

APPENDIX

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UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 17-4636

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

OLUSOLA OLLA,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Greenbelt.
Paul W. Grimm, District Judge. (8:15-cr-00277-PWG-8)

Submitted: October 31, 2018

Decided: November 7, 2018

Before GREGORY, Chief Judge, AGEE and QUATTLEBAUM, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Eugene Gorokhov, Ziran Zhang, BURNHAM & GOROKHOV, PLLC, Washington, D.C., for Appellant. Robert K. Hur, United States Attorney, Baltimore, Maryland, Thomas P. Windom, Assistant United States Attorney, Ray D. McKenzie, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Greenbelt, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Olusola Olla was indicted for his role in a conspiracy that targeted older women and men through online dating sites and, through false stories and promises, convinced the victims to send money to the conspirators. A jury found him not guilty of conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349 (2012), and conspiracy to commit promotional money laundering, in violation of 18 U.S.C. § 1956(a)(1)(A)(i), (h) (2012), but guilty of conspiracy to commit concealment money laundering, in violation of 18 U.S.C. § 1956(a)(1)(B)(i), (h) (2012), and structuring currency transactions to avoid reporting requirements, in violation of 31 U.S.C. § 5324(a)(3) (2012). He was sentenced to 48 months in prison.

Olla challenges his convictions on appeal, arguing that a fatal variance existed between the concealment money laundering conspiracy offense charged in the superseding indictment and the proof at trial, that insufficient evidence supported his conviction on that conspiracy charge, and that the district court issued an improper willful blindness instruction to the jury.

A fatal variance—also known as a constructive amendment—occurs when the government (through argument or presentation of the evidence) or the district court (through jury instructions) “broadens the bases for conviction beyond those charged in the indictment,” effectively amending the indictment to allow the defendant to be convicted of a crime other than the one charged, in violation of his Fifth Amendment right to be tried only on the charges made by the grand jury in the indictment. *United States v. Randall*, 171 F.3d 195, 203 (4th Cir. 1999). Divergence between the charges

and the Government's proof is not automatically a constructive amendment or fatal variance; when the facts proven at trial support a finding that the defendant committed the charged crime, and the allegations in the indictment differ in some way not essential to that conclusion, a mere variance has occurred. *See United States v. Miltier*, 882 F.3d 81, 93 (4th Cir. 2018), *cert. denied*, ___ U.S.L.W. ___ (U.S. Oct. 1, 2018) (No. 17-9189); *United States v. Allmendinger*, 706 F.3d 330, 339 (4th Cir. 2013). A variance violates the defendant's Fifth Amendment rights only if it prejudices him by surprising him at trial and hindering his defense, or "by exposing him to the danger of a second prosecution for the same offense." *Allmendinger*, 706 F.3d at 339. In considering a constructive amendment or fatal variance claim, the key inquiry is whether the defendant has been tried on charges other than those in the indictment. *See United States v. Moore*, 810 F.3d 932, 936 (4th Cir. 2016); *Allmendinger*, 706 F.3d at 339.

With these standards in mind, there is no merit to Olla's arguments that a fatal variance occurred because the Government charged but did not prove that he knew the romance fraud scheme was the source of the money in the money laundering conspiracy, or because there was evidence that some of the laundered money may have come from other schemes. Olla does not contend that the Government or the district court broadened the basis for convicting him of the money laundering conspiracy charge or tried him on some other charge, and the purported variances did not alter the elements of the offense. *See United States v. Burfoot*, 899 F.3d 326, 338-39 (4th Cir. 2018); *Randall*, 171 F.3d at 203.

Olla fares no better arguing about the sufficiency of the evidence on the concealment money laundering charge because, contrary to his claim, the Government did not have to prove that he knew about the romance fraud scheme. To convict, the Government had to prove that a conspiracy to commit concealment money laundering existed, that Olla knowingly joined, and—regarding what he knew about where the money being laundered came from—only that he knew the proceeds came from an illegal activity. *See United States v. Alerre*, 430 F.3d 681, 693-94 (4th Cir. 2005) (identifying elements for promotion money laundering conspiracy); *United States v. Campbell*, 977 F.2d 854, 858 (4th Cir. 1992) (concerning knowledge required to prove concealment money laundering). Because the Government did not have to establish that Olla knew about the romance fraud scheme, and because he has not argued that the Government failed to meet its burden on any of the actual elements of the concealment money laundering conspiracy offense, Olla’s argument that there was insufficient evidence to convict him fails.

Olla’s last argument is that the district court erred by issuing a willful blindness instruction to the jury when there was no evidentiary basis for one. The willful blindness doctrine imputes knowledge to defendants who purposely avoid knowledge of facts that would support a conviction. *See Global-Tech Appliances, Inc., v. SEB S.A.*, 563 U.S. 754, 766-67 (2011) (noting that doctrine is well-established in criminal law, and applying it to civil lawsuits for induced patent infringement); *United States v. Jinwright*, 683 F.3d 471, 478-79 (4th Cir. 2012).

As an initial matter, although Olla contends in his opening brief that the purportedly improper jury instruction requires reversal of both his money laundering conspiracy and structuring convictions, the Government correctly points out that the district court gave the instruction only for the charged conspiracy offenses. Olla does not dispute the point in his reply brief, and raises no other challenges to his structuring conviction. Because his single argument against it is off-target, we affirm the structuring conviction.

As for the conspiracy conviction, the district court instructed the jury that in determining whether Olla acted knowingly for the purposes of the conspiracy charges, it could consider whether he “engaged in ‘willful blindness,’ that is, whether he deliberately closed his eyes to what would otherwise have been obvious to him.” (J.A. 1882); *see* (J.A. 1638).* Olla contends the instruction was improper because there was no evidence that he took “any affirmative step to avoid finding out the truth,” but there are two problems with his argument. The first is that, as explained above, Olla has not accurately challenged the sufficiency of the evidence that he had *actual* knowledge that would support his conviction. He even suggests in his reply brief that two pieces of evidence would support a finding of actual knowledge that the money he received was illegitimate. Therefore, we can affirm Olla’s conviction based on actual knowledge; any error in the willful blindness instruction would have been harmless. *See United States v. Lighty*, 616 F.3d 321, 378-79 (4th Cir. 2010).

* Citations to the “J.A.” refer to the joint appendix submitted by the parties.

Olla fares no better if we consider the willful blindness instruction directly. He contends that the Government could not point to any affirmative acts by which he tried to avoid knowledge that the money going in and out of his bank accounts came from illegal activity, and could only point to omissions or instances when he failed to investigate or ask questions. But failures to act or investigate can constitute deliberate actions taken to avoid learning facts; a willful blindness instruction is appropriate if evidence indicates that a defendant deliberately maintains ignorance. *See United States v. Blair*, 661 F.3d 755, 778 (4th Cir. 2011); *United States v. Abbas*, 74 F.3d 506, 513-14 (4th Cir. 1996). The record contains sufficient evidence of Olla's deliberate ignorance to support the willful blindness instruction. *See United States v. Vinson*, 852 F.3d 333, 357 (4th Cir. 2017).

Accordingly, we affirm Olla's convictions. 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 in the decisional process.

AFFIRMED

FILED: November 7, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4636
(8:15-cr-00277-PWG-8)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

OLUSOLA OLLA

Defendant - Appellant

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

United States District Court

District of Maryland

UNITED STATES OF AMERICA

v.

OLUSOLA OLLA

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed on or After November 1, 1987)

Case Number: PWG-8-15-CR-00277-008

Defendant's Attorney: Eugene Gorokhov
 Assistant U.S. Attorney: Thomas Patrick Windom and
 Ray McKenzie

THE DEFENDANT:

pleaded guilty to count(s) ____

pleaded nolo contendere to count(s) ____, which was accepted by the court.

was found guilty on count(s) 2 & 3 of the Superseding Indictment after a plea of not guilty.

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 U.S.C. § 19569(H)	Conspiracy To Commit Money Laundering	05/2015	2s
31 U.S.C. § 5324 (a)(3)	Structuring	05/2015	3s

The defendant is adjudged guilty of the offenses listed above and sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 as modified by U.S. v. Booker, 543 U.S. 220 (2005).

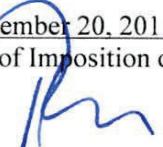
The defendant has been found not guilty on count(s) ____

Counts 1, 2, & 8 of the Original Indictment is/are dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

FILED
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 SEP 22 2017
 AT GREENBELT
 CLERK, U.S. DISTRICT COURT
 DISTRICT OF MARYLAND
 BY DEPUTY

September 20, 2017
 Date of Imposition of Judgment

 9/22/17
 Paul W. Grimm Date
 United States District Judge

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **48 months as to Count 2s; 48 months as to Count 3s terms to run concurrent, for a total term of 48 months.**

The court makes the following recommendations to the Bureau of Prisons:

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m./p.m. on _____.

as notified by the United States Marshal.

The defendant shall surrender, at his own expense, to the institution designated by the Bureau of Prisons at the date and time specified in a written notice to be sent to the defendant by the United States Marshal. If the defendant does not receive such a written notice, defendant shall surrender to the United States Marshal:

before 2pm on November 6, 2017.

A defendant who fails to report either to the designated institution or to the United States Marshal as directed shall be subject to the penalties of Title 18 U.S.C. §3146. If convicted of an offense while on release, the defendant shall be subject to the penalties set forth in 18 U.S.C. §3147. For violation of a condition of release, the defendant shall be subject to the sanctions set forth in Title 18 U.S.C. §3148. Any bond or property posted may be forfeited and judgment entered against the defendant and the surety in the full amount of the bond.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By: _____
DEPUTY U.S. MARSHAL

DEFENDANT: Olusola Olla

CASE NUMBER: PWG-8-15-CR-00277-008

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years as to Count 2s; 3 years as to Count 3s, terms to run concurrent, for a total term of 3 years.

The defendant shall comply with all of the following conditions:

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

A. MANDATORY CONDITIONS

- 1) You must not commit another federal, state or local crime.
- 2) You must not unlawfully possess a controlled substance.
- 3) You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
- 4) You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
- 5) You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
- 6) You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page

B. STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

- 1) You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
- 2) After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
- 3) You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
- 4) You must answer truthfully the questions asked by your probation officer.
- 5) You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 6) You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
- 7) You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 8) You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

DEFENDANT: Olusola Olla**CASE NUMBER: PWG-8-15-CR-00277-008**

- 9) If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
- 10) You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
- 11) You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
- 12) If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
- 13) You must follow the instructions of the probation officer related to the conditions of supervision.

C. SUPERVISED RELEASE ADDITIONAL CONDITIONS

Financial Disclosure

You must provide the probation officer with access to any requested financial information and authorize the release of any financial information. The probation office may share financial information with the U.S. Attorney's Office.

No New Debt/Credit

You must not incur new credit charges or open additional lines of credit without the approval of the probation officer.

Restitution – Money

Pay outstanding monetary restitution imposed by the court in the amount of \$349,095.00. Restitution should be made payable to the Clerk, U.S. District Court, 6500 Cherrywood Lane, Suite 200, Greenbelt, Maryland, for disbursement to the victims. Additionally, the defendant shall make restitution payments from any wages he earns in prison in accordance with the Bureau of Prisons Financial Responsibility Program. Any portion of the restitution that is not paid in full at the time of the defendant's release from imprisonment shall become a condition of supervision. While on supervised release, restitution payments shall be made in monthly installments of at least \$200.00 or as directed by the supervising probation officer.

Special Assessment

Pay special assessment of \$200.00.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: Olusola Olla

CASE NUMBER: PWG-8-15-CR-00277-008

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$200.00	Waived	\$349,095.00
<input type="checkbox"/> CVB Processing Fee	\$30.00		

The determination of restitution is deferred until _____ . An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
*Clerk of the Court please see attached statement of reasons		\$349,095.00	

- Restitution amount ordered pursuant to plea agreement _____
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
 - the interest requirement is waived for the fine restitution
 - the interest requirement for the fine restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Olusola OllaCASE NUMBER: PWG-8-15-CR-00277-008

SCHEDEULE OF PAYMENTS

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

Payment of the total fine and other criminal monetary penalties shall be due as follows:

- A \$200.00 Special Assessment fee shall be paid in full immediately.
- B \$ 349,095.00 immediately, balance due (in accordance with C, D, or E); or
- C Not later than _____; or
- D Installments to commence _____ day(s) after the date of this judgment.
- E In 36 equal, monthly installments of \$ 200.00 over a period of 3 year(s) to commence when the defendant is placed on supervised release.

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

Unless the court expressly orders otherwise, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Bureau of Prisons Inmate Financial Responsibility Program, are to be made to the Clerk of the Court.

NO RESTITUTION OR OTHER FINANCIAL PENALTY SHALL BE COLLECTED THROUGH THE INMATE FINANCIAL RESPONSIBILITY PROGRAM.

If the entire amount of criminal monetary penalties is not paid prior to the commencement of supervision, the balance shall be paid:

- in equal monthly installments during the term of supervision; or
- on a nominal payment schedule of \$ 200.00 per month during the term of supervision.

The U.S. probation officer may recommend a modification of the payment schedule depending on the defendant's financial circumstances.

Special instructions regarding the payment of criminal monetary penalties:

- Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

See Attached Forfeiture Order

SEP 22 2017

AT GREENBELT
CLERK, U.S. DISTRICT COURT
DISTRICT OF MARYLAND
BY DEPUTY

UNITED STATES OF AMERICA

v.

OLUSOLA OLLA,

Defendant

*
*
* CRIMINAL NO. PWG-15-277
*
*
*
*

ORDER OF FORFEITURE

1. The defendant having been convicted at trial of money laundering conspiracy, in violation of 18 U.S.C. § 1956(h), and structuring, in violation of 31 U.S.C. § 5324(a)(3), it is hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

2. The Court has determined, based on the defendant's conviction on Count Two and Count Three of the Superseding Indictment, and on evidence presented at trial and supplemented at the sentencing hearing, that the following property and monies are subject to forfeiture pursuant to 18 U.S.C. § 982(a)(1) and 31 U.S.C. § 5317(c)(1): a money judgment in the amount of \$349,095. This money judgment will be partially satisfied by \$12,921.38 seized from the defendant's bank accounts by the Government on or about September 30, 2015. Assuming the Government authorizes remission of forfeited funds for restitution purposes, the forfeited amount will be distributed to victims identified in the Judgment and Statement of Reasons.

3. Upon the entry of this Order, the United States Attorney General (or a designee) is authorized to seize the forfeited property, whether held by the defendant or by a third party, and to conduct any discovery necessary in identifying, locating, or disposing of the property subject to forfeiture, in accordance with Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure.

4. Upon entry of this Order, the United States Attorney General (or a designee) is

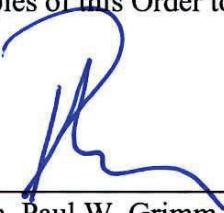
authorized to commence any applicable proceeding to comply with statutes governing third party rights, including giving notice of this Order.

5. The United States shall publish notice of this Order in accordance with 21 U.S.C. § 853(n)(1).

6. This Order shall become a Final Order as to the defendant's interests at the time of sentencing.

7. The Clerk of the Court shall provide copies of this Order to all parties of record.

9/20/17
Date


Hon. Paul W. Grimm
United States District Judge

FILED: January 23, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4636
(8:15-cr-00277-PWG-8)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

OLUSOLA OLLA

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: Chief Judge Gregory, Judge Agee, and Judge Quattlebaum.

For the Court

/s/ Patricia S. Connor, Clerk