FILED
United States Court of Appeals
Tenth Circuit

June 30, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RHONDA QUINTANA ,

Defendant - Appellant.

No. 22-2069
(D.C. No. 1:18-CR-00925-WJ-2)
(D. N.M.)

ORDER AND JUDGMENT*

Before **PHILLIPS**, **MURPHY**, and **ROSSMAN**, Circuit Judges.

This appeal concerns Rule 901(a) of the Federal Rules of Evidence. Rule 901(a) governs authentication, which is a prerequisite to admissibility. In September 2021, a jury in the District of New Mexico convicted Appellant Rhonda Quintana of a single count of bank robbery or of aiding and abetting bank robbery under 18 U.S.C. § 2113(a) and 18 U.S.C. § 2. The charges against Ms. Quintana stemmed from her alleged role as the getaway driver for two bank robberies. Part of the government's evidence at Ms. Quintana's

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

trial was Exhibit 9(a), which the government claimed included a serialized list of bills stolen from one of the banks. One of the serial numbers on the list matched a photograph of a $100 bill recovered from Ms. Quintana's cell phone.

Ms. Quintana contends the government failed to authenticate Exhibit 9(a), and the district court abused its discretion by admitting the exhibit over her objection. According to Ms. Quintana, the district court's erroneous evidentiary ruling substantially affected the jury's verdict and cannot be deemed harmless. She asks this court to reverse her conviction and remand for a new trial. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

I. BACKGROUND

On March 9 and 13, 2018, James Verdream robbed two credit unions in Albuquerque, New Mexico—the Nusenda Credit Union (Nusenda) and the Rio Grande Credit Union (Rio Grande). At the time, Ms. Quintana worked as a driver in Albuquerque for $5 G-Rides, a ride-share company where customers pay their driver $5 in cash per stop. Ms. Quintana drove Mr. Verdream to and from each credit union on the days of the robberies.

On March 14, the day after the Rio Grande robbery, law enforcement officers located Mr. Verdream and Ms. Quintana. Mr. Verdream was a passenger in a silver Nissan sedan driven by Ms. Quintana. From security-

camera footage at the banks, law enforcement knew a silver Nissan sedan was associated with both robberies.

Mr. Verdream was arrested and taken into custody. Ms. Quintana agreed to accompany law enforcement to the FBI's Albuquerque Field Office, where FBI Special Agents Daniel Fondse and Ross Zuercher interviewed her. During the interview, Ms. Quintana denied driving Mr. Verdream on March 9 and said she did not know Mr. Verdream was robbing banks because she "never saw any money." R. Vol. 1 at 192, 202. About two weeks later, a federal grand jury named Mr. Verdream and Ms. Quintana in a single indictment.

Mr. Verdream was charged with two counts of bank robbery under 18 U.S.C. § 2113(a)—one count relating to the Nusenda robbery and a second count for the Rio Grande robbery. Mr. Verdream eventually pleaded guilty to both counts. Ms. Quintana was charged with bank robbery or of aiding and abetting bank robbery under 18 U.S.C. § 2113(a) and 18 U.S.C. § 2 for her role in the Rio Grande robbery on March 13. Ms. Quintana proceeded to jury trial on the single count. Mr. Verdream testified against Ms. Quintana at her trial.

The government, without objection, introduced a text message recovered from Ms. Quintana's phone; it said "$100 tip" and included a photograph of a

$100 bill.[1] Ms. Quintana apparently sent this text message on March 9, less than an hour after Mr. Verdream robbed the Nusenda branch. *See id.* at 197-98, 200-02. To convict Ms. Quintana for aiding and abetting, the government had to prove beyond a reasonable doubt she "consciously shared [Mr. Verdream's] knowledge of the underlying criminal act and intended to help him." *See id.* at 148. The government sought to prove the $100 bill pictured in Ms. Quintana's text message was one of the bills that Mr. Verdream stole from Nusenda.

Special Agent Daniel Fondse, the lead case agent, testified for the government about his investigation into the bills stolen from Nusenda. According to Agent Fondse,

> [M]any banks – and Nusenda is one of them – they keep a stack of bills near the teller station which they've already recorded the serial numbers of, of all those bills. And so when a bank robbery occurs, that's usually some of the money that gets included with the money given to the robber. So they know the serial numbers of some of the bills that are handed out. So they keep that, and that's called a bait bill list.

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[1] In its Answer Brief, the government includes an image of what it calls "Ex. 8(c)"—the photograph of the $100 bill attached to Ms. Quintana's March 9 text message. *See* Aplee. Br. at 5. Exhibit 8(c) is not included in the record on appeal. But the trial evidence shows Exhibit 8(c) is what the government says it is and confirms the document was admitted, without objection. *See* R. Vol. 1 at 200-01 (admitting Exhibits 8(a) through 8(h) as "the phone extraction and various versions of the phone extraction" from Ms. Quintana's cell phone.). We thus have no reason to doubt the photograph in the Answer Brief is Exhibit 8(c). Ms. Quintana has not suggested otherwise.

R. Vol. 1 at 185. Agent Fondse explained, "I coordinated with Nusenda to get the bait bill list for [the March 9] robbery." *Id.*

The prosecutor asked Agent Fondse, "Do you know if this serial number that is listed on this bill matched the Nusenda bill list?" *Id.* at 202. Before Agent Fondse could answer, defense counsel objected, "I think there's a foundational problem here." *Id.* "[The prosecutor is] asking whether this serial number [on the photograph of the $100 bill in Exhibit 8(c)] matches a list he obtained from Nusenda. That list has not been admitted into evidence yet," defense counsel argued. *Id.* "We don't know how that list was compiled, where it came from, who produced it. So I think it's premature for this witness to be asked if this serial number matches a number on that list." *Id.* The district court queried, "Isn't it a matter of looking at the list and seeing if the number is the same as that?" *Id.* Defense counsel replied, "If the government can successfully introduce the list, the jury can take a look at it, themselves, and see if it matches." *Id.* at 203. The district court overruled the objection. *See id.*

The prosecutor again asked Agent Fondse whether the serial number on the $100 bill pictured in Ms. Quintana's text message matched "any of the serial numbers on Nusenda's bill list." *Id.* Agent Fondse answered, "So yes, it did." *Id.* He then testified

> there was initially some confusion on Nusenda's part in getting me the bait bill list. They initially sent me a list of bait bill serial numbers on the day of the robbery, and then very shortly after,

> I want to say within an hour, maybe two hours, they said that was an incorrect list they had initially sent me. So later on when we ironed out the list, then they confirmed that this was, indeed, a serial number that was on their bait bill list.

Id.

The government moved to admit Exhibit 9(a)—the bill list Agent Fondse said he received from Nusenda. Exhibit 9(a) consisted of an email thread. The first email, dated April 4, 2018, was from William Dorian, Security Specialist at Nusenda, to Agent Fondse with the subject: "Serial# on one hundred dollar bill." *See* Supp. App. Vol. 1 at 5. That email message said, "Below is a correct list of serial numbers of the bill taken from the Nusenda Montgomery Branch robbery. The top one on the list matches the serial number provided." *Id.* The April 4 email forwarded an exchange from the day before between Mr. Dorian and an individual with the email address "mstoddard@nusenda.org." *See id.* at 5-6.

In the earliest email, Mr. Dorian wrote, "Dan with the FBI provided a serial number he picked up on social media from a hundred dollar bill, which was posted immediately following the Montgomery robbery." *Id.* at 6. The message listed the serial number and asked, "Would we be able to confirm this came from our robbery?" *Id.* The response included a list of serial numbers in the body of the email and stated, "Yep. Here's the series

of notes. The one he provided is listed on here. You can give him these and see if they match any of the others she posted." *Id*. at 5-6.

Agent Fondse testified he remembered interacting with the Nusenda employee who generated the list and emailed it to him. *See* R. Vol. 1 at 204. The prosecutor then asked Agent Fondse if Exhibit 9(a) is "a true and accurate representation of what you received from Nusenda?" *Id*. Agent Fondse testified, "Yes." *Id.*

Before the court admitted Exhibit 9(a) into evidence, defense counsel again objected and asked to question Agent Fondse. Defense counsel asked Agent Fondse if he knew "anything about what [Nusenda] got wrong in the first list," "what they fixed to get a correct list," "anything about how those lists are produced" or "how this list that we're talking about was produced." *Id.* at 206-07. Agent Fondse testified he did not know what Nusenda got wrong in the first list or how Nusenda produced either list. *See id.* Agent Fondse testified he "asked the bank to provide me a list of bait bills and that [Exhibit 9(a)] was the list that they gave me." *Id.* at 207.

Counsel then approached the bench. The district court wanted to know if someone from Nusenda familiar with the list in Exhibit 9(a) would testify; the prosecutor replied, "Yes. The bank teller." *Id.* The district court then asked, "[w]ell, wouldn't it come in at that time?" *Id.* Defense counsel

replied, "[i]f she can say she knows how it was produced." The following colloquy then occurred:

> **Court:** No, if she knows that that's the bank – it's like somebody who is taking a photograph. As long as it's a fair and accurate representation of what the photograph depicts, it comes into evidence. You don't have to have the person who originally took the photograph. I mean, what's the difference here?
>
> **Defense:** . . . . The list of these arcane digits and letters is not obviously correct or obviously wrong, unless somebody can tell us how it was produced. It's very different from a photograph.
>
> **Court**: Well, through the special agent, you're offering into evidence not the incorrect list, but the list that was subsequently sent to him saying, this is the correct bait list?
>
> **Prosecutor**: Yes, sir.
>
> **Court**: And then the teller from the bank is going to likewise testify that that list was the correct list, right?
>
> **Prosecutor**: Yes, sir.
>
> **Court**: And that this bill matches – I think the foundation's there. I'll overrule. I mean, I'll note your objection for the record.
>
> **Prosecutor**: Counsel certainly has arguments as to weight, but that's not authenticity.
>
> **Court**: No, I agree. It's going to come in. Objection overruled.

See R. Vol. 1 at 207-09.

Later, Ms. Vanessa Loya-Medina, a bank teller at Nusenda, testified about the robbery on March 9. When the government asked her if she recognized the list in Exhibit 9(a), she testified: "It's probably the serial numbers of the money I probably gave [Mr. Verdream]." *Id.* at 294. The defense did not object to Ms. Loya-Medina's testimony.

In closing argument, the government referenced the match between the serial number on one of the bait bills in Exhibit 9(a) and the $100 bill pictured in Ms. Quintana's text message.

After a three-day trial, the jury found Ms. Quintana guilty as charged in the indictment. *Id.* at 168. The district court imposed a sentence of 21 months in prison, followed by a 3-year term of supervised release. *See id.* at 572-73.[2] This timely appeal followed. *Id.* at 585.

II. DISCUSSION

Ms. Quintana raises a single issue on appeal. She claims Exhibit 9(a) was erroneously admitted into evidence without proper authentication under Federal Rule of Evidence 901. We review the district court's admission of evidence for abuse of discretion. *United States* v. *Jenkins*, 313 F.3d 549, 559 (10th Cir. 2002); *see also United States* v. *Henry*, 164 F.3d

[2] The district court's initial judgment inaccurately stated Ms. Quintana pleaded guilty to count two of the joint indictment. *See* R. Vol. 1 at 571. The amended judgment accurately shows Ms. Quintana was convicted after trial. *Id.* at 586.

1304, 1309 (10th Cir. 1999) ("Evidentiary decisions, such as findings concerning the authenticity of a document, rest within the sound discretion of the district court and are reviewed for abuse of discretion."). "Under that standard, we will not disturb an evidentiary ruling absent a distinct showing that it was based on a clearly erroneous finding of fact or an erroneous conclusion of law or manifests a clear error in judgment." *Jenkins*, 313 F.3d at 559. Even "[i]f the trial court erroneously admitted evidence, we need not reverse a conviction if the error was harmless." *See United States* v. *Gwathney*, 465 F.3d 1133, 1140 (10th Cir. 2006).

As we will explain, the district court did not abuse its discretion in admitting Exhibit 9(a) because the government satisfied Rule 901's authentication requirements. Even if the court made a mistake in its evidentiary ruling, any error is harmless on this record.

A. The District Court Did Not Abuse Its Discretion By Finding The Government Properly Authenticated Exhibit 9(a).

"Before evidence is admissible it must be authenticated." *United States* v. *Meienberg*, 263 F.3d 1177, 1181 (10th Cir. 2001). "To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce sufficient evidence to support a finding that the item is what the proponent claims it is." Fed. R. Evid. 901(a). We have observed "[t]he rationale for the authentication requirement is that the

evidence is viewed as irrelevant unless the proponent of the evidence can show that the evidence is what its proponent claims." *United States* v. *Hernandez-Herrera*, 952 F.2d 342, 343 (10th Cir. 1991). "Although Rule 901 serves an important gatekeeping function, '[t]he bar for authentication of evidence is not particularly high.'" *United States* v. *Isabella*, 918 F.3d 816, 843 (10th Cir. 2019) (quoting *United States* v. *Gagliardi*, 506 F.3d 140, 151 (2d Cir. 2007)).[3]

Rule 901 offers ten examples—"not a complete list—of evidence that satisfies the requirement" of authentication. Fed. R. Evid. 901(b). Two of Rule 901(b)'s examples are particularly relevant to this appeal:

> **(1) Testimony of a Witness with Knowledge.** Testimony that an item is what it is claimed to be.
>
> . . .
>
> **(9) Evidence About a Process or System.** Evidence describing a process or system and showing that it produces an accurate result.

See Fed. R. Evid. 901(b)(1), (9).

Ms. Quintana urges reversal because "[t]he Government did not provide proper authentication of [Exhibit 9(a)] – no witness testified about how the list was produced or who produced it." Aplt. Br. at 10. According to

[3] Of course, evidence is not admissible simply because the requirements of Rule 901 are satisfied. Ms. Quintana's appeal, however, does not challenge Exhibit 9(a) on any ground but authenticity.

Ms. Quintana, the district court erroneously relied "solely on the testimony of FBI Special Agent Fondse" but he had "no knowledge about the source, accuracy, or production of the list." *Id.* at 10-11. The crux of Ms. Quintana's claim of error seems to be that, to properly authenticate Exhibit 9(a), the government needed to present "evidence describing a process or system and showing that it produces an accurate result." Fed. R. Evid. 901(b). The government contends it sufficiently authenticated Exhibit 9(a) through the testimony of a witness with knowledge as permitted by Rule 901(b)(1).[4] We agree with the government.

The record supports the district court's conclusion, based on the testimony of Agent Fondse, Exhibit 9(a) was authentic. Agent Fondse was the lead FBI agent investigating the two robberies and testified he "coordinated with Nusenda to get the bait bill list for [the March 9] robbery." R. Vol. 1 at 185. Agent Fondse confirmed he "asked [Nusenda] to provide me the list of bait bills, and that [Exhibit 9(a)] was the list that they gave me." *Id.* at 207. Exhibit 9(a) contained emails sent to Agent Fondse from Nusenda's Security Specialist, stating "Below is a correct list of serial numbers of the bill taken from the Nusenda Montgomery Branch robbery."

[4] The government also argues it authenticated Exhibit 9(a) under Rule 901(b)(4). *See* Fed. R. Evid. 901(b)(4). Because we conclude authentication is supported by Rule 901(b)(1), we need not also decide if the government satisfied Rule 901(b)(4).

Supp. App. Vol. 1 at 5. When presented with Exhibit 9(a), Agent Fondse testified he recognized the document and confirmed the bill list was a true and accurate representation of what he received from Nusenda. *See* R. Vol. 1 at 204.

Before admitting Exhibit 9(a), the district court asked, "is someone from Nusenda going to testify that's familiar with this list?" *Id.* at 207. The government responded, "Yes. The bank teller." *Id.* And the bank teller did later testify. But the district court did not state it was conditionally admitting Exhibit 9(a) pending that later testimony, nor would it be reasonable to draw such an inference from the record. *See id.* at 207-09. The district court asked if the government "through the special agent" was "offering into evidence not the incorrect list, but the list that was subsequently sent to [Agent Fondse] saying, this is the correct bait list?" *Id.* at 208. The government responded, "Yes, sir." *Id.* The district court went on, "And then the teller from the bank is going to *likewise* testify that that list was the correct list, right?" *Id.* (emphasis added). Again, "Yes, sir." *Id.* The court then concluded, "I think the foundation's there . . . . It's going to come in. Objection overruled." *Id.* at 208-09. There is no doubt from the record the district court was not waiting on the bank teller and determined Exhibit

9(a) was authentic based on Agent Fondse's trial testimony.[5] Nothing more was needed to satisfy Rule 901's authentication requirement. We thus conclude Agent Fondse's trial testimony constitutes sufficient evidence from a "witness with knowledge" that "an item is what it is claimed to be"—the bill list from the robbery on March 9 provided to him by Nusenda. Fed. R. Evid. 901(b)(1).

Ms. Quintana's arguments to the contrary are unavailing. She seems to challenge Exhibit 9(a)'s *accuracy* (whether the list correctly identified bills stolen from Nusenda on March 9), not its *authenticity* (whether the list

[5] In the appellate briefing, Ms. Quintana and the government at times seem to suggest the district court's ruling on Exhibit 9(a)'s authenticity was conditioned on the testimony of the Nusenda bank teller. *See* Aplee. Br. at 13 (noting a court's ability to conditionally admit evidence under Rule 104(b) of the Federal Rules of Evidence); Reply Br. at 5 n.1 (arguing "the court's admission of [Exhibit 9(a)] was based, at least in significant part, on an expectation of testimony that never materialized"). The parties' arguments about conditional admissibility are wholly undeveloped. *See Hardeman* v. *City of Albuquerque*, 377 F.3d 1106, 1122 (10th Cir. 2004) ("[I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived." (citation omitted)). To the extent made, they were abandoned at oral argument. At oral argument, the court asked Ms. Quintana's counsel, "Do you think that [Exhibit 9(a)] was conditionally admitted at that point then?" Counsel responded, "The court said it was admitted. [It] didn't say conditionally or not conditionally." And in response to a similar line of inquiry at oral argument, counsel for the government stated, "The ruling was not conditioned upon the teller testifying and the district court admitted the list during Agent Fondse's testimony. . . ." The government also disclaimed any reliance on Rule 104(b), which was discussed in its Answer Brief.

was what Nusenda provided to Agent Fondse on April 4).[6] Rule 901 speaks only to authenticity.

We have rejected the proposition that Rule 901 requires a proponent of evidence to establish the accuracy of information as a condition precedent to admissibility. *United States* v. *Meienberg* is instructive. There, the defendant objected to the authenticity of certain documents—computer printouts showing approval numbers issued to defendant's firearms business—on the ground the offering witness could not confirm the information in the printouts was accurate. 263 F.3d 1177, 1180-81 (10th Cir. 2001). The district court admitted the evidence, and we affirmed, rejecting the defendant's argument that "the government was required to demonstrate the accuracy of the information contained in the printouts" to authenticate them. *Id.* at 1181. We explained, "any question as to the accuracy of the printouts . . . would have affected only the weight of the printouts, not their admissibility," since the government had authenticated the exhibit under Rule 901. *See id.* (citation omitted).

[6] To be sure, the record does show there was initially some confusion on Nusenda's end, and Nusenda originally sent Agent Fondse an incorrect list. But that does not disturb our conclusion on authenticity. As Agent Fondse testified, Nusenda eventually came back with Exhibit 9(a), which was "what they told me was the accurate list" of the bills stolen on March 9. *See* R. Vol. 1 at 206.

So too here. The district court, having concluded the government properly authenticated Exhibit 9(a) through Agent Fondse's testimony, agreed with the government's contention that Ms. Quintana "has arguments as to weight, but that's not authenticity." R. Vol. I at 208-09. Thus, while Ms. Quintana "remained free 'to challenge the reliability of [Exhibit 9(a)], to minimize its importance, or to argue alternative interpretations of its meaning . . . these and similar other challenges go to the *weight* of the evidence—not to its *admissibility*.'" *Isabella*, 918 F.3d at 844 (quoting *United States* v. *Vayner*, 769 F.3d 125, 131 (2d Cir. 2014)); *see also Meienberg*, 263 F.3d at 1181. Ms. Quintana made no such arguments in the district court.

B. The Government Has Shown Any Error In Admitting Exhibit 9(a) Was Harmless.

We conclude the district court did not abuse its discretion by admitting Exhibit 9(a) into evidence based on a determination the government properly authenticated the exhibit under Rule 901(b)(1). But even "[i]f the trial court erroneously admitted evidence, we need not reverse a conviction if the error was harmless." *Gwathney*, 465 F.3d at 1140; *see also* Fed. R. Crim. P. 52(a) ("Any error, defect, irregularity, or variance that does not affect substantial rights must be disregarded."). Where, as here, a defendant challenges a district court's admission of evidence based solely

on the Federal Rules of Evidence—and does not assert a constitutional challenge—we apply the non-constitutional harmless error standard. *See, e.g.*, *United States* v. *Jefferson*, 925 F.2d 1242, 1253-54 (10th Cir. 1991) (distinguishing between the non-constitutional harmless error standard for review of objections based solely on the Rules of Evidence and the constitutional harmless error standard for objections implicating constitutional rights); *see also* 7 Wayne R. LaFave et al., Criminal Procedure § 27.6(b) (4th ed. 2015) ("In the federal courts, all nonconstitutional, nonjurisdictional violations are reviewed under the harmless error standard of Federal Rule of Criminal Procedure 52(a). . . ."). "To determine whether the erroneous admission of evidence was harmless, we review the record de novo to determine whether the evidence had a "'substantial influence" on the outcome or leaves one in "grave doubt" as to whether it had such an effect.'" *Gwathney*, 465 F.3d at 1140 (citations omitted). "It is well-established that the burden of proving harmless error is on the government." *United States* v. *Holly*, 488 F.3d 1298, 1307 (10th Cir. 2007); *accord United States* v. *Kahn*, 58 F.4th 1308, 1318 (10th Cir. 2023); *see also United States* v. *Rivera*, 900 F.2d 1462, 1469 n.4 (10th Cir. 1990) (en banc) ("[T]he government ordinarily has the burden of proving that a non-constitutional error was harmless.").

The government argues the prosecution offered "compelling evidence at trial" against Ms. Quintana; it insists "there is no chance that the jury's verdict would have been different had it not seen Nusenda's list of serial numbers or heard that one of them matched the crisp $100 bill in Quintana's photo." Aplee. Br. at 17. We agree.

The government charged Ms. Quintana under 18 U.S.C. § 2113(a) and § 2 for her role in the Rio Grande robbery on March 13. *See* R. Vol. 1 at 28-29. The jury was instructed on the elements of each offense. As to § 2113(a), bank robbery, the government needed to prove Ms. Quintana "intentionally took from the person or the presence of the person, money" that "belonged to or was in the possession of a federally insured bank or credit union at the time of the taking . . . ." *Id.* at 147 (Jury Instruction No. 6). As to § 2, aiding and abetting, the government needed to prove "every element of the charged crime . . . was committed by someone other than [Ms. Quintana]" and that Ms. Quintana:

> Intentionally associated herself in some way with the crime and intentionally participated in it as she would in something she wished to bring about. This means that the government must prove that the defendant consciously shared the other person's knowledge of the underlying criminal act and intended to help him.

Id. at 148 (Jury Instruction No. 7). The jury was instructed the requisite knowledge could "be inferred if [Ms. Quintana] deliberately blinded herself

to the existence of a fact [or] if [she] was aware of a high probability of the existence of James Verdream's intent to rob a bank or credit union . . . ." *Id.* at 150 (Jury Instruction No. 9).[7]

The primary focus of our harmlessness inquiry is on the work being done by the evidence admitted in error. Exhibit 9(a) included a serialized list of the bills identified as stolen from Nusenda on March 9. The government used Exhibit 9(a) to establish a serial-number link between the money stolen from Nusenda and the $100 bill—labeled a "tip"—pictured in Ms. Quintana's text message sent about an hour after the Nusenda robbery. But as the government persuasively explains, "That the bill came from Nusenda was a nice touch, but the government's theory of [Ms.] Quintana's guilt never depended on her knowledge that that specific bill she held was proceeds of the robbery." Aplee. Br. at 17. Reviewing de novo, we agree with the government any error in admitting Exhibit 9(a) was harmless.

The government introduced compelling evidence to prove Ms. Quintana had the requisite knowledge and intent to aid Mr. Verdream's

[7] We note Ms. Quintana objected to the "deliberate ignorance instruction," arguing the government's theory of the case was that Ms. Quintana actively and knowingly participated in the March 13 robbery, not that she was "willfully blinding herself to what was going on." *See* R. Vol. 1 at 469-70. The district court resolved the objection in favor of the government. *See id.* at 478. Ms. Quintana has not challenged the jury instructions on appeal.

March 13 Rio Grande robbery. This included testimony from Mr. Verdream and Agent Fondse, surveillance video from multiple banks and credit unions, and text messages from Ms. Quintana's cell phone.

Mr. Verdream testified Ms. Quintana drove him to and from the Rio Grande robbery and the Nusenda robbery. *See* R. Vol. 1 at 353-54, 363-64, 380-81. Ms. Quintana never argued otherwise. Mr. Verdream further testified he shared proceeds from both robberies with Ms. Quintana. *See id.* at 368, 381-382. He also testified he told Ms. Quintana about his previous bank robbery conviction and claimed "[s]he didn't react at all. She didn't care." *Id.* at 361. According to Mr. Verdream, Ms. Quintana drove him to about 16 banks in one day because he was "Staking them out. . . . Setting them up for bank robberies." *Id.* at 360. When asked by the government, "Did you tell [Ms. Quintana] that you were looking to rob another bank," Mr. Verdream responded, "Yeah. . . . She didn't react." *Id.* at 361.

Mr. Verdream's testimony was corroborated by surveillance videos showing a vehicle matching Ms. Quintana's driving him to both the Nusenda and Rio Grande locations and to other banks in Albuquerque. *See id.* at 184, 211-214, 216-218. Video surveillance footage from the Rio Grande on March 13 showed a car matching Ms. Quintana's—a silver Nissan Sentra—accelerating to exit the parking lot after the robbery, before Mr. Verdream had closed the passenger door. *See id.* at 216-17, 380-381. Mr.

Verdream testified the silver Nissan Sentra in this surveillance video was Ms. Quintana's and that "she was in a hurry to get out of there." *Id*. at 380-81.

The jury also reviewed extracted text messages from Ms. Quintana's phone. One of the recovered text messages was from another ride-share customer, "Tyrone." The message was sent to Ms. Quintana on March 13, while she was driving Mr. Verdream to multiple banks and credit unions, but before he committed the Rio Grande robbery that same day. *See id.* at 220-22. Tyrone wrote to Ms. Quintana, "Oh yea that guy u take to banks robbed them." Supp. App. Vol. I at 3; *see also* R. Vol. 1 at 220-22. Ms. Quintana replied, "I know he Robbed them he told me" and "he told me the first day I met him." Supp. App. Vol. I at 3; R. Vol. I at 221. The government later elicited testimony from Agent Fondse that Ms. Quintana admitted during her interview with the FBI that she tried to delete text messages with "Tyrone." *See* R. Vol. 1 at 238-39.

Under these circumstance, we cannot conclude Exhibit 9(a), even if admitted in error, had a "'substantial influence' on the outcome or leaves one in 'grave doubt' as to whether it had such effect." *Gwathney*, 465 F.3d at 1140 (citations omitted). Ms. Quintana resists this conclusion, but her contrary arguments are not persuasive.

She says Exhibit 9(a)'s serialized bill list "provided a unique link" which makes its erroneous admission harmful. Aplt. Br. at 13. In support, Ms. Quintana relies on an out-of-circuit decision—*United States* v. *Vayner*, 769 F.3d 125 (2d Cir. 2014). In *Vayner*, the district court admitted a printout of defendant's profile page from a foreign website likened to "the Russian equivalent of Facebook." *Id*. at 128. During the jury trial, the government initially argued "it offered the evidence simply as a web page that existed on the Internet at the time of trial, not as evidence of [the defendant's] own statements." *Id*. at 131. But in its closing arguments, the government changed course and "insisted that the page belonged to and was authored by [the defendant]." *Id.*

The Second Circuit held the district court improperly admitted the website printout because the government had not established the evidence was what it was purported to be—an account belonging to the defendant. Aside from the printout, there was no evidence the defendant even had an account. *Id*. at 132-33. Because the improperly admitted exhibit played such a key part of the government's proof, the Second Circuit declined to find the evidentiary error harmless. *Id*. at 133-35. Ms. Quintana has not shown the same outcome is warranted on the record before us. In *Vayner*, the improperly admitted exhibit provided direct evidence about the "only point

truly in contention at trial." *Id.* at 133. Exhibit 9(a) is simply not that kind of evidence; it did not have a central role in proving Ms. Quintana's guilt.

Finally, Ms. Quintana underscores the government, in its closing argument, emphasized the link between the serial number in Exhibit 9(a) and the money pictured in the text from Ms. Quintana. Given our determination that Exhibit 9(a) was not a critical component of the government's evidence of Ms. Quintana's knowledge and intent, we cannot say mere reference to it during closing argument justifies a new trial.

III. CONCLUSION

The judgment of the district court is **AFFIRMED**.

ENTERED FOR THE COURT

Veronica S. Rossman
Circuit Judge