RECORD NO._____

In The
Supreme Court of The United States

DAVID T. ODOM,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

David Odom was charged with a fraud scheme arising out of an attempt to obtain a bridge loan under false pretenses. The stated objective of the conspiracy was to induce a bridge lender to approve a loan and disburse the proceeds. There is a five-year statute of limitations for the crime charged. 18 U.S.C. § 3282(a). Odom was not charged in the original indictment but was instead added to a superseding indictment. Since the superseding indictment was not filed until June 15, 2016, and the original loan disbursement was May 10, 2011, the factual allegations contained in original indictment were not sufficient to meet the statute of limitations requirements. As a result, the government added two post-disbursement allegations to the superseding indictment in an attempt to "save" it from the limitations issue.

The question presented is:

1. **Whether a defendant can make a knowing and voluntary decision under a conditional plea agreement when, believing he is preserving his Motion to Dismiss regarding the statute of limitations, the Federal Appeals Court limits its review and frames the District Court's decision in a manner that functionally convert is to a non-dispositive one?**

PARTIES TO THE PROCEEDINGS

Petitioner David Odom was Defendant and Appellant below. The United States was the Plaintiff and Appellee below.

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PETITION FOR A WRIT OF CERTIORARI

David Odom respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this matter.

OPINION BELOW

The decision of the court of appeals, an unreported opinion, is reprinted in the Appendix at App-1. The district court's opinion is found at App-44.

JURISDICTION

The court of appeals entered its judgment on April 27, 2018. A timely petition for rehearing and rehearing *en banc* was filed on May 10, 2018. App-1-App-7. The motion for rehearing was denied on June 5, 2018. The Court erroneously filed an incorrect order on June 5, 2018, and an amended order was filed June 6, 2018. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUIONAL AND STATUTORY PROVISIONS

Federal Rule of Criminal Procedure 11(a)(2) governs conditional pleas and provides for the following:

(2) **Conditional Plea**. With the consent of the court and the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion. A defendant who prevails on appeal may then withdraw the plea.

STATEMENT OF THE CASE

A. Facts and Proceedings Below

This is a criminal case on direct appeal. On April 27, 2016, a federal grand jury returned a five-count indictment charging Darryl Clements and Rodney Dunn with conspiracy to commit wire fraud and also substantive counts of wire fraud. The allegations of fraud surround the financing of a movie called "Season Tickets" to be produced by CityScope Productions, LLC. ("CityScope") On June 15, 2016, David Odom was indicted under a superseding indictment that alleged him to be a co-conspirator and co-defendant. He was the sole owner of CityScope. Loan monies in the amount of $2.5 million for bridge-financing were dispersed on May 10, 2011. The superseding indictment added an additional substantive wire fraud count against David Odom for a fraud occurring on June 27, 2011.

Mr. Odom filed a motion to dismiss the indictment against him on the basis of a violation of the statute of limitations. App-9. He argued that the court should be "bound by the language of the indictment." *United States v. Hitt*, 249 F.3d 1010, 1015 (D.C. Cir. 2001). The motion to dismiss argued, as was also argued on appeal, that the superseding indictment does not allege any express agreement among the co-conspirators to conceal their offense. Because the loan had been processed by May 10, of 2011, and the superseding indictment was not filed until June 15, 2016, the indictment was infirm.

In an attempt to avoid statute of limitations issues, the superseding indictment does allege two acts of concealment in the manner and means section of the indictment. Specifically, paragraph 24 of the indictment states:

> 24. It was part of the conspiracy and scheme to defraud that on June 27, 2011, for the purpose of concealing the scheme to defraud, ODOM sent a letter to Harbor Bank demanding that Harbor Bank pay $3 million to Blue Rider from escrow account ****4253 in the name of the Shah Group.

USA v. David Odom, 1:16-cr-0 0192-GLR-3, June 5, 2016, ECF No. 7.

The Government proffered numerous additional details at the motions hearing that were not part of the indictment. Even on appeal, the government attempted to put to the Fourth Circuit numerous documents that were not admitted into evidence at any point during the pre-trial litigation of the case.

The District Court denied the motion to dismiss. In it's ruling the Court stated that it was looking at the four-corners of the ruling but that it considered the representations of the Government as to the nature of 1) the June 27, 2011 letter, including many details not included in the indictment, and 2) additional proof that the Government would be presenting at trial.

Prior to trial, Odom entered into a conditional plea. App-9. He reserved the right to appeal the denial of his motion to dismiss. A rule 11 colloquy was conducted which covered the various standard review of rights that would be relinquished. However, the trial court did not ask Mr. Odom if he understood the specific bounds of his reserve question for appeal. Odom pled guilty under a willful blindness theory

that Odom had been willfully blind to the Clements/Dunn fraud conspiracy. On October 30, 2017, the court entered a judgment of conviction and sentenced Mr. Odom to 30 months of imprisonment and three years of supervised release.

B. Proceedings on Direct Appeal.

Petitioner appealed his Motion to Dismiss. Odom first argued that the court erred in not finding that the conspiracy ended on May 10, 2011, that the acts of "concealment" alleged in the superseding indictment cannot extend the statute of limitations, and that the post-payment activities surrounding the June 27, 2011 were not lulling acts in furtherance of the alleged conspiracy. Second Odom argued whether or not a conditional appeal was appropriate given the non-dispositive nature of the district court's ruling. The court of appeals affirmed petitioner's sentence in an unpublished opinion. App-1.

The Fourth Circuit reiterated that "The district court ruled that it was limited to the allegations in the indictment and thus it was required to accept the Government's factual allegation that the June 27 letter was part of the conspiracy." App-3.

REASONS FOR GRANTING THE PETITION

Plea agreements are an integral part of the functioning of the federal court. Per the United States Courts own website, more than 90 percent of cases end in a guilty plea.[1] Generally, a guilty plea waives all non-jurisdiction arguments. Although this Court's recent case of *Class v. United States*, held that a guilty plea

[1] United States Courts, *Criminal Cases* (September 1, 2018), http://www.uscourts.gov/about-federal-courts/types-cases/criminal-cases

does not inherently waive a constitutional challenge to the statute of conviction. *Class v. United States*, 138 S. Ct. 798, 200 L.Ed.2d 37 (2018).

Specifically, conditional pleas allow a defendant to appeal an adverse ruling. Fed. R. Crim. P. 11(a)(2). The issue reserved for appeal must be dispositive and requires consent of both the court and government. *United States v. Fitzgerald*, 820 F.3d 107 (4th Cir. 2016).

Court approval of conditional pleas ensures that a defendant is "not allowed to take an appeal on a matter which can only be fully developed by proceeding to trial." Fed. R. Crim. P. 11 advisory committee note. On the other hand, government approval ensures that a conditional plea only occurs when "the court of appeals will dispose of the case either by allowing the plea to stand or by such action as compelling dismissal of the indictment or suppressing essential evidence." *Id.*

Finally, ensuring that the issue is dispositive is critical for two specific reasons. First, that the conditional plea promotes judicial economy, and second, that the conditional plea not be employed in a manner that "renders appellate review difficult or even impossible." *United States v. Bundy*, 392 F.3d 641, 646 (4th Cir. 2004).

Judicial economy and consent of the government and court are primary concerns regarding conditional guilty pleas. Curiously absent are concerns for fairness to a defendant in conditional guilty pleas. For example, Rule 11 post-*Padilla* requires any federal court accepting a plea to notify a defendant "that, if convicted, a defendant who is not a United States citizen may be removed from the

United States, denied citizenship, and denied admission to the United States in the future." Fed. R. Crim. P. 11(b)(1)(O). *See Padilla v. Kentucky*, 559 U.S. (2010). No such particular inquiry is required by the rule prior to accepting a conditional guilty plea.

Mr. Odom, from his initial motion to dismiss, through his pretrial motions argument, and on through his arguments raised on appeal, believed that he was free to litigate more than the district court's decision that it was "limited to the allegations in the indictment and thus it was required to accept the Government's factual allegations that the June 27 letter was part of the conspiracy." App-3.

This Court should grant the petition and reverse the court below.

1. **Whether a defendant can make a knowing and voluntary decision under a conditional plea agreement when, believing he is preserving his Motion to Dismiss regarding the statute of limitations, the Federal Appeals Court limits its review and frames the District Court's decision in a manner that functionally convert is to a non-dispositive one?**

The Issue as Framed by the Fourth Circuit is Non-Dispositive.

David Odom, throughout all argument phases of this case, argued that his case should be dismissed based on various statute of limitations grounds. One of the primary arguments was that the indictment did not set forth an express agreement to extend the duration of the conspiracy through concealment. *Grunewald v. United States*, 353 U.S. 391, 443 (1957). Odom argued that the goal of the conspiracy had

been met by May of 2011. (disbursement of the loan proceeds) The superseding indictment was infirm as it was not filed until June 15, 2016.

The Fourth Circuit's interpretation of the breadth of the issue on appeal renders the reserve issue a non-dispositive one. The Fourth Circuit, in referring to the adverse ruling states:

> The district court ruled that it was limited to the allegations in the indictment and thus it was required to accept the Government's factual allegation that the June 27 letter was part of the conspiracy.

App-3,4.

The Fourth Circuit goes on to say that "Odom was free to argue on appeal that the district court erred in reaching this conclusion, and if his arguments were successful on appeal, the ultimate result would be the dismissal of the indictment." *Id*. This is untrue. For example, if the appeals court had taken the opposite position, that the trial court was not bound to accept the allegations in the indictment that the June 27 letter was part of the conspiracy that would extend the conspiracy and save from statute of limitations issue, the case would need to be remanded for further development of the record. The issue would have been non-dispositive if Mr. Odom had prevailed.

On remand, the trial court could in fact, even though now not bound to do so, decide to accept the allegations that the letter was in fact part of the conspiracy conduct and subsequently deny Mr. Odom's motion to dismiss yet again. This would have either led to another attempted conditional plea or a trial.

Mr. Odom did not get the benefit of his negotiated bargain in this case. He was either going to lose, and have that be the end of it. Or, win, and not have it be the end of it.

David Odom did Not Enter Into a Knowing and Voluntary Plea as He was Not Instructed on the True Limitations of His Appeal.

As raised in his petition for rehearing, there are serious inaccuracies in the characterization of the record by the Fourth Circuit. Mr. Odom, in fact, did not understand the limited nature of his appellate rights. The district court did not inquire of his knowledge on that topic, nor does the plea offer any guidance on how limited his appellate rights were.

Neither the motions hearing, rearraignment, nor sentencing transcript provide evidence that Mr. Odom knowingly waived his right to persist in his not guilty plea. Specifically, that nothing in the records shows Mr. Odom knew that he was limited in arguing only that the district court was wrong in finding that "it was limited to the allegations in the indictment and thus it was required to accept the Government's factual allegations that the June 27 letter was part of the conspiracy." App-2. In fact, the actual language of the plea agreement states that Mr. Odom would be permitted to appeal the denial of the motion generally. The plea does not state that he was limited to any certain portion of his motion to dismiss. App-1.

The Fourth Circuit found that the district court confirmed that Odom understood the limited nature of his appellate rights. However, nowhere in the

record does the District Court explain to Odom the limited nature of the question that can be appealed.

Rule 11(a)(2) requires "precisely what pretrial issues have been preserved for appellate review." *Id.* There was clearly a disagreement about what arguments could be raised at the appellate level. Mr. Odom believed the question on appeal would be broader than whether or not the trial court had to accept the allegations in the indictment as true. Not only would he not have accepted the plea, the results of the framing of the issue by the Fourth Circuit is that the issue became non-dispositive. Simply put, if the Fourth Circuit was correct that the appeal issue was whether or not the district court was bound by the allegations of the indictment, Mr. Odom really never had an issue on appeal to begin with.

This Court should resolve the question of whether or not the plea in this case was knowing and voluntary considering the manner in which the Court of Appeals denied relief and couched the trial court's opinion. This Court has a strong interest in making sure that federal plea agreements are resolved in a fair and efficient manner. A reasonable defendant could believe from his pleadings and the hearing that he had preserved a dispositive issue for appeal. A reasonable defendant could also have a desire to persist in trial but may be persuaded to enter a conditional guilty plea with the idea that he had preserved a good issue for appeal. This is what happened to Mr. Odom. In some instances, like this one, a conditional plea is not appropriate.

For example, motions to suppress are different. The police search a home without a warrant but argue exigent circumstances. A defendant may then file a pretrial motion to suppress, the parties then submit testimony and argument, and the trial court can make a finding from a solidified body of information. The government cannot hope to supplement proof at trial to cure a factually deficient record at the motions hearing. Here, both the trial court, and the court of appeals agree that certain determination of facts should be developed at trial. App-4 citing *United States v. Engle*, 676 F.3d 405 (4th Cir. 2012)(internal quotation marks omitted).

In Mr. Odom's case, he received the worst of all possible worlds and clearly did not engage in a knowing and voluntary plea. It is well-settled caselaw, and clear from the legislative notes regarding conditional pleas, that only non-dispositive issues should be contained in conditional pleas. It is abundantly clear from the Fourth Circuit's opinion that Mr. Odom never had a meaningful opportunity for review of his appellate issue and that at best his victory would be non-dispositive. This Petition for Writ of Certiorari is unique in that it calls upon this Court to grant the petition not on the conclusion of the Fourth Circuit, but asking this Court to apply well-settled law, logic, and to recognize that just because the lower court says Mr. Odom preserved a non-dipositive issue does not mean that that is in fact the case given a plain and thorough reading of the record and opinions below.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

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APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Appendix A

United States v. David T. Odom, No. 17-4677

Unpublished Opinion
in the United States Court of Appeals for the Fourth Circuit

Decided April 27, 2018

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4677

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAVID T. ODOM,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore. George L. Russell, III, District Judge. (1:16-cr-00192-GLR-3)

Submitted: April 17, 2018 Decided: April 27, 2018

Before MOTZ, TRAXLER, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Mirriam Z. Seddiq, MIRRIAM Z. SEDDIQ, LLC, Upper Marlboro, Maryland, for Appellant. Stephen M. Schenning, Acting United States Attorney, Joyce K. McDonald, Rachel M. Yasser, Assistant United States Attorneys, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

David T. Odom pled guilty, pursuant to a conditional guilty plea, to conspiring to commit wire fraud, in violation of 18 U.S.C. § 1349 (2012). On appeal, Odom contends that the district court erred in denying his motion to dismiss the indictment as barred by the statute of limitations. Odom further contends that his conditional guilty plea is invalid because the district court did not make a factual determination regarding whether a letter sent on June 27, 2011 ("the June 27 letter") was part of the conspiracy. We reject Odom's contentions and affirm his conviction.

Pursuant to Fed. R. Crim. P. 11(a)(2), "a defendant may enter a conditional guilty plea or nolo contendere, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion." However, a conditional guilty plea may only be taken from a case-dispositive issue. *United States v. Bundy*, 392 F.3d 641, 647 (4th Cir. 2004). "The disposition of a pretrial issue is case-dispositive if (1) a ruling in the defendant's favor would require dismissal of the charges or suppression of essential evidence, or (2) a ruling in the Government's favor would require affirming the conviction." *Id.* at 648. If the issue reserved for appeal is nondispositive, the conditional plea is invalid. *Id.* at 649.

We conclude that Odom preserved appellate review of a case-dispositive issue. Although Odom attempts to frame the issue on appeal as "the duration of the scheme alleged," he reserved the right to appeal the district court's ruling on his motion to dismiss. The district court ruled that it was limited to the allegations in the indictment and thus it was required to accept the Government's factual allegation that the June 27

letter was part of the conspiracy. Odom was free to argue on appeal that the district court erred in reaching this conclusion, and if his arguments were successful on appeal, the ultimate result would be the dismissal of the indictment. Moreover, the district court confirmed that Odom understood the terms of his plea agreement and the limited nature of his appellate rights. Thus, we discern no error in the district court's acceptance of Odom's plea.

A defendant may file a motion to dismiss an indictment as barred by the statute of limitations pursuant to Fed. R. Crim. P. 12. *United States v. Grimmett*, 150 F.3d 958, 961 (8th Cir. 1998); *United States v. Jarvis*, 7 F.3d 404, 409 (4th Cir. 1993). "A district court may dismiss an indictment under Rule 12 where there is an infirmity of law in the prosecution; a court may not dismiss an indictment, however, on a determination of facts that should have been developed at trial." *United States v. Engle,* 676 F.3d 405, 415 (4th Cir. 2012) (internal quotation marks omitted). "We review the district court's factual findings on a motion to dismiss an indictment for clear error, but we review its legal conclusions de novo." *United States v. Perry*, 757 F.3d 166, 171 (4th Cir. 2014) (internal quotation marks omitted). In conducting our review, we are "ordinarily limited to the allegations contained in the indictment." *Engle*, 676 F.3d at 415; *see also Boyce Motor Lines, Inc. v. United States,* 342 U.S. 337, 343 n.16 (1952).

Conspiracy to commit wire fraud is governed by a 5-year statute of limitations. 18 U.S.C. § 3282(a) (2012). Generally, a "statute of limitations . . . runs from the last overt act during the existence of the conspiracy." *Fiswick v. United States*, 329 U.S. 211, 216 (1946). However, the government is not required to establish an overt act to prove a

conspiracy to commit wire fraud. *See United States v. Roy*, 783 F.3d 418, 420 (2d Cir. 2015) (collecting cases). Thus, the statute of limitations is satisfied if the government "alleges . . . that the conspiracy continued into the limitations period." *United States v. Seher*, 562 F.3d 1344, 1364 (11th Cir. 2009) (internal quotation marks omitted).

We conclude that the district court did not err in denying Odom's motion to dismiss the indictment. Because the Government was not required to establish an overt act to convict Odom, it was similarly not required to allege an overt act within the statute of limitations period. The Government alleged that the conspiracy continued into August 2011, within the limitations period. Additionally, and contrary to Odom's contention, the Government did not allege that the object of the conspiracy was to only obtain bridge financing; instead, it alleged that an object of the conspiracy was to defraud lenders. *See United States v. Qayyum*, 451 F.3d 1214, 1218 (10th Cir. 2006) ("To determine the scope of the alleged conspiratorial agreement, [a] court is bound by the language of the indictment." (internal quotation marks omitted)). Moreover, the Government alleged that the June 27 letter was an act of concealment and part of the conspiracy to defraud lenders. Even if the June 27 letter is not considered part of the conspiracy to defraud lenders, we conclude that the Government's allegations were sufficient to infer that the June 27 letter was intended to "lull the victim[] into a false sense of security," and thus that the conspiracy extended into the limitations period. *See United States v. Lane*, 474 U.S. 451-52 (1986).

Accordingly, we deny Odom's motions to expedite and for reconsideration and affirm the district court's judgment. We dispense with oral argument because the facts

and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

Appendix B

United States v. David T. Odom, No. 17-4677

Order Denying Petition for Rehearing and Rehearing *En Banc*
in the United States Court of Appeals for the Fourth Circuit

Filed June 6, 2018

FILED: June 6, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4677
(1:16-cr-00192-GLR-3)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DAVID T. ODOM

Defendant - Appellant

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Traxler, Judge Motz, and Judge Duncan.

For the Court

/s/ Patricia S. Connor, Clerk

Appendix C

United States v. David T. Odom
No. 1:16-cr-00192-GLR-3

Plea Agreement/Letter
in the United States District Court
for the District of Maryland at Baltimore

Filed March 31, 2017

FOR 3/28/17

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Via e-mail

March 28, 2017

Harry J. Trainor, Jr.
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Re: United States v. David Odom, Criminal No. GLR 16-192

Dear Counsel:

This letter, together with the Sealed Supplement, confirms the plea agreement which has been offered to the Defendant by the United States Attorney's Office for the District of Maryland ("this Office"). If the Defendant accepts this offer, please have him execute it in the spaces provided below. If this offer has not been accepted by **March 29 at 5:00 pm EST**, it will be deemed withdrawn. The terms of the agreement are as follows:

Offense of Conviction

1. The Defendant agrees to plead guilty to Count One of the Superseding Indictment now pending against him, which charges him with Wire Fraud Conspiracy, in violation of 18 U.S.C. § 1349. The Defendant admits that he is, in fact, guilty of this offense and will so advise the Court.

Elements of the Offense

2. The elements of the offense to which the Defendant has agreed to plead guilty, and which this Office would prove if the case went to trial, are as follows:

Conspiracy to Commit Wire Fraud

a. First, that in the District of Maryland, there was a scheme or artifice to defraud or to obtain money or property by materially false and fraudulent pretenses, representations, or promises as alleged in the Superseding Indictment; and

b. Second, that the Defendant knowingly and willfully conspired and agreed with at least one other person to participate in the scheme to defraud.

Penalties

3. The maximum sentence provided by statute for the offense to which the Defendant is pleading guilty is as follows: Count One: twenty (20) years imprisonment, plus a term of as much as three (3) years of supervised release, and a fine of $250,000 or twice the gross gain or loss from the offense. In addition, the Defendant must pay $100.00 as a special assessment pursuant to 18 U.S.C. § 3013, which will be due and should be paid at or before the time of sentencing. This Court may also order him to make restitution pursuant to 18 U.S.C. §§ 3663, 3663A, and 3664.[1] If a fine or restitution is imposed, it shall be payable immediately, unless, pursuant to 18 U.S.C. § 3572(d), the Court orders otherwise. The Defendant understands that if he serves a term of imprisonment, is released on supervised release, and then violates the conditions of his supervised release, his supervised release could be revoked - even on the last day of the term - and the Defendant could be returned to custody to serve another period of incarceration and a new term of supervised release. The Defendant understands that the Bureau of Prisons has sole discretion in designating the institution at which the Defendant will serve any term of imprisonment imposed.

Waiver of Rights

4. The Defendant understands that by entering into this agreement, he surrenders certain rights as outlined below:

a. If the Defendant had persisted in his plea of not guilty, he would have had the right to a speedy jury trial with the close assistance of competent counsel. That trial could be conducted by a judge, without a jury, if the Defendant, this Office, and the Court all agreed.

b. If the Defendant elected a jury trial, the jury would be composed of twelve individuals selected from the community. Counsel and the Defendant would have the opportunity to challenge prospective jurors who demonstrated bias or who were otherwise unqualified, and would have the opportunity to strike a certain number of jurors peremptorily. All twelve jurors would have to agree unanimously before the Defendant could be found guilty of any count. The jury would be instructed that the Defendant was presumed to be innocent, and that presumption could be overcome only by proof beyond a reasonable doubt.

c. If the Defendant went to trial, the government would have the burden of proving the Defendant guilty beyond a reasonable doubt. The Defendant would have the right to confront and cross-examine the government's witnesses. The Defendant would not have to present any defense witnesses or evidence whatsoever. If the Defendant wanted to call witnesses in his

[1] Pursuant to 18 U.S.C. § 3612, if the Court imposes a fine in excess of $2,500 that remains unpaid 15 days after it is imposed, the Defendant shall be charged interest on that fine, unless the Court modifies the interest payment in accordance with 18 U.S.C. § 3612(f)(3).

defense, however, he would have the subpoena power of the Court to compel the witnesses to attend.

d. The Defendant would have the right to testify in his own defense if he so chose, and he would have the right to refuse to testify. If he chose not to testify, the Court could instruct the jury that they could not draw any adverse inference from his decision not to testify.

e. If the Defendant were found guilty after a trial, he would have the right to appeal the verdict and the Court's pretrial and trial decisions on the admissibility of evidence to see if any errors were committed which would require a new trial or dismissal of the charges against his. By pleading guilty, the Defendant knowingly gives up the right to appeal the verdict and the Court's decisions.

f. By pleading guilty, the Defendant will be giving up all of these rights, except the right, under the limited circumstances set forth in the "Waiver of Appeal" paragraph below, to appeal the sentence and one pre-trial ruling. By pleading guilty, the Defendant understands that he may have to answer the Court's questions both about the rights he is giving up and about the facts of his case. Any statements the Defendant makes during such a hearing would not be admissible against him during a trial except in a criminal proceeding for perjury or false statement.

g. If the Court accepts the Defendant's plea of guilty, there will be no further trial or proceeding of any kind, and the Court will find him guilty.

h. By pleading guilty, the Defendant will also be giving up certain valuable civil rights and may be subject to deportation or other loss of immigration status. The Defendant's law license from the State of Illinois may be affected by his conviction.

Advisory Sentencing Guidelines Apply

5. The Defendant understands that the Court will determine a sentencing guidelines range for this case (henceforth the "advisory guidelines range") pursuant to the Sentencing Reform Act of 1984 at 18 U.S.C. §§ 3551-3742 (excepting 18 U.S.C. §§ 3553(b)(1) and 3742(e)) and 28 U.S.C. §§ 991 through 998. The Defendant further understands that the Court will impose a sentence pursuant to the Sentencing Reform Act, as excised, and must take into account the advisory guidelines range in establishing a reasonable sentence.

Factual and Advisory Guidelines Stipulation

6. This Office and the Defendant understand, agree and stipulate to the Statement of Facts set forth in Attachment A hereto, which this Office would prove beyond a reasonable doubt, and to the following applicable sentencing guidelines factors:

a. The applicable guideline is U.S.S.G. §2B1.1 and the Base Offense Level for conspiracy to commit wire fraud is seven (7). See U.S.S.G. § 2B1.1(a)(1).

b. Pursuant to U.S.S.G. § 2B1.1(b)(1)(I), sixteen (16) levels are added because the loss was over $1,500,000. **Subtotal = twenty-three (23)**

c. This Office does not oppose a two-level reduction in the Defendant's adjusted offense level, based upon the Defendant's apparent prompt recognition and affirmative acceptance of personal responsibility for his criminal conduct. U.S.S.G. § 3E1.1(a). This Office may oppose *any* adjustment for acceptance of responsibility if the Defendant (a) fails to admit each and every item in the factual stipulation; (b) denies involvement in the offense; (c) gives conflicting statements about his involvement in the offense; (d) is untruthful with the Court, this Office, or the United States Probation Office; (e) obstructs or attempts to obstruct justice prior to sentencing; (f) engages in any criminal conduct between the date of this agreement and the date of sentencing; or (g) attempts to withdraw his plea of guilty. **Total twenty-one (21).**

Criminal History

7. The Defendant understands that there is no agreement as to his criminal history or criminal history category, and that his criminal history could alter his offense level if he is a career offender or if the instant offense was a part of a pattern of criminal conduct from which he derived a substantial portion of his income.

Fine

8. Under the fine provisions of the U.S.S.G. §5E1.2, the Defendant is subject to a criminal fine. The Defendant agrees that he will fully disclose to the probation officer and to the Court, subject to the penalty of perjury, all information, including but not limited to copies of his bank and other financial records.

Restitution

9. The Defendant agrees to the entry of a Restitution Order for the full amount of the victim's losses, if any of the losses remain unpaid. The Defendant agrees that, pursuant to 18 U.S.C. §§ 3663 and 3663A and §§ 3563(b)(2) and 3583(d), the Court shall order restitution of the full amount of the victims' losses by the offense conduct set forth in the factual stipulation. The Defendant further agrees that he will fully disclose to the probation officer and to the Court, subject to the penalty of perjury, all information, including but not limited to copies of all relevant bank and financial records, regarding the current location and prior disposition of all funds obtained as a result of the criminal conduct set forth in the factual stipulation. The Defendant further agrees to take all reasonable steps to retrieve or repatriate any such funds and to make them available for restitution. If the Defendant does not fulfill this provision, it will be considered a material breach of this plea agreement, and this Office may seek to be relieved of its obligations under this agreement.

Collection of Financial Obligations

10. The Defendant expressly authorizes the U.S. Attorney's Office to obtain a credit report in order to evaluate the Defendant's ability to satisfy any financial obligation imposed by the Court. In order to facilitate the collection of financial obligations to be imposed in connection with this prosecution, the Defendant agrees to disclose fully all assets in which the Defendant has any interest or over which the Defendant exercises control, directly or indirectly, including those held by a spouse, nominee or other third party. The Defendant will promptly submit a completed financial statement to the United States Attorney's Office, in a form this Office prescribes and as it directs. The Defendant promises that the financial statement and disclosures will be complete, accurate and truthful, and understands that any willful falsehood on the financial statement will be a separate crime and may be punished under 18 U.S.C. §1001 by an additional five years' incarceration and fine.

Forfeiture

11. The Defendant understands that the Court will, upon acceptance of his guilty plea, enter an order of forfeiture as part of his sentence, and that the order will include assets directly traceable to his offense, substitute assets and/or a money judgment equal to the value of the property subject to forfeiture. The forfeiture order will include the following assets:

a. 24724 West Royal Lytham Drive, Naperville, IL 60564-8100, up to the amount of fraud proceeds traced to the property, namely $821,000; after sale of the property and satisfaction of outstanding taxes, liens, sales expenses and the forfeiture money judgement, if any funds remain, the defendant may keep those funds;

b. $250,000 in escrow at United Talent Agency; and

c. the rights to the movie "Season Tickets."

12. The Defendant agrees to consent to the entry of orders of forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 11(b)(1)(J), 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, advice regarding the forfeiture at the change-of-plea hearing, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment.

Assisting the Government with Regard to the Forfeiture

13. The Defendant agrees to assist fully in the forfeiture of the foregoing assets. The defendant agrees to disclose all of his assets and sources of income to the United States, and to take all steps necessary to pass clear title to the forfeited assets to the United States, including but not limited to executing any and all documents necessary to transfer such title, assisting in bringing any assets located outside of the United States within the jurisdiction of the United States, and taking whatever steps are necessary to ensure that assets subject to forfeiture are not sold, disbursed, wasted, hidden or otherwise made unavailable for forfeiture. The Defendant also agrees to give this Office permission to request and review his federal and state income tax returns, and

any credit reports maintained by any consumer credit reporting entity, until such time as the money judgment is satisfied. In this regard, the Defendant agrees to complete and sign a copy of IRS Form 8821 (relating to the voluntary disclosure of federal tax return information) as well as whatever disclosure form may be required by any credit reporting entity.

Waiver of Further Review of Forfeiture

14. The Defendant further agrees to waive all constitutional, legal and equitable challenges (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this plea agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. The Defendant also agrees not to challenge or seek review of any civil or administrative forfeiture of any property subject to forfeiture under this agreement, and will not assist any third party with regard to such challenge or review or with regard to the filing of a petition for remission of forfeiture.

Obligations of the United States Attorney's Office

15. At the time of sentencing, this Office will recommend a sentence that it deems to be reasonable and not more than necessary to accomplish the purposes of sentencing set forth in 18 U.S.C. § 3553(a). This Office will also be free to recommend whatever period of supervised release that it deems appropriate. This Office will move to dismiss the remaining count set forth in the Superseding Indictment against the Defendant. The parties reserve the right to bring to the Court's attention at the time of sentencing, and the Court will be entitled to consider, all relevant information concerning the Defendant's background, character and conduct, including the conduct that is the subject of the count of the Superseding Indictment that this Office has agreed to dismiss at sentencing. The Defendant reserves the right to request a stay of the execution of any sentence pending resolution of the conditional appeal set forth below in Paragraph 16(a); the position of this Office will be determined in light of circumstances at the time of the motion.

Waiver of Appeal

16. In exchange for the concessions made by this Office and the Defendant in this plea agreement, this Office and the Defendant waive their rights to appeal as follows:

a. Pursuant to Rule 11(a)(2), Fed.R.Crim.P., the Defendant specifically reserves the right to appeal the District Court's March 24, 2017, ruling on ECF# 43 denying the Defendant's Motion to Dismiss Counts One and Six of the Superseding Indictment as Time Barred. The Defendant knowingly waives all other rights, pursuant to 28 U.S.C. § 1291 or otherwise, to appeal the Defendant's conviction.

b. The Defendant and this Office knowingly waive all right, pursuant to 18 U.S.C. § 3742 or otherwise, to appeal whatever sentence is imposed (including the right to appeal any issues that relate to the establishment of the advisory guidelines range, the determination of the defendant's criminal history, the weighing of the sentencing factors, and the decision whether to impose and the calculation of any term of imprisonment, fine, order of forfeiture, order of restitution, and term or condition of supervised release).

c. Nothing in this agreement shall be construed to prevent the Defendant or this Office from invoking the provisions of Federal Rule of Criminal Procedure 35(a), or from appealing from any decision thereunder, should a sentence be imposed that resulted from arithmetical, technical, or other clear error.

d. The Defendant waives any and all rights under the Freedom of Information Act relating to the investigation and prosecution of the above-captioned matter and agrees not to file any request for documents from this Office or any investigating agency.

Obstruction or Other Violations of Law

17. The Defendant agrees that he will not commit any offense in violation of federal, state or local law between the date of this agreement and his sentencing in this case. In the event that the Defendant (i) engages in conduct after the date of this agreement which would justify a finding of obstruction of justice under U.S.S.G. § 3C1.1, or (ii) fails to accept personal responsibility for his conduct by failing to acknowledge his guilt to the probation officer who prepares the Presentence Report, or (iii) commits any offense in violation of federal, state or local law, then this Office will be relieved of its obligations to the Defendant as reflected in this agreement. Specifically, this Office will be free to argue sentencing guidelines factors other than those stipulated in this agreement, and it will also be free to make sentencing recommendations other than those set out in this agreement. As with any alleged breach of this agreement, this Office will bear the burden of convincing the Court of the Defendant's obstructive or unlawful behavior and/or failure to acknowledge personal responsibility by a preponderance of the evidence. The Defendant acknowledges that he may not withdraw his guilty plea because this Office is relieved of its obligations under the agreement pursuant to this paragraph.

Court Not a Party

18. The Defendant expressly understands that the Court is not a party to this agreement. In the federal system, the sentence to be imposed is within the sole discretion of the Court. In particular, the Defendant understands that neither the United States Probation Office nor the Court is bound by the stipulation set forth above, and that the Court will, with the aid of the Presentence Report, determine the facts relevant to sentencing. The Defendant understands that the Court cannot rely exclusively upon the stipulation in ascertaining the factors relevant to the determination of sentence. Rather, in determining the factual basis for the sentence, the Court will consider the stipulation, together with the results of the presentence investigation, and any other relevant information. The Defendant understands that the Court is under no obligation to accept this Office's recommendations, and the Court has the power to impose a sentence up to and including the statutory maximum stated above. The Defendant understands that if the Court ascertains factors different from those contained in the stipulation set forth above, or if the Court should impose any sentence up to the maximum established by statute, the Defendant cannot, for that reason alone, withdraw his guilty plea, and will remain bound to fulfill all of his obligations under this agreement. The Defendant understands that neither the prosecutor, his counsel, nor the Court can make a binding prediction, promise, or representation as to what guidelines range or sentence

the Defendant will receive. The Defendant agrees that no one has made such a binding prediction or promise.

Entire Agreement

19. This letter supersedes any prior understandings, promises, or conditions between this Office and the Defendant and, together with the Sealed Supplement, constitutes the complete plea agreement in this case. The Defendant acknowledges that there are no other agreements, promises, undertakings or understandings between the Defendant and this Office other than those set forth in this letter and the Sealed Supplement and none will be entered into unless in writing and signed by all parties.

If the Defendant fully accepts each and every term and condition of this agreement, please sign and have the Defendant sign the original and return it to me promptly.

Very truly yours,

Rod J. Rosenstein
United States Attorney

By: Joyce K. McDonald
Joyce K. McDonald
Rachel Miller Yasser
Assistant United States Attorneys

I have read this agreement, including the Sealed Supplement, and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Specifically, I have reviewed the Factual and Advisory Guidelines Stipulation with my attorney, and I do not wish to change any part of it. I am completely satisfied with the representation of my attorney.

3-28-2017
Date

David T. Odom

I am Mr. Odom's attorney. I have carefully reviewed every part of this agreement, including the Sealed Supplement with him. He advises me that he understands and accepts its terms. To my knowledge, his decision to enter into this agreement is an informed and voluntary one.

March 29, 2017
Date

Harry J. Trainor, Jr. Esq.

Statement of Facts

The parties hereby stipulate and agree that had this matter gone to trial, the government would have proven the following facts through competent evidence beyond a reasonable doubt. The parties also stipulate and agree that the following facts do not encompass all of the evidence that would have been presented had this matter gone to trial.

Odom's Financial Distress

In 2008, David Odom ("Odom") was unable to pay his property taxes and his home mortgage lender Northern Trust paid approximately $96,000 in property taxes on his behalf. Odom's failure to pay his property taxes was a default under the terms of his mortgage. In September 2008, Odom could have repaid Northern Trust just over $96,000 and cured the default; however, Odom was unable to pay. There were negotiations between Odom and Northern Trust representatives regarding reinstatement of the loan, but Odom was never able to make the necessary payments to cure the default. Northern Trust began foreclosure proceedings. In April 2010 and November 2010, Odom filed personal bankruptcy which stopped the foreclosure proceeding while Northern Trust sought to avoid the automatic stay afforded to those who file bankruptcy. In December 2010, Mrs. Odom filed personal bankruptcy which stopped the foreclosure. In early 2011, the Odoms' house was sold in a foreclosure proceeding to the lender. The next step would have been for the Odoms to move or face eviction.

Clements -Dunn Relationship

In 2009, Darryl Clements met Rodney Dunn while Dunn was employed as a loan officer by M&T Bank. Dunn agreed that when he would receive voice mail messages regarding possible deals that weren't related to his loan portfolio, that he would pass the messages onto Darryl Clements. Clements returned the telephone calls and posed as "Rodney Dunn, bank officer." In 2010, Dunn became a loan officer at The Harbor Bank, Baltimore, Maryland, which received funds from the Troubled Asset Relief Program ("TARP"). Dunn and Clements continued the same agreement: Clements warned Dunn at times to expect telephone calls, and Dunn agreed to forward those messages to Clements for Clements to return the call,

posing as Dunn. Clements also paid for the creation of an internet domain and email address, "rdunn@theharborbank.org" for his use.

Odom-Clements Relationship

Odom met Clements through L.W., an attorney in New York, while Odom was seeking financing to produce the movie "Season Tickets" starring Martin Lawrence. Odom used his company CityScope for movie production. Clements had a relationship with a Canadian lender named Roy Murad. Clements created two companies in Michigan, Link Resources Partner, LLC, and Bridge Capital Corporation, to mirror Murad's Canadian companies. Odom through a movie investor paid Clements $25,000 for loan brokerage services.

Clements introduced Odom to Murad, and Odom and Clements attempted to persuade Murad to loan funds to CityScope for the movie. In January 2011, Clements furnished to Odom a "verification of fiscal capability" for The Shah Group at Atlantic Pacific Title for $4 million. Odom told L.W. via email that he was informed by United Talent Agency, agent for Martin Lawrence, that they were unable to verify these funds. On February 2, 2011, Clements furnished Odom electronic copies of five (5) cashier's checks totaling $4 million drawn on The Harbor Bank and payable to Lawrence, the movie directors and writers, with "The Shah Group" shown as the remitter. Odom knew that these checks were ~~bogus~~ suspicious in that no money had been paid to Lawrence, the directors or writers.

In late January and in February 2011, Clements produced two escrow agreements and two proofs of funds which together purported to show that Bridge Capital and The Shah Group had $8 million and $5 million respectively in escrow accounts at The Harbor Bank, Baltimore, MD. According to the escrow agreements, the funds from the escrow accounts would be released to pay the expenses of movie production after ~~Odom and~~ CityScope had paid Lawrence, the directors, and the writers and other pre-production expenses. L.W. introduced Odom to M.C., a New York businessman, who also agreed to look for a loan for pre-production funds of $2.5 million. Odom told M.C. that he had $13 million in escrow accounts at The Harbor Bank to use for production expenses.

$300,000 Cashiers Check

On March 23, 2011, Odom entered into a contract to purchase his home from Northern Trust for $800,000. The contract required a $300,000 deposit. On March 24, 2011, Odom delivered the signed contract and a fraudulent $300,000 cashier's check to the law firm representing Northern Trust. The law firm deposited the cashier's check and scheduled the settlement for April.

Quick Draw

In March 2011, through the efforts of M.C., Odom was introduced to Quick Draw, a company located in London, England. Quick Draw provided bridge financing for movies. Odom provided to Quick Draw the production information for "Season Tickets" including the purported escrow agreement for The Shah Group at The Harbor Bank and The Harbor Bank Proof of Funds. Quick Draw retained a local Baltimore law firm to represent its interests. On March 31, 2011, an attorney from the law firm called Dunn at The Harbor Bank to verify the funds in the escrow account and left a phone message for Dunn. Dunn notified Clements of the phone message, and Clements returned the call to the attorney but posed as Dunn and falsely verified that the funds were in the escrow account.

The law firm structured the Quick Draw loan so that The Harbor Bank would issue a letter of credit for the benefit of Quick Draw and required that the bank president sign the letter of credit. Odom was in frequent telephone contact with Clements and warned Clements that the law firm required that the bank president, not Rodney Dunn, sign the letter of credit. On April 4, 2011, Clements called the Baltimore attorney and recorded the telephone call. Clements posed as "Dunn" and advised the attorney that he had spoken with Odom and Shah. Clements as Dunn asked the attorney whether he was questioning his (Dunn's) integrity by requiring the signature of the bank president. The attorney assured Dunn/Clements that he was not questioning his integrity. Odom emailed the draft letter of credit to Clements; Clements placed the letter of credit on bank letterhead and affixed the forged signature of "Rodney Dunn" and emailed the completed letter of credit to Odom. Odom sent it to M.C. who sent it to the attorney.

The Baltimore attorney also required a "deposit account control agreement" at The Harbor Bank for The Shah Group's funds. Odom relayed this requirement to Clements. Clements directed Dunn to open a bank account at The Harbor Bank for a Michigan company owned by T.W., William and Williams Entertainment Agency. They were ultimately unsuccessful.

The Baltimore attorney also required verification that "The Shah Group, LLC" was a corporation in good standing. "The Shah Group, LLC" had actually not been formed. Clements arranged to acquire William and Williams Entertainment Agency and to change its name to "The Shah Group." Clements did not have $25 to pay the Michigan Licensing and Regulatory Agency ("LARA") charge to change the name. ~~Odom called LARA on April 8, 2011, regarding the name change. Also on~~ April 8, 2011, Odom provided a MasterCard number which debited a David T. Odom dba David Odom & Associates account at Associated Bank to pay $25 to LARA for the name change for William and Williams Entertainment Agency to "The Shah Group LLC."

Quick Draw was prepared to make the $2.5 million loan to CityScope; however, the law firm advised confirming the escrow accounts with Dunn's boss, the Chief Operating Officer ("COO") of the Bank. When the COO of The Harbor Bank told the law firm that there were no funds in escrow for Bridge Capital or The Shah Group, Quick Draw refused to make the loan. Through counsel, Quick Draw informed Odom/CityScope and M.C. that it would not make the loan. On April 14, 2011, the Baltimore law firm sent Odom an email in which the law firm summarized the proposed loan transaction and stated that on late Friday afternoon (April 8, 2011), the Chief Operating Officer of The Harbor Bank had advised Quick Draw's counsel "in no uncertain terms that Harbor Bank would not issue a letter of credit in connection with the proposed transaction." The Baltimore law firm further stated that the Chief Operating Officer referred to "specific and substantial irregularities with regard to the documentation that had been originally presented to Quick Draw with respect to the escrow agreement and the statement relating to the holding of funds and with regard to the letter of credit that was subsequently presented to Quick Draw." The email suggested that "if you have any further questions as to Harbor Bank's position, please contact [the COO] directly." Odom did not contact the COO after this email.

Odom knew, or was willfully blind to, the fact that The Shah Group did not have $5 million in escrow at The Harbor Bank. Odom knew that The Shah Group's Verification of Fiscal Capability for $4 million at The Atlantic Pacific Title could not be confirmed by United Talent Agency. Odom knew that "The Shah Group" had no formal existence until he paid $25 to LARA to change the name of William and Williams Entertainment. And Odom knew that he had never spoken to Rodney Dunn or Nimesh Shah, the ostensible owner of The Shah Group, but had spoken only to Darryl Clements. Odom knew that Darryl Clements was the source of $4 million in bogus Harbor Bank cashier's checks, the Atlantic Pacific Title's Verification of Fiscal Capability, and The Harbor Bank's escrow agreements for Bridge Capital and The Shah Group and The Harbor Bank's proofs of funds. Odom and M.C. DTD 4/8/11 continued to look for a $2.5 million bridge fund.

Counterfeit Bank Cashiers' Check

On April 15, 2011, the law firm representing the lender for Odom's house informed Odom that the $300,000 cashier's check for the deposit had not been honored by the issuing bank and attached a copy of the check. The law firm stated that the eviction was proceeding. The cashier's check had not been honored because Odom had counterfeited the check by pasting the words "Cashier's Check," the U.S. Bank logo and address to the top of a check with Odom's business account routing numbers at U.S. Bank on the bottom. Odom stated to the law firm that he intended to fulfill the payment obligations under the contract and if he did not pay, would move voluntarily.

Prospective Lender Introduced by B.B.

L.W. had introduced Odom to B.B. who through his brother S.B. had a connection to another possible lender. Odom sent B.B. the escrow agreements for The Shah Group and Bridge Capital and the Harbor Bank Proofs of Funds. The possible lender requested a bank statement for The Shah Group's account at The Harbor Bank. Odom passed this request on to Darryl Clements. On April 28, 2011, On that same date, DTD 4/28/11 Clements and Odom conferred frequently by telephone, ~~while~~ Clements created a bank statement for The Shah Group's account at The Harbor Bank. At 7:24 pm on April 28th, Clements emailed the bank statement to Odom, and on April 29th, Odom forwarded the account statement to B.B. ~~Odom and~~ DTD 4/29/11

Clements created four versions of the account statement; the account balance on the fictitious account in the four statements was always in excess of $5 million.

Blue Rider

In April 2011, Odom was introduced to Blue Rider Finance, a California company, which also specialized in bridge loans for movies. The outside counsel for Blue Rider and the principal of Blue Rider wanted to have a conference call with Odom, M.C. and Nimesh Shah to confirm that Shah would allow The Shah Group's funds to secure Blue Rider's loan and another conference call with Odom, M.C., and Rodney Dunn to verify with Dunn the funds on deposit at The Harbor Bank. Clements recruited I.G. to pose as Shah and on April 25, 2011, Odom, Clements and I.G. had two conference calls with each other. On April 26, 2011, Odom, M.C., the Blue Rider attorney and officer called into a conference call number. Clements called I.G. and then Clements connected to the conference call number, but only I.G., posing as Shah, spoke. On ~~that~~ conference call, in response to questions from Blue Rider, Odom assured Blue Rider's principal and counsel that he would use ~~all of~~ the loan proceeds to ~~make the movie.~~

On May 3rd, the law firm representing Odom's house lender inquired when Odom intended to vacate the property. Odom responded on May 4th that before the week was out, the purchase sum would be placed with the settlement company.

On May 6, 2011, the conference call with Odom, M.C., Blue Rider counsel and principal, and a fake "Rodney Dunn," who was L.T., a cousin of Clements, was held. The fake Rodney Dunn confirmed that the $13 million was on deposit in two escrow accounts at The Harbor Bank. The Shah Group's escrow account was the same account for which Odom had forwarded the counterfeit bank statement to B.B. on April 29th.

Following the telephone calls with the fictitious Dunn and Shah, and based on the assurances provided by the fictitious Dunn and Shah, Blue Rider moved forward by having its attorney prepare new escrow account agreements and other documents for its loan to CityScope. Blue Rider required Odom and M.C. to execute a "Use of Funds" statement which ~~stated that Blue Rider's $2.5 million loan would be used to fund only the movie and~~ set forth categories of movie expenses and the amount allotted to each

category. On May 9, 2011, Odom emailed the signed Use of Funds to Blue Rider. Also on May 9th, Odom emailed the attorney for Northern Trust that he was establishing an escrow account on May 10th at the settlement company and would transfer $800,000 into that account.

On May 9, 2011, Blue Rider transferred over $2 million to CityScope. On May 10, 2011, Odom provided $100,000 to Link Resource Partners/ Clements and later, another $200,000. Of this second amount, Clements returned $100,000 to Odom.

On May 19, 2011, Odom emailed Blue Rider that he had negotiated agreements with the writers which were lower than the budgeted amounts. Odom requested that the $125,000 in now available loan proceeds be wire transferred to him and stated that he would use "that sum to pay other pre-production expenses." On May 27, 2011, Blue Rider wire transferred the additional funds to CityScope's account at Associated Bank.

On or about May 16, 2011, Odom flew to Detroit where he stayed at a hotel near the airport, rented a car and drove to downtown Detroit where he pitched his movie to ~~two different~~ a persons in a separate meetings arranged by Clements.

Use of Funds

Odom used the Blue Rider funds to re-pay $95,000 to movie investors and to pay $421,000 in finder's fees and $110,000 in attorney's fees. Odom spent approximately $482,000 in movie expenses besides the finder's fees and attorney's fees. Odom spent $821,000 to purchase his home from Northern Trust, approximately $60,000 to buy two cars, approximately $6,000 to take his family on "Exotic Western Caribbean Cruise" by Carnival Cruise, approximately $90,000 in transfers to family members, and another approximately $75,000 in personal expenses.

Repayment Period

The Blue Rider loan would go into default on the 45th day and was repayable from The Shah Group's account at The Harbor Bank. During June, Clements posed as Dunn in telephone conversations to confirm that the funds were still in escrow and sent emails to Blue Rider from "rdunn@theharborbank.org" to confirm that the funds were still in escrow. Odom and Clements were in

daily telephone contact. When the loan was not repaid on time, Blue Rider prepared to have The Harbor Bank repay the loan from the Shah escrow. Blue Rider telephoned Harbor Bank and left messages for Dunn, who, in turn, called Clements. Clements provided a telephone number to Blue Rider which ended in 1834 and asked Blue Rider to contact him on that number. DTO HBT

On June 23, 2011, ~~Clements using the 1834 number and~~ posing as Dunn had a conference call with Odom and Blue Rider in which "Dunn" asserted that he had wired funds to CityScope for Blue Rider and Odom stated that CityScope had not received the funds. Odom did not disclose to Blue Rider that ~~Darryl Clements~~ someone was pretending to be "Dunn." On June 27, 2011, Odom faxed a demand for the release of The Shah Group's escrow funds to pay Blue Rider. Odom did not disclose that the escrow account number was the same account number ~~he and~~ Clements had created the bank statement for.

On July 1, 2011, Blue Rider asked Odom for an accounting of how the Blue Rider money had been spent. Odom, in an email dated July 8, 2011, assured Blue Rider that he had only spent the money on the movie and stated that he was working hard to pay Blue Rider back. He did not disclose that he had spent Blue Rider funds on buying his home out of foreclosure.

Blue Rider brought civil lawsuits in California, Michigan and Illinois to recover its loan. Because of the ~~pressure created by~~ allegations in the civil law suits, Odom ~~became afraid~~ believed that criminal charges would be brought against Clements if the bridge loan was not repaid, and he told Clements his fears. Clements was engaged in another loan fraud and received proceeds of $4 million. In August 2011, Clements transferred $2 million to CityScope, which Odom used to settle the Blue Rider law suit, and promised to pay the balance owing to Blue Rider not more than 14 days later.

I have read this agreement, including the Sealed Supplement, and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Specifically, I have reviewed the Factual and Advisory Guidelines Stipulation with my attorney, and I do not wish to change any part of it. I am completely satisfied with the representation of my attorney.

3-28-2017
Date

David T. Odom

I am Mr. Odom's attorney. I have carefully reviewed every part of this agreement, including the Sealed Supplement with him. He advises me that he understands and accepts its terms. To my knowledge, his decision to enter into this agreement is an informed and voluntary one.

March 29, 2017
Date

Harry J. Trainor, Jr., Esq.

Appendix D

United States v. David T. Odom
No. 1:16-cr-00192-GLR-3

Odom's Motion to Dismiss Counts One & Six
in the United States District Court
for the District of Maryland at Baltimore

Filed October 17, 2016

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,	*	
v.	*	**Criminal No. GLR-16-0192-002**
DAVID T. ODOM,	*	
Defendant.	*	

* * *

DEFENDANT DAVID T. ODOM'S MOTION TO DISMISS COUNTS ONE & SIX OF THE SUPERSEDING INDICTMENT AS TIME BARRED

The defendant David T. Odom by and through undersigned counsel, moves this Honorable Court pursuant to F.R. Crim. P. 12(b) to dismiss Counts 1 and 6 of the Superseding Indictment as barred by the five-year statute of limitations established by 18 U.S.C. § 3282(a). The grounds for this relief are as follows:

Introduction

David T. Odom is one of three persons joined as defendants in the six-count Superseding Indictment. It is alleged that Mr. Odom, an experienced film producer, was seeking funding for a new feature film project through his Illinois-based production company. The financing sought included a permanent loan for at least $13 million and short-term bridge financing in a lesser amount, to be repaid from the proceeds of the permanent loan. Co-defendant Darryl Clements controlled a Michigan-based company which he held out as the loan underwriter for a Canadian lender. Co-defendant Rodney Dunn was an employee of a Baltimore-based bank.

Mr. Clements and Mr. Dunn were indicted on April 27, 2016. Mr. Odom was added as a defendant in the Superseding Indictment returned on June 15, 2016. The three co-defendants are charged in Count One of the Superseding Indictment with a wire fraud conspiracy in violation of 18 U.S.C. § 1349. The Superseding Indictment alleges that the three defendants devised a scheme to defraud bridge loan lenders by inducing a lender to make a $2.5 million loan to a company owned by Mr. Odom. The charged fraud-in-the-inducement conspiracy focuses on two alleged material misrepresentations: (1) That $13 million in permanent financing was in place, held in escrow, and properly designated to repay the bridge loan when it became due; and, (2) that the proceeds of the bridge loan would be spent on a movie project. The bridge loan settled on May 9, 2011 and on that date the lender transmitted the net loan proceeds by interstate wire to the borrowing company's bank account. On the next day, May 10, 2011, it is alleged that Mr. Odom paid a debt to a co-conspirator from the loan proceeds, thus completing the distribution of loan proceeds to all co-conspirators. At that point in time, if the allegations can be proved, the alleged offense had been committed and the crime was complete. The object of the alleged conspiracy was to induce the bridge loan lender to approve the loan and disburse the proceeds. By no later than May 10, 2011 the alleged scheme had succeeded in its objective — the loan was made and the proceeds had been wired to the borrowing company's bank account and disbursed to co-conspirators.[1]

[1] The disbursement by Mr. Odom was to Link Resource Partners, L.L.C., the loan underwriting company controlled by Mr. Clements. This payment was made pursuant to a

David T. Odom was not charged in the original Indictment returned on April 27, 2016. [Doc. No. 1]. Mr. Odom was only added as a defendant in the Superseding Indictment returned on June 15, 2016. [Doc. No. 7]. 18 U.S.C. § 3282(a) provides that:

> Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed.

It was therefore incumbent upon the Government to charge Mr. Odom with an offense that was still in existence on June 15, 2011. If not, Section 3282(a) will bar prosecution. Of course, "[t]he government bears the burden of proving that it began its prosecution within the statute of limitations period." *United States v. Wilson,* 118 F.3d 228, 236 (4th Cir. 1997).

Argument

The Alleged Conspiracy

Certainly the Government was well aware of the five-year statute of limitations problem on June15, 2016, when the Superseding Indictment adding Mr. Odom as a defendant was returned.[2] To address that issue, the Government added overt acts to

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brokering contract with Mr. Odom's production company.

[2] Clearly the conspiracy alleged in the Superseding Indictment was a scheme to obtain bridge financing proceeds from lenders by false pretenses. Overt Act 21confirms that the loan was made and disbursed by interstate wire on May 9, 2011. Consequently, once those proceeds were obtained by the defendants on May 9th and 10th of 2011, the objective of the conspiracy was attained, effectively ending the conspiracy. *See Parr v. United States,* 363 U.S. 370 (1980)(holding that once the proceeds of a transaction are received, the scheme has ended; *Kann*

Count One, all of which took place after the offense was complete. Overt Act 22 alleges that Mr. Odom spent some of the bridge loan proceeds on personal expenditures and paid a debt to a co-conspirator at some time after May 9, 2011.[3] Overt Act 23 alleges that on June 22, 2011 a representative of the alleged victim called a co-conspirator who misdirected the call to a third co-conspirator.[4] Finally, Overt Act 24 alleges that on June 27, 2011 Mr. Odom wrote a letter "for the purpose of concealing the scheme to defraud."[5]

The case at bar appears to be one in which the Government, anticipating statute of limitations problems, has attempted to bring a conspiracy offense within the limitations period by structuring the Superseding Indictment so that non-material facts are alleged as being in furtherance of the conspiracy or as being acts of concealment. The Government's

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v. United States, 323 U.S. 88, 92-92 (1944)(subsequent mailings were immaterial to the object of the scheme); *see also United States v. Hare,* 618 F.2d 1085, 1087 (4th Cir. 1980)(holding that the statute of limitations began to run when the loan was made to the defendant).

[3] There can be no dispute that the alleged payment of a debt to a co-conspirator was completed in May of 2011, in fact the payment to Link Resource Partners, L.L.C. appears to have been made by May 10, 2011 according to information provided to defense counsel by the Government in discovery.

[4] Paragraph 23 and Count 5 of the Superseding Indictment allege that co-defendant Dunn provided a telephone number to the lender that was registered to co-defendant Clements some 43 days after the objective of the alleged conspiratorial scheme had been achieved. There is simply no nexus between Dunn providing the wrong number on June 22, 2011 and attainment of the alleged conspiratorial objective, which was achieved on May 9th and 10th of 2011. This allegation was inserted in the Superseding Indictment in an obvious attempt by the government to skirt the 5-year statute of limitations.

[5] This letter attributed to Mr. Odom is also the subject of Count Six, charging wire fraud in violation of 18 U.S.C. § 1343. The content of this letter cannot be fairly and reasonably construed as being in furtherance of the conspiracy and "for the purpose of concealing the scheme to defraud." To the contrary, the letter actually reveals to alleged co-conspirator Dunn's supervisors at Harbor Bank that their employee, Mr. Dunn, may have engaged in wrongdoing.

objective appears to be to cause the limitations period to run from the alleged last act of concealment performed by a conspirator.

As a general rule, a conspiracy continues only until the conspirators abandon the conspiracy or succeed in its objectives. *See, Hyde v. United States,* 225 U.S. 347 (1912). After the conspirators achieve their objectives, as was the case by no later than May 10, 2011 in the instant alleged conspiracy to defraud the bridge loan lender,[6] the conspiracy ends. Once the conspiracy has ended, a subsidiary conspiracy to conceal the crime may not be implied from circumstantial evidence showing merely that the conspiracy was kept a secret. Any act of concealment indicates simply that the conspirators hope to avoid apprehension.

In the leading case of *Grunewald v. United States,* 353 U.S. 391, 405 (1957), Justice Harlan, writing for the Court, observed:

> [A] vital distinction must be made between acts of concealment done in furtherance of the main criminal objectives of the conspiracy, and acts of concealment done after these central objectives have been attained, for the purpose only of covering up after a crime.

The United States Supreme Court in *Grunewald* held that efforts by conspirators to conceal or merely coverup their actions are not part of the conspiracy and thus do not expand the statute of limitations. *Id.* at 406. The *Grunewald* Court noted that the

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[6] *See* Overt Act 21 in Count One of the Superseding Indictment: "It was part of the conspiracy and scheme to defraud that on May 9, 2011, Blue Rider loaned $2.5 million to City Scope and transmitted $2.175 million to City Scope's account by interstate wire."

Government's argument — that an agreement to conceal a conspiracy can be deemed part of the conspiracy and can extend the duration of the conspiracy for purposes of the statute of limitations — has already been rejected by the Supreme Court in *Krulewith v. United States,*[7] 336 U.S. 440, 69 S.Ct 716, 718 (1949), and in *Lutwak v. United States,*[8] 344 U.S. 604, 73 S.Ct. 481 (1953)("there can be no furtherance of a conspiracy that has ended." *Id.* at 617-18). *Grunewald* at 399.

In *Grunewald* the Government urged the Court to distinguish *Krulewith* and *Lutwak* on the ground that in those two cases the attempt by the Government was to imply a conspiracy to conceal from the mere fact that the main conspiracy was kept secret and that overt acts of concealment occurred and, the argument went — in *Grunewald* there was an actual agreement to conceal the conspirators, which was charged in the Indictment

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[7] In *Krulewith* the Government argued that the conspiracy was not ended since it included an implied subsidiary conspiracy to conceal the crime after its commission. The Court rejected the Government's argument, stating:

> Thus the [Government's] argument is that even after the central criminal objectives of a conspiracy have succeeded or failed, an implicit subsidiary phase of the conspiracy always survives, the phase which has concealment as its sole objective.
>
> We cannot accept the Government's contention.

Grunewald at 399-400.

[8] The *Krulewith* case was reaffirmed in *Lutwak v. United States.* Again the Government attempted to extend the life of the conspiracy by an alleged subsidiary conspiracy to conceal. Importantly to the analysis of our case, in *Lutwak*, unlike in *Krulewith*, **the existence of a subsidiary conspiracy to conceal was charged in the indictment**. The Court again rejected the Government's theory, holding that no such agreement to conceal had been proved or could be implied. *Grunewald* at 401.

and proved to be an express part of the initial conspiracy. In rejecting the Government's argument, the Supreme Court noted that "sanctioning the Government's theory would for all practical purposes wipe out the statute of limitations in conspiracy cases."[9] The Court explained its rationale as follows:

> The crucial teaching of *Krulewith* and *Lutwak* is that after the central criminal purposes of a conspiracy have been attained, a subsidiary conspiracy to conceal may not be implied from circumstantial evidence showing merely that the conspiracy was kept secret and that the conspirators took care to cover up their crime in order to escape detection and punishment. As was there stated, allowing such a conspiracy to conceal to be inferred or implied from mere overt acts of concealment would result in a great widening of the scope of conspiracy prosecutions, since it would extend the life of a conspiracy indefinitely. Acts of covering up, even though done in the context of a mutually understood need for secrecy, cannot themselves constitute proof that concealment of the crime after its commission was part of the initial agreement among conspirators.

Grunewald at 401-02.

Thus, acts of concealment to cover up a completed crime that occur after the main objectives of the conspiracy have been accomplished **are not part of the conspiracy and do not extend the statute of limitations**.[10] Only acts of concealment to further the

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[9] "...as well as extend indefinitely the time within which hearsay declarations will bind co-conspirators." *Grunewald* at 402. Fed.R.Evid. 801(d)(2)(E).

[10] The Fourth Circuit in *Hare v. United States,* 618 F.2d 1085 (4th Cir. 1980) makes clear that the limitations period cannot be extended by acts occurring after the object of the scheme has been accomplished. In *Hare* the indictment charged the defendant with receiving loan benefits under a statute making it unlawful to receive "anything of value" because of the performance of an official act. The indictment, returned in 1979, alleged Hare received the loan in 1970. In an

objectives of the conspiracy, such as when kidnappers take and transport their victim but hide out until they receive ransom, are actually a part of the conspiracy and have the effect of extending the statute of limitations so that it runs from the last overt act of concealment in such a case. *See United States v. Dynalectric Co.,* 859 F.2nd 1559, 1563-69 (11th Cir. 1988).

Here, the Government cannot successfully argue that acts of concealment, as alleged in Overt Acts 23 and 24 of the Superseding Indictment and occurring after the loan proceeds were transferred and fully disbursed, have the effect of extending the running of the statute of limitations. *See United States v. Turner,* 548 F.3d 1094, 1097 (D.C. Cir. 2008); *see also United States v. Hare,* 618 F.2d 1085 (4th Cir. 1980)(rejecting the Government's attempt to avoid the five-year limitation where the indictment did not allege an express agreement to continue the scheme after the loan proceeds that were the object of the conspiracy were received). In *Turner* the D.C. Circuit applied *Grunewald* in rejecting the Government's argument that the conspiracy continued after the completion of its primary objective because the indictment alleged concealment, and acts in furtherance thereof, as one object of the conspiracy itself. *Turner* at 1097.

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attempt to avoid the 5-year statute of limitations, the Government argued that the defendant received the benefit of the loan until it was paid off in 1975. The Fourth Circuit rejected that argument, reasoning that the indictment must be dismissed as time-barred because the scheme in the indictment was based solely on the 1970 loan. The statutory period began running when the loan was received by the defendant in 1970.

The Superseding Indictment here alleges a conspiracy to defraud in which the objectives were attained on May 9th and 10th of 2011 when the loan was made and the proceeds were disbursed to co-conspirators. The Superseding Indictment does not allege any *express* agreement among the three alleged co-conspirators to conceal their offense after they had received the proceeds.[11] The crucial question in determining whether the statute of limitations has run is, of course, the scope of the conspiratorial agreement. *Grunewald* at 397.[12] It is correct at this stage to look to the language of the indictment to determine the scope of the conspiratorial agreement, and in the case at bar neither The Scheme To Defraud [¶ 7, Superseding Indictment] nor The Conspiracy To Defraud [¶ 8, Superseding Indictment] is described by referencing post-settlement concealment as an object.

The Superseding Indictment does go on to allege two acts of concealment in the Manner and Means section of the Superseding Indictment, [¶¶ 23 & 24, Superseding

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[11] *See United States v. Bornman*, 559 F.3d 150, 153 (3d Cir. 2009)("The government cannot extend the limitations period by insisting there was an implicit agreement to conceal the conspiracy."); *see also United States v. Kang*, 715 F.Supp. 657, 673 (D.S.C. 2010)(applying *Grunewald* and *Hare* and holding that conspiracy indictment was barred by the statute of limitations where the indictment "[made] no mention of an express, original agreement to conceal the crime after its commission.").

[12] To determine the scope of the alleged conspiratorial agreement, "the court is bound by the language of the indictment." *United States v. Hitt,* 249 F.3d 1010, 1015 (D.C. Cir. 2001). "Adherence to the language of the indictment is essential because the Fifth Amendment requires that criminal prosecutions be limited to the unique allegations of the indictments returned by the grand jury." *Id.* at 1016. The indictment "establishes the outer limits of the scope of the conspiracy" because it serves notice to the defendant of the nature of the accusation. *Id.* at 1015-16.

Indictment] but these post-offense concealment allegations do not extend the running of the statute of limitations, because they are alleged to have occurred after the objective of the conspiracy was accomplished. The Government cannot be permitted to structure the language of the Superseding Indictment to extend the running of the statute of limitations, by merely alleging post-offense acts of concealment. Specifically, the instant Superseding Indictment alleges a conspiracy continuing through "in or around August 2011" and adds the acts alleged in ¶¶ 23 and 24 citing post-offense concealment in support of its effort to extend the running of the statute of limitations beyond May 10, 2011.[13] This tactic has been condemned by the Supreme Court. In *Lutwak* the Court was faced with an indictment charging a conspiracy to transport a woman across state lines for the purpose of prostitution and specifically alleging concealment as part of the conspiracy. *Id.,* 344 U.S at 617. Despite specific language in the *Lutwak* indictment alleging post-offense concealment as an object of the conspiratorial agreement, the Supreme Court held that the conspiracy did not continue after the transportation occurred. *Id.* The indictment in *Grunewald* specifically charged that "one of the terms of the illegal agreement was that continuing efforts would be made 'to avoid detection and prosecution by any governmental body.'" *United States v. Grunewald,* 233 F.2d 556, 565 (2d Cir. 1956). Yet the Supreme Court held that the conspirators' acts of concealment after the

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[13] The scheme alleged here neither contemplated nor depended upon the conduct alleged in paragraphs 23 or 24. Indeed, the information contained in these paragraphs have no logical relationship to the scheme alleged (¶ 23) and tend to expose — not further — the alleged fraud (¶ 24).

central object of the conspiracy had been accomplished **did not** extend the life of the conspiracy. *Grunewald,* 353 U.S. at 414; *see Turner,* 548 U.S. at 1097.

Certainly the Government cannot in this case use this same condemned tactic to extend the date that the statute of limitations begins to run. As the Court reasoned in *Grunewald*, sanctioning this tactic "would for all practical purposes wipe out the statute of limitations in conspiracy cases, as well as extend indefinitely the time within which hearsay declarations will bind co-conspirators." *Id.* at 402. It is clear that the object of the alleged conspiracy in this case had been attained no later than May 10, 2011. Thus, the five-year statute of limitations had already run when the Superseding Indictment naming David Odom as a defendant was returned on June 15, 2016.

The Supreme Court has long recognized the principle that: "...criminal limitations statutes are to be liberally interpreted in favor of repose." *Toussie v. United States,* 397 U.S. 112, 114-15 (1970); *United States v. Hare,* at 1087 ("federal statutes of limitations should be applied strictly in order to further the congressional policy favoring repose."). This is because statutes of limitation "provide predictability by specifying a limit beyond which there is an irrebuttable presumption that a defendant's right to a fair trial would be prejudiced." *United States v. Marion,* 404 U.S. 307, 322 (1971). The Court has also warned repeatedly that it "will view with disfavor attempts to broaden the already pervasive and wide-sweeping nets of conspiracy prosecutions." *Grunewald* at 404.

The Letter Dated June 27, 2011

In paragraph 24 of the Superseding Indictment it is alleged that Mr. Odom sent a letter to Harbor Bank, co-defendant Rodney Dunn's employer, demanding that the bank pay $3 million to the bridge loan lender from an escrow account that was purported to be the designated source of repayment of the bridge financing. Paragraph 24 alleges that this letter was sent "for the purpose of concealing the scheme to defraud" alleged in Count One. In Count Six the same letter from Mr. Odom is alleged to have been a separate act of wire fraud, in violation of 18 U.S.C. §1343, in that it was transmitted by facsimile over telephone wires for the purpose of executing a scheme and artifice to defraud, apparently referring to the scheme to defraud alleged in Count One.

It is important to note that the subject letter was sent at least 47 days after the scheme alleged in Count One was completed. Rather than conceal the alleged scheme, such a letter to Rodney Dunn's employer – a bank – regarding a non-existent escrow account at the bank, would certainly expose the alleged scheme to bank officials. Exposing the fraud, and an alleged co-conspirator's involvement in falsely claiming that an escrow account existed, could not possibly be an essential part of the fraudulent scheme.

When considering whether a letter is part of the execution of a fraudulent scheme, it must be incident to an essential part of the scheme. In *Kann v. United States,* 328 U.S. 88, 94-95 (1944) the Supreme Court held that mailing of fraudulent cashed checks

between two banks was a mailing that did not meet the "incident to an essential part of the scheme" test because the fraud was complete when the defendants obtained the cash from the first bank. In *Maze* and *Parr,* the defendants engaged in unauthorized use of government credit cards and were charged with mail fraud based on the subsequent mailing of the invoices to the credit card holder by the credit card company. *United States v. Maze,* 414 U.S. 395, 94 S.Ct. 645 (1974); *Parr v. United States*, 363 U.S. 370, 80 S.Ct. 1171 (1960). In both of these cases, the Supreme Court held that the mailing element could not be met because the scheme was complete when the defendants received the goods and services at the time they used the fraudulent credit cards. Thus, the subsequent mailings were immaterial to the success of the fraudulent scheme. *Parr*, 363 U.S. at 393; *Maze,* 414 U.S. at 402. These cases were not overruled by *Schmuck v. United States,* 489 U.S. 705, 109 S.Ct. 1443 (1989), but they were distinguished by the Supreme Court in noting that the mailings in those cases were not material to the long-term success of the fraud. *Schmuck,* 489 U.S. at 714. In that case the Supreme Court held that a mailing needed to be "incident to an essential part of the scheme" to satisfy the mail fraud statute" *Id.* at 711. In *United States v. Strong,* 371 F.3d 225, 229 (5th Cir. 2004) the Court of Appeals reasoned that whether a mailing meets the incident to an essential part of the scheme test "is cabined by the materiality of the mailing, as well as its timing: A tangential mailing occurring after the success of a fraud scheme is complete would never qualify, even if the mailing is 'incidental' to a part of the scheme." *Strong,*

371 F.3d at 229. As noted by the Supreme Court in *Schmuck* and reiterated by the 5th Circuit in *Strong,* the question is "whether the mailings somehow contributed to the successful continuation of the scheme – and, if so, whether they were so intended by [the defendant]." *Schmuck,* 489 U.S. at 711-12; *Strong,* 371 F.3d at 230.

Thus, to extend the limitations period, the Superseding Indictment must allege a link between the fraudulent scheme and the letter "which demonstrates that the mailing[] either advanced or [was] integral to the fraud." *Strong,* 371 F.3d at 230. The substance of the letter described in paragraph 24 and Count Six of the Superseding Indictment in no way advanced the alleged scheme nor did it contribute to the continuation of the scheme. The objectives of the alleged scheme and conspiracy were achieved no later than May 10, 2011when all of the loan proceeds had been disbursed and distributed among the alleged co-conspirators.[14] There was no continuing scheme after the money was transferred. The alleged letter submitted to Harbor Bank more then six weeks after the money was disbursed by the lender, who was not connected in any way to Harbor Bank, simply could not have furthered the alleged fraudulent scheme.

[14] As a general rule, a conspiracy continues only until the conspirators abandon the conspiracy or succeed in its objectives. *See e.g. Hyde v. United States*, 225 U.S. 347 (1912).

Conclusion

For the foregoing reasons and for other and further reasons that will be advanced at a hearing on this motions, Counts One and Six, as they relate to the defendant, David T. Odom, must be dismissed with prejudice as time-barred by the five-year statute of limitations set forth at 18 U.S.C. § 3282(a).

Respectfully submitted,

/s/

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REQUEST FOR HEARING

Pursuant to Rule 105.6 of the Local Rules of the United States District Court for the District of Maryland, Mr. Odom requests a hearing on this motion.

/s/

HARRY J. TRAINOR, JR.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Defendant David T. Odom's Motion To Dismiss Counts One and Six of the Superseding Indictment as Time Barred was this 17th day of October, 2016 electronically filed via the CM/ECF system with notice and access to all parties.

/s/

HARRY J. TRAINOR, JR.

Appendix E

United States v. David T. Odom
No. 1:16-cr-00192-GLR-3

Transcript Excerpts of Motions Hearing/Pretrial Conference
in the United States District Court
for the District of Maryland at Baltimore

On March 24, 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

UNITED STATES OF AMERICA

v. CRIMINAL CASE NO.
GLR-16-0192

DAVID T. ODOM,

Defendant
_____/

(Motions Hearing/Pretrial Conference)
Friday, March 24, 2017
Baltimore, Maryland

Before: Honorable George Levi Russell, III, Judge

Appearances:

On Behalf of the Government:
Joyce K. McDonald, Esquire
Rachel Yasser, Esquire

On Behalf of the Defendant:
Harry J. Trainor, Jr., Esquire

Reported by:
Mary M. Zajac, RPR, FCRR
Fourth Floor, U.S. Courthouse
101 West Lombard Street
Baltimore, Maryland 21201

whether you believe in the letter or not, there's a conspiratorial act of concealment, from our view, that happens, I think that's a Friday and the letter is sent on a Monday, there's a conspiratorial act in there.

Also, just briefly with respect to the lulling letter. The lulling letter is sent to Rodney Dunn at Harbor Bank. And we are in search of whether or not it was sent to Joe Haskins. He's named in the, you know, in the body. It says, oh, it's directed to him. But we have the copy that was sent to Mr. Dunn. We don't have either the copy that was purported to be faxed to Mr. Banks or the one that went to Mr. Haskins. And I don't want to tell -- we're in contact with counsel for the bank as to whether or not it ever arrived and was lost or if it never arrived. So that is a significant fact as well.

But I think that, from our standpoint, focusing on the allegation of concealment, the duration of the conspiracy, and the targets of the conspiracy as being a number of prospective lenders, is the indictment that the Court should be ruling on and not -- you know, these words "fraud in the inducement", that doesn't appear in the indictment. And I think that's how he's thinking of the case. But that's not the way it's alleged here.

THE COURT: Thank you. Mr. Trainor.

MR. TRAINOR: Your Honor, the government has laid out a very complicated multi-step conspiracy that they intend to prove. If we come to that, I hope the Court will hold them to that.

But also involved is the government's theory regarding what any such attempts to get financing were about, which, which it would involve, you know, why that was done.

I don't know if this is the appropriate time to try to rebut all that. But there is --

THE COURT: Probably not because I just got to go -- probably not because I've got to go on what's in the indictment.

MR. TRAINOR: Yeah.

THE COURT: I'm not looking outside of anything right now except the charging document.

MR. TRAINOR: Yeah. And I didn't see all that detail in the indictment. But I can assure the Court and the government that there are facts to rebut the theory that the government has just expressed to the Court.

THE COURT: Absolutely. All right. Pending before the Court is Motion 43, motion to dismiss Counts One and Six as being time-barred. As indicated earlier, there is a five-year statute of limitations. I have summarized the parties' arguments, I believe fairly accurately.

I need to look to the four corners of the indictment to determine whether or not there have been sufficient allegations related to the conspiracy and scheme to defraud that would encompass acts that occurred after the receipt of the monies in late May of 2011, and certainly by, after July, or after June 15 of 2016, the date the superseding indictment was returned in this

case.

Looking at the four corners of the indictment itself, it makes allegations of a scheme to defraud, of the superseding indictment itself, it makes allegations of the scheme to defraud that go into as late as August of 2011. And certainly it is important for the defendant to be provided with notice regarding allegations related to the conspiracy and scheme to defraud.

I believe that the indictment itself, as well as, specifically, 22, 23, and 24, provide the defendant with the appropriate notice of the charges against him related to the conspiracy.

Now, of course, that's not to say that at another stage in this litigation the defense will be able to renew based upon the actual evidence that's received in court, that there is no basis to believe that the conspiracy was ongoing well after the May receipt of the loan proceeds. But based upon the representations of a letter to misdirect Blue Rider and have them expect that the escrow proceeds were, in fact, at the Harbor Bank as of late June of 2011, well after the charging document date of early June, or mid June, appears to have been designed and is, in fact, alleged to be designed to postpone Blue Rider's ultimate complaint to authorities or for them to seek remedy related to the loaned monies.

It's also been represented to the Court that there will be other evidence, not necessarily listed in the indictment, nor

does it have to be, of alleged telephone conversations that ended up taking place with the defendant and other coconspirators representing themselves to be representatives of Harbor Bank, all to ensure that the representative and officials of Blue Rider be confident that, in fact, there were escrow monies that were transferred to Harbor Bank and that would otherwise be available for the purposes of moving forward with the movie. That was the subject of the, initial subject or goal of the alleged conspiracy.

At this stage, assuming the facts in the superseding indictment are, in fact, true, I believe that there are sufficient allegations which toll the running of the statute of limitations past the late May date of receipt of the loaned proceeds, well after the indictment was returned in this case. And as a result, at this juncture, I am going to go ahead and deny the motions to dismiss as to Counts One and Six.

Ms. McDonald, do you believe that the government has made an adequate record?

MS. MCDONALD: Yes, sir. Thank you.

THE COURT: Mr. Trainor, have you made an adequate record, sir?

MR. TRAINOR: We've made our best effort, Your Honor.

THE COURT: Okay. Very good. I always say it at the end, just to make sure that no one else wants to put something on the record, make sure that I have not misspoken.

* * *