

No. 21-7366

IN THE  
SUPREME COURT OF THE UNITED STATES

RAYMOND L. ROGERS, pro se - PETITIONER

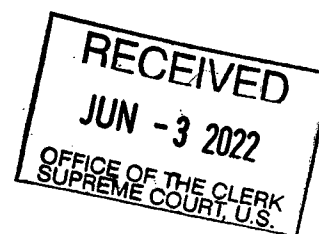
VS.

UNITED STATES OF AMERICA - RESPONDENT(S)

ON PETITION FOR A REHEARING OF THIS  
UNITED STATES SUPREME COURT'S APRIL 18, 2022 DENIAL ORDER

PETITION FOR A REHEARING

RAYMOND L. ROGERS  
P.O. BOX 3000-Medium  
Forrest City, AR 72336



REHEARING GROUND(S)

- (1). THE TENTH CIRCUIT COURT OF APPEALS FAILED TO RAISE AND ADDRESS THE THRESHOLD JURISDICTIONAL QUESTION CONCERNING ITS OWN AND THE KANSAS DISTRICT COURT'S SUBJECT MATTER JURISDICTION TO CRIMINALLY PROSECUTE PETITIONER BEFORE THE COURT RULED ON THE MERITS OF THE KANSAS DISTRICT COURT'S CRIMINAL JUDGMENT OF CONVICTION IN ITS APRIL 5, 2013, AFFIRMANCE ORDER. SEE APPENDIX A.
- (2). THE KANSAS DISTRICT COURT LACKED SUBJECT MATTER JURISDICTION TO CRIMINALLY PROSECUTE PETITIONER FOR THE CRIMES HE IS IN FEDERAL PRISON FOR AFTER THE DISTRICT COURT DISMISSED THE GRAND JURY'S JUNE 21, 2011, FIRST SUPERSEDING INDICTMENT, UPON THE AUSA'S MOTION TO DISMISS. SEE APPENDIX B.

LIST OF PARTIES

[ X] All parties appear in the caption of the case on the cover page.

[ ] All parties DO NOT appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## ARGUMENT(S) FOR REHEARING

Petitioner Rogers brings to this United States Supreme Court's attention for a rehearing concerning this Supreme Court's April 18, 2022, denial order of his Writ of Certiorari Petition, pertaining to the Tenth Circuit Court of Appeals April 5, 2013, affirmance judgment, of Petitioner's Criminal Direct Appeal and the Circuit Court's December 15, 2021, denial order, of Petitioner's pro se motion to recall or modify a mandate, that this Supreme Court failed to acknowledge that the Tenth Circuit Court of Appeals and the Kansas District Court were both without [Subject and Personal] Matter [jurisdiction] to issue the orders and judgments they have in Petitioner's Criminal Cases: (D.C. No. 6:10-CR-10186-JTM-1 & USAP10 No. 12-3125).

Petitioner submits that he did not originally argue this lack of Subject and Personal Matter [Jurisdictional] claim in his initial Certiorari request because he did not know that this court was going to deem his Writ of Certiorari request "timely" for him to be able to bring to this Supreme Court's attention arguments concerning the Tenth Circuit Court of Appeals April 05, 2013, Affirmance Order, on his Criminal Direct Appeal proceeding.

But being that Subject and Personal Matter [Jurisdictional] claims cannot be waived and court's must determine them in all proceedings because without [jurisdiction] a court's order and judgment is void, See *Steel Co. v. Citizens For Better Environment*, 523 US 83, 140 L Ed 2d 210, 118 S Ct 1003 (1998), Petitioner now brings his [jurisdictional] arguments to this court's attention.

Ground 1 - THE TENTH CIRCUIT COURT OF APPEALS APRIL 5, 2013,  
AFFIRMANCE JUDGMENT AND THE DECEMBER 15, 2021, DENIAL  
ORDER, ARE VOID FOR LACK OF SUBJECT MATTER JURISDICTION

Facts in support: Petitioner brings to this Supreme Court's attention that the Tenth Circuit Court of Appeals determined the merits of his criminal direct appeal without first resolving the question of [jurisdiction]. A review of the Tenth Circuit Court's April 5, 2013, affirmance judgment, attached hereto as Appendix A shows the opinion does not address the question of the Tenth Circuit Court's jurisdiction or the Kansas District Court's jurisdiction. See Appendix A.

In *Steel Co. v. Citizens For Better Environment*, 523 US 83, 140 L Ed 2d 210, 118 S Ct 1003 (1998), the court reiterated: "The requirement that jurisdiction be established as a threshold matter is 'inflexible and without exception';" *id.*, at 94-95, 140 L Ed 2d 210, 118 S Ct 1003 (quoting *Mansfield, C. & L. M. R. Co. v. Swan*, 111 US 379, 382, 28 L Ed 462, 4 S Ct 510 (1884)); for "[j]urisdiction is power to declare the law," and "[w]ithout jurisdiction the court cannot proceed at all in any cause'," 523 US at 94, 140 L Ed 2d 210, 118 S Ct 1003.

Appendix A, the Tenth Circuit Court's April 5, 2013, affirmance judgment which is currently rubber stamping Petitioner's illegal incarceration, never determined either its own or the Kansas District Court "[j]urisdiction to resolve the merits of any issues in Petitioner's criminal case. Steel Co. held that jurisdiction [must] precede merits in dispositional order. Every Federal appellate court has a special obligation to satisfy itself not only of its own jurisdiction, but also that of the lower court's in a cause

under review, even though the parties are prepared to concede the issue.

Because the Tenth Circuit Court of Appeals failed to raise or address the threshold question concerning its own jurisdiction and the Kansas District Court's subject matter jurisdiction before the Circuit Court resolved the merits of Petitioner's criminal direct appeal and affirmed his convictions and sentences, Petitioner is asking for this court to vacate or reverse the April 5, 2013, affirmance judgment, and remand his cause back to the Tenth Circuit Court for it to address the question of its own and the Kansas District Court's [juris]diction to criminally prosecute Petitioner in his criminal matter as federal appellate courts are obligated to.

Ground 2 - PETITIONER'S CRIMINAL CONVICTIONS AND SENTENCES ARE  
VOID FOR WANT OF INDICTMENT

Facts in support: Petitioner brings to this Supreme Court's attention for relief that he was criminally prosecuted without an indictment in the Kansas District Court. Petitioner points to the record of his criminal proceeding which took place in the Kansas District Court attached hereto as Exhibit "B", for this court to see that he was criminally prosecuted without an indictment. See Exhibit "B".

The facts supporting Petitioner's argument is that he was first indicted on December 07, 2010, for three federal statute code violations. He was arraign on this indictment at which point he plead not guilty. On June 21, 2011, the AUSA requested for the grand jury to return a First Superseding Indictment in Petitioner's

criminal case once Petitioner refused to plea guilty to the counts charged in the December 07, 2010, original indictment. The grand jury honored the AUSA's request and returned a First Superseding Indictment charging Petitioner with the same three counts contained in the grand jury's December 07, 2010, original indictment, plus three additional counts for a total of six counts. Petitioner was rearraigned on the June 21, 2011, First Superseding Indictment, at which point he plead not guilty on all six counts. On November 28, 2011, the aUSA filed a motion to "[dismiss]" the grand jury's June 21, 2011, First Superseding Indictment, in its entirety, of which the Kansas District Court Judge J. Thomas Marten [granted] the same day. See Appendix B Docket Entries # 12, 54, 89, 91.

Without any new indictment being requested or returned from a grand jury, Petitioner was criminally tried, convicted and sentenced in the Kansas District Court. See Appendix B.

Petitioner argues that the Kansas District Court was without [s]ubject and [p]ersonal matter jurisdiction to criminally prosecute him for any federal statute code violations once the court granted the aUSA's motion to "[dismiss]" the grand jury's First Superseding Indictment. This is so because the June 21, 2011, First Superseding Indictment, "replaced", "supplanted" and voided the December 07, 2010, original indictment. In *Humana Inc. v. Forsyth*, 525 US 299, 119, 142 L. Ed 2d 753 S Ct. 710 (1998) the court held, "the term 'supersede' ordinarily means to displace (and thus render ineffective) while providing a substitute rule."

So because the record of the Kansas District Court's proceeding is clear that no new indictment was returned in Petitioner's

criminal case after the court dismissed the grand jury's June 21, 2011, First Superseding Indictment, or before Petitioner was criminally tried, Petitioner's convictions and sentences are void for want of an indictment. The Fifth Amendment in the United States Constitution prohibits federal courts to criminally prosecute citizens without an indictment founded by a federal grand jury.

These facts are most likely why the Tenth Circuit Court of Appeals did not address the threshold jurisdictional question on Petitioner's criminal direct review before reaching the merits of the questions put forth. Since the record of the Kansas District Court's proceeding is established and now before this court and also plainly shows that Petitioner's convictions and sentences are void for want of an indictment, (Appendix B), I am asking this United States Supreme Court to intervene and reverse both lower courts judgments and instruct the courts to order my release from my illegal incarceration. The judgment of conviction in my criminal case attached to the grand jury's December 07, 2010, original indictment is "void" being that such said indictment was replaced and supplanted by the grand jury's June 21, 2011, First Superseding Indictment, which was terminated by the Kansas District Court upon the AUSA's Motion to Dismiss. See Appendix B Docket Entries # 89, 91.



APPENDIX A

TENTH CIRCUIT COURT OF APPEALS  
APRIL 5, 2013, AFFIRMANCE JUDGMENT  
WITHOUT THRESHOLD JURISDICTIONAL DETERMINATION

APPENDIX A

**UNITED STATES OF AMERICA, Plaintiff-Appellee, v. RAYMOND L. ROGERS,  
Defendant-Appellant.**

**UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT**

**520 Fed. Appx. 727; 2013 U.S. App. LEXIS 6954**

**No. 12-3125**

**April 5, 2013, Filed**

**Notice:**

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

**Editorial Information: Subsequent History**

Post-conviction relief denied at, Summary judgment denied by, Certificate of appealability denied United States v. Rogers, 2014 U.S. Dist. LEXIS 169984, 2014 WL 6977405 (D. Kan., Dec. 9, 2014) Magistrate's recommendation at, Habeas corpus proceeding at Rogers v. Beasley, 2017 U.S. Dist. LEXIS 189348, 2017 WL 5505009 (E.D. Ark., Nov. 16, 2017)

**Editorial Information: Prior History**

**{2013 U.S. App. LEXIS 1}**

(D.C. No. 6:10-CR-10186-JTM-1). (D. Kan.).

**Disposition:**

**AFFIRMED.**

**Counsel**

For UNITED STATES OF AMERICA, Plaintiff - Appellee: James A. Brown, Office of the United States Attorney, District of Kansas, Topeka, KS.

For RAYMOND L. ROGERS, Defendant - Appellant: Sean C. McEnulty, McEnulty Law Firm, P.A., Wichita, KS.

**Judges:** Before HARTZ, BALDOCK, and GORSUCH, Circuit Judges.

**CASE SUMMARY**

**PROCEDURAL POSTURE:** A jury convicted defendant of robbing a federally-insured bank, brandishing a firearm during the robbery, and possessing a firearm after a felony conviction. The United States District Court for the District of Kansas sentenced defendant to 234 months imprisonment. Defendant appealed, challenging both his convictions and sentence. District court properly found the evidence of the actual robbery supported application of the two-point enhancement for physical restraint because defendant and his accomplices threatened the branch manager and the teller with handguns to facilitate the crime.

**OVERVIEW:** District court properly found the evidence of the actual robbery supported application of the two-point enhancement for physical restraint because defendant and his accomplices threatened the branch manager and the teller with handguns to facilitate the crime. Further, the enhancement was appropriate regardless of which of the three roles defendant played in the robbery because defendant was accountable at sentencing for all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant. Finally, given the overwhelming evidence of his guilt, defendant's roundabout attempt to undermine the jury's verdict based on the fact

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that he wore a mask during the robbery to escape eyewitness identification was hardly mitigating evidence appropriate for allocution, and defendant failed to provide any objective basis to suggest the district court would have granted a lower sentence absent its obvious frustration with defendant's point (at the very least, a miscarriage of justice amounting to plain error could not be said to have occurred).

**OUTCOME:** The judgment of the district court was affirmed.

#### **LexisNexis Headnotes**

***Criminal Law & Procedure > Trials > Motions for Acquittal***

***Criminal Law & Procedure > Appeals > Standards of Review > De Novo Review > Sufficiency of Evidence to Convict***

An appellate court's review of the denial of a motion for judgment of acquittal pursuant to Fed. R. Crim. P. 29 is de novo. Viewing the evidence in the light most favorable to the Government, appellate courts ask whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. In so doing, appellate courts do not weigh evidence or credibility; appellate courts ask only whether the Government's evidence, credited as true, suffices to establish the elements of the crime.

U.S. Sentencing Guidelines Manual § 2B3.1(b)(4)(B) directs the court to increase a defendant's base offense level by two points if any person was physically restrained to facilitate the commission of the offense.

***Criminal Law & Procedure > Sentencing > Adjustments***

***Evidence > Procedural Considerations > Burdens of Proof > Preponderance of Evidence***

When determining the propriety of a sentence enhancement, appellate courts review the district court's factual findings for clear error and legal conclusions de novo. The Government bears the burden of establishing facts to support an enhancement by a preponderance of the evidence.

The enhancement for physical restraint is applicable when a defendant uses force, including force by gun point, to impede others from interfering with commission of the offense.

***Criminal Law & Procedure > Sentencing > Adjustments***

U.S. Sentencing Guidelines Manual § 1B1.3(a)(1)(A) explains that a defendant is accountable at sentencing for all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant.

***Criminal Law & Procedure > Sentencing > Guidelines***

Under U.S. Sentencing Guidelines Manual § 1B1.3(a)(1)(B), a defendant is responsible for all reasonably foreseeable acts and omissions of others in furtherance of the jointly undertaken criminal activity, that occurred during the commission of the offense of conviction.

***Criminal Law & Procedure > Sentencing > Imposition > Allocution***

***Criminal Law & Procedure > Appeals > Standards of Review > Plain Error > Burdens of Proof***

When a defendant did not object that he was denied his right to allocution in the district court, appellate courts review only for plain error pursuant to Fed. R. Crim. P. 52(b).

***Criminal Law & Procedure > Sentencing > Imposition > Allocution***

Before imposing sentence, the court must address the defendant personally in order to permit the defendant to speak or present any information to mitigate the sentence. Fed. R. Crim. P. 32(i)(4)(A)(ii). A defendant's right of allocution is violated if a district court indicates it is unwilling to listen to the statements or information a defendant wishes to offer in mitigation of his sentence.

**Opinion**

**Opinion by:** Bobby R. Baldock

**Opinion**

**{520 Fed. Appx. 728} ORDER AND JUDGMENT\***

A jury convicted Defendant Raymond Rogers of robbing a federally-insured bank in violation of 18 U.S.C. § 2113(a) (Count I); brandishing a firearm during the robbery in violation of 18 U.S.C. § 924(c)(1)(A) (Count II); and possessing a firearm after a felony conviction in violation of 18 U.S.C. § 922(g)(1) (Count III). The district court sentenced him to 234 months imprisonment. On appeal, Defendant challenges both his convictions and sentence. Defendant argues the district court improperly (1) denied his motion for judgment of acquittal pursuant to Fed. R. Crim. P. 29, (2) {2013 U.S. App. LEXIS 2} enhanced his base offense level under U.S.S.G. § 2B3.1(b)(4)(B), and (3) denied his right to allocution in violation of Fed. R. Crim. P. 32(i)(4)(A)(ii). Our jurisdiction arises under 28 U.S.C. § 1291 and 18 U.S.C. § 3742. We reject each of Defendant's arguments, and affirm.

I.

The Government's evidence as reflected in the record established that on the morning of December 1, 2010, three black males entered a branch of the Equity Bank in Wichita, Kansas. The branch manager and a teller, both women, were inside the bank. All three men wore masks and gloves. Two of the men brandished handguns; the third man carried a white bag. The first armed man covered the lobby area and provided lookout while periodically pointing his gun at the women. The other two men jumped the counter and ordered the women to "get down on the ground." After emptying the teller drawers, the two men instructed the women to open the vault. The second armed man yelled, "If you don't open it, I'll shoot you. Don't make me shoot you." The branch manager testified she thought she was going to be shot. The security video showed that after the vault was opened, the manager crouched in the corner outside the vault:

I just {2013 U.S. App. LEXIS 3} wanted to get as small as possible, . . . I didn't know what to do so I was thinking, what am I supposed to do now, but I wanted to get as small as possible because I was kind of worried that they were going to shoot me on the way out because, you know, even though . . . they're covered up, . . . you never know if they're thinking, oh, she saw me or something, I don't know. I was worried they were going to shoot me on the way out.

The three men fled in a green Chevy Tahoe that had been reported stolen earlier that morning. A few

moments after the robbery, a motorist in the vicinity of the robbery reported red smoke coming from the Tahoe. Among the \$102,743 stolen from the bank were bait money and dye-packs. A dye-pack is a bundle of what looks like money, but inside the bundle is a combustible canister of tear gas and red dye. Bait money is marked bills traceable to a specific bank. The responding officer found the Tahoe abandoned but saw a "large sum of money stained in red dye laying on the floor board."

Meanwhile, other officers were pursuing a blue Ford Escape that had been reported stolen at around the same time and from the same neighborhood as the Tahoe. The Escape neared an apartment {2013 U.S. App. LEXIS 4}complex about fourteen blocks from where the Tahoe had been abandoned. With the Escape still moving, three black men exited the vehicle and fled on foot. The two men {520 Fed. Appx. 729} who had jumped out of the passenger side of the vehicle ran toward building 12 of the complex. The driver fled in a different direction and was the first to be apprehended. Officers entered building 12 to search for the remaining two suspects. Officers apprehended the second man after they heard screaming coming from apartment 1211. At this point, the third man still remained at large. That man pounded on the door of apartment 1217 and entered uninvited when the tenant answered. According to the tenant, the man "looked like he had been running. He was sweaty." Officers proceeded to clear the apartments in building 12. In the process of removing five individuals from apartment 1217, an officer "saw a black male stick his head out from the . . . southwest bedroom into the hallway and look real quick and then go back . . . into the bedroom." Officers handcuffed that man, identified as Defendant.

Defendant wore a white t-shirt stained with red dye near its midsection. Forensics found the dye on Defendant's t-shirt to be consistent {2013 U.S. App. LEXIS 5}with the dye contained in a dye-pack. A search of apartment 1217 uncovered \$62,300 wrapped in two bags in the bathroom's toilet tank. Some of the bills were stained with red dye. Some of the bills were bait money from Equity Bank. Inside the Chevy Tahoe investigators found a dye-stained bag, envelopes from Equity Bank, and several thousand dollars in dye-stained bills, including bait money and some specially marked \$2 bills the branch manager had intended to give her children. Inside the Ford Escape investigators located numerous items of evidence linking the three men to the robbery including items of clothing, a wool cap with holes cut in it, and two loaded semiautomatic handguns-an Intratec AB-10 and a Bersa.

## II.

Defendant first claims the evidence was insufficient to support his convictions because no one directly identified him as a participant in the bank robbery (perhaps because he was wearing a mask). 1 Our review of the denial of a motion for judgment of acquittal pursuant to Fed. R. Crim. P. 29 is de novo. See *United States v. Vigil*, 523 F.3d 1256, 1262 (10th Cir. 2008). Viewing the evidence in the light most favorable to the Government, we ask whether "any rational trier of {2013 U.S. App. LEXIS 6}fact could have found the essential elements of the crime beyond a reasonable doubt. In so doing, we do not weigh evidence or credibility; we ask only whether the Government's evidence, credited as true, suffices to establish the elements of the crime." *United States v. Hutchinson*, 573 F.3d 1011, 1033 (10th Cir. 2009) (internal citation omitted). Applying this standard to the record facts, we need not belabor the point. Suffice to say the Government presented ample evidence to support the jury's finding that Defendant was one of the three men who robbed Equity Bank.

Defendant next asserts the district court erred when it applied a two-point sentencing enhancement pursuant to U.S.S.G. § 2B3.1(b)(4)(B) to increase his base offense level. Subsection (b)(4)(B) directs the court to increase a defendant's base offense level by two points "if any person was physically restrained to facilitate the commission of the offense." When determining the propriety of a sentence

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enhancement, {2013 U.S. App. LEXIS 7} we review the district court's factual findings for clear error and legal conclusions de novo. See *United States v. Miera*, 539 F.3d 1232, 1234 (10th Cir. 2008). The Government bears the burden of establishing facts to support an enhancement by a preponderance of the evidence. See *United States v. Flonnory*, 630 F.3d 1280, 1285-86 (10th Cir. 2011).

The enhancement for physical restraint is applicable when a defendant uses force, including force by gun point, to impede others from interfering with commission of the offense. See *Miera* 539 F.3d at 1234. Again, we need not tarry. In this case, the district court properly found the evidence of the actual robbery supported application of the two-point enhancement because Defendant and his accomplices threatened the branch manager and others with handguns to facilitate the crime. 2

Lastly, Defendant argues the district court denied him his right to allocution. Because the parties agree Defendant did not object in the district court, we review only for plain error pursuant to Fed. R. Crim. P. 52(b). See *United States v. Mendoza-Lopez*, 669 F.3d 1148, 1150-51 (10th Cir. 2012). Before imposing sentence, the court "must . . . address the defendant personally in order to permit the defendant to speak or present any information to mitigate the sentence." Fed. R. Crim. P. 32(i)(4)(A)(ii). "[A] defendant's right of allocution is violated if a district court indicates it is unwilling to listen to the statements or information a defendant wishes to offer in *mitigation* of his sentence." *Mendoza-Lopez*, 669 F.3d at 1151 (emphasis added).

The district court announced its proposed sentence and then asked Defendant {2013 U.S. App. LEXIS 9}"is there anything that you would like to say in your own behalf?" Defendant responded:

Your Honor, . . . I've been convicted of these crimes and, you know, I apologize for . . . what's been done that's got us here in court today, but I don't think that a high end of a sentence like that is appropriate for me at this age that I am and, you know, given the fact that I got three kids and a wife, I mean, a low end would be justifiable for me, if you ask my consideration about anything. I mean, I didn't plan on getting 230 some months, that's like a lot of time to a person. But I guess it's really not too much I can say with in the matter. When Defendant had concluded, the court thanked him and then explained in detail why its proposed sentence was the appropriate sentence. Defendant interjected and the following exchange took place:

THE DEFENDANT: Can I ask you a question Your Honor?

THE COURT: Sure.

THE DEFENDANT: I mean, no one really ever said that I was exactly robbed the bank or anything, but-

THE COURT: Mr. Rogers, if you are trying to tell me now-

THE DEFENDANT: No, I'm not saying-

THE COURT: No, no, what you are trying to tell me now is that nobody {520 Fed. Appx. 731} said that you were one of the people {2013 U.S. App. LEXIS 10} in the bank. Well, the fact is they did say that. There was testimony at your trial about that, and a jury found even as an aider and abettor that you are every bit as responsible as a principal if you weren't a principal. And let me tell you something else, Mr. Rogers, if you try to excuse or diminish in any way, again, in hearing your involvement, your role in this, I'm going to look for a way to enhance your sentence even further. Do you understand that?

THE DEFENDANT: Yes sir.

THE COURT: All right. Were you about to tell me that you were not as important a part of this as

the other people? Is that what you want to tell me?

THE DEFENDANT: No, I was just trying to say that I didn't get a straight testimony of anybody pointing me out that said I did anything. That's all.

THE COURT: The jury found beyond a reasonable doubt that you were a bank robber.

THE DEFENDANT: I understand that.

THE COURT: And that's all we need to know. That's all we need to know.

Defendant says the foregoing exchange implicated his allocution. We think not. First, after apparently completing his allocution, Defendant decided he wanted to point out to the district court that no direct evidence identified him as one of {2013 U.S. App. LEXIS 11} the three robbers. And he did so. As the foregoing exchange indicates, the district court eventually heard Defendant out. Second, given the overwhelming evidence of his guilt, Defendant's roundabout attempt to undermine the jury's verdict based on the fact he wore a mask during the robbery to escape eyewitness identification is hardly mitigating evidence appropriate for consideration. Third, Defendant fails to provide us any objective basis to suggest the district court should have granted a lower sentence absent its obvious frustration with Defendant's point. See *Morales-Lopez*, 669 F.3d at 1154. At the very least, a miscarriage of justice amounting to plain error cannot be said to have occurred.

AFFIRMED.

Entered for the Court,

Bobby R. Baldock

United States Circuit Judge

Footnotes

\*  
This order and judgment is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

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Notably, Defendant does not challenge his brandishing a firearm and felon in possession convictions apart from his bank robbery conviction. Because Defendant's robbery conviction stands, so do his other two convictions.

2

The § 2B3.1(b)(4)(B) enhancement was appropriate regardless of which of the three roles Defendant played in the robbery. Guideline § 1B1.3(a)(1)(A) explains that a defendant is accountable at sentencing for "all acts and omissions committed, *aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant*" (emphasis added). Each count {2013 U.S. App. LEXIS 8} of the indictment charged Defendant under 18 U.S.C. § 2, the aiding and abetting statute, as well as the substantive statute. Additionally, under § 1B1.3(a)(1)(B), a defendant is responsible for "all reasonably foreseeable acts and omissions of others in furtherance of the jointly undertaken criminal activity, that occurred during the commission of the offense of conviction."

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APPENDIX      B

RECORD OF THE KANSAS DISTRICT COURT'S PROCEEDINGS  
SHOWING DISMISSAL OF THE GRAND JURY'S  
JUNE 21, 2011, FIRST SUPERSEDING INDICTMENT

APPENDIX      B



CLOSED,SEVER

**U.S. District Court  
DISTRICT OF KANSAS (Wichita)  
CRIMINAL DOCKET FOR CASE #: 6:10-cr-10186-JTM All Defendants**

Case title: USA v. Rogers et al

Related Case:

Magistrate judge case number: 6:10-mj-06187-KGG

Date Filed: 12/07/2010

Date Terminated: 04/17/2012

---

Assigned to: Chief Judge J.  
Thomas Marten

**Defendant (1)**

**Raymond L. Rogers**

**20787-031**

**TERMINATED: 04/17/2012**

represented by **Raymond L. Rogers**

**20787-031**

**FORREST CITY - FCI - MEDIUM**

**Federal Correctional Institution**

**Inmate Mail/Parcels**

**PO Box 3000**

**Forrest City, AR 72336**

**Email:**

**PRO SE**

**Bar Status:**

**Jeff L. Griffith**

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**111 S. Baltimore**

**Derby, KS 67037**

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**Email: jlgriffithlaw@aol.com**

**TERMINATED: 01/18/2011**

**LEAD ATTORNEY**

**Designation: CJA Appointment**

**Bar Status: Active**

**Sean C. McEnulty**

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**151 Whittier St., Suite #1000**

**Wichita, KS 67207**

**316-263-0142**

**Fax: 316-681-4499**

**Email: s@mcenultylawfirm.com**

**LEAD ATTORNEY**

**ATTORNEY TO BE NOTICED**

**Designation: CJA Appointment**

**Bar Status: Active**

**Pending Counts**

**18:2113(a) - Bank robbery by  
force or violence and 18:2 -  
Aiding and abetting**

**Disposition**

**234 Months Imprisonment (Count 1: 150 months,  
Count 2: 84 months to run consecutive to counts 1  
& 3, Count 3: 120 months to run concurrent to**

(INDICTMENT 12/07/2010)

(1)

18:924(c)(1)(A) – Possessing and brandishing a firearm in furtherance of a crime of violence and 18:2 – Aiding and abetting (INDICTMENT 12/07/2010)  
(2)

18:922(g)(1) and 924(a)(2) – Felon in possession of a firearm and 18:2 – Aiding and abetting (INDICTMENT 12/07/2010)  
(3)

**Highest Offense Level (Opening)**

Felony

**Terminated Counts**

18:2113(a) – Bank robbery and 18:2 – Aiding and abetting (SUPERSEDING INDICTMENT 06/21/2011)  
(1s)

18:924(c)(1)(A) – Possession of firearm in furtherance of a crime of violence and 18:2 – Aiding and abetting (SUPERSEDING INDICTMENT 06/21/2011)  
(2s)

18:922(g)(1) and 924(a)(2) – Felon in possession of a firearm and 18:2 – Aiding and abetting (SUPERSEDING INDICTMENT 06/21/2011)  
(3s)

18:2113(a) – Bank robbery and 18:2 – Aiding and abetting (SUPERSEDING INDICTMENT 06/21/2011)  
(4s)

18:924(c)(1)(A) – Possession of a firearm in furtherance of a crime of violence and 18:2 – Aiding and abetting (SUPERSEDING INDICTMENT 06/21/2011)  
(5s)

18:922(g)(1) and 924(a)(2) – Felon in possession of a firearm and 18:2 – Aiding and abetting (SUPERSEDING INDICTMENT 06/21/2011)  
(6s)

counts 1 & 2); 5 Years Supervised Release (Counts 1 & 3: 3 years each count, to run concurrent to each other, Count 2: 5 years to run concurrent to counts 1 & 3); \$300 Assessment

234 Months Imprisonment (Count 1: 150 months, Count 2: 84 months to run consecutive to counts 1 & 3, Count 3: 120 months to run concurrent to counts 1 & 2); 5 Years Supervised Release (Counts 1 & 3: 3 years each count, to run concurrent to each other, Count 2: 5 years to run concurrent to counts 1 & 3); \$300 Assessment

234 Months Imprisonment (Count 1: 150 months, Count 2: 84 months to run consecutive to counts 1 & 3, Count 3: 120 months to run concurrent to counts 1 & 2); 5 Years Supervised Release (Counts 1 & 3: 3 years each count, to run concurrent to each other, Count 2: 5 years to run concurrent to counts 1 & 3); \$300 Assessment

**Disposition**

Dismissed

Dismissed

Dismissed

Dismissed

Dismissed

Dismissed

**Highest Offense Level**  
**(Terminated)**

Felony

**Complaints**

18:2113(a) – Bank robbery;  
18:924(c)(1)(A) – Possession and  
brandishing a firearm in  
furtherance of a crime of violence,  
and 18:2 – Aiding and abetting.

**Disposition**

Assigned to: Chief Judge J.  
Thomas Marten

**Defendant (2)**

David L. Hollis, III  
**TERMINATED: 02/22/2012**

represented by **Charles A. O'Hara**  
O'Hara & O'Hara  
1223 E. First  
Wichita, KS 67214  
316-263-5601  
Fax: 316-263-7205  
Email: [ohara@oharaohara.com](mailto:ohara@oharaohara.com)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**  
*Designation: Retained*  
*Bar Status: Active*

**Pending Counts**

18:924(c)(1)(A) – Possession of  
firearm in furtherance of a crime of  
violence and 18:2 – Aiding and  
abetting (SUPERSEDING  
INDICTMENT 06/21/2011)  
(2s)

**Disposition**

7 years imprisonment, said term to run concurrently  
to the sentence imposed in Sedgwick County  
District Court Case No. 10CR623; 3 years  
supervised release; \$100.00 Assessment

**Highest Offense Level (Opening)**

Felony

**Terminated Counts**

18:2113(a) – Bank robbery by  
force or violence and 18:2 –  
Aiding and abetting  
(INDICTMENT 12/07/2010)  
(1)

18:2113(a) – Bank robbery and  
18:2 – Aiding and abetting  
(SUPERSEDING INDICTMENT  
06/21/2011)  
(1s)

18:924(c)(1)(A) – Possessing and  
brandishing a firearm in  
furtherance of a crime of violence  
and 18:2 – Aiding and abetting  
(INDICTMENT 12/07/2010)  
(2)

**Disposition**

Dismissed

Dismissed

Dismissed

Dismissed

18:922(g)(1) and 924(a)(2) – Felon  
in possession of a firearm and 18:2  
– Aiding and abetting  
(INDICTMENT 12/07/2010)  
(3)

18:922(g)(1) and 924(a)(2) – Felon  
in possession of a firearm and 18:2  
– Aiding and abetting  
(SUPERSEDING INDICTMENT  
06/21/2011)  
(3s)

Dismissed

**Highest Offense Level**  
**(Terminated)**

Felony

**Complaints**

18:2113(a) – Bank robbery;  
18:924(c)(1)(A) – Possession and  
brandishing a firearm in  
furtherance of a crime of violence,  
and 18:2 – Aiding and abetting.

**Disposition**

Assigned to: Chief Judge J.  
Thomas Marten

**Defendant (3)**

**Shelan D. Peters**  
**TERMINATED: 07/06/2011**

represented by **Timothy J. Henry**  
Office of Federal Public Defender – Wichita  
850 Epic Center  
301 North Main Street  
Wichita, KS 67202  
316-269-6445  
Fax: 316-269-6175  
Email: [Tim\\_Henry@fd.org](mailto:Tim_Henry@fd.org)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**  
*Designation: Public Defender or Community  
Defender Appointment*  
*Bar Status: Active*

**Pending Counts**

18:2113(a) – Bank robbery by  
force or violence and 18:2 – Aiding  
and abetting (INDICTMENT  
12/07/2010)  
(1)

**Disposition**

97 Months Imprisonment (to run concurrent to the  
revocation sentence imposed in USDC case no.  
02-cr-10147-01); 3 Years Supervised Release;  
\$100 Assessment

**Highest Offense Level (Opening)**

Felony

**Terminated Counts**

18:2113(a) – Bank robbery and  
18:2 – Aiding and abetting  
(SUPERSEDING INDICTMENT  
06/21/2011)  
(1s)

**Disposition**

Dismissed

18:924(c)(1)(A) – Possessing and brandishing a firearm in furtherance of a crime of violence and 18:2 – Aiding and abetting (INDICTMENT 12/07/2010) (2)

Dismissed

18:924(c)(1)(A) – Possession of firearm in furtherance of a crime of violence and 18:2 – Aiding and abetting (SUPERSEDING INDICTMENT 06/21/2011) (2s)

Dismissed

18:922(g)(1) and 924(a)(2) – Felon in possession of a firearm and 18:2 – Aiding and abetting (INDICTMENT 12/07/2010) (3)

Dismissed

18:922(g)(1) and 924(a)(2) – Felon in possession of a firearm and 18:2 – Aiding and abetting (SUPERSEDING INDICTMENT 06/21/2011) (3s)

Dismissed

**Highest Offense Level**  
**(Terminated)**

Felony

**Complaints**

**Disposition**

18:2113(a) – Bank robbery;  
18:924(c)(1)(A) – Possession and brandishing a firearm in furtherance of a crime of violence, and 18:2 – Aiding and abetting.

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**Plaintiff**

USA

represented by Annette B. Gurney  
Office of United States Attorney – Wichita  
301 North Main Street, Suite #1200  
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316-269-6481  
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**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**  
*Bar Status: Active*

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**LEAD ATTORNEY**  
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**Lanny D. Welch**

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**Aaron L. Smith**

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 301 North Main Street, Suite #1200  
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 316-269-6561  
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**ATTORNEY TO BE NOTICED**  
*Bar Status: Active*

Email All Attorneys

Email All Attorneys and Additional Recipients

Date Filed	#	Docket Text
12/03/2010	<u>1</u>	COMPLAINT as to Raymond L. Rogers (1), David L. Hollis, III (2), Shelan D. Peters (3). (adw) [6:10-mj-06187-KGG] (Entered: 12/03/2010)
12/06/2010	<u>2</u>	ENTRY OF APPEARANCE: by attorney Charles A. O'Hara appearing for David L. Hollis, III (O'Hara, Charles) [6:10-mj-06187-KGG] (Entered: 12/06/2010)
12/06/2010		ARREST of David L. Hollis, III. (alm) [6:10-mj-06187-KGG] (Entered: 12/06/2010)
12/06/2010	<u>7</u>	MINUTE ENTRY for proceedings held before Magistrate Judge Kenneth G. Gale: RULE 5/INITIAL APPEARANCE as to David L. Hollis, III held on 12/6/2010. Detention Hearing set for 12/10/2010 at 01:30 PM in Courtroom 406 (KGG) before Magistrate Judge Kenneth G. Gale. Preliminary Hearing set for 12/20/2010 at 09:00 AM in Courtroom 406 (KGG) before Magistrate Judge Kenneth G. Gale. (Tape #1:39-1:45.) (alm) [6:10-mj-06187-KGG] (Entered: 12/06/2010)
12/06/2010	<u>8</u>	ORDER OF TEMPORARY DETENTION as to David L. Hollis, III. Signed by Magistrate Judge Kenneth G. Gale on 12/6/10. (alm) [6:10-mj-06187-KGG] (Entered: 12/06/2010)
12/06/2010		ARREST of Raymond L. Rogers. (alm) [6:10-mj-06187-KGG] (Entered: 12/06/2010)
12/06/2010	<u>3</u>	MINUTE ENTRY for proceedings held before Magistrate Judge Kenneth G. Gale: RULE 5/INITIAL APPEARANCE as to Raymond L. Rogers held on 12/6/2010. Detention Hearing set for 12/13/2010 at 01:30 PM in Courtroom 406 (KGG) before Magistrate Judge Kenneth G. Gale. Preliminary Hearing set for 12/20/2010 at 09:00 AM in Courtroom 406 (KGG) before Magistrate Judge Kenneth G. Gale. (Tape #1:31-1:40.) (alm) [6:10-mj-06187-KGG] (Entered: 12/06/2010)
12/06/2010	<u>4</u>	CJA 23 FINANCIAL AFFIDAVIT by Raymond L. Rogers. (alm) [6:10-mj-06187-KGG] (Entered: 12/06/2010)
12/06/2010	<u>5</u>	ORDER OF TEMPORARY DETENTION as to Raymond L. Rogers. Signed by Magistrate Judge Kenneth G. Gale on 12/6/10. (alm) [6:10-mj-06187-KGG] (Entered: 12/06/2010)
12/06/2010	<u>6</u>	CJA 20 as to Raymond L. Rogers: Appointment of Attorney Jeffrey L. Griffith. Signed by Magistrate Judge Kenneth G. Gale on 12/6/2010. (alm) [6:10-mj-06187-KGG] (Entered: 12/06/2010)

12/07/2010	<u>11</u>	Arrest WARRANT returned executed on 12/6/2010 as to David L. Hollis, III. (adw) [6:10-mj-06187-KGG] (Entered: 12/08/2010)
12/07/2010	<u>9</u>	ENTRY OF APPEARANCE: by attorney Jeff L. Griffith appearing for Raymond L. Rogers (Griffith, Jeff) [6:10-mj-06187-KGG] (Entered: 12/07/2010)
12/07/2010	<u>10</u>	Arrest WARRANT returned executed on 12/6/2010 as to Raymond L. Rogers. (adw) [6:10-mj-06187-KGG] (Entered: 12/08/2010)
12/07/2010	<u>12</u>	INDICTMENT as to Raymond L. Rogers (1) count(s) 1, 2, 3, David L. Hollis, III (2) count(s) 1, 2, 3, Shelan D. Peters (3) count(s) 1, 2, 3. (aa) (Entered: 12/08/2010)
12/07/2010	<u>13</u>	NOTICE by USA as to Raymond L. Rogers, David L. Hollis, III, Shelan D. Peters. (aa) (Entered: 12/08/2010)
12/08/2010		ARREST of Shelan D. Peters. (alm) (Entered: 12/09/2010)
12/08/2010	<u>14</u>	MINUTE ENTRY for proceedings held before Magistrate Judge Kenneth G. Gale: RULE 5/INITIAL APPEARANCE as to Shelan D. Peters held on 12/8/2010. ARRAIGNMENT as to Shelan D. Peters (3) Count 1,2,3 held on 12/8/2010. Defendant signed a Waiver of Detention Hearing. Court granted Defendant's oral request and ordered Marshal's service to communicate with counsel regarding Defendant's condition. Defendant's next appearance per the Scheduling Order before Judge Marten. (Court Reporter Jana Hoelscher.) (alm) (Entered: 12/09/2010)
12/08/2010	<u>15</u>	WAIVER OF DETENTION HEARING by Shelan D. Peters. (alm) (Entered: 12/09/2010)
12/08/2010	<u>16</u>	CJA 23 FINANCIAL AFFIDAVIT by Shelan D. Peters. (alm) (Entered: 12/09/2010)
12/09/2010	<u>17</u>	Arrest WARRANT returned executed on 12/7/2010 as to Shelan D. Peters. (adw) (Entered: 12/10/2010)
12/09/2010	<u>18</u>	Arrest WARRANT returned executed on 12/7/2010 as to Shelan D. Peters. (adw) (Entered: 12/10/2010)
12/10/2010	<u>19</u>	ORDER OF DETENTION PENDING TRIAL as to David L. Hollis, III. Signed by Magistrate Judge Kenneth G. Gale on 12/10/2010. (aa) (Entered: 12/10/2010)
12/10/2010	<u>20</u>	MINUTE ENTRY for proceedings held before Magistrate Judge Kenneth G. Gale: ARRAIGNMENT as to David L. Hollis III (2) Count 1,2,3 held on 12/10/2010. DETENTION HEARING as to David L. Hollis, III held on 12/10/2010. The court granted the government's motion for detention. Defendant's next appearance per scheduling order before Judge Marten. (Tape #2:17-2:28.) (adw) (Entered: 12/13/2010)
12/13/2010	<u>21</u>	MINUTE ENTRY for proceedings held before Magistrate Judge Kenneth G. Gale: ARRAIGNMENT as to Raymond L. Rogers (1) to Counts 1, 2, 3 of Indictment held on 12/13/2010. DETENTION HEARING as to Raymond L. Rogers held on 12/13/2010. Defendant's next appearance per scheduling order before Judge Marten. (Tape #1:46-1:49.) (adw) (Entered: 12/14/2010)
12/13/2010	<u>22</u>	WAIVER OF DETENTION HEARING by Raymond L. Rogers. (adw) (Entered: 12/14/2010)
12/14/2010	<u>23</u>	ENTRY OF APPEARANCE: by attorney Timothy J. Henry appearing for Shelan D. Peters (Henry, Timothy) (Entered: 12/14/2010)
12/14/2010	<u>24</u>	GENERAL ORDER OF DISCOVERY & SCHEDULING as to Raymond L. Rogers, David L. Hollis, III, and Shelan D. Peters: Jury Trial set for 2/15/2011 at 9:00 AM in Courtroom 238 before District Judge J. Thomas Marten. Status Conference set for 2/3/2011 at 2:30 PM in Courtroom 238 before District Judge J. Thomas Marten. Signed by District Judge J. Thomas Marten on 12/14/10. (mss) (Entered: 12/14/2010)
12/15/2010	<u>25</u>	SEALED MOTION for Leave to File Under Seal by Shelan D. Peters. (Attachments: # <u>1</u> Proposed Sealed Document)(Henry, Timothy) (Entered: 12/15/2010)
12/15/2010	<u>26</u>	ORDER granting <u>25</u> Sealed Motion for Leave to File Under Seal. Counsel is directed to file forthwith the requested document(s) with an event from the SEALED DOCUMENTS category as to Shelan D. Peters (3). Entered by District Judge J.

		Thomas Marten on 12/15/10. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (mss) (Entered: 12/15/2010)
12/15/2010	<u>27</u>	SEALED MOTION by Shelan D. Peters. (Henry, Timothy) (Entered: 12/15/2010)
12/16/2010	<u>28</u>	SEALED ORDER granting <u>27</u> Sealed Motion as to Shelan D. Peters (3). Signed by District Judge J. Thomas Marten on 12/16/10. (alm) (Entered: 12/16/2010)
01/13/2011	<u>29</u>	MOTION to Withdraw Jeff Griffith as Attorney by Raymond L. Rogers. (Griffith, Jeff) (Entered: 01/13/2011)
01/18/2011	<u>30</u>	CJA 20 as to Raymond L. Rogers: Appointment of Attorney Sean McNulty. Signed by Magistrate Judge Kenneth G. Gale on 1/14/2011. (alm) (Entered: 01/18/2011)
01/18/2011	<u>31</u>	ORDER granting <u>29</u> Jeff Griffith's Motion to Withdraw as Attorney for Raymond L. Rogers (1). Signed by District Judge J. Thomas Marten on 1/18/2011. (mss) (Entered: 01/18/2011)
01/21/2011	<u>32</u>	MOTION for order Granting Authority to Consume Physical Evidence in Furtherance of the Investigation by USA as to Raymond L. Rogers, David L. Hollis, III, Shelan D. Peters. (Smith, Aaron) (Entered: 01/21/2011)
01/24/2011	<u>33</u>	NOTICE OF HEARING re: <u>32</u> MOTION for order Granting Authority to Consume Physical Evidence in Furtherance of the Investigation: Responses shall be filed no later than February 4, 2011. A hearing is set for 2/7/11 at 1:30 p.m. in Courtroom 238 before District Judge J. Thomas Marten. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (mss) (Entered: 01/24/2011)
01/27/2011	<u>34</u>	MOTION to Sever Defendant, MOTION to Continue Pre-trial Motion Deadline, Status Conference and Jury Trial by Shelan D. Peters. (Henry, Timothy) (Entered: 01/27/2011)
01/27/2011	<u>35</u>	DEMAND FOR NOTICE OF ALIBI DEFENSE by USA as to Raymond L. Rogers, David L. Hollis, III, Shelan D. Peters (Smith, Aaron) (Entered: 01/27/2011)
01/31/2011	<u>36</u>	ORDER TO SEVER AND CONTINUE granting <u>34</u> Motion to Sever Defendant as to Shelan D. Peters (3); granting <u>34</u> Motion to Continue as to Shelan D. Peters (3). The deadline for filing pre-trial motions, the status conference and the jury trial are continued to a later date to be determined by the Court. Signed by District Judge J. Thomas Marten on 1/31/2011. (alm) (Entered: 01/31/2011)
02/02/2011	<u>37</u>	Joint MOTION to Continue time to file Defendants' Motions, Status Conference and Jury Trial by David L. Hollis, III. (O'Hara, Charles) (Entered: 02/02/2011)
02/03/2011	<u>38</u>	NOTICE OF CANCELLED HEARING: The status conference set on February 3, 2011, at 2:30 p.m. as to Defendants Raymond L. Rogers and David L. Hollis, III is cancelled. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (mss) (Entered: 02/03/2011)
02/07/2011	<u>39</u>	MINUTE ENTRY for proceedings held before District Judge J. Thomas Marten: MOTION HEARING as to Raymond L. Rogers, David L. Hollis, III, and Shelan D. Peters held on 2/7/2011. Counsel for defendant Peters was present. Defendant Peters was not present. Order to follow. (Court Reporter Jana Hoelscher.) (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (mss) (Entered: 02/07/2011)
02/08/2011	<u>40</u>	ORDER granting <u>32</u> Motion for Order as to Raymond L. Rogers (1) and David L. Hollis III (2). Signed by District Judge J. Thomas Marten on 2/7/2011. (alm) (Entered: 02/08/2011)
02/08/2011	<u>41</u>	ORDER FOR CONTINUANCE granting <u>37</u> Motion to Continue as to Raymond L. Rogers (1) and David L. Hollis III (2). Motions due by 3/11/11. Jury Trial set for 4/19/2011 at 09:00 AM in Courtroom 238 (JTM) before District Judge J. Thomas Marten. Status Conference set for 4/6/2011 at 02:30 PM in Courtroom 238 (JTM) before District Judge J. Thomas Marten. Signed by District Judge J. Thomas Marten on 2/8/2011. (alm) (Entered: 02/08/2011)
03/11/2011	<u>42</u>	MOTION to Continue Time to File Defendant's Motions by David L. Hollis, III. (O'Hara, Charles) (Entered: 03/11/2011)



03/16/2011	<u>43</u>	ORDER granting <u>42</u> Motion to Continue as to Raymond L. Rogers (1) and David L. Hollis, III (2): Motions due by 3/25/2011. Signed by District Judge J. Thomas Marten on 3/16/2011. (alm) (Entered: 03/16/2011)
03/24/2011	<u>44</u>	NOTICE OF HEARING as to Defendants Raymond L. Rogers and David L. Hollis, III: Status conference RE-SET for Monday, April 11, 2011, at 2:00 p.m. This is a rescheduling of the April 6, 2011 hearing. The defendants will not be present for the status conference. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (mss) (Entered: 03/24/2011)
04/06/2011	<u>45</u>	MOTION to Continue Status Conference and Jury Trial by David L. Hollis, III. (O'Hara, Charles) (Entered: 04/06/2011)
04/07/2011	<u>46</u>	ORDER granting <u>45</u> Motion to Continue as to Raymond L. Rogers (1) and David L. Hollis III (2) Status Conference set for 5/11/2011 at 02:30 PM in Courtroom 238 (JTM) before District Judge J. Thomas Marten. Jury Trial set for 5/24/2011 at 09:00 AM in Courtroom 238 (JTM) before District Judge J. Thomas Marten. Signed by District Judge J. Thomas Marten on 4/7/2011. (adw) (Entered: 04/07/2011)
05/11/2011	<u>47</u>	MINUTE ENTRY for proceedings held before District Judge J. Thomas Marten: STATUS CONFERENCE as to Raymond L. Rogers and David L. Hollis, III held on 5/11/2011. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (mss) (Entered: 05/11/2011)
05/16/2011	<u>48</u>	MOTION to Continue Jury Trial by Raymond L. Rogers. (McEnulty, Sean) (Entered: 05/16/2011)
05/18/2011	<u>49</u>	ORDER granting <u>48</u> Motion to Continue. Time excluded from 5/16/2011 as to Raymond L. Rogers (1) and David L. Hollis, III. A Status Conference/Change of Plea and a Jury Trial date of this case will be scheduled by this Court at a later date. Signed by District Judge J. Thomas Marten on 5/17/2011. (adw) (Entered: 05/18/2011)
05/19/2011	<u>50</u>	NOTICE OF HEARING as to Defendants Raymond L. Rogers and David L. Hollis, III: Jury Trial set for 7/19/2011 at 9:00 AM in Courtroom 238 (JTM) before District Judge J. Thomas Marten. Status Conference set for 7/7/2011 at 2:30 PM in Courtroom 238 (JTM) before District Judge J. Thomas Marten. (mss) (Entered: 05/19/2011)
06/03/2011	<u>51</u>	ARREST WARRANT returned executed on 12/01/2010 as to Raymond L. Rogers. (aa) (Entered: 06/06/2011)
06/15/2011	<u>52</u>	NOTICE OF HEARING as to Defendant Shelan D. Peters: Change of Plea Hearing set for 7/5/2011 at 10:00 AM in Courtroom 238 (JTM) before District Judge J. Thomas Marten. (mss) (Entered: 06/15/2011)
06/17/2011	<u>53</u>	NOTICE OF HEARING as to Defendant Shelan D. Peters: Change of Plea Hearing and Sentencing RE-SET for 7/5/2011 at 11:00 AM in Courtroom 238 (JTM) before District Judge J. Thomas Marten. PLEASE NOTE TIME CHANGE. (mss) (Entered: 06/17/2011)
06/21/2011	<u>54</u>	SUPERSEDING INDICTMENT as to Raymond L. Rogers (1) count(s) 1s, 2s, 3s, 4s, 5s, 6s, David L. Hollis, III (2) count(s) 1s, 2s, 3s, Shelan D. Peters (3) count(s) 1s, 2s, 3s. (aa) (Entered: 06/22/2011)
06/30/2011	<u>55</u>	PRESENTENCE INVESTIGATION REPORT as to Shelan D. Peters  (NOTE: Access to this document is restricted to the USA and this defendant.) (USPO) (Entered: 06/30/2011)
07/01/2011	<u>56</u>	ARREST WARRANT returned executed on 6/22/2011 as to Shelan D. Peters. (smg) (Entered: 07/01/2011)
07/05/2011	<u>57</u>	MINUTE ENTRY for proceedings held before District Judge J. Thomas Marten: CHANGE OF PLEA HEARING as to Shelan D. Peters held on 7/5/2011. Defendant entered a plea of guilty to Count 1 of the Indictment. Sentencing set for 7/5/2011 at 11:45 AM in Courtroom 238 (JTM) before District Judge J. Thomas Marten. (Court Reporter Jana McKinney.) (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (mss) (Entered: 07/05/2011)

07/05/2011	<u>58</u>	MINUTE ENTRY for proceedings held before District Judge J. Thomas Marten: SENTENCING HEARING held on 7/5/2011 as to defendant Shelan D. Peters. (Court Reporter Jana McKinney.) (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (mss) (Entered: 07/05/2011)
07/05/2011	<u>59</u>	PETITION TO ENTER PLEA OF GUILTY AND ORDER ENTERING PLEA as to Shelan D. Peters (3): Count 1. Signed by District Judge J. Thomas Marten on 7/5/2011. (aa) (Entered: 07/05/2011)
07/05/2011	<u>60</u>	PLEA AGREEMENT as to Shelan D. Peters re <u>59</u> Petition and Order to Enter Plea of Guilty. (aa) (Entered: 07/05/2011)
07/06/2011	<u>61</u>	JUDGMENT as to Shelan D. Peters (3): Count 1 = 97 Months Imprisonment (to run concurrent to the revocation sentence imposed in USDC case no. 02-cr-10147-01); 3 Years Supervised Release; \$100 Assessment; Count(s) 1s, 2, 2s, 3, 3s, Dismissed. Signed by District Judge J. Thomas Marten on 7/6/2011. (aa) (Entered: 07/06/2011)
07/06/2011	<u>62</u>	STATEMENT OF REASONS as to Shelan D. Peters re <u>61</u> Judgment.  (NOTE: Access to this document is restricted to the USA and this defendant.)  (aa) (Entered: 07/06/2011)
07/06/2011	<u>63</u>	MINUTE ENTRY for proceedings held before Magistrate Judge Karen M. Humphreys: ARRAIGNMENT as to Raymond L. Rogers (1) Count 1s,2s,3s,4s,5s,6s held on 7/6/2011. Defendant's next appearance before Judge Marten as directed. (Tape #1:36-1:39) (aa) (Entered: 07/07/2011)
07/07/2011	<u>64</u>	MINUTE ENTRY for proceedings held before District Judge J. Thomas Marten: STATUS CONFERENCE as to Raymond L. Rogers and David L. Hollis, III held on 7/7/2011. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (mss) (Entered: 07/07/2011)
07/12/2011	<u>65</u>	MOTION to Continue Jury Trial by Raymond L. Rogers as to Raymond L. Rogers, David L. Hollis, III. (McEnulty, Sean) (Entered: 07/12/2011)
07/14/2011	<u>66</u>	AGREED ORDER CONTINUING JURY TRIAL granting <u>65</u> Motion to Continue. Time excluded from 07/14/2011 until 09/13/2011 as to Raymond L. Rogers (1) & David L. Hollis III (2). Jury Trial set for 9/13/2011 at 09:00 AM in Courtroom 238 (JTM) before District Judge J. Thomas Marten. Status Conference is continued to 08/31/2011 at 3:00 PM. Signed by District Judge J. Thomas Marten on 7/13/2011. (aa) (Entered: 07/14/2011)
08/25/2011	<u>67</u>	NOTICE OF HEARING as to Defendants Raymond L. Rogers and David L. Hollis, III: Status conference RE-SET for 8/31/11 at 1:00 PM in Courtroom 238 before District Judge J. Thomas Marten. THIS IS A TIME CHANGE ONLY. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (mss) (Entered: 08/25/2011)
08/29/2011	<u>68</u>	MOTION to Continue Status Conference and Jury Trial by Raymond L. Rogers. (McEnulty, Sean) (Entered: 08/29/2011)
08/29/2011	<u>69</u>	NOTICE OF CANCELLED HEARING: The status conference set on August 31, 2011, at 1:00 p.m. as to Defendants Raymond L. Rogers and David L. Hollis, III is cancelled. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (mss) (Entered: 08/29/2011)
08/30/2011	<u>70</u>	ORDER granting <u>68</u> Motion to Continue. Time excluded from 08/30/2011 as to Raymond L. Rogers (1). Signed by District Judge J. Thomas Marten on 8/30/2011. (aa) (Entered: 08/30/2011)
08/30/2011	<u>71</u>	NOTICE OF HEARING as to Defendants Raymond L. Rogers and David L. Hollis, III: Jury Trial RE-SET for 10/25/2011 at 9:00 AM in Courtroom 238 (JTM) before District Judge J. Thomas Marten. Status Conference RE-SET for 10/13/2011 at 3:30 PM in Courtroom 238 (JTM) before District Judge J. Thomas Marten. (mss) (Entered: 08/30/2011)

09/09/2011	<u>72</u>	ARREST WARRANT on Superseding Indictment returned executed on 12/1/10 as to Raymond L. Rogers (smg) (Entered: 09/09/2011)
09/09/2011	<u>73</u>	ARREST WARRANT returned executed on 12/1/2010 as to David L. Hollis, III (smg) (Entered: 09/13/2011)
09/19/2011	<u>74</u>	MOTION for Forfeiture of Property <i>and for Preliminary Order of Forfeiture</i> by USA as to Shelan D. Peters. (Gurney, Annette) (Entered: 09/19/2011)
09/19/2011	<u>75</u>	PRELIMINARY ORDER OF FORFEITURE granting <u>74</u> plaintiff's Motion for Forfeiture of Property as to Shelan D. Peters (3). Signed by District Judge J. Thomas Marten on 9/19/2011. (mss) (Entered: 09/19/2011)
09/30/2011	<u>76</u>	NOTICE OF EXPERT TESTIMONY pursuant to Rule 16(a)(1)(G) by USA as to Raymond L. Rogers, David L. Hollis, III, Shelan D. Peters (Attachments: # <u>1</u> Attachment A, # <u>2</u> Attachment B)(Smith, Aaron) (Entered: 09/30/2011)
10/13/2011	<u>77</u>	MINUTE ENTRY for proceedings held before District Judge J. Thomas Marten: STATUS CONFERENCE as to Raymond L. Rogers and David L. Hollis, III held on 10/13/2011. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (mss) (Entered: 10/13/2011)
10/20/2011	<u>78</u>	MOTION to Continue Jury Trial by David L. Hollis, III. (O'Hara, Charles) (Entered: 10/20/2011)
10/24/2011	<u>79</u>	ORDER FOR CONTINUANCE granting <u>78</u> Motion to Continue. Time excluded from 10/24/2011 until 11/29/2011 as to David L. Hollis III (2). Jury Trial set for 11/29/2011 at 09:00 AM in Courtroom 238 (JTM) before District Judge J. Thomas Marten. Signed by District Judge J. Thomas Marten on 10/24/2011. (aa) (Entered: 10/24/2011)
10/24/2011	<u>80</u>	NOTICE OF HEARING as to Defendants Raymond L. Rogers and David L. Hollis, III. Status Conference set for 11/14/2011, at 03:00 PM in Courtroom 238 before District Judge J. Thomas Marten. (jlw) (Entered: 10/24/2011)
11/07/2011	<u>81</u>	DEMAND FOR NOTICE OF ALIBI DEFENSE by USA as to Raymond L. Rogers (Smith, Aaron) (Entered: 11/07/2011)
11/07/2011	<u>82</u>	NOTICE OF EXPERT TESTIMONY pursuant to Rule 16(a)(1)(G) by USA as to Raymond L. Rogers, David L. Hollis, III (Attachments: # <u>1</u> Attachment A)(Smith, Aaron) (Entered: 11/07/2011)
11/08/2011	<u>83</u>	NOTICE OF HEARING as to Defendants Raymond L. Rogers and David L. Hollis, III: Jury Trial RE-SET to commence on Monday, November 28, 2011 at 9:00 AM in Courtroom 238 before District Judge J. Thomas Marten. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (mss) (Entered: 11/08/2011)
11/14/2011	<u>84</u>	NOTICE OF EXPERT TESTIMONY pursuant to Rule 16(a)(1)(G) by USA as to Raymond L. Rogers, David L. Hollis, III (Attachments: # <u>1</u> Attachment A, # <u>2</u> Attachment B)(Smith, Aaron) (Entered: 11/14/2011)
11/14/2011	<u>85</u>	ENTRY OF APPEARANCE on behalf of USA by Lanny D. Welch (Welch, Lanny) (Entered: 11/14/2011)
11/14/2011	<u>86</u>	MINUTE ENTRY for proceedings held before District Judge J. Thomas Marten: STATUS CONFERENCE as to Raymond L. Rogers and David L. Hollis, III held on 11/14/2011. (Court Reporter Michelle Hancock.) (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (jlw) (Entered: 11/15/2011)
11/21/2011	<u>87</u>	RESPONSE by Raymond L. Rogers (McEnulty, Sean) (Entered: 11/21/2011)
11/22/2011	<u>88</u>	NOTICE OF HEARING as to Defendant David L. Hollis, III: Change of Plea Hearing set for 11/29/2011 at 4:00 PM in Courtroom 238 (JTM) before District Judge J. Thomas Marten. (mss) (Entered: 11/22/2011)
11/28/2011	<u>89</u>	MOTION to Dismiss Indictment ( <i>First Superseding Indictment</i> ) by USA as to Raymond L. Rogers, David L. Hollis, III, Shelan D. Peters. (Smith, Aaron) (Entered: 11/28/2011)

11/29/2011	90	NOTICE OF HEARING as to Defendant David L. Hollis, III: Change of plea hearing RE-SET for 11/29/11 at 3:00 PM in Courtroom 238 before District Judge J. Thomas. NOTE: THIS IS A TIME CHANGE ONLY. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (mss) (Entered: 11/29/2011)
11/29/2011	91	ORDER granting <u>89</u> Motion to Dismiss Indictment as to Raymond L. Rogers (1), David L. Hollis III (2), Shelan D. Peters (3). Signed by District Judge J. Thomas Marten on 11/28/2011. (aa) (Entered: 11/29/2011)
11/29/2011	92	MINUTE ENTRY for proceedings held before District Judge J. Thomas Marten: CHANGE OF PLEA HEARING as to David L. Hollis, III held on 11/29/2011. Defendant entered a plea of guilty to Count 2 of the First Superseding Indictment. Sentencing set for 2/15/2012 at 2:30 PM in Courtroom 238 (JTM) before District Judge J. Thomas Marten. (Court Reporter Jana McKinney.) (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (mss) (Entered: 11/29/2011)
11/29/2011	94	PETITION TO ENTER PLEA OF GUILTY AND ORDER ENTERING PLEA as to David L. Hollis III (2) Count 2. Signed by District Judge J. Thomas Marten on 11/29/2011. (aa) (Entered: 11/30/2011)
11/29/2011	95	PLEA AGREEMENT as to David L. Hollis, III re <u>94</u> Petition and Order to Enter Plea of Guilty. (aa) (Entered: 11/30/2011)
11/30/2011	93	MINUTE ENTRY for proceedings held before District Judge J. Thomas Marten: INSTRUCTIONS CONFERENCE as to Raymond L. Rogers held on 11/30/2011. (Court Reporter Jana McKinney.) (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (mss) (Entered: 11/30/2011)
11/30/2011	96	MINUTE ORDER by deputy clerk directing that lunch be provided by the clerk to the jury members during their deliberation. Entered by deputy clerk on 11/30/2011. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (mss) (Entered: 11/30/2011)
11/30/2011	97	NOTICE OF HEARING as to Defendant David L. Hollis, III: Sentencing set for 2/15/2012 at 2:30 PM in Courtroom 238 (JTM) before District Judge J. Thomas Marten. (mss) (Entered: 11/30/2011)
12/01/2011	98	JURY INSTRUCTIONS as to Raymond L. Rogers. (mss) (Entered: 12/01/2011)
12/01/2011	99	ORAL MOTION for Acquittal by Raymond L. Rogers. (aa) (Entered: 12/01/2011)
12/01/2011	100	ORDER denying 99 Motion for Acquittal as to Raymond L. Rogers (1). Signed by District Judge J. Thomas Marten on 12/1/2011. (aa) (Entered: 12/01/2011)
12/01/2011	101	WITNESS & EXHIBIT LIST by Raymond L. Rogers. (aa) (Entered: 12/01/2011)
12/01/2011	102	MINUTE ENTRY for proceedings held before District Judge J. Thomas Marten: JURY TRIAL as to Raymond L. Rogers held on 12/1/2011. Sentencing set for 2/15/2012 at 03:30 PM in Courtroom 238 (JTM) before District Judge J. Thomas Marten. All exhibits returned to counsel. Verdict of guilty to counts 1, 2 and 3. (Court Reporter Jana McKinney.) (aa) (Entered: 12/02/2011)
12/01/2011	103	JURY VERDICT as to Raymond L. Rogers (1) Guilty on Counts 1-3. (aa) (Entered: 12/02/2011)
12/01/2011	104	QUESTIONS FROM THE JURY FILED as to Raymond L. Rogers. (Attachments: # <u>1</u> Question 2, # <u>2</u> Question 3)(aa) (Entered: 12/02/2011)
12/02/2011	105	NOTICE OF HEARING as to Defendant Raymond L. Rogers: Sentencing set for 2/15/2012 at 3:30 PM in Courtroom 238 (JTM) before District Judge J. Thomas Marten. (mss) (Entered: 12/02/2011)
01/26/2012	108	MOTION to Continue Sentencing Date and Motion to Continue The Defendant's Presentence Investigation Reports Response/Objection Date by Raymond L. Rogers. (McEnulty, Sean) (Entered: 01/26/2012)
01/27/2012	109	NOTICE OF HEARING as to Defendant Raymond L. Rogers: Sentencing RE-SET for 4/16/2012 at 10:00 AM in Courtroom 238 (JTM) before District Judge J. Thomas Marten. (mss) (Entered: 01/27/2012)

01/27/2012	<u>110</u>	ORDER sustaining <u>108</u> Motion to Continue as to Raymond L. Rogers (1). See order for details. Signed by District Judge J. Thomas Marten on 1/27/2012. (aa) (Entered: 01/27/2012)
02/02/2012	<u>111</u>	PRESENTENCE INVESTIGATION REPORT as to David L. Hollis, III  (NOTE: Access to this document is restricted to the USA and this defendant.)  (USPO) (Entered: 02/02/2012)
02/15/2012	<u>112</u>	MINUTE ENTRY for proceedings held before District Judge J. Thomas Marten: SENTENCING HEARING held on 2/15/2012 as to defendant David L. Hollis, III. (Court Reporter Jana McKinney.) (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (mss) (Entered: 02/15/2012)
02/22/2012	<u>113</u>	ORDER NUNC PRO TUNC as to David L. Hollis, III. The Court hereby corrects its earlier Order (Dkt. No. 91), so that the First Superseding Indictment was dismissed as to Mr. Rogers only, and not Mr. Hollis. Signed by District Judge J. Thomas Marten on 2/17/2012. (alm) (Entered: 02/22/2012)
02/22/2012	<u>114</u>	JUDGMENT as to David L. Hollis, III (2): Counts 1, 1s, 2, 3 and 3s are dismissed; Count 2s = 7 years imprisonment, said term to run concurrently to the sentence imposed in Sedgwick County District Court Case No. 10CR623; 3 years supervised release; \$100.00 Assessment. Signed by District Judge J. Thomas Marten on 2/16/2012. (alm) (Entered: 02/22/2012)
02/22/2012	<u>115</u>	STATEMENT OF REASONS as to David L. Hollis, III re <u>114</u> Judgment.  (NOTE: Access to this document is restricted to the USA and this defendant.)  (alm) (Entered: 02/22/2012)
03/26/2012	<u>116</u>	JUDGMENT RETURNED EXECUTED as to David L. Hollis, III on 3/15/2012. (smg) (Entered: 03/27/2012)
04/04/2012	<u>117</u>	PRESENTENCE INVESTIGATION REPORT as to Raymond L. Rogers  (NOTE: Access to this document is restricted to the USA and this defendant.)  (USPO) (Entered: 04/04/2012)
04/15/2012	<u>118</u>	OBJECTION TO Presentence Report by Raymond L. Rogers (McEnulty, Sean) (Entered: 04/15/2012)
04/16/2012	<u>119</u>	MINUTE ENTRY for proceedings held before District Judge J. Thomas Marten: SENTENCING HEARING held on 4/16/2012 as to defendant Raymond L. Rogers. (Court Reporter Jana McKinney.) (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (mss) (Entered: 04/16/2012)
04/17/2012	<u>120</u>	JUDGMENT as to Raymond L. Rogers (1): 234 Months Imprisonment (Count 1: 150 months, Count 2: 84 months to run consecutive to counts 1 & 3, Count 3: 120 months to run concurrent to counts 1 & 2); 5 Years Supervised Release (Counts 1 & 3: 3 years each count, to run concurrent to each other, Count 2: 5 years to run concurrent to counts 1 & 3); \$300 Assessment. Signed by District Judge J. Thomas Marten on 4/16/2012. (aa) (Entered: 04/17/2012)
04/17/2012	<u>121</u>	STATEMENT OF REASONS as to Raymond L. Rogers re <u>120</u> Judgment.  (NOTE: Access to this document is restricted to the USA and this defendant.)  (aa) (Entered: 04/17/2012)
05/01/2012	<u>122</u>	NOTICE OF APPEAL TO 10CCA as to defendant Raymond L. Rogers (McEnulty, Sean) (Entered: 05/01/2012)
05/02/2012	<u>123</u>	PRELIMINARY RECORD ON APPEAL transmitted to 10CCA as to Raymond L. Rogers re <u>122</u> Notice of Appeal - Final Judgment. (Attachments: # <u>1</u> Preliminary Packet)(aa) (Entered: 05/02/2012)