or that conclusively established that he was in any of the other banks at the time of the robberies; (2) bank employees testified that they could not identify the masked robbers; (3) the Government presented no DNA evidence; and (4) the accomplices who testified against Beverly were not credible. For the same reasons, Beverly argues that there was insufficient evidence supporting his convictions for brandishing a firearm during a crime of violence because the robbery offenses were the predicate crimes for those convictions.

Because Beverly **2 did not preserve his sufficiency challenges, we review for plain error. *See United States*

Pursuant to *5TH CIRCUIT RULE 47.5*, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in *5TH CIRCUIT RULE 47.5.4*.

v. Oti, 872 F.3d 678, 686 (5th Cir. 2017). Under this standard, Beverly must show that there was a "manifest miscarriage of justice, which occurs only where the record is devoid of evidence pointing to guilt or the evidence is so tenuous that a conviction is shocking." *Id.* (internal quotation marks and citation omitted). As with a preserved sufficiency claim, "[t]he jury has responsibility for determining the weight and credibility of testimony and evidence," *United States v. Green*, 293 F.3d 886, 895 (5th Cir. 2002), and we will not second-guess the jury's reasonable determinations of evidentiary weight and witness credibility, *United States v. Mendoza*, 522 F.3d 482, 489 (5th Cir. 2008). Further, even "uncorroborated testimony of an accomplice or of someone making a plea bargain with the [G]overnment" can support a conviction. *United States v. Chapman*, 851 F.3d 363, 378 (5th Cir. 2017) (internal quotation [*808] marks and citation omitted); *see also Mendoza*, 522 F.3d at 489 ("Evidence consisting entirely of testimony from accomplices or conspirators is sufficient.").

Here, two of Beverly's accomplices provided detailed testimony about how Beverly planned and committed the crimes of conviction. They identified Beverly in surveillance videos of the robberies that were played for the jury. Their testimony was corroborated by a text message sent by Beverly [*3] about the robberies and by the available cell phone data. In light of this testimony and evidence, Beverly fails to demonstrate a miscarriage of justice under the plain error standard. *See Oti*, 872 F.3d at 686; *Chapman*, 851 F.3d at 378; *Mendoza*, 522 F.3d at 489.

AFFIRMED.