

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 10-CR-10186-01-JTM

RAYMOND L. ROGERS,

Defendant.

ORDER DENYING RECONSIDERATION

Before the court is defendant's motion for reconsideration (Dkt. 179) of the order denying his request to vacate the order that denied his 28 U.S.C. § 2255 motion (Dkt. 178). Defendant argues that the court erred in finding that it had addressed his ineffective assistance of *appellate* counsel claims by relying upon its analysis of the ineffective assistance of *trial* counsel claims. Defendant contends that a separate analysis was required as to each of his ineffective assistance of counsel claims. For the following reasons, the court denies the motion.

I. Legal Standard

A motion to alter or amend judgment is appropriate only if the moving party establishes: 1) an intervening change in controlling law; 2) the availability of new evidence that could not have been obtained previously through the exercise of due diligence; or 3) the need to correct clear error or prevent manifest injustice. *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000). A motion to alter or amend "is not appropriate to revisit issues already addressed or [to] advance arguments that could have been raised in prior briefing." *Id.* It is not "a

second chance for the losing party to make its strongest case or to dress up arguments that previously failed.” *Voelkel v. General Motors Corp.*, 846 F. Supp. 1482, 1483 (D. Kan.), *aff’d*, 43 F.3d 1484 (10th Cir. 1994). The court has broad discretion to grant or deny a Rule 59(e) motion. *See Phelps v. Hamilton*, 122 F.3d 1309, 1324 (10th Cir. 1997); *Comm. for the First Amendment v. Campbell*, 962 F.2d 1517, 1523 (10th Cir. 1992).

II. Discussion

Mr. Rogers contends this court must grant his Rule 59(e) motion to correct clear error. He argues that the court’s conclusion that “[a] separate analysis was not required as to each counsel,” is clearly erroneous because there is no case law that says a court may consolidate ineffective assistance of trial and appellate counsel claims together. The court rejects this argument because there is no rule or case that says the court may not consolidate its analysis. Courts possess the inherent authority to ensure the efficient and orderly administration of justice. *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (emphasizing “the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants”). There are no specific rules governing the format for judicial opinion writing and none that would require courts to repeat an analysis that equally applies to multiple claims or individuals. *See Taylor v. McKeithen*, 407 U.S. 191, 194 n.4 (1972) (*per curiam*) (courts have wide latitude in their decisions of whether or how to write opinions). That would be inefficient. In fact, courts are not required to discuss each and every argument made by the parties. *Fin. Control Assocs., Inc. v. Equity Builders, Inc.*, 812 F. Supp. 198, 202 (D. Kan. 1993) (“[T]here is no requirement that the court’s written memorandum and order specifically address and discuss each and every argument advanced by the parties.”). Arguments not discussed may be deemed implicitly rejected, rather than ignored. *Malbon v. Pa. Millers Mut.*

Ins. Co., 636 F.2d 936, 939 n.8 (4th Cir.1980) (“An argument to which sub silentio treatment is accorded may be simply deemed not to have required specific reference.... The argument may be deemed to have been considered, but to have been found insufficient in merit; it is not necessarily to be concluded that it must have been totally ignored.”). Thus, the court’s consolidation of its analysis as to counsels’ failure to object to Jury Instruction No. 18 and to make an *Alleyne* challenge is not a sufficient ground for reconsideration.

IT IS THEREFORE ORDERED that defendant’s motion for reconsideration (Dkt. 179) is DENIED.

IT IS SO ORDERED this 9th day of March 2016.

s/ J. Thomas Marten
J. THOMAS MARTEN, Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 6:10-CR-10186-JTM

RAYMOND L. ROGERS,

Defendant.

MEMORANDUM AND ORDER

This matter is before the court on defendant Raymond L. Rogers' Motion for Disclosure of Grand Jury Ballot (Dkt. 171). On April 16, 2012, defendant was sentenced to 234 months in prison after a jury convicted him of armed robbery and being a felon in possession of a firearm. Defendant directly appealed his conviction and sentence on the count of bank robbery to the United States Court of Appeals for the Tenth Circuit. *See United States v. Rogers*, 520 Fed. Appx. 727 (10th Cir. 2013). The court affirmed his conviction and sentence. Defendant did not file a petition for writ of certiorari to the United States Supreme Court.

On December 2, 2014, defendant filed a Motion to Vacate, Set Aside, or Correct a sentence pursuant to 28 U.S.C. § 2255, alleging numerous errors. Dkt. 146. This court denied defendant's motion on December 9, 2014. Dkt. 162. Defendant subsequently filed an Application for Certificate of Appealability (Dkt. 163), which this court also denied on December 29, 2014. Dkt. 164.

Nearly eight months later, defendant filed the present Motion for Disclosure of Grand Jury Ballot, seeking to “inspect the record to determine whether the proper amount of jurors agreed in the bringing of the indictment.” Dkt. 171, at 1. In its response, the government requests that this court deny the motion given defendant’s failure to demonstrate a compelling reason for disclosure. The court agrees.

Federal Rule of Criminal Procedure 6(c) provides that the record of the number of grand jurors voting to indict “shall not be made public except on order of the court.” *United States v. Deffenbaugh Indus., Inc.*, 957 F.2d 749, 755 (10th Cir. 1992) (citing FED. R. CIV. P. 6(c)).¹ “The rule affirms that the well-established rule of grand jury secrecy includes the voting record of the grand jurors.” *Id.* at 755-56. The Tenth Circuit has long held that, in adopting Rule 6(c), “Congress made the policy decision that the record revealing the number of grand jurors concurring to indict should remain secret absent a particularized, discrete showing of need.” *Id.* at 756. *See also United States v. Manley*, 437 F.2d 1250, 1251 (10th Cir.) (minutes kept under Rule 6(c) may only be inspected after showing of materiality), *cert. denied*, 404 U.S. 837 (1971). “The judge, therefore, necessarily exercises discretion in determining whether to order release of the voting record.” *Deffenbaugh*, 957 F.2d at 756.

However, the Tenth Circuit also believes “defendants are entitled to the assurance of the district judge that the judge has inspected the grand jury foreperson’s report and it contains twelve or more votes to indict.” *United States v. Lindsey*, 2004 U.S. Dist. LEXIS 16503, at *7 (D. Kan. May 6, 2004) (quoting *Deffenbaugh*, 957 F.2d at 757) (internal brackets omitted). Anything more, “except upon a showing of particularized need, would negate [Rule 6(c)’s] requirement of secrecy absent an order of the court.” *Id.* (internal brackets omitted).

¹ Rule 6(c) provides in relevant part: “The foreperson or another juror designated by the foreperson shall keep record of the number of jurors concurring in the finding of every indictment and shall file the record with the clerk of the court, but the record shall not be made public except on order of the court.”

First and foremost, the court notes that defendant's request comes nearly five years after the indictment and more than three years after his conviction and sentencing. Defendant was represented by competent counsel throughout the pendency of his criminal proceedings. The court is confident that any issues concerning a deficiency of votes in support of defendant's indictment would have surfaced long ago.

Moreover, defendant has not set forth *any* reason, let alone a compelling reason, for disclosure of the grand jury vote. This alone is sufficient for this court to deny defendant's motion. However, defendant can be assured that, upon his motion, the court performed an *in camera* inspection of the grand jury foreperson's report and can confirm that there were indeed a sufficient number of votes in support of his indictment.

IT IS THEREFORE ORDERED this 14th day of September, 2015, that defendant's Motion for Disclosure of Grand Jury Ballot (Dkt. 171) is hereby **DENIED**.

s/J. Thomas Marten
J. Thomas Marten, Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 10-CR-10186-JTM-1
13-CV-01448-JTM

RAYMOND L. ROGERS,

Defendant.

**ORDER DENYING CERTIFICATE OF APPEALABILITY AND
LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL**

Raymond Rogers has filed a Notice of Appeal (Dkt. 182) as to the court's order denying him relief from the judgment that dismissed his 28 U.S.C. § 2255 motion (Dkt. 178, the "Rule 60 Order"). He now seeks from this court a certificate of appealability to challenge that order and leave to proceed in forma pauperis on appeal. (Dkts. 183 and 184, respectively). For the reasons stated below, the court denies both requests.

Application for a Certificate of Appealability (COA) as to the Rule 60 Order

By statute, a court may issue a COA "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Under this standard, an applicant must show that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented 'were adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)).

In the Rule 60 Order, this court declined to issue a COA, finding Mr. Rogers had failed to meet the above standard and that the record was devoid of any authority suggesting that the Tenth Circuit Court of Appeals (the “Tenth Circuit”) would resolve the issues in the order differently. (Dkt. 178 at 3-4). In his COA application, Mr. Rogers claims that this court denied him due process by failing to conduct a separate analysis as to his ineffective assistance of counsel claims against his trial and appellate counsel. Because Mr. Rogers proceeds in this court *pro se*, the court reviews his pleadings with special solicitude. Even so, the court remains convinced that Mr. Rogers has failed to make a substantial showing of the denial of his constitutional right to due process. This court considered and rejected his ineffective assistance of counsel claims as to both his trial and appellate counsels’ failure to object to Jury Instruction No. 18 and to make an *Alleyne* challenge. Just because the court incorporated its analysis, instead of repeating it as to each counsel does not mean Mr. Rogers was not accorded due process. No reasonable jurists would debate this issue. Accordingly, the court denies Mr. Rogers’ application for a COA.

Motion for Leave to Proceed In Forma Pauperis [on Appeal]

In this motion, Mr. Rogers states, “[he] was allowed to proceed in forma pauperis on direct appeal, therefore, such status should carry on through his criminal prosecution in the aboved [sic] titled cause No.” (Dkt. 184 at 1). The court disagrees for two reasons. First, although the Tenth Circuit granted Mr. Rogers in forma pauperis (ifp) status on direct appeal, *see United States v. Rogers*, Case No. 12-3125 (10th Cir. May 2, 2012), it later denied him that status when he appealed this court’s order dismissing his § 2255 motion, as well as a COA. *United States v. Rogers*, Case No. 15-3013 (10th Cir. April 17, 2015) (Order Denying Certificate of Appealability).

Second, the prior approval rule does not apply here. Rule 24(a)(3) of the Federal Rules of Appellate Procedure¹ provides in pertinent part:

Prior Approval: A party who was permitted to proceed in forma pauperis in the district-court action . . . may proceed on appeal in forma pauperis without further authorization, unless: (A) the district court-before or after the notice of appeal is filed-certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis”

This court, however, has never granted Mr. Rogers leave to proceed ifp in the district court action. Even if this court treated the Tenth Circuit’s grant of ifp status in Mr. Rogers’ direct appeal of his sentence as prior approval under Rule 24(a)(3), the court declines to grant Mr. Rogers leave to proceed ifp on appeal because the appeal lacks good faith. *See also* 28 U.S.C. § 1915(a)(3) (“an appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith”).

Pursuant to § 1915(a)(3) and Rule 24(a)(3), the court certifies that any appeal in this matter would not be taken in good faith. The good faith standard is an objective one. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). The test under § 1915(a) for whether an appeal is taken in good faith is whether the litigant seeks appellate review of any issue that is not frivolous. *Id.* Mr. Rogers revived this matter by crafting a Rule 60 motion that claimed this court failed to address two of his ineffective assistance of appellate counsel claims. This court, however, discussed and rejected those claims. Mr. Rogers now argues that those claims must be separately analyzed from the ineffective assistance of trial counsel claim even though they apply equally to each counsel. Essentially, Mr. Rogers bases this appeal on this court’s failure to repeat its analysis, which the court finds absurd and frivolous. This appeal is another attempt to proverbially beat the dead horse.

¹ All future references to “Rule” are to the Federal Rules of Appellate Procedure unless otherwise noted.

IT IS THEREFORE ORDERED that Mr. Rogers' application for a COA (Dkt. 183) and his motion to proceed in forma pauperis (Dkt. 184) are **DENIED**.

IT IS FURTHER ORDERED that in accordance with Rule 24(a)(4), the Clerk of the Court shall notify the parties and the Tenth Circuit of this order. Pursuant to Rule 24(a)(5), if petitioner still wishes to proceed in forma pauperis on appeal, he must file a motion with the Tenth Circuit within thirty days after service of the above-prescribed notice.

IT IS SO ORDERED this 31st day of March 2016.

s/ J. Thomas Marten
J. THOMAS MARTEN, Judge

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: 6:13-cv-01448-JTM
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

Appeals court case number:
12-3125 10CCA

Defendant (1)

Raymond L. Rogers
20787-031
TERMINATED: 04/17/2012

represented by **Raymond L. Rogers**
20787-031
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PRO SE
Bar Status:

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Griffith & Griffith
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TERMINATED: 01/18/2011
LEAD ATTORNEY
Designation: CJA Appointment
Bar Status: Active

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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)

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

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)

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
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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**
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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.

Plaintiff

USA

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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 McEnulty. 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	<u>90</u>	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	<u>91</u>	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	<u>92</u>	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	<u>94</u>	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	<u>95</u>	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	<u>93</u>	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	<u>96</u>	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	<u>97</u>	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	<u>98</u>	JURY INSTRUCTIONS as to Raymond L. Rogers. (mss) (Entered: 12/01/2011)
12/01/2011	<u>99</u>	ORAL MOTION for Acquittal by Raymond L. Rogers. (aa) (Entered: 12/01/2011)
12/01/2011	<u>100</u>	ORDER denying <u>99</u> 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	<u>101</u>	WITNESS & EXHIBIT LIST by Raymond L. Rogers. (aa) (Entered: 12/01/2011)
12/01/2011	<u>102</u>	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	<u>103</u>	JURY VERDICT as to Raymond L. Rogers (1) Guilty on Counts 1-3. (aa) (Entered: 12/02/2011)
12/01/2011	<u>104</u>	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	<u>105</u>	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	<u>108</u>	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	<u>109</u>	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)

05/02/2012	<u>124</u>	APPEAL DOCKETED in 10CCA on 05/02/2012 and assigned Appeal No. 12-3125 re <u>122</u> Notice of Appeal – Final Judgment filed by Raymond L. Rogers. Transcript order form, designation of record and docketing statement due 05/16/2012 for Raymond L. Rogers. Notice of appearance due on 05/16/2012 for Raymond L. Rogers and United States of America. (aa) (Entered: 05/04/2012)
05/03/2012		APPEAL FEE STATUS: filing fee waived re: Notice of Appeal – Final Judgment <u>122</u> on behalf of Defendant Raymond L. Rogers. (THIS IS A TEXT ONLY ENTRY–NO DOCUMENT IS ASSOCIATED WITH THIS TRANSACTION) (aa) (Entered: 05/03/2012)
05/17/2012	<u>125</u>	TRANSCRIPT ORDER FORM: Transcript Requested Jury Trial 11/28/11 to 11/30/11 re <u>122</u> Notice of Appeal – Final Judgment filed by Raymond L. Rogers (McEnulty, Sean) (Entered: 05/17/2012)
05/17/2012	<u>126</u>	TRANSCRIPT ORDER FORM: Transcript Requested Jury Trial 11/29/11 Morning Only re <u>122</u> Notice of Appeal – Final Judgment filed by Raymond L. Rogers (McEnulty, Sean) (Entered: 05/17/2012)
05/24/2012	<u>127</u>	TRANSCRIPT ORDER FORM by Court Reporter Jana McKinney ordering transcripts of Jury Trial re <u>122</u> Notice of Appeal – Final Judgment filed by Raymond L. Rogers (Appeal No. 12-3125) Transcript due by 7/5/2012. (jlh) (Entered: 05/24/2012)
06/01/2012	<u>128</u>	CERTIFICATE OF FILING OF TRANSCRIPT by Court Reporter Jo Wilkinson (jw) (Entered: 06/01/2012)
06/01/2012	<u>129</u>	TRANSCRIPT of Trial Volume 2 held November 29, 2011, as to Raymond L. Rogers before Judge J. Thomas Marten, Court Reporter Jo Wilkinson, 316-315-4334, jo_wilkinson@ksd.uscourts.gov. Transcript purchased by: Mr. Sean C. McEnulty. Volume: 2. NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the party's intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy is located on our website at www.ksd.uscourts.gov. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Release of Transcript Restriction set for 8/30/2012. (jw) (Entered: 06/01/2012)
06/05/2012	<u>130</u>	DESIGNATION OF RECORD ON APPEAL by Raymond L. Rogers re <u>122</u> Notice of Appeal – Final Judgment (Appeal No. 12-3125) (Attachments: # <u>1</u> District Court Docket Sheet)(McEnulty, Sean) (Entered: 06/05/2012)
06/11/2012	<u>131</u>	TRANSCRIPT of Trial Volume 1 held November 28, 2011 as to Raymond L. Rogers before Judge J. Thomas Marten, Court Reporter Jana McKinney, 316-315-4314, jana_mckinney@ksd.uscourts.gov. Transcript purchased by: Mr. Sean McEnulty. Volume: 1. NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the party's intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy is located on our website at www.ksd.uscourts.gov. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Release of Transcript Restriction set for 9/10/2012. (jlh) (Entered: 06/11/2012)

06/11/2012	<u>132</u>	TRANSCRIPT of Trial Volume 2B held November 29, 2011 as to Raymond L. Rogers before Judge J. Thomas Marten, Court Reporter Jana McKinney, 316-315-4314, jana_mckinney@ksd.uscourts.gov. Transcript purchased by: Mr. Sean McEnulty. Volume: 2B. NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the party's intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy is located on our website at www.ksd.uscourts.gov. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Release of Transcript Restriction set for 9/10/2012. (jlh) (Entered: 06/11/2012)
06/11/2012	<u>133</u>	TRANSCRIPT of Trial Volume 3 held November 30, 2011 as to Raymond L. Rogers before Judge J. Thomas Marten, Court Reporter Jana McKinney, 316-315-4314, jana_mckinney@ksd.uscourts.gov. Transcript purchased by: Mr. Sean McEnulty. Volume: 3. NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the party's intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy is located on our website at www.ksd.uscourts.gov. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Release of Transcript Restriction set for 9/10/2012. (jlh) (Entered: 06/11/2012)
06/11/2012	<u>134</u>	CERTIFICATE OF FILING OF TRANSCRIPT by Court Reporter Jana McKinney (jlh) (Entered: 06/11/2012)
07/12/2012	<u>135</u>	RECORD ON APPEAL transmitted to 10CCA electronically as to Raymond L. Rogers, Volume(s) 3, re <u>122</u> Notice of Appeal – Final Judgment. (Appeal No. 12-3125) (aa) (Entered: 07/12/2012)
09/11/2012	<u>136</u>	TRANSCRIPT ORDER FORM: Transcript Requested Sentencing Proceedings Held on 04/16/12 re <u>122</u> Notice of Appeal – Final Judgment filed by Raymond L. Rogers (McEnulty, Sean) (Entered: 09/11/2012)
09/14/2012	<u>137</u>	ORDER of 10CCA as to Raymond L. Rogers re <u>122</u> Notice of Appeal – Final Judgment. Order granting leave to supplement the record on appeal. Supplemental record on appeal due 09/24/2012 for Timothy M. O'Brien (KSwi), Clerk of Court. In light of the outstanding transcript, the 9/20/12 due date for the appellant's brief is vacated. Appellant's opening brief shall be served and filed within 30 day of filing of the supplemental record. Served on 09/14/2012. (Appeal No. 12-3125) (aa) (Entered: 09/17/2012)
09/20/2012	<u>138</u>	TRANSCRIPT ORDER FORM by Court Reporter Jana McKinney ordering transcripts of Sentencing re <u>122</u> Notice of Appeal – Final Judgment filed by Raymond L. Rogers. (Appeal No. 12-3125) Transcript due by 10/12/2012. (aa) (Entered: 09/21/2012)
10/03/2012	<u>139</u>	TRANSCRIPT of Sentencing held April 16, 2012 as to Raymond L. Rogers before Judge J. Thomas Marten, Court Reporter Jana McKinney, 316-315-4314, jana_mckinney@ksd.uscourts.gov. Transcript purchased by: Mr. Sean McEnulty. NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the party's intent to redact personal data identifiers from the electronic transcript

		of the court proceeding. The policy is located on our website at www.ksd.uscourts.gov. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Release of Transcript Restriction set for 1/2/2013. (jlh) (Entered: 10/03/2012)
10/03/2012	<u>140</u>	CERTIFICATE OF FILING OF TRANSCRIPT by Court Reporter Jana McKinney (jlh) (Entered: 10/03/2012)
10/04/2012	<u>141</u>	SUPPLEMENTAL RECORD ON APPEAL transmitted to 10CCA as to Raymond L. Rogers re <u>122</u> Notice of Appeal – Final Judgment. (Appeal No. 12–3125) (aa) (Entered: 10/04/2012)
04/29/2013	<u>142</u>	MANDATE from 10CCA: affirming decision of the District Court as to Raymond L. Rogers. (Appeal No. 12–3125) (Attachments: # <u>1</u> Mandate issued letter)(aa) (Entered: 04/29/2013)
06/14/2013	<u>143</u>	MOTION to Withdraw Sean C. McEnulty as Attorney by Raymond L. Rogers. (aa) (Entered: 06/14/2013)
06/14/2013	<u>144</u>	MOTION FOR FREE DOCUMENTS by Raymond L. Rogers. (aa) (Entered: 06/14/2013)
06/19/2013	<u>145</u>	ORDER. Pursuant to the Tenth Circuit's Mandate (Dkt. 142) affirming the district court's verdict, the court denies as moot Motion to Withdraw Sean C. McEnulty (Dkt. 143) and denies as moot Motion for Free Documents as Mr. McEnulty has provided the trial and sentencing transcripts and discovery to Mr. Rogers. Entered by District Judge J. Thomas Marten on 6/19/2013. Mailed to pro se party Raymond L. Rogers by regular mail. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (mss) (Entered: 06/19/2013)
12/02/2013	<u>146</u>	MOTION to Vacate under 28 U.S.C. 2255 by Raymond L. Rogers. (smg) Civil case 6:13–cv–01448–JTM opened. (Entered: 12/03/2013)
12/02/2013	<u>147</u>	MEMORANDUM IN SUPPORT of <u>146</u> MOTION to Vacate under 28 U.S.C. 2255 by Raymond L. Rogers as to Raymond L. Rogers. (smg) (Entered: 12/03/2013)
12/16/2013	<u>148</u>	SUPPLEMENT to <u>146</u> Motion to Vacate under 28 U.S.C. 2255 by Raymond L. Rogers. (smg) Modified to correct title on 12/16/2013 (smg). (Entered: 12/16/2013)
01/08/2014	<u>149</u>	MOTION for Extension of Time to File Response as to <u>146</u> MOTION to Vacate under 28 U.S.C. 2255 by USA as to Raymond L. Rogers . (Welch, Lanny) Modified on 1/9/2014 to correct filing event and text (alm). (Entered: 01/08/2014)
01/09/2014	<u>150</u>	ORDER granting <u>149</u> plaintiff's Motion for Extension of Time to February 7, 2014 to respond to Raymond L. Rogers' Motion to Vacate. Signed by District Judge J. Thomas Marten on 1/9/2014. Mailed to pro se party Raymond L. Rogers by regular mail. (mss) (Entered: 01/09/2014)
02/06/2014	<u>151</u>	MOTION for Extension of Time to File Response/Reply to <i>Def.'s 2255 Motion</i> by USA as to Raymond L. Rogers. (Brown, James) (Entered: 02/06/2014)
02/06/2014	<u>152</u>	ORDER granting <u>151</u> plaintiff's Motion for Extension of Time to March 7, 2014 to respond to defendant Rogers' Motion to Vacate. Signed by District Judge J. Thomas Marten on 2/6/2014. Mailed to pro se party Raymond L. Rogers by regular mail. (mss) (Entered: 02/06/2014)
03/06/2014	<u>153</u>	MOTION for Extension of Time to File Response/Reply to <i>Def.'s 2255 Motion</i> by USA as to Raymond L. Rogers. (Brown, James) (Entered: 03/06/2014)
03/06/2014	<u>154</u>	ORDER granting <u>153</u> government's Motion for Extension of Time to April 7, 2014 to respond to defendant's 2255 motion. Entered by District Judge J. Thomas Marten on 3/6/14. Mailed to pro se party Raymond L. Rogers by regular mail. (mss) (Entered: 03/06/2014)

03/18/2014	<u>155</u>	SUPPLEMENT TO <u>146</u> MOTION to Vacate under 28 U.S.C. 2255 by Raymond L. Rogers. (smg) Modified on 3/18/2014 to correct title (aa). (Entered: 03/18/2014)
04/07/2014	<u>156</u>	RESPONSE TO MOTION by USA as to Raymond L. Rogers re <u>148</u> MOTION to Vacate under 28 U.S.C. 2255, <u>146</u> MOTION to Vacate under 28 U.S.C. 2255, <u>155</u> MOTION to Vacate under 28 U.S.C. 2255 (Attachments: # <u>1</u> Exhibit)(Brown, James) (Entered: 04/07/2014)
05/14/2014	<u>157</u>	REPLY TO RESPONSE to Motion by Raymond L. Rogers re <u>146</u> MOTION to Vacate under 28 U.S.C. 2255. (smg) (Entered: 05/14/2014)
05/27/2014	<u>158</u>	MOTION to Amend <u>146</u> MOTION to Vacate under 28 U.S.C. 2255 filed by Raymond L. Rogers. (smg) (Entered: 05/28/2014)
06/06/2014	<u>159</u>	ORDER. The court grants petitioner Raymond L. Rogers's Motion to Amend (Dkt. 158). No response from the government is necessary. Entered by Chief Judge J. Thomas Marten on 6/6/14. Mailed to pro se party Raymond L. Rogers by regular mail. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (mss) (Entered: 06/06/2014)
10/09/2014	<u>160</u>	MOTION FOR SUMMARY JUDGMENT ON PETITIONER 2255 MOTION TO VACATE, SET ASIDE, OR CORRECT A SENTENCE BY A PERSON IN FEDERAL CUSTODY PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE RULE 56 by Raymond L. Rogers. (aa) (Entered: 10/10/2014)

Attachment 2

(2).

"GOVERNMENT'S ADDMISSION OF AMENDMENT ERROR"

United States v. Van Tieu, 279 F.3d 917, 921 (10th Cir. 2002) (internal citations omitted).

In light of these authorities, the government is constrained to agree with the defendant that this Court constructively amended the Indictment by instructing the jury to determine whether “the defendant put some person’s life in jeopardy by the use of a dangerous weapon or device, while engaged in the taking of the money.” (Doc. 98, Instr. No. 18.) This language tracks an element of a charge under 18 U.S.C. § 2113(d), which the government did not charge the defendant with violating. *See* n.6, *supra*. By instructing the jury on this element, this Court impermissibly modified an essential element of the offense, resulting in a constructive amendment to the indictment under *Van Tieu*.⁷ *Cf. United States v. Brown*, 400 F.3d 1242, 1252-53 (10th Cir. 2005) (district court constructively amended indictment in § 924(c) prosecution where indictment charged defendant with *carrying* a gun under § 924(c), but instruction directed jury to convict him if he either *used or carried* a gun). Based on this concession, the government must also agree that the defendant’s counsel performed ineffectively by failing to object

⁷ This Court’s instruction tracked 10th Circuit Pattern Instruction 2.77. *See* 10th Cir. Pattern Crim. Jury Instr. 2.77 (2011) (Attach. C). The Use Note of 2.77 cautions: “This instruction also presupposes that the indictment charges a violation of subsections (a) and (d) in the same count. If a subsection (d) violation is not alleged, the fourth element and its corresponding definitions would be deleted.” *Id.* (Use Note). The Use Note further explains that “a violation of subsection (a) alone, i.e., the first three elements above, is a lesser included offense of the alleged violation of subsections (a) and (d) combined, i.e., all four elements.” *Id.*

Attachment 3

(3)

"FIRST SUPERSEDING INDICTMENT"

"No. 18 JURY INSTRUCTION"

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Criminal Action
	)	
v.	)	No. 10-10186 -01, 02, 03- JTM
RAYMOND L. ROGERS,	)	
DAVID L. HOLLIS III, and	)	
SHELAN D. PETERS,	)	
	)	
Defendants.	)	

FIRST SUPERSEDING INDICTMENT

The Grand Jury charges:

COUNT ONE

On or about December 1, 2010, in the District of Kansas, the defendants,

**RAYMOND L. ROGERS,
DAVID L. HOLLIS III, and
SHELAN D. PETERS,**

by force, violence, and intimidation did take from the person or presence of another,
money, namely \$102,743.00 United States Currency, belonging to, and in the care,
custody, control, management, and possession of, the Equity Bank in Wichita, Kansas, a
bank whose deposits were then insured by the Federal Deposit Insurance Corporation.

In violation of Title 18, United States Code, Section 2113(a) and Section 2.

COUNT TWO

On or about December 1, 2010, in the District of Kansas, the defendants,

**RAYMOND L. ROGERS,
DAVID L. HOLLIS III, and
SHELAN D. PETERS,**

did knowingly possess firearms and brandish firearms, to wit: a Intratec Luger 9mm handgun, and a Bersa Thunder .380 handgun, in furtherance of a crime of violence for which they may be prosecuted in a court of the United States, to wit: Bank Robbery in violation of Title 21, United States Code, Section 2113(a).

In violation of Title 18, United States Code, Section 924(c)(1)(A) and Section 2.

COUNT THREE

On or about December 1, 2010, in the District of Kansas, the defendants,

**RAYMOND L. ROGERS,
DAVID L. HOLLIS III, and
SHELAN D. PETERS,**

having been convicted of a crime punishable by imprisonment for a term exceeding one year, did knowingly possess in and affecting commerce, firearms, to wit: a Intratec Luger 9mm handgun, and a Bersa Thunder .380 handgun, said firearm having been shipped and transported in interstate commerce.

In violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2) and Section 2.

COUNT FOUR

On or about November 15, 2010, in the District of Kansas, the defendant,

RAYMOND L. ROGERS,

by force, violence, and intimidation did take from the person or presence of another, money, namely \$117,141.00 United States Currency, belonging to, and in the care, custody, control, management, and possession of, the Sunflower Bank in Wichita, Kansas, a bank whose deposits were then insured by the Federal Deposit Insurance Corporation.

In violation of Title 18, United States Code, Section 2113(a) and Section 2.

COUNT FIVE

On or about November 15, 2010, in the District of Kansas, the defendant,

RAYMOND L. ROGERS,

did knowingly possess firearms and otherwise use firearms, to wit: Intratec Tec 22 .22 caliber handgun, and a Modesa F.T. .22 caliber revolver, in furtherance of a crime of violence for which they may be prosecuted in a court of the United States, to wit: Bank Robbery in violation of Title 21, United States Code, Section 2113(a).

In violation of Title 18, United States Code, Section 924(c)(1)(A) and Section 2.

COUNT SIX

On or about November 15, 2010, in the District of Kansas, the defendant,

RAYMOND L. ROGERS,

having been convicted of a crime punishable by imprisonment for a term exceeding one year, did knowingly possess in and affecting commerce, firearms, to wit: a Intratec Tec 22 .22 caliber handgun, and a Modesa F.T. .22 caliber revolver, said firearm having been shipped and transported in interstate commerce.

In violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2) and Section 2.

FORFEITURE NOTICE

Upon conviction of the offense in Count One, the defendants, **RAYMOND L. ROGERS, DAVID L. HOLLIS III,** and **SHELAN D. PETERS,** shall forfeit to the United States, pursuant to Title 18, United States Code, Section 924(d) and Title 28, United States Code, Section 2461(c), any firearms and ammunition involved in the commission of the offense, including, but not limited to:

- a) a Intratec Luger 9mm handgun,
- b) a Bersa Thunder .380 handgun.

All pursuant to Title 18, United States Code, Section 924(d) and Title 28, United States Code, Section 2461(c).

Upon conviction of the offense in Count Four, the defendants, **RAYMOND L. ROGERS**, and **SHELAN D. PETERS**, shall forfeit to the United States; pursuant to Title 18, United States Code, Section 924(d) and Title 28, United States Code, Section 2461(c), any firearms and ammunition involved in the commission of the offense, including, but not limited to:

- a) a Intratec Tec 22, .22 caliber handgun,
- b) a Modesa F.T., .22 caliber revolver.

All pursuant to Title 18, United States Code, Section 924(d) and Title 28, United States Code, Section 2461(c).

A TRUE BILL

June 21, 2011
DATE

S/Foreperson
FOREMAN OF THE GRAND JURY

/s/ Barry R. Grissom
BARRY R. GRISSOM
United States Attorney
District of Kansas
1200 Epic Center, 301 N. Main
Wichita, Kansas 67202
(316) 269-6481
(316) 269-6484 (fax)
barry.grissom@usdoj.gov
KS. S. Ct. No. 10866

(It is requested that trial be held in Wichita, Kansas.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 10-10186-JTM

RAYMOND L. ROGERS,

Defendant.

JURY INSTRUCTIONS

J. Thomas Marten, Judge

COPY

INSTRUCTION NO. 18

Raymond L. Rogers is charged in Count I with a violation of 18 U.S.C. section 2113(a).

This law makes it a crime to take from a person by force, violence, and intimidation any money in the possession of a federally insured bank, and in the process of so doing, to put in jeopardy the life of any person by the use of a dangerous weapon or device.

To find the defendant guilty of this crime you must be convinced that the government has proved each of the following beyond a reasonable doubt.

First: the defendant intentionally took money from the person;

Second: the money belonged to or was in the possession of a federally insured bank at the time of the taking;

Third: the defendant took the money by means of force and violence or intimidation; and

Fourth: the defendant put some person's life in jeopardy by the use of a dangerous weapon or device, while engaged in the taking of the money.

A "federally insured bank" means any bank with deposits insured by the Federal Deposit Insurance Corporation.

To take "by means of intimidation" is to say or do something in such a way that a person of ordinary sensibilities would be fearful of bodily harm. It is not necessary to prove that the alleged victim was actually frightened, and neither is it necessary to show that the behavior of the defendant was so violent that it was likely to cause terror, panic, or hysteria. However, a taking would not be by "means of intimidation" if the fear, if any, resulted from the alleged victim's own timidity rather than some intimidating conduct on the part of the defendant. The essence of the offense is the taking of money or property accompanied by intentional, intimidating behavior on the part of the defendant.

A "dangerous weapon or device" includes anything capable of being readily operated or wielded by one person to inflict severe bodily harm or injury upon another person.

To "put in jeopardy the life of any person by the use of a dangerous weapon or device" means to expose someone else to a risk of death by the use of a dangerous weapon or device.