

No. _____

In The
Supreme Court of the United States

CHIMA EDOZIE ALIGWEKWE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

PETITIONER'S APPENDIX A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

Nos. 16-15796; 16-17387

D.C. Docket No. 6:15-cr-00249-CEM-TBS-1

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

EUGENE WARREN BREWINGTON,
a.k.a. Gene,
CHIMA EDOZIE ALIGWEKWE,
a.k.a. Six,

Defendants - Appellants.

Appeals from the United States District Court
for the Middle District of Florida

(November 28, 2018)

Before TJOFLAT, MARCUS, and NEWSOM, Circuit Judges.

PER CURIAM:

Beginning in late 2010, Eugene Warren Brewington, Chima Aligwekwe, and others operated a fraudulent telemarketing scheme, directing teams of callers who falsely promised timeshare vacation property owners that their properties had sold so that the owners would give them money for fictitious closing costs. On December 2, 2015, a grand jury returned a 16-count indictment that charged Brewington and Aligwekwe with conspiracy to commit mail and wire fraud and with the commission of mail fraud. Brewington was also charged with the commission of wire fraud. A jury found Brewington guilty of conspiracy to commit mail and wire fraud in violation of 18 U.S.C. § 1349; four counts of wire fraud in violation of 18 U.S.C. § 1343; and eleven counts of mail fraud in violation of 18 U.S.C. §§ 1341-42. A jury found Aligwekwe guilty of conspiracy to commit mail and wire fraud in violation of 18 U.S.C. § 1349, and of mail fraud in violation of 18 U.S.C. §§ 1341-42. The District Court sentenced each defendant to serve 108 months' imprisonment followed by three years' supervised release.

Brewington appeals his convictions and sentences. He challenges his convictions on the following grounds:

- The entry of evidence of other crimes denied Brewington his constitutional right to a fair trial;
- The District Court should have granted his motion for mistrial and severed his trial because the joinder with co-defendants compromised the jury's ability to make a reliable judgment regarding his individual guilt or innocence.

And he challenges his sentences on the following grounds:

- The District Court erred by finding a four level role adjustment under U.S.S.G. § 3B1.1. where the government could not establish Brewington's role relative to that of other persons in the business, the appropriate number of participants, or how the business was otherwise extensive;
- The District Court relied on improper factors and failed to consider mitigating evidence under 18 U.S.C. § 3553(a) when it imposed a sentence at the highest end of the guidelines.

Aligwekwe also appeals his convictions and sentences. He challenges his convictions on the following grounds:

- The District Court erred in delivering a "deliberate ignorance" charge to the jury;
- The District Court erred by allowing irrelevant evidence regarding the type of automobile owned by Aligwekwe to be presented to the jury;
- Aligwekwe was denied a fair trial due to the cumulative errors made by the District Court.

And he challenges his sentences on the following grounds:

- The District Court erred by including acquitted and uncharged conduct in the calculation of his sentencing guideline range;
- The District Court erred by including acquitted and uncharged conduct in the calculation of his restitution;
- The District Court erred by overruling his objections to his Pre-sentence report;
- The sentence is substantively unreasonable given all of the sentencing factors and the characteristics of Aligwekwe.

We have carefully considered these issues and after entertaining briefing and oral argument find that they lack merit.

AFFIRMED.

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

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

November 28, 2018

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 16-15796-CC ; 16-17387 -CC

Case Style: USA v. Eugene Brewington

District Court Docket No: 6:15-cr-00249-CEM-TBS-1

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Carol R. Lewis, CC at (404) 335-6179.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Djuanna Clark
Phone #: 404-335-6161

OPIN-1 Ntc of Issuance of Opinion

No. _____

In The
Supreme Court of the United States

CHIMA EDOZIE ALIGWEKWE,
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v.

UNITED STATES OF AMERICA,
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On Petition for Writ of Certiorari to the
United States Court of Appeals
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PETITIONER'S APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

vs

Case Number: 6:15-cr-249-Orl-41TBS

CHIMA EDOZIE ALIGWEKWE

USM Number: 65900-018

Che Lopardo, CJA
Suite 150
3030 N. Rocky Point Drive W
Tampa, FL 33607

JUDGMENT IN A CRIMINAL CASE

The defendant was found guilty to Counts One and Twelve of the Superseding Indictment. Accordingly, the Court has adjudicated the defendant guilty of the following offenses:

| <u>Title & Section</u> | <u>Nature of Offense</u> | <u>Date Offense Concluded</u> | <u>Count Number(s)</u> |
|----------------------------------|--|-------------------------------|------------------------|
| 18 U.S.C. §§ 1349, 1343 and 1341 | Conspiracy to Commit Wire Fraud and Mail Fraud | March 2011 | One |
| 18 U.S.C. §§ 1341 and 2 | Mail Fraud | January 12, 2011 | Twelve |

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on Counts Thirteen through Sixteen of the Superseding Indictment.

The Original Indictment is dismissed on the motion of the United States.

IT IS 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. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Date of Imposition of Sentence:

September 19, 2016

CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGESeptember 21, 2016

Chima Edozie Aligwekwe
6:15-cr-249-Orl-41TBS

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 108 months on each of Counts One and Twelve, all such terms to run concurrently.

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

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

Chima Edozie Aligwekwe
6:15-cr-249-Orl-41TBS

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years on each of Counts One and Twelve, all such terms to run concurrently.

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

The defendant shall not commit another federal, state or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The mandatory drug testing requirements of the Violent Crime Control Act are imposed. The Court orders the defendant to submit to random drug testing not to exceed 104 tests per year.

The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervision that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervision in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).

The defendant shall also comply with the additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment;
7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;

Chima Edozie Aligwekwe
6:15-cr-249-Orl-41TBS

10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
11. The defendant shall notify the probation officer within **seventy-two (72) hours** of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

ADDITIONAL CONDITIONS OF SUPERVISED RELEASE

1. The defendant shall participate in a substance abuse program (outpatient and/or inpatient) and follow the probation officer's instructions regarding the implementation of this court directive. Further, the defendant shall contribute to the costs of these services not to exceed an amount determined reasonable by the Probation Office's Sliding Scale for Substance Abuse Treatment Services. During and upon completion of this program, the defendant is directed to submit to random drug testing.
2. The defendant shall participate in a mental health treatment program (outpatient and/or inpatient) and follow the probation officer's instructions regarding the implementation of this court directive. Further, the defendant shall contribute to the costs of these services not to exceed an amount determined reasonable by the Probation Office's Sliding Scale for Mental Health Treatment Services.
3. The defendant shall be prohibited from incurring new credit charges, opening additional lines of credit, or making an obligation for any major purchases without approval of the probation officer. The defendant shall provide the probation officer access to any requested financial information.
4. The defendant shall cooperate in the collection of DNA, as directed by the probation officer.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth in the Schedule of Payments.

| <u>Total Assessment</u> | <u>Total Fine</u> | <u>Total Restitution</u> |
|-------------------------|-------------------|--------------------------|
| \$200.00 | \$0.00 | *Deferred |

*The determination of restitution is deferred. Pursuant to Title 18 U.S.C. § 36649(d)(5), the Court sets a hearing regarding restitution on November 22, 2016.

Chima Edozie Aligwekwe
6:15-cr-249-Orl-41TBS

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

The Special Assessment in the amount of \$200.00 is due in full and immediately.

Unless the court has expressly ordered otherwise in the special instructions above, 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 Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States attorney.

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

FORFEITURE

Defendant shall forfeit to the United States those assets previously identified in the Forfeiture Money Judgment, that are subject to forfeiture.

The defendant shall pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution 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 the Schedule of Payments may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

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

No. _____

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UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

PETITIONER'S APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-15796-CC; 16-17387-CC

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

EUGENE WARREN BREWINGTON,
a.k.a. Gene,
CHIMA EDOZIE ALIGWEKWE,
a.k.a. Six,

Defendants - Appellants.

Appeal from the United States District Court
for the Middle District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: TJOFLAT, MARCUS and NEWSOM Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:



UNITED STATES CIRCUIT JUDGE

ORD-42

No. _____

In The
Supreme Court of the United States

CHIMA EDOZIE ALIGWEKWE,
Petitioner,

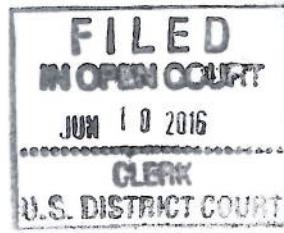
v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

PETITIONER'S APPENDIX D

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION



UNITED STATES OF AMERICA

v.

Case No: 6:15-cr-249-Orl-41TBS

EUGENE WARREN
BREWINGTON,
CHIMA EDOZIE ALIGWEKWE and
CHARLES LONNIE SUTTON, JR.

VERDICT FORM

1. COUNT ONE: Conspiracy to Commit Wire Fraud and Mail Fraud

As to Count One of the Superseding Indictment, charging conspiracy to commit wire fraud and mail fraud, in violation of 18 U.S.C. § 1349, we, the members of the Jury, find:

a. Defendant EUGENE WARREN BREWINGTON:

GUILTY NOT GUILTY

b. Defendant CHIMA EDOZIE ALIGWEKWE:

GUILTY NOT GUILTY

c. Defendant CHARLES LONNIE SUTTON, JR.:

GUILTY NOT GUILTY

2. **COUNT TWO: Wire Fraud on or about December 13, 2010 (Interstate wire from bank account of victims S.E. and H.E. to TTS's Chase bank account, in the amount of \$2,388.11)**

As to Count Two of the Superseding Indictment, charging wire fraud, in violation of 18 U.S.C. § 1343, we, the members of the Jury, find:

a. Defendant EUGENE WARREN BREWINGTON:

GUILTY NOT GUILTY

b. Defendant CHARLES LONNIE SUTTON, JR.:

GUILTY NOT GUILTY

3. **COUNT THREE: Wire Fraud on or about December 22, 2010 (Interstate wire from bank account of victims C.C. and J.C. to TTS's Chase bank account, in the amount of \$1,586.00)**

As to Count Three of the Superseding Indictment, charging wire fraud, in violation of 18 U.S.C. § 1343, we, the members of the Jury, find:

a. Defendant EUGENE WARREN BREWINGTON:

GUILTY NOT GUILTY

b. Defendant CHARLES LONNIE SUTTON, JR.:

GUILTY NOT GUILTY

4. **COUNT FOUR: Wire Fraud on or about December 27, 2010 (Interstate wire from bank account of victims L.R. to TTS's Chase bank account, in the amount of \$2,794.46)**

As to Count Four of the Superseding Indictment, charging wire fraud, in violation of 18 U.S.C. § 1343, we, the members of the Jury, find:

a. Defendant EUGENE WARREN BREWINGTON:

GUILTY NOT GUILTY

b. Defendant CHARLES LONNIE SUTTON, JR.:

GUILTY NOT GUILTY

5. COUNT FIVE: Wire Fraud on or about December 28, 2010 (Interstate e-mail from TTS employee to victim L.M. with a Letter of Intent to Sell from TTS)

As to Count Five of the Superseding Indictment, charging wire fraud, in violation of 18 U.S.C. § 1343, we, the members of the Jury, find:

a. Defendant EUGENE WARREN BREWINGTON:

GUILTY NOT GUILTY

b. Defendant CHARLES LONNIE SUTTON, JR.:

GUILTY NOT GUILTY

6. COUNT SIX: Mail Fraud on or about December 3, 2010 (Cashier's check sent by victim S.R., via mail, to TTS's P.O. Box in Orlando, Florida, payable to TTS and in the amount of \$1,178.74)

As to Count Six of the Superseding Indictment, charging mail fraud, in violation of 18 U.S.C. § 1341, we, the members of the Jury, find:

a. Defendant EUGENE WARREN BREWINGTON:

GUILTY NOT GUILTY

b. Defendant CHARLES LONNIE SUTTON, JR.:

GUILTY NOT GUILTY

7. COUNT SEVEN: Mail Fraud on or about December 4, 2010 (Cashier's check sent by victim R.V., via mail, to TTS's P.O. Box in Orlando, Florida, payable to TTS and in the amount of \$1,485.00)

As to Count Seven of the Superseding Indictment, charging mail fraud, in violation of 18 U.S.C. § 1341, we, the members of the Jury, find:

a. Defendant EUGENE WARREN BREWINGTON:

GUILTY NOT GUILTY

b. Defendant CHARLES LONNIE SUTTON, JR.:

GUILTY NOT GUILTY

8. COUNT EIGHT: Mail Fraud on or about December 21, 2010 (Cashier's check sent by victim S.R., via mail, to TTS's P.O. Box in Orlando, Florida, payable to TTS and in the amount of \$439.00)

As to Count Eight of the Superseding Indictment, charging mail fraud, in violation of 18 U.S.C. § 1341, we, the members of the Jury, find:

a. Defendant EUGENE WARREN BREWINGTON:

GUILTY NOT GUILTY

b. Defendant CHARLES LONNIE SUTTON, JR.:

GUILTY NOT GUILTY

9. COUNT NINE: Mail Fraud on or about December 28, 2010 (Two money orders sent by victim K.H., via mail, to TTS's P.O. Box in Orlando, Florida, payable to TTS and in the aggregate amount of \$1,436.00)

As to Count Nine of the Superseding Indictment, charging mail fraud, in violation of 18 U.S.C. § 1341, we, the members of the Jury, find:

a. Defendant EUGENE WARREN BREWINGTON:

GUILTY NOT GUILTY

b. Defendant CHARLES LONNIE SUTTON, JR.:

GUILTY NOT GUILTY

10. COUNT TEN: Mail Fraud on or about December 28, 2010 (Cashier's check sent by victim M.S., via mail, to TTS's P.O. Box in Orlando, Florida, payable to TTS and in the amount of \$2,413.00)

As to Count Ten of the Superseding Indictment, charging mail fraud, in violation of 18 U.S.C. § 1341, we, the members of the Jury, find:

a. Defendant EUGENE WARREN BREWINGTON:

GUILTY NOT GUILTY

b. Defendant CHARLES LONNIE SUTTON, JR.:

GUILTY NOT GUILTY

11. COUNT ELEVEN: Mail Fraud on or about December 30, 2010 (Cashier's check sent by victim L.M., via mail, to TTS's P.O. Box in Orlando, Florida, payable to TTS and in the amount of \$2,842.18)

As to Count Eleven of the Superseding Indictment, charging mail fraud, in violation of 18 U.S.C. § 1341, we, the members of the Jury, find:

a. Defendant EUGENE WARREN BREWINGTON:

GUILTY NOT GUILTY

b. Defendant CHARLES LONNIE SUTTON, JR.:

GUILTY NOT GUILTY

12.COUNT TWELVE: Mail Fraud on or about January 12, 2011 (Cashier's check sent by victims C.M. and F.M., via mail, to TTS's P.O. Box in Orlando, Florida, payable to TTS and in the amount of \$797.44)

As to Count Twelve of the Superseding Indictment, charging mail fraud, in violation of 18 U.S.C. § 1341, we, the members of the Jury, find:

a. Defendant EUGENE WARREN BREWINGTON:

GUILTY NOT GUILTY _____

b. Defendant CHIMA EDOZIE ALIGWEKWE:

GUILTY NOT GUILTY _____

c. Defendant CHARLES LONNIE SUTTON, JR.:

GUILTY _____ NOT GUILTY

13.COUNT THIRTEEN: Mail Fraud on or about January 18, 2011 (Cashier's check sent by victim L.R., via mail, to TTS's P.O. Box in Orlando, Florida, payable to TTS and in the amount of \$1,047.00)

As to Count Thirteen of the Superseding Indictment, charging mail fraud, in violation of 18 U.S.C. § 1341, we, the members of the Jury, find:

a. Defendant EUGENE WARREN BREWINGTON:

GUILTY NOT GUILTY _____

b. Defendant CHIMA EDOZIE ALIGWEKWE:

GUILTY _____ NOT GUILTY

c. Defendant CHARLES LONNIE SUTTON, JR.:

GUILTY _____ NOT GUILTY

**14.COUNT FOURTEEN: Mail Fraud on or about January 24, 2011
(Cashier's check sent by victim J.M., via mail, to TTS's P.O. Box in
Orlando, Florida, payable to TTS and in the amount of \$2,523.76)**

As to Count Fourteen of the Superseding Indictment, charging mail fraud, in violation of 18 U.S.C. § 1341, we, the members of the Jury, find:

a. Defendant EUGENE WARREN BREWINGTON:

GUILTY NOT GUILTY _____

b. Defendant CHIMA EDOZIE ALIGWEKWE:

GUILTY _____ NOT GUILTY

c. Defendant CHARLES LONNIE SUTTON, JR.:

GUILTY _____ NOT GUILTY

**15.COUNT FIFTEEN: Mail Fraud on or about February 4, 2011 (Cashier's
check sent by victim C.C., via mail, to TTS's P.O. Box in Orlando,
Florida, payable to TTS and in the amount of \$957.81)**

As to Count Fifteen of the Superseding Indictment, charging mail fraud, in violation of 18 U.S.C. § 1341, we, the members of the Jury, find:

a. Defendant EUGENE WARREN BREWINGTON:

GUILTY NOT GUILTY _____

b. Defendant CHIMA EDOZIE ALIGWEKWE:

GUILTY _____ NOT GUILTY

c. Defendant CHARLES LONNIE SUTTON, JR.:

GUILTY _____ NOT GUILTY

**16. COUNT SIXTEEN: Mail Fraud on or about February 16, 2011
(Cashier's check sent by victim J.M., via mail, to UCS's commercial
mailbox in Kissimmee, Florida, payable to UCS and in the amount of
\$1,930.72)**

As to Count Sixteen of the Superseding Indictment, charging mail fraud, in violation of 18 U.S.C. § 1341, we, the members of the Jury, find:

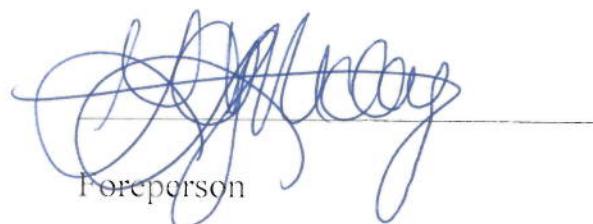
a. Defendant EUGENE WARREN BREWINGTON:

GUILTY NOT GUILTY _____

b. Defendant CHIMA EDOZIE ALIGWEKWE:

GUILTY _____ NOT GUILTY

SO SAY WE ALL, this 10th day of June, 2016.



A handwritten signature in blue ink, appearing to read "Foreperson", is written over a horizontal line. The signature is fluid and cursive.

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PETITIONER'S APPENDIX E

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

v.

Case No: 6:15-cr-249-Orl-41TBS

**EUGENE WARREN BREWINGTON
CHIMA EDOZIE ALIGWEKWE**

RESTITUTION ORDER

THIS CAUSE is before the Court subsequent to a November 22, 2016, restitution hearing attended by Counsel for Defendant Brewington and Counsel for Defendant Aligwekwe. Counsel for Defendant Brewington waived Defendant Brewington's presence at the hearing. Defendant Aligwekwe voluntarily absented himself from the hearing after engaging in repeated disruptive interruptions.

Pursuant to Title 18, United States Code, Sections 3663A, Defendants Brewington and Aligwekwe are hereby ordered to make full and complete restitution to the named victims listed in Government Exhibits 1 and 2.

Accordingly, it is **ORDERED** and **ADJUDGED** that the total amount of restitution to be paid, jointly and severally, by Defendants Brewington and Aligwekwe is \$372,346.21. Restitution is payable to the Clerk, U.S. District Court, Middle District of Florida, for distribution to the victims. Payment of this obligation shall be made as follows: While in Bureau of Prisons custody: Defendants shall either (1) pay at least \$25.00 quarterly if defendant has a non-Unicor job or (2) pay at least 50% of defendant's monthly earnings if defendant has a Unicor job. Upon release from custody, Defendants are each ordered to begin making payments of \$200.00 per month and this payment schedule shall continue until such time as the Court is notified by either Defendant, any

victim, or the Government that there has been a material change in either Defendant's ability to pay. It is the intent of the Court that any monies paid to victims from forfeited property reduce the ordered restitution amount.

DONE and ORDERED in Orlando, Florida on November 22, 2106.



CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record

No. _____

In The
Supreme Court of the United States

CHIMA EDOZIE ALIGWEKWE,
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PETITIONER'S APPENDIX F

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

Transcript of the sentencing

before the Honorable Carlos E. Mendoza

September 19, 2016; 10:00 a.m.

Orlando, Florida

Appearances:

Counsel for Plaintiff: Andrew C. Searle

Counsel for Defendant: Che Lopardo

Proceedings recorded by mechanical stenography,
transcript produced by computer.

Diane Peede, RMR, CRR
Federal Official Court Reporter
401 West Central Boulevard, Suite 4600
Orlando, Florida 32801

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| David Keogh Keith | |
| Direct by Mr. Searle | 18 |
| Cross by Mr. Lopardo | 43 |

PROCEEDINGS

THE COURTROOM DEPUTY: This is the case of United States of America versus Chima Edozie Aligwekwe, case number 6:15-cr-249.

Will counsel please state their appearances for the record.

MR. SEARLE: Good morning, Your Honor. For the
United States, Andrew Searle. Sitting with me is United
States Postal Inspector David Keith.

MR. LOPARDO: Good morning, Your Honor. On behalf of Mr. Aliqwekwe, Che Lopardo.

THE COURT: All right. Mr. Lopardo, if you would be kind enough to approach the podium with your client, we'll get started.

Once at the podium, Mr. Aligwekwe, if you would be kind enough to raise your right hand, you're going to be placed under oath at this time. I'm not going to ask you about your case.

THE COURTROOM DEPUTY: Do you solemnly swear or affirm under the penalty of perjury that the testimony you give will be the truth, the whole truth and nothing but the truth?

THE DEFENDANT: I do.

CHIMA EDOZIE ALIGWEKWE, SWORN

THE COURT: Please state your full name for the

1 record. And you can put your hand down.

2 THE DEFENDANT: Chima Edozie Aligwekwe, Your Honor.

3 THE COURT: Mr. Aligwekwe, are you currently under
4 the influence of alcohol, prescribed medication or any
5 narcotics that may affect your ability to understand these
6 proceedings?

7 THE DEFENDANT: No, sir.

8 THE COURT: All right. On June 10, 2016, you were
9 found guilty of one count of the Superseding Indictment,
10 charging you with conspiracy to commit wire fraud and mail
11 fraud, in violation of Title 18, U.S. Code, Sections 2349,
12 2343 and 1341; in Count Twelve of the Superseding Indictment,
13 charging with you mail fraud, in violation of Title 18,
14 U.S. Code, Section 1341; and Title 18, U.S. Code, Section 2.
15 The Court hereby adjudges you guilty of those offenses.

16 We've reached the stage in the proceedings where it
17 is my duty to address several questions to you, your attorney
18 and counsel for the government.

19 They prepared a Presentence Investigation Report in
20 anticipation of today's sentencing date. Have you had a
21 chance to go over that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Have you had a chance to go over that
24 with the assistance of your attorney, Mr. Lopardo?

25 THE DEFENDANT: Yes, Your Honor.

THE COURT: All right.

Mr. Lopardo, this question is for you. Do you have any objections as to the guideline calculations or the factual assertions contained therein?

MR. LOPARDO: I did file objections, which were included in the Addendum.

THE COURT: All right. Do you want to take those up one at a time so you can appropriately preserve them?

MR. LOPARDO: Yes, Your Honor.

THE COURT: Okay. And we'll do them one at a time, and I'll invite comment from Mr. Searle, the Assistant U.S. Attorney, if he'd like to state his position.

MR. LOPARDO: And, Your Honor, there is an underlying theme to the objections. Mr. Aligwekwe was acquitted of a great volume of conduct. So I have objected to the inclusion of that, somewhat repeatedly, in the calculation of his guideline sentence. I understand the guidelines are advisory, but it is an important first step.

So in the P.S.R., I have objected to paragraph nine through 72, which is basically laying out the offense conduct. That includes conduct that he was acquitted of.

It's my assertion that, according to at least the Supreme Court, that conduct that's going to be considered for the basis of the sentence either needs to be admitted or a person is found guilty of that. So that's why I've objected

1 to the paragraph nine through 72.

2 THE COURT: And in your estimation, what sort of
3 increase in the guideline calculation has, in your view, the
4 unfair inclusion of that conduct raised the score from and
5 to?

6 MR. LOPARDO: If Your Honor would give me a moment.

7 I believe he would have been at a base level of
8 seven. I'm just referring to the updated P.S.R. I believe
9 it was a level 33, but I'm checking. Because there was
10 actually -- between the -- we had a meeting of the parties
11 and there were some adjustments made that I did not actually
12 request.

13 THE COURT: But you're still objecting to
14 paragraphs nine through 69, 70 and 71, and it's your
15 assertion that he was acquitted of charges that are now, you
16 think, being unfairly considered for the purposes of the
17 guideline calculation?

18 MR. LOPARDO: That is -- that is correct.

19 THE COURT: Mr. Searle, response?

20 MR. SEARLE: Your Honor, as the Court is aware, you
21 can rely on a number of different pieces of evidence in
22 finding that the P.S.R. is properly scored and contains the
23 appropriate offense conduct, including the trial record as
24 well as evidence presented at the sentencing, including
25 reliable hearsay.

There is specifically a case on point that states that the Court can also rely on conduct for which the defendant has been acquitted so long as the conduct has been proved by a preponderance of the evidence, and there's actually a litany of cases that stand for that proposition. The one that I have for the Court is United States versus Watts, which is a Supreme Court case from 1997, and it's -- the cite is 519 U.S. 148; and then there's an Eleventh Circuit opinion from 1997, which is United States versus Lewis, which is 115 F.3d 1531.

However, Your Honor, in an abundance of caution, even though there is a trial record, for posterity purposes, I am prepared to call the case agent to present some testimony at the sentencing so the Court can rely on that as well.

THE COURT: I understand. So we'll move on to the next component.

And I understand, Mr. Lopardo, you are objecting to 73 and 83, acceptance of responsibility, in that your client is not receiving a two-level reduction acceptance of responsibility deduction, and it's your argument he was never given a chance to plead to the limited conduct found by the jury. Is there anything else you'd like to add to that objection?

MR. LOPARDO: No. I think that states it

1 succinctly.

2 THE COURT: And I understand the government's
3 response to this case is that nothing stopped them from
4 entering a plea to limited counts.

5 Is there anything else, Mr. Searle, that you would
6 like to add to your opposition to the objection from the
7 defendant that he's not receiving a two-level reduction for
8 acceptance of responsibility?

9 MR. SEARLE: No, Your Honor.

10 MR. LOPARDO: Your Honor, may I just make another
11 comment?

12 THE COURT: Sure.

13 MR. LOPARDO: He was offered to plead guilty to
14 Count One, a general conspiracy, which would have been an
15 unlimited amount of conduct. So my argument is that he was
16 never given an opportunity to plead guilty to what the jury
17 found him guilty of.

18 THE COURT: I understand. And with regard to your
19 third objection, paragraph 76, the base level, I've had a
20 chance to review per the Presentence Investigation Report
21 what your objection is. Would you like to supplement that
22 with any further argument? You're arguing that base level
23 seven applies.

24 MR. LOPARDO: No, Your Honor.

25 THE COURT: Any further response from the

1 government with regard to the third objection?

2 MR. SEARLE: No, Your Honor.

3 THE COURT: All right. The fourth objection,
4 paragraph 76, you're objecting to the amount of loss and
5 you've also submitted a memorandum in support thereof that
6 was relied upon by Mr. Brewington's counsel during that
7 sentencing hearing. Would you like to make any further
8 argument on that motion that you filed?

9 MR. LOPARDO: Well, I think the argument is in the
10 motion and it's just a reiteration of a similar argument,
11 that even in Count One, I would draw the analogy to say a
12 drug case, Your Honor, where there's a conspiracy and then
13 there's boxes to check, you know, five kilograms or more, on
14 the Count One there was no amount to check. The boxes that
15 the jury did check was only the \$797.44.

16 So I think that in order to enhance his sentence
17 beyond the base level, Your Honor has to find facts that were
18 not found by the jury, and in fact they were rejected by the
19 jury.

20 I would submit that if there were more boxes, they
21 probably would have kept checking no.

22 THE COURT: All right.

23 Anything from the government?

24 MR. SEARLE: Briefly, Your Honor. As the Court is
25 aware, the Court does not need to determine the loss amount

1 with precision. The Court can rely on a reasonable estimate
2 of loss, given all available information. The Court can also
3 rely on circumstantial evidence to determine loss. The Court
4 can also hold all participants in a conspiracy responsible
5 for the losses resulting.

6 THE COURT: And I think that's sort of the elephant
7 in the room. I think your arguments would have considerably
8 more weight if it weren't for the fact that the jury found
9 him guilty to the conspiracy charge.

10 Probably why you didn't want to plead to it to
11 begin with, because that opens everything up. So I
12 understand your argument.

13 All right. Moving on to the sixth objection or --
14 I beg your pardon -- the fifth objection, number of victims,
15 your argument here, that he was found guilty of a single
16 count of mail fraud which involved only two victims, as
17 alleged by the government. But, again, he was also found
18 guilty of conspiracy, which encompassed all of the victims.
19 So would you like to add to that objection?

20 MR. LOPARDO: Well, I would say it's the similar
21 objection, that the government could have brought in any
22 number of victims. And my argument would be that if they
23 wanted to prove the loss of those victims, then they should
24 have brought them to the trial.

25 It would almost be like if there was a box there

1 for \$10 and they checked \$10, I think the jury's impression
2 is, as in the case cited by the Court, the Richardson Marsh
3 case, is that there's comparative relative culpability.

4 So we have one -- one defendant that was acquitted
5 completely; one where they checked one box, probably assuming
6 that that was going to be lesser than Brewington, who they
7 kept checking all the boxes.

8 So in order to, again, enhance his sentence, you
9 have to find facts that the jury didn't. That's my argument.

10 THE COURT: Would the government like to respond?

11 MR. SEARLE: Again, Your Honor, the defendant was
12 convicted of a conspiracy. So it really doesn't matter what
13 substantive offenses he was acquitted or convicted of.

14 At the trial, the Court heard specifically from
15 well over ten victims. There were far more victims that were
16 available to be called, and, in fact, the agent will address
17 this during his testimony. But based on the fact that the
18 defendant was convicted of a conspiracy, the number of
19 victims enhancement was appropriately scored here.

20 THE COURT: All right. Thank you.

21 All right. Next, we have an objection from the
22 defense based on the additional points added on for the
23 sophistication of the offense.

24 Would you like to further supplement your written
25 objection with any further argument, Mr. Lopardo?

1 MR. LOPARDO: Just briefly, Your Honor. Looking at
2 this case -- and I've had many other cases -- to me, this
3 wasn't sophisticated at all because there was one person who
4 was basically running the show, who left town. Basically,
5 this scheme could probably never continue because people were
6 never given anything for their money. So they would
7 immediately complain.

8 This was actually kind of a stupid scheme, if
9 you'll pardon my. . .

10 THE COURT: Bluntness?

11 MR. LOPARDO: Bluntness. I mean, it's -- it's --
12 it's not built to last. This isn't "Bernie" Madoff. This
13 isn't a Ponzi scheme. This was going to end up in the ditch
14 from the beginning.

15 THE COURT: All right.

16 Anything from the government?

17 MR. SEARLE: Your Honor, the government believes
18 that the sophisticated means enhancement was appropriately
19 applied here. This scheme did involve a number of
20 sophisticated activities, including putting false information
21 on a website, which induced some of the timeshare owners to
22 believe the companies were legitimate; specifically
23 displaying that the company had a good Better Business Bureau
24 rating.

25 In addition, Your Honor, the defendants took

1 actions to conceal their roles and involvement in the scheme.
2 So I think based on everything that's before the Court, this
3 scheme was appropriately applied.

4 And the application note provides some of the
5 sophisticated means examples but is not -- the enhancement is
6 not strictly limited to those specific examples. It can be
7 things that are beyond those examples, Your Honor.

8 THE COURT: All right.

9 Mr. Lopardo, the next objection is paragraph 79,
10 the aggravated role increase. Would you like to supplement
11 the record with any further argument?

12 MR. LOPARDO: Well, Your Honor, I would say that
13 based on the credible evidence at trial, that Mr. Aligwekwe
14 was not a leader.

15 We had Ms. Fundora, who apparently worked hand in
16 hand with Authnel McPhie, also known as George Mason. And
17 during the time of the relevant period of this fraud, she was
18 basically working very closely with him. She said, and I
19 think she was credible, that she never really saw him except
20 once.

21 And Authnel McPhie's sister, Leicent McPhie, she
22 also indicated that all he did was sell information or data.

23 I know there were some other witnesses, like Rick
24 Bell, who said that my client was the ringleader, but he also
25 said a lot of other incredible things. So I think if you

1 look at the credible witnesses, the people who were there, he
2 wasn't a leader at all. In fact, he was probably more like a
3 minimal participant.

4 THE COURT: All right.

5 Anything from the government?

6 MR. SEARLE: The United States believes the
7 aggravating role enhancement was properly applied in this
8 instance because the defendant was a manager or supervisor of
9 a fraud scheme that involved five or more participants and
10 was otherwise extensive. As long as the Court finds one or
11 the other, that it involved five or more participants or was
12 otherwise extensive, the enhancement should apply here.

13 We have both instances. The scheme did involve
14 five or more participants. It matters not that some of those
15 participants were acquitted or not ultimately indicted, based
16 on the case law.

17 And in addition, Your Honor, the scheme was
18 extensive based on the definition in the application notes as
19 well as the case law that's been developed in this area. As
20 I mentioned, it did involve some sophisticated tactics.
21 There were numerous victims throughout the country. And
22 based on that, Your Honor, the United States believes that
23 the aggravated role enhancement is properly scored here.

24 THE COURT: All right.

25 Paragraphs 88 through 109, the criminal history

1 section of the Presentence Investigation Report, the
2 defendant objects to the entire contents and calculation of
3 the criminal history.

4 Mr. Lopardo, would you like to supplement your
5 written objection with any further argument?

6 MR. LOPARDO: I mean, based on an Internet search,
7 I suppose it's accurate. I was just objecting if they were
8 not going to have certified copies of conviction. I'm sure
9 the Court's going to overrule that.

10 THE COURT: Well, I would imagine that they did
11 more than a basic Internet search. I mean, there's an
12 N.C.I.C. that they can run a complete background.

13 Mr. Searle, would you like to be heard on that?

14 MR. SEARLE: Briefly, Your Honor. The United
15 States concurs with the Court's view of how the criminal
16 history section was determined. Johnson doesn't apply, so
17 this isn't an instance where we need to provide Sheppard
18 documents or anything to that effect.

19 We believe that the criminal history section is
20 accurate in the P.S.R.

21 THE COURT: And, finally, on paragraph nine -- or
22 the ninth objection, which is to paragraph 121, you're
23 objecting to the inclusion of information provided by Samuel
24 Washington in the Presentence Report. Would you like to
25 supplement that objection with any further argument?

MR. LOPARDO: Yes, Your Honor. I object to this even being included. I mean, this person, Samuel Washington, basically accused my client of all kinds of things, crimes that have nothing to do with this case.

It's also my understanding that while he is at liberty, my client resides with his mother and basically assists her. She is disabled and she gets a Social Security check. And my understanding is that Mr. Washington wants my client out of the picture so he can live off his mother.

THE COURT: All right.

Any response from the government?

MR. SEARLE: The United States believes that the information provided by Mr. Washington is relevant, as it goes to the defendant's history and characteristics.

And I would also point out to the Court that it was the defendant who gave the Probation Office Mr. Washington's information and advised that he was a person who could verify some of this information, from what I understand. I may be mistaken on that, but I don't believe they would have been able to get in contact with him had the defendant not in some way referenced that he was a family member.

So at this point, Your Honor, I think it's relevant and I think it's something that should be before the Court in determining what an appropriate sentence is here.

THE COURT: Mr. Lopardo, do you contest the

1 assertion that your client provided the government with -- or
2 probation with the contact information on Mr. Williams --

3 MR. LOPARDO: Yes, Your Honor.

4 THE COURT: -- or Mr. Washington? I beg your
5 pardon.

6 MR. LOPARDO: I believe that the information
7 provided was -- my client gave the contact information for
8 his mother, and now Mr. Washington has moved in and is trying
9 to ride the gravy train pretty much.

10 MR. SEARLE: Your Honor, just to correct the
11 record, I was mistaken. That is accurate. The mother ended
12 up providing Mr. Washington's information to Probation. So I
13 was mistaken on that count. But nonetheless, it's a family
14 member and I believe it's relevant for the Court to consider.

15 THE COURT: All right.

16 Mr. Aliigwekwe, feel free to be seated at the table
17 with your attorney. The government is going to be presenting
18 some evidence with regard to the objections over the
19 calculations.

20 Call your first witness, please.

21 MR. SEARLE: The United States calls Postal
22 Inspector David Keith.

23 THE COURTROOM DEPUTY: Please come forward and be
24 sworn.

25 Do you solemnly swear or affirm under the penalty

1 of perjury that the testimony you give will be the truth, the
2 whole truth and nothing but the truth?

3 MR. KEITH: I do.

4 THE COURTROOM DEPUTY: Have a seat there, please.

5 THE COURT: And once seated, please make yourself
6 comfortable with the chair's proximity to the microphone,
7 then state your full name into that microphone, spelling your
8 last name, please.

9 THE WITNESS: Yes, sir. My name is David Keogh
10 Keith, last name spelling K-e-i-t-h.

11 THE COURT: Your witness, Mr. Searle.

12 MR. SEARLE: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. SEARLE:

15 Q Good morning, sir.

16 A Good morning.

17 Q For the record, what do you do for a living?

18 A I'm a United States Postal Inspector.

19 Q What are your responsibilities in that position?

20 A I'm assigned to the Orlando domicile. I handle crimes
21 of involvement nexus to the U.S. Postal Service, such as mail
22 theft, mail fraud, burglaries of the post office, robbery of
23 a mail carrier. And timeshare resale fraud would fall under
24 the mail fraud statute.

25 Q How long have you been a postal inspector?

1 A Since 2003.

2 Q Do you have training and experience in white-collar
3 fraud cases?

4 A Yes, sir, I do.

5 Q Do you have other law enforcement experience in addition
6 to what you've already mentioned?

7 A Yes, sir. Prior to being a postal inspector, I was a
8 special agent with the Florida Department of Law Enforcement
9 for two years doing violent crimes and police corruption; and
10 prior to that, I was a patrol officer and a drug officer with
11 the Tallahassee Police Department for five years.

12 Q Are you familiar with the defendant in this matter,
13 Chima Aligwekwe?

14 A Yes, sir, I am.

15 Q Were you the case agent in a federal investigation
16 involving him?

17 A Yes, sir.

18 Q Do you see him in the courtroom here today?

19 A Yes, sir. He's the gentleman wearing the orange inmate
20 outfit.

21 MR. SEARLE: For the record, the witness has
22 indicated the defendant.

23 BY MR. SEARLE:

24 Q And --

25 THE COURT: The record will so reflect.

1 BY MR. SEARLE:

2 Q Can you briefly describe the investigation involving Mr.
3 Aligwekwe?

4 A Sure. I'm sorry. I should have said red. It's more
5 red than orange.

6 I was working a case involving multiple complaints for
7 Timeshare Title Services and then later United Clearing
8 Solution. I had victims across the country that were
9 complaining of being cold called by a telemarketer regarding
10 selling their timeshares, that there was a buyer for the
11 timeshare.

12 They were advised to do what we call an advance fee.
13 They were told to -- they were provided legal -- what they
14 perceived to be legal documents indicating there was a buyer
15 for their timeshare.

16 The victim in this case -- I will call them victims,
17 would then mail in a payment to a P.O. Box or a U.P.S. Store
18 box with the idea that this would be an advance fee to pay
19 for the legal fees and estoppel letters and other realty-
20 related funds.

21 Once that payment was made, absolutely nothing happened
22 at that point.

23 Q How would you describe this type of fraud scheme?

24 A It's a mail fraud. A timeshare -- we call it "timeshare
25 resale fraud" here in Orlando.

1 Q Outside of this case, is that something that you've seen
2 with frequency as a postal inspector?

3 A During this time frame, yes, this was the number one
4 consumer complaint to the Florida Attorney General. It blew
5 up here.

6 Q Did this fraud scheme involve telemarketing?

7 A Yes, it did.

8 Q In your experience, have you seen other fraud schemes in
9 the Central Florida area that have involved telemarketing?

10 A Yes.

11 Q Do you have a belief as to why these type of activities
12 occur in this area?

13 A Central Florida being a hot spot tourist destination, we
14 have a lot of timeshares here. We've noticed that a lot of
15 these -- the people who have been involved in these timeshare
16 resale frauds, they work for a company. They learn how it
17 goes, then they start their own company. They hire 30 more.
18 They learn how the timeshare fraud goes, and it just -- it
19 just kept going and going and going. And more companies were
20 being incorporated in order to -- what I believe to victimize
21 these victims across the case.

22 Q As the case agent, can you describe some of the things
23 you did during your investigation?

24 A Subpoenaed bank records. We contacted nearly all of the
25 victims, either through the mail or via the phone, to get

1 statements sent in, notarized statements from the victims.
2 We gathered evidence. We interviewed employees that we
3 identified in the timeshare -- with both companies, Timeshare
4 Title Services. We actually conducted an undercover
5 operation involving Mr. Brewington.

6 Q Did you interview subjects of the investigation?

7 A Yes, we did.

8 Q Did you interview the defendant at some point during the
9 investigation?

10 A Yes, sir, I did.

11 Q Were you present in court during the trial in this case?

12 A Yes, sir, I was.

13 Q Did you have an opportunity to hear all of the trial
14 evidence that was presented?

15 A Yes, sir, I did.

16 Q Have you had an opportunity to review the offense
17 conduct sections of the defendant's Presentence Investigation
18 Report?

19 A Yes, I did.

20 Q Based on the investigation you conducted and the trial
21 record that you observed during the trial, do you believe the
22 facts set forth in those sections are accurate?

23 A Yes, sir, I do.

24 Q Approximately how many victims were there in the fraud
25 scheme the defendant was convicted of?

1 A We identified over 400.

2 Q Can you briefly summarize for the Court the process you
3 undertook to identify those victims?

4 A We subpoenaed bank accounts and we were able to -- for
5 the most part, we saw the incoming checks that came in or
6 incoming wires. Most of them -- a lot of them had the
7 victims' information on either the checks or on the wire.

8 Another one is we went to the Better Business Bureau
9 website. They provided us consumer complaints on the
10 company. The Department of Agriculture and Consumer Services
11 provided us consumer complaints on the company, and the
12 Federal Trade Commission, also.

13 Q Were you able to get a statement from all of those
14 victims?

15 A Not from every one but we did get over 140 responses.

16 Q In your experience, do you always get statements from
17 all of the victims in a white-collar fraud scheme like this?

18 A No.

19 Q Explain why not.

20 A It just -- every time we sent out, I normally get maybe
21 a 20 or 30 percent response on victims of identity thefts and
22 fraud. That's just the way it is.

23 Q Did more than ten of those victims testify at the trial?

24 A Yes.

25 Q Are some of those victims identified in the defendant's

1 Presentence Investigation Report by their initials?

2 A Yes.

3 Q With regard to the offense conduct section of the
4 defendant's Presentence Investigation Report, are some of the
5 victims' accounts in that section of the P.S.R. from victims
6 who did not actually testify at the trial?

7 A Yes.

8 Q And based on your investigation, do you believe all the
9 victim accounts set forth in the P.S.R. are accurate?

10 A Yes.

11 MR. SEARLE: Your Honor, I'd like to approach the
12 witness with Government's Exhibits 1, 2, 3, 4, 5 and 6.
13 These are the same exhibits that were introduced at the
14 sentencing of Mr. Brewington, and I would offer these into
15 evidence at this time.

16 THE COURT: You may approach.

17 Mr. Lopardo, have you been provided with copies of
18 these exhibits?

19 MR. LOPARDO: Yes. I would make the objection that
20 they're irrelevant to my client.

21 THE COURT: All right.

22 Do you have a copy for me, then? Yes, you do. All
23 right. Let me look through them.

24 All right. I'm going to allow you to have the
25 witness testify to these and then I'll make my decision on

1 admission, because I think it can be a situation where you're
2 laying the predicate and answering to the objections of
3 relevance. So go on ahead.

4 MR. SEARLE: Yes, Your Honor.

5 BY MR. SEARLE:

6 Q If you would, focus your attention on Government's
7 Exhibit 1, what's been marked as Government's Exhibit 1. Do
8 you recognize that exhibit?

9 A I do.

10 Q What is it?

11 A It's a spreadsheet that our agency made regarding all
12 the identified victims that we identified in this
13 investigation.

14 Q What is this exhibit based on?

15 A This is based on the amounts, the deposit amounts into,
16 I would say, three different bank accounts -- Amscot, Chase
17 and Regions -- for Timeshare Title Services.

18 Q And is the exhibit based on bank records and Amscot
19 records that were actually introduced at the defendant's
20 trial?

21 A Yes.

22 MR. SEARLE: Your Honor, at this time I offer
23 Government's Exhibit 1 into evidence.

24 THE COURT: All right. Keep going. I'm going to
25 table the rulings until you've gone all the way through. I'm

1 going to let you do your entire examination.

2 MR. SEARLE: May I display --

3 THE COURT: You may.

4 MR. SEARLE: -- on the screen, Your Honor?

5 If we could, start with the first page, just so we
6 can see that, Bates 6271.

7 BY MR. SEARLE:

8 Q Can you just briefly describe for the record the columns
9 we see in this exhibit, the information that's contained in
10 the columns?

11 A Sure. It hasn't come up on my screen yet. I can scroll
12 from the exhibit list, if you want.

13 Q Yeah, if you wouldn't mind just starting.

14 A Okay. Sure.

15 All right. The first two columns will be the victims'
16 first and last names. There we go.

17 The third column, that says Loss Amount, that would be
18 the amount that we identified that was deposited into that
19 particular account.

20 The Express Mail label, if we were able to -- if the
21 victim was able to provide us a copy of the label or we were
22 able to retrieve it ourselves, we would be able to put that
23 down of how the payment was sent to the particular P.O. Box.

24 Obviously, the Statement Received, if they responded
25 with a statement, we would mark it down as "Yes." And the

1 deposit would be either the Amscot account, the Chase
2 account, and -- it's not on here, but the Regions account.

3 Then for the Reporting Agencies, actually, if that
4 victim told us if they made a complaint with a particular
5 third-party complaint center, such as Federal Trade
6 Commission, the Better Business Bureau website.

7 Q And you've mentioned the scheme involved two companies.
8 Does this exhibit pertain to one specific company?

9 A Yeah. This -- this -- this chart should only be for the
10 Timeshare Title Services.

11 Q Turning now to Bates number 6278, at the bottom of the
12 exhibit there, does it indicate the total amount of loss
13 caused by this company?

14 A Yes. There looks to be a total loss of \$638,277.45.

15 Q How was that amount determined?

16 A We added all the amounts from all of the deposits that
17 went into those particular accounts that we identified for
18 Timeshare Title Services.

19 Q Based on the investigation you conducted and the trial
20 record in this case, what role, if any, did the defendant
21 play in this company Timeshare Title Services?

22 A Oh, we -- I mean, speaking with the employees, he was a
23 participant with Timeshare Title Services. We identified him
24 as working on the second floor that was associated with it.
25 And by the defendant's own account, he advised us he sold

leads to Timeshare Title Services.

Q Turning your attention now to Government's 2, do you recognize Government's 2?

A Yes, sir, I do.

Q What is Government's 2?

A This would be the spreadsheet of losses attributed to the second company that was opened up, United Clearing Solutions.

Q Did you assist in preparing this exhibit?

A Yes .

Q What is the exhibit based on?

A Again, it would be the identified deposits or
interceptions of checks going to United Clearing Solutions.

Q Did that come from bank records that were introduced at the defendant's trial?

A Yes, they were associated. This particular bank account was with the Fifth Third Bank.

MR. SEARLE: If we could, publish Government's 2 on the screen.

BY MR. SEARLE:

Q What was the total loss caused by that company?

A It was \$26,720.31.

Q How was that figure determined?

A Again, from adding up all the loss amounts that was deposited into the account.

1 Q Has there been a single person that you've come into
2 contact with during this investigation that reported
3 receiving services from either of these companies in return
4 for their payments?

5 A We have never spoken to a victim who got anything from
6 either of these companies, no.

7 Q Based on the investigation and the trial record in this
8 case, did you see anything to indicate that these two
9 companies were legitimate businesses?

10 A No. These companies were complete frauds.

11 Q Are the figures in the charts that we just looked at
12 conservative?

13 A Yes, they are.

14 Q Explain why they're conservative estimates.

15 A There was a lot of checks that came into the Timeshare
16 Title Services accounts that were cashier's checks that had
17 no markings of the victim. We had no idea who sent it. As
18 an abundance of caution, those checks that we could not
19 identify to an actual person was not included in the totals,
20 total figure.

21 Q Turning your attention now to Government's 3, do you
22 recognize Government's 3?

23 A Yes.

24 Q Is this a composite exhibit that was generated by an
25 auditor from the U.S. Attorney's Office?

1 A Yes.

2 Q Is it based on bank records that were obtained during
3 this investigation?

4 A Yes.

5 Q And, in fact, was this specific exhibit introduced at
6 the defendant's trial?

7 A Yes.

8 MR. SEARLE: If we could, turn to Bates number 6236
9 of the exhibit and publish it on the screen.

10 This is Government's 3, Bates number 6236.

11 BY MR. SEARLE:

12 Q If we look through this section of the exhibit, what do
13 we see here?

14 A These would be, again, incoming deposits from various
15 people into the Chase account, it looks like, on that
16 particular Bates number.

17 Q Which Chase account?

18 A I'm sorry. Ending in '1983 for Timeshare Title
19 Services, LLC.

20 Q And the names that are listed here, does that represent
21 individuals who sent payments to that company?

22 A Yes, sir.

23 Q And turning to Bates number 6242 of the exhibit, does it
24 indicate the total amount of deposits that went into this
25 account for Timeshare Title Services?

1 A Yes, sir.

2 Q What is the total amount?

3 A It would be \$605,617.24.

4 Q Now turning to Bates number 6254 of the exhibit, what do
5 we see in this part of the exhibit?

6 A These are disbursement checks. These were outgoing
7 checks from the same account, Chase account '1983, held in
8 the name of Timeshare Title Services.

9 Q Turning to Bates number 6255, do you see payments being
10 made to the defendant?

11 A Yes.

12 Q And what is the first payment you see in terms of the
13 date?

14 A The first payment -- I'm sorry. She clicked out.

15 THE WITNESS: Thank you.

16 A According to this, November 30th of 2010.

17 Q And when was the last payment?

18 A And the last payment is February 2nd, 2011.

19 Q What is the total amount of payments that were made to
20 the defendant from this account?

21 A \$127,174.39.

22 Q Turning to Government's 4 -- if you could, just look in
23 the book there at what's been marked as Government's 4. Do
24 you recognize Government's 4?

25 A Yes. This would be the -- a Regions Bank account, the

1 last four is '1250, that was held in the name of Timeshare
2 Title Services.

3 Q Was this an exhibit that was introduced at the
4 defendant's trial?

5 A Yes, sir, it was.

6 Q And is it based on bank records that were also
7 introduced at the defendant's trial?

8 A Yes, sir.

9 MR. SEARLE: If we could, publish Government's 4.

10 BY MR. SEARLE:

11 Q What was the total amount of deposits that went into
12 this account for the years 2010 and 2011?

13 A The ending balance, sir? I'm sorry.

14 Q The total amount of deposits.

15 MR. SEARLE: Government's 4, Bates 6259, if we
16 could, publish that on the screen.

17 Thank you.

18 A Yeah, the deposit for 2010 is -- \$7,341.08 would be the
19 full deposit. And ending balance -- the disbursement was
20 \$1,000, over \$1,000.

21 Q And the names we see here -- actually, let me turn to
22 Bates number 6260.

23 MR. SEARLE: If we could, put that on the screen.

24 BY MR. SEARLE:

25 Q What do we see on this page of the exhibit?

1 A All right. For deposit into the Regions account ending
2 in '1250, it looks to be \$29,471.16.

3 Q And the names that we see here, do they represent
4 individuals who sent money to Timeshare Title Services?

5 A Yes, sir.

6 Q Turning now to Government's 5, do you recognize
7 Government's 5 in front of you?

8 A Yes.

9 Q What is it?

10 A This is a spreadsheet again for all of the checks that
11 was cashed at the Amscot that were made payable to Timeshare
12 Title Services.

13 Q Was this exhibit introduced at trial?

14 A Yes.

15 Q Is it based on other records that were introduced at
16 trial?

17 A Yes, sir.

18 Q And specifically whose account at Amscot did this relate
19 to?

20 A It was Mr. Charles Sutton doing business as Timeshare
21 Title Services.

22 MR. SEARLE: If we could, just publish on the
23 screen Bates number 6262 of the exhibit.

24 BY MR. SEARLE:

25 Q What do these names we see listed here represent?

1 A Those were the names of the people that we identified
2 that had sent the cashier's check or the personal check to.
3 It would be the names of the victims.

4 Q And then if we could now -- if I could now focus your
5 attention on Government's 6. Do you recognize Government's
6 6?

7 A Yes.

8 Q What is it?

9 A That is, again, a spreadsheet on United Clearing Solu-
10 -- I'm sorry -- the Fifth Third Bank account ending in '2825
11 for United Clearing Solutions.

12 Q Was this introduced at the defendant's trial?

13 A Yes, it was.

14 Q And was it based on records that were introduced at the
15 defendant's trial?

16 A Yes.

17 MR. SEARLE: And if we could, publish Bates number
18 6265.

19 BY MR. SEARLE:

20 Q What was the total amount deposited into this account?

21 A \$25,825.72.

22 Q And the names, again, what do they represent?

23 A They would be the victims that sent in money to United
24 Clearing Solutions.

25 Q Some of the names on this particular exhibit, do you

1 recognize them as individuals who actually testified at the
2 defendant's trial?

3 A Yes.

4 Q And for all the money that was deposited into these
5 accounts from the victims, if we were to look through these
6 exhibits, would we see the money being spent and going out of
7 these accounts?

8 A Yes.

9 Q Were there certain amounts that you were able to
10 actually seize from the banks?

11 A Yes. I was able to seize small funds from both the
12 Chase Bank account for Timeshare Title Services and for
13 United Clearing Solutions.

14 Q Do you recall the approximate amounts you were able to
15 seize?

16 A At United Clearing, I think 16,000; and Timeshare, to be
17 honest, I don't remember the full amount on that.

18 Q Beyond that, was the rest of the money spent?

19 A Yes.

20 Q Turning now back to the scheme, based on the
21 investigation and the trial record, can you describe how, if
22 at all, this scheme utilized sophisticated tactics?

23 A Oh, one is -- you had mentioned it in your opening, is
24 they had a website and they were able to manipulate the
25 Better Business Bureau's A-rating and put that on the website

1 in order to -- in my opinion, to entice potential victims
2 that this was a legitimate company.

3 There was false addresses on their incorporation
4 paperwork that they were never at.

5 There was -- they put these companies in other people's
6 names.

7 The actual building location that they were actually
8 located in, there's no legal paperwork for that as well
9 that's associated with either of those companies.

10 And they used telemarketing -- they used a pitch lead.
11 They used fraudulent documents regarding the legal paperwork
12 about selling other property, purchasers. We had several
13 victims complain that they even provided a copy of a deposit
14 check that a supposed purchaser had put down for the property
15 that they thought they would be selling the timeshare for.

16 Q The individuals who were making the cold calls to the
17 victims, did they use fake names?

18 A Yes, they did.

19 Q And what devices did they use to make those cold calls?

20 A They used what we call in business burner phones, phones
21 that they just pick up that they can just throw away.

22 Q Did these tactics make it difficult for you as the
23 investigator to identify who was truly responsible for this
24 scheme?

25 A Absolutely.

1 Q How so?

2 A Well, everything was put in the name of Mr. Charles
3 Sutton. So initially the investigation only centered on him
4 because there was nothing else that would lead us to the
5 other people until we started doing a more proactive approach
6 to the investigation.

7 Q How was Mr. Aligwekwe identified as a participant in
8 this scheme, if you recall?

9 A The main one was we noticed that out of all of the
10 disbursement checks, Mr. Aligwekwe made much more money than
11 any other person at Timeshare Title Services.

12 Q What role did Mr. Aligwekwe specifically play in this
13 scheme, based on the trial record and the investigation you
14 conducted?

15 A Based on -- he -- we got around to him providing leads
16 to Timeshare Title Services, but as we interviewed more
17 people, we also found out that he literally owned the second
18 floor operation and had his own group of telemarketers.

19 Q You mentioned the term "leads." Just so the record is
20 clear, what are leads?

21 A The best way to put it, potential victims. He had
22 information of persons' timeshare, the name of the person on
23 the timeshare, the value, where it was located at, and this
24 would be provided -- what we believe to be provided to the
25 telemarketers to call these potential people.

1 Q You've mentioned that he had a floor of callers. Was
2 that in the Harbco Building?

3 A Yes, sir, it was.

4 Q During the investigation, did you interview the office
5 manager at that location?

6 A Yes, sir, I did.

7 Q What was that individual's name?

8 A Gary Guastella.

9 Q Was he a trial witness for the government?

10 A Yes, he was.

11 Q And what, if anything, did he provide as far as Mr.
12 Aligwekwe's role in Timeshare Title Services?

13 A Again, he also reiterated that he worked out of the
14 second floor and that he was associated with Mr. Brewington
15 and the others.

16 Q Did he indicate what he -- what it appeared that Mr.
17 Aligwekwe was doing on the second floor?

18 A He said it was something to do with timeshare.

19 Q Did other witnesses indicate that Mr. Aligwekwe was
20 managing people?

21 A Yes.

22 Q On that floor?

23 A Yes.

24 Q And was there an occasion where a witness was told that
25 Mr. Aligwekwe was coming into the company to do certain

1 things?

2 A Yes, that would be witness Zaymara Fundora.

3 Q Can you describe that for the record?

4 A She mentioned that Eugene Brewington introduced him to
5 the office and that he was going to be working with the
6 Timeshare Title people, Timeshare Title Services.

7 Q How did she describe him being introduced to her?

8 A Like a manager role-type.

9 Q Do you recall what specifically was said to her when he
10 was introduced?

11 A That he was going to be like a good employee, something
12 in that manner.

13 Q And this scheme that you've been discussing, did it
14 involve five or more participants?

15 A Absolutely.

16 Q During the investigation, you mentioned you interviewed
17 Mr. Aligwekwe. Where did that interview take place?

18 A The first interview was at his residence. If I recall,
19 it was in the Metro West area, off of somewhere -- near
20 Raleigh Street. It was an apartment complex, outside of his
21 apartment.

22 Q What was the reason you went to that location?

23 A Well, again we had -- he had made \$100,000 in two
24 months. So we wanted to talk to him about his association
25 with Timeshare Title Services.

1 Q Can you describe that interview for the Court? What was
2 his demeanor during the interview?

3 A He deflected. It was obvious he wasn't telling us
4 everything during the interview. He only told us he didn't
5 -- the only person he dealt with was one person at Timeshare
6 Title Services, which was Ricky Bell.

7 He kept on saying that he only sold leads. He wouldn't
8 provide any -- he said he had no paperwork to provide to back
9 up his claim. He wouldn't give us exactly how his -- how the
10 business of providing leads worked.

11 The interview was -- he was somewhat hostile, bowed-up-
12 type deal. When I gave him my card, he crumpled it up and
13 threw it in the -- in the grass.

14 Q What, if any, statements did he make about the federal
15 government during that interview?

16 A He said he -- when I told him that he was lying to me
17 and, you know, he sat there and told me something in the
18 essence of that he had beaten the prosecution before, that he
19 wasn't worried.

20 Q Did there come a time when you conducted a second
21 interview with Mr. Aligwekwe?

22 A Yes. After he was indicted in this case, he was
23 arrested by Altamonte Springs Police Department, and I went
24 up to Altamonte Springs P.D. to interview him.

25 Q Was there another law enforcement with you during that

1 interview?

2 A Yes, sir. Inspector -- Postal Inspector Ed Sanabria was
3 with me.

4 Q Can you please spell his last name?

5 A I'm sorry. S-a-n-a-b-r-i-a, Sanabria.

6 Q During this second interview, what, if anything, did Mr.
7 Aligwewke say regarding his connections with Timeshare Title
8 Services and specifically Eugene Brewington?

9 A Mr. Aligwewke denied any involvement. All he kept on
10 saying was, "I only sold leads." He would not even identify
11 Mr. Brewington. He just said, "I don't really know this
12 guy."

13 And I told him, "That's not true. We've interviewed so
14 many employees that have identified you with him." But he
15 just played that he didn't know these guys.

16 Q Was he actually shown a photograph of Mr. Brewington?

17 A Yes, he was.

18 Q During that interview, what, if any, statements did Mr.
19 Aligwewke make to either you or the other law enforcement
20 officer who was with you regarding his military career?

21 A He advised that he had joined, if I recall, the Marines,
22 but he wasn't in there that long. He -- well, he called it
23 "piss dirty," but it was a urine test. It was -- they found
24 drugs in it and he was shortly booted out of the military.

25 Q Was that statement made to you or the other law

1 enforcement?

2 A It was made to Inspector Sanabria.

3 Q Where were you during that statement?

4 A I was outside the room.

5 Q When did you learn of the statement?

6 A When I talked to -- I was debriefed by Mr. Sanabria, and
7 that interview was recorded and I also heard it in the
8 recording.

9 Q Lastly, can you describe the victims of this scheme?

10 A The victims. The majority of our victims are elderly.
11 The elderly people seem to be more susceptible to this type
12 of telemarketing fraud.

13 We had a lot of retirees. We had several --
14 unfortunately, we had several victims that passed away during
15 this investigation due to their age and health.

16 Our victims came from all -- all types of background,
17 from the blue-collar worker to the professional retirees. We
18 had veterans. We had people in the military that were still
19 serving that were victimized by -- by these people.

20 MR. SEARLE: Your Honor, at this time I offer into
21 evidence Government's 1 through 6. And I have no further
22 questions for this witness.

23 THE COURT: I have the opportunity to consider the
24 objection, in light of the predicate and the testimony. 1
25 through 6 will be admitted over the objection of the defense

1 and marked as such.

2 Mr. Lopardo, cross-examination?

3 MR. LOPARDO: Yes, Your Honor. I would add to that
4 objection foundation.

5 THE COURT: Okay.

6 CROSS-EXAMINATION

7 BY MR. LOPARDO:

8 Q When you first met with Mr. Aligwekwe, he indicated to
9 you that he didn't want to be a witness against Timeshare
10 Title Services; would that be fair?

11 A He didn't want to be a witness? I don't recall him
12 saying that.

13 Are you talking about the first time we interview him in
14 front of his apartment?

15 Q Yes.

16 A We questioned him about it. I mean, he just played the
17 "I do business with a lot of different companies."

18 Q In fact, what he told you was that he sold them leads?

19 A Yes, sir.

20 Q And that the person he sold the leads to was Ricardo
21 Bell?

22 A Yes, sir, he did.

23 Q And you also interviewed Ricardo Bell?

24 A Yes, sir, I did.

25 Q And you told Mr. Bell that Mr. Aligwekwe said he was the

1 boss?

2 A Yes, I did.

3 Q In fact, he didn't tell you he was the boss. He said he
4 sold leads to them?

5 A Well, I told Mr. Bell that. Mr. Aligwekwe was pointing
6 the finger at him, that he was part of Timeshare Title
7 Services.

8 Q Well, "pointing the finger," I mean, there's a
9 difference between saying, "I sold someone leads," and, you
10 know, "I'm turning against them." He wasn't really turning
11 against Mr. Bell, was he?

12 A Mr. Aligwekwe?

13 Q Yes.

14 A Well, he was pointing me in the direction of Mr. Bell.
15 He never mentioned that he was partnering with Mr. Brewington
16 or Mr. McPhie or anybody else. He only mentioned he only
17 dealt with Ricky Bell.

18 Q But, I mean, at the time he was explaining that as far
19 as he knew, it was legitimate and, "This was the person I
20 sold the leads to"? He didn't say, "This is illegitimate and
21 this is the guy in charge"?

22 A That's correct. He never said that the company was a
23 fraud, no, sir.

24 Q Okay. But Mr. Bell was told otherwise? That's what you
25 just told us?

1 A No. Mr. Bell was -- when you say that, I'm trying to
2 understand what you're trying to get out of that.

3 Q Mr. Bell was led to believe that Mr. Aligwekwe was
4 basically incriminating Mr. Bell?

5 A We told Mr. Bell that Mr. Aligwekwe -- yeah, he pointed
6 us in his direction.

7 Q Direction to discuss further or as an actual defendant?

8 A For Mr. Bell?

9 Q In other words, what I'm trying to get at, Mr. Bell was
10 given the impression that Mr. Aligwekwe had turned against
11 him?

12 A I wouldn't say he was turning against him, because there
13 was never -- as far as I know, there was never a conspiracy
14 between the two, that I knew of. He pointed us in that
15 direction. We wanted to validate what his testimony was.

16 Q I bring that up because at the trial, Mr. Bell indicated
17 that Mr. Aligwekwe was a key player. Fair to say?

18 A Yes, sir.

19 Q In fact, you're basing the leadership role somewhat on
20 what Mr. Bell said?

21 A His testimony helped.

22 Q However, Ms. Fundora testified, correct?

23 A She did.

24 Q And she said that my client didn't have an office there
25 and that she saw him maybe once, correct?

1 A I remember she said she didn't see him that often.

2 Q But -- well, that's -- she said she saw him maybe once?

3 A I can't remember all the small details of her testimony.

4 I apologize, Mr. Lopardo.

5 Q That's fine. But she also indicated that he was not
6 operating out of that building?

7 A Out of her floor, is my understanding.

8 Q No. It was the building.

9 A I can't recall all the basis of her testimony on that,
10 then.

11 Q What I'm saying is her testimony is in conflict with Mr.
12 Bell. Ms. Fundora says he wasn't even there.

13 A Okay. I can't affirm or deny that. So. . .

14 Q Well, I'm just wondering if you're going to -- we saw at
15 the trial, in terms of credibility, if you have to make a
16 decision, why would you choose Mr. Bell over Ms. Fundora?

17 MR. SEARLE: Objection as to form and relevancy,
18 Your Honor.

19 THE COURT: I'm going to sustain the objection, but
20 I get your point. You can argue that, if you'd like.

21 MR. LOPARDO: Okay.

22 BY MR. LOPARDO:

23 Q What I remember Ms. Fundora saying, and you tell me if
24 this is correct, is that Mr. Aligwekwe was going to be a
25 sales -- a great salesman and would be working with them.

1 A That sounds about correct, yes.

2 Q Not for them, with them?

3 A That sounds about correct, yes.

4 Q Okay. At one point you also stated that Mr. Aligwekwe
5 told you he beat a prosecution before?

6 A Yes.

7 Q But you didn't put that in the discovery?

8 A Well, I never got anything more out of that.

9 Q What I'm saying is that, you didn't record that
10 anywhere?

11 A No. That's in the M.O.I., sir, of the interview. The
12 first interview that I conducted with him, that is in there.

13 Q Was it on the -- is it on the recorded interview?

14 A No, sir. That would have been on the first
15 interview that we conducted in his apartment. The only one
16 that was recorded would be the one when he was detained by
17 Altamonte Springs on the warrant.

18 Q The documents that you brought in and submitted that
19 were entered into evidence, the summary documents, the
20 financial documents, did you create those?

21 A The financial documents, the U.S. Marshals, yeah,
22 request that the case agent, or anybody who is bringing them
23 in for booking, has to fill those out.

24 Q What I mean is, did you -- did you create the
25 spreadsheets?

1 A I'm sorry. I misunderstood you, sir.

2 Q I meant like the spreadsheets, Exhibits 1 through 9 that
3 we have today, did you create those summaries?

4 THE COURT: 1 through 6.

5 BY MR. LOPARDO:

6 Q I'm sorry. 1 through 6?

7 A Are you talking about the actual spreadsheets that --
8 for Exhibit 1 to -- for 1 and 2 I did, or I should say me and
9 Detective Johan Anderson with Orange County assisted as well.

10 3 and 4 were done by the U.S. Attorney's Office, their
11 financial analyst.

12 And I did 5, and 5 would be our agency.

13 And 6 would, again, be U.S. Attorney's Office, their
14 financial analyst.

15 So 1, 2 and 5 is what I'm trying to say, yes, sir.

16 Q Well, fair to say that 1 through 6 are summaries and
17 they're not original documents?

18 A Yes, sir.

19 Q They're not original records, correct?

20 A No. They're not the original bank records, no, sir.

21 Q As far as United Clearing Solutions, my client never
22 received any checks from United Clearing Solutions, correct?

23 A No, we did not see any disbursement checks to any
24 employees that we identified except for the accountholder,
25 Mrs. McPhie.

1 Q And, in fact, getting to Ms. McPhie, she also told you
2 that Mr. Aligwekwe sold leads only and that's what he did for
3 her brother?

4 A I don't recall Mrs. McPhie's testimony regarding Mr.
5 Aligwekwe in that on those small details. I'm sorry, sir.

6 Q Well, I mean, she knew her brother pretty well.
7 Apparently, she knew about the operation. What she told the
8 jury was that he just sold leads, he didn't work for her
9 brother.

10 A Yeah. When we dealt with Mrs. McPhie, she just
11 identified -- for the most part, most of her testimony was
12 regarding Mr. Brewington and Mr. -- and her brother.

13 Q But as far as Mr. Aligwekwe went, she didn't believe
14 that he worked for her brother, as far as she knew?

15 A Mr. Aligwekwe came in when -- he was there during the
16 actual -- if I recall, the undercover operation with
17 Detective Anderson. The specific roles of what Mr. Aligwekwe
18 did with United Clearing, I don't remember what she told me
19 regarding that.

20 Q So you just don't recall specifically?

21 A Yeah, specifics. Yeah, specific roles on Mr. Aligwekwe.

22 Q Now, when you asked Mr. Aligwekwe about the leads, he
23 told you he actually paid for them from a man named William
24 Shivers?

25 A That was on his second interview, yes, sir. He said he

1 got it from another person.

2 Q Okay. And he also told you he had his own consulting
3 company?

4 A I don't remember that.

5 Q C.E.A. Management Services?

6 A He did have a company called C.E.A. Management.

7 Q But did you even -- did you even look into that company?

8 A For C.E.A. Management, we subpoenaed accounts. I
9 remember Host Services. I can't recall C.E.A. Management.

10 Q But that's certainly -- even the Articles of
11 Incorporation were not part of your investigation -- his
12 Articles of Organization, rather?

13 A No, not that I recall.

14 Q Now, you've said that Mr. Aligwekwe was an organizer/
15 leader.

16 The manager at the Harbco Building said that, you know,
17 he -- contrary to Ms. Fundora, the manager said that he had
18 basically an unlawful sublease that the owners didn't know
19 about and he was directing a call center on the second floor,
20 correct?

21 A I'm sorry. Was that a question?

22 Q I'm sorry. The manager said that Mr. Aligwekwe had a
23 call center on the second floor?

24 A Yes.

25 Q And he also said that the bosses -- the owners didn't

1 know about it?

2 A I'm not aware of that one. My understanding was, the
3 first one, I don't know if that question ever came up. That
4 was regarding the second time when Mr. Brewington came in and
5 did a -- re-upped the lease under a different name with that
6 whole nationwide consulting, and that was the one that the
7 managers had done without Gary Guastella's input.

8 Q Well, I mean, my point in asking that is, according to
9 the guidelines, there would have had to have been a written
10 sublease? He couldn't just set up operations without
11 permission from the owners, according to the contract?

12 A If I recall. I'm under the impression that -- or not
13 impression. We got the contract and it was Mr. Brewington on
14 both for top and bottom.

15 Q Well, there was no -- his name was not on the Harbco
16 Building lease?

17 A No, Mr. Aligwekwe's name was not on the lease.

18 Q And his name was not on any sublease that there was a
19 record of?

20 A Not that I know of, no, sir.

21 Q And the contract requires subleases to be in writing?

22 A You're asking me a question outside of my purview, sir.

23 Q That's fine. If he's directing this call center, I
24 mean, who was he directing specifically?

25 A We were not able to identify anybody that worked for

1 him. I even asked -- when I asked Mr. Aligwekwe on the
2 second interview if he would give me an employee's name that
3 can identify -- or if he can tell me -- tell me about his
4 business, he said there was none.

5 Q Well, this would be talking about he supposedly was
6 managing a call center on the second floor of the Harbco
7 Building, but you have no evidence that he -- of who it would
8 have been?

9 A No, sir.

10 Q So you didn't find anybody that he organized or managed?

11 A No, sir. Mr. Aligwekwe told me that he liked to do a
12 cash business. So the way we identified the employees from
13 Timeshare Title Services was the outgoing checks to the
14 employees.

15 Q Well, I mean, I understand that there's all kinds of
16 ways to find people, correct?

17 A Okay.

18 Q I'm just saying you didn't identify any employees of
19 his, alleged employees that he was managing?

20 A That's a fair question. No, sir, we did not.

21 Q Okay.

22 MR. LOPARDO: May I have a moment, Your Honor?

23 THE COURT: You may.

24 MR. LOPARDO: I have nothing further at this time,
25 Your Honor.

1 THE COURT: Redirect?

2 MR. SEARLE: No, Your Honor. Thank you.

3 THE COURT: All right. Thank you. Be seated.

4 Any further witnesses to call from the government
5 at this time?

6 MR. SEARLE: No, Your Honor.

7 THE COURT: All right. Will there be any witnesses
8 called in rebuttal by the defense with regard to your
9 objections on one through nine?

10 MR. LOPARDO: I'm sorry. Did you ask if I have
11 rebuttal witnesses?

12 THE COURT: Yes.

13 MR. LOPARDO: No, Your Honor.

14 THE COURT: All right.

15 With regard to one through eight, the defense
16 objections are overruled. I'm not going to consider all the
17 comments made by Mr. Washington, Samuel Washington. So
18 objection nine will be sustained.

19 At this time the Court's findings are as follows:
20 The Court adopts the undisputed factual statements and
21 guideline applications contained in the Presentence Report.
22 As to the controverted factual statements and guideline
23 applications, as I indicated, defense objections one through
24 nine (sic) will be overruled. The Court will sustain defense
25 objection nine and I will not consider any of the comments

1 made by Mr. Washington.

2 Therefore, the Court determines that the advisory
3 guidelines are as follows: Total offense level 27, criminal
4 history category V, 120 to 150 months' imprisonment, one to
5 three years' supervised release.

6 Restitution has been scheduled in the Brewington
7 case for November 22, 2016. Are you going to be making that
8 same request, Mr. Searle?

9 MR. SEARLE: Yes, Your Honor.

10 THE COURT: All right.

11 So restitution will be determined on that date.

12 A fine of 12,500 to \$1.2 million, and a \$200
13 special assessment.

14 At this time, Mr. Lopardo, would you like to
15 present any evidence in mitigation prior to arguing on the
16 sentence?

17 (No response.)

18 THE COURT: I mean, you've submitted matters
19 already. Is there anything additionally you want the Court
20 to consider at this time?

21 MR. LOPARDO: No, Your Honor.

22 THE COURT: Would your client like to make a
23 statement to the Court?

24 MR. LOPARDO: Yes, Your Honor.

25 THE COURT: All right. Feel free to stand there,

1 and please use the microphone.

2 THE DEFENDANT: Your Honor, I would first like to
3 thank the Court for its time in regards to this matter. I
4 would have liked a better outcome, but I am grateful for the
5 jury's verdict.

6 As president of C.E.A. Management Services, I did
7 broker and sell lists of timeshare owners' names and contact
8 information who are interested in marketing their property
9 for rental or sale.

10 Timeshare Title Services was a company that I did
11 business with under the pretense they were a legitimate
12 marketing agency. I had no way of knowing what was
13 transpiring day to day at Timeshare Title Services, being
14 that I was only a lead broker, as witnessed by receptionist
15 Zaymara Fundora.

16 The company did appear to have all the moving parts
17 of a legitimate marketing firm. Your Honor, if I would have
18 known Mr. Authnel McPhie a/k/a George Mason or any
19 representative of Timeshare Title Services was making
20 outlandish claims to clients, then telling the clients to go
21 find themselves, as stated by witnesses or victims,
22 intentionally running the company into the ground, not only
23 would I have stopped doing business with them sooner, out of
24 self-preservation, Your Honor, I would have reported them to
25 the Attorney General myself.

1 I was approached by law enforcement and did
2 complete two interviews, Your Honor. I told them who I
3 brokered my leads from and who I sold my leads to.

4 As it pertained to Timeshare Title Services, as
5 stated by the witness Ricardo Bell, who did state that I told
6 authorities that he was the boss, Your Honor, I never told
7 authorities that he was the boss. I simply told them that's
8 who I sold my leads to.

9 I did broker leads for other marketing firms
10 before, during and after doing business with Timeshare Title
11 Services. So when asked by law enforcement to be a witness,
12 I stated I did not feel comfortable, being that at the time I
13 didn't know any more than I told them in the interview.

14 I did confront Mr. Authnel McPhie and Mr. Ricardo
15 Bell after being approached by law enforcement and decided to
16 stop doing business with Timeshare Title Services as it was
17 evident my company C.E.A. Management Services and my
18 livelihood was being put at risk.

19 Your Honor, I'm not here to make any excuses. I
20 accept responsibility for what the jury found me guilty of,
21 Your Honor. I vow to be a much more diligent and meticulous
22 businessman in my future endeavors.

23 However, Your Honor, as soon as I was approached by
24 law enforcement, I did cut ties with Timeshare Title
25 Services.

Respectfully, Your Honor, I ask the Court to have
mercy so that I can pay my debt to society, get back to the
work force, and serve my community and my country in a
positive manner while providing for my family. Thank you.

THE COURT: All right. Thank you.

Will the government be presenting any evidence in aggravation?

MR. SEARLE: No, Your Honor, just argument.

THE COURT: All right.

Mr. Lopardo, you're invited to make your sentencing argument at the podium, if you're prepared to do so.

MR. LOPARDO: Your Honor, I think the -- I think our argument has pretty much been made, considering the objections to the P.S.R., the Sentencing Memorandum that I filed.

My primary concern is that Mr. Aligwekwe was acquitted of multiple charges and that that should mean something.

Again, with the Richardson v. Marsh case, the idea is that, to their benefit sometimes, the jury will find relative culpability. And to just sort of lump my client with the other defendant, Brewington, sort of disregards the acquittals.

And I would also make the argument, as far as a conspiracy goes, that I made before, which is even in drug

1 cases where there's a conspiracy, the count is just
2 conspiracy. There's usually an amount put there. And my
3 concern is that if the sentencing includes facts that the
4 jury didn't find, in a way, the jury is being misled. I
5 mean, I think the jury was saying something by marking only
6 one box.

7 He's here today to take responsibility for what the
8 jury found; but the jury tried, I believe, to limit his
9 culpability compared to what -- we had one defendant
10 acquitted completely, one basically found guilty of
11 everything, and my client, where they acquitted him of all
12 but one. So my argument would be that it should account for
13 something.

14 Also, he has conducted himself while on pretrial
15 release according to the law. And I would point out that in
16 his situation, the one thing that nobody denies is that he
17 immediately stopped doing business with those people.

18 Contrary to Mr. Brewington, when the funds were
19 even seized and he knew he was stealing from people, they
20 tried to get the money back, they hired a lawyer, they wanted
21 to get the money back, so they continued, my client cut ties,
22 which was the only thing he knew how to do.

23 I would ask respectfully, Your Honor, that,
24 according with the jury verdict, that you not consider facts
25 that he's been acquitted of or not found guilty of because I

1 do believe that the maximum punishment is not what the law
2 allows, but the maximum punishment based on a verdict is what
3 the Judge could only find by finding other facts. So, in
4 other words, the maximum punishment should be basically the
5 responsibility for the \$797.

6 Anything beyond that, we're assuming facts that
7 raise the sentence beyond what the statute actually allows.
8 That's my argument.

9 THE COURT: So your argument is, what is a
10 reasonable sentence? You haven't told me what that is, in
11 your view.

12 MR. LOPARDO: I have argued in my Sentencing
13 Memorandum that I believe that it should either be -- that
14 basically his base level should be no higher than seven.

15 THE COURT: But, remember, the premise of your
16 argument on your written filings were based on your
17 assumption that objections one through nine would be
18 sustained. Objections one through eight have been overruled.

19 So the base level -- the argument you're
20 extrapolating from the base-level-seven scenario does not
21 exist. We have a base level 27 scenario. So your argument
22 is based on a premise that doesn't exist at this point.

23 So do you want to modify your arguments or is it
24 still your position that he should be scheduled pursuant to a
25 base-level-seven analysis?

1 MR. LOPARDO: Well, I still -- I still believe that
2 should be the case. I understand it's not the case, but I
3 also understand the guidelines are advisory and there's no
4 minimum mandatory. I believe that my client would be a
5 candidate for probation.

6 THE COURT: I understand, but we have to accept
7 reality on reality's terms, and reality's terms here today
8 are that we have a base level 27. So I understand that
9 you're making an argument that he should be sentenced to
10 probation, but that's on a premise that does not exist.

11 So, I mean, if that's going to be your argument,
12 that's your argument. But the base level is not seven.

13 MR. LOPARDO: Well, one thing I would say for sure,
14 Your Honor, is I think, based on the testimony, at least,
15 here, that you should consider that he was not a leader or
16 organizer.

17 THE COURT: All right. Thank you for your
18 argument. Anything further?

19 MR. LOPARDO: Not at this time.

20 THE COURT: All right. Thank you, Mr. Lopardo.
21 Would the government like to make a sentencing
22 argument at this time?

23 Let me throw something at you here as you get
24 started. I understand that the whole premise here is that
25 the criminal history category -- and this question is for Mr.

1 Searle; feel free to be seated, Mr. Lopardo -- oftentimes
2 drives this. When I was a state court judge, I had someone
3 who was convicted of a third-degree felony by a jury where a
4 third-degree felony in the state of Florida is punishable by
5 a maximum penalty of five years, convicted, and he was
6 facing, as the maximum penalty, because of his prior criminal
7 history, over 15 years in prison. So that sort of thing
8 happens all the time. Sometimes the statutory maximums can
9 be blown away by a really bad criminal history category.

10 So here's my question, and I'd ask you to weave it
11 into your argument. I don't think there's any debate that
12 Brewington was the worst of all of the people involved in
13 this and maybe that I know of at this point. I know there's
14 someone on the run right now that might be proved to be worse
15 than Brewington.

16 Brewington was found guilty of all 16 counts and he
17 was sentenced to the top of the guidelines of 108 by the
18 Court. He was found guilty of the conspiracy and of one
19 count -- one substantive count on the criminal Indictment,
20 and is looking at a bottom of 120 to 150, higher than
21 Brewington (sic), who, I don't think there's any debate of
22 the ones who were tried here, was clearly the mastermind of
23 the three.

24 So why is it fair -- and I know what the score is
25 and I know all the rules apply to downward departures,

1 variances, et cetera. Why would it be fair to sentence him
2 to more than Mr. Brewington?

3 MR. SEARLE: I understand that, Your Honor. The
4 United States is asking for a low-end guideline sentence of
5 120 months here, and we believe that that takes into account
6 some of what the Court is concerned with in the sense that
7 Mr. Brewington was sentenced to the high end of his
8 guidelines range and we're asking for the Court to sentence
9 this defendant to the low end of his guidelines range.

10 As the Court recognizes, a big part of what's
11 driving the guidelines range here is the defendant's criminal
12 history category. However, the United States would point out
13 that the defendant earned that criminal history category by
14 leading a life of crime and earning a significant criminal
15 history over many years. And I'll address that later in my
16 argument, Your Honor, but we believe that he's undeserving of
17 any kind of downward variance here based on his history and
18 characteristics.

19 In terms of the nature and circumstances of his
20 offense, the defendant's argument seems to ignore that he was
21 convicted of a conspiracy, a conspiracy that he joined, that
22 he vitally assisted, and as a result, Your Honor, under the
23 law, he's responsible for all the harm caused by that
24 conspiracy.

25 This was a very serious crime, as the Court is

1 aware, with far-reaching implications. There were hundreds
2 of victims from all over the country. These were people that
3 did not have a lot of money themselves. They were retirees
4 on fixed incomes, elderly. Some of them had serious
5 illnesses. Some of them were veterans who were serving our
6 country, and this was a significant amount of money for them.

7 And I would also point out, Your Honor, that many
8 of the victims were defrauded not once but twice. There was
9 a scheme -- part of the scheme was when they would call to
10 complain, they were told to provide more money.

11 As I argued and as the Court has found, this was a
12 sophisticated scheme that was difficult to prosecute in the
13 sense that initially it was hard to determine who was
14 ultimately responsible.

15 And I'd point out, Your Honor, that this was a
16 crime that was committed solely for greed. All of the
17 defendants, including Defendant Aligwekwe, were intelligent.
18 They had a lot of opportunity and potential, things that they
19 could have provided to society, and instead they chose to do
20 this.

21 The sentence I'm asking for would reflect the
22 seriousness of this offense, promote respect for the law, and
23 provide just punishment.

24 The Court heard from the victims in this case. It
25 was a crime that really impacted them and they were so

1 impacted by it that they were able to come to court five
2 years later and provide details about how this happened. The
3 United States believes that a sentence of 120 months in this
4 case would vindicate those victims.

5 I'd also point out, Your Honor, that the defendant
6 showed no respect for the law over the months that he was
7 involved in this conspiracy. This wasn't a one-time deal.
8 He was provided with a significant amount of money in this
9 case and all of that money came from the victims.

10 From a deterrent standpoint, 120 months would be
11 appropriate, Your Honor. It would provide specific
12 deterrence to this defendant. He has not accepted
13 responsibility, and in fact his conduct continues to
14 demonstrate that he does not think what he was doing was
15 wrong. He continues to maintain that he was simply a lead
16 broker, and he's maintained that from the very beginning when
17 he was interviewed by law enforcement. He told them that he
18 was just obtaining leads. He was difficult with the agents.
19 He indicated that he'd beaten a prosecution in the past. He
20 did not seem to appreciate the gravity of the situation and
21 has continued to maintain that all he did here was provide
22 leads.

23 In his statement to the Court, he did express some
24 remorse, but he failed to indicate to the Court how truly
25 remorseful he should be, based on the fact that he pocketed

1 over \$120,000 in the victims' money. And the United States
2 believes that his failure to appreciate and accept
3 responsibility here is dangerous in that it indicates that
4 he's deluded himself into believing that what he engaged in
5 was legitimate activity, to some extent.

6 I'd also point out his statements to law
7 enforcement contradict his claim he would have immediately
8 cooperated with law enforcement once he realized that there
9 was illegal activities going on, because as the Court heard
10 from the testimony of the agent, he refused to identify
11 co-conspirators when he was provided with photographs of
12 them.

13 From a general deterrent standpoint, the sentence
14 is appropriate. As the Court heard testimony, this type of
15 fraud was prevalent in the Central Florida area, based on the
16 resorts that are in the area. And telemarketing is another
17 problem in the area. So from a general deterrent standpoint,
18 the sentence would be appropriate.

19 And, lastly, to protect the public, Your Honor.
20 This defendant does have a significant criminal history
21 category, as I alluded to. It's a history that includes some
22 violence, erratic behavior, serious drug abuse, involuntary
23 hospitalization due to mental health.

24 And what makes him more dangerous is that he fails
25 to appreciate some of his problems. On numerous occasions,

1 as I read in the P.S.R., he's refused mental health
2 counseling or assessments. His parents don't fully
3 appreciate his issues because he hides things from them. And
4 he continued to engage in telemarketing after this scheme,
5 selling vacation packages to victims.

6 Now, we have no evidence to indicate that he
7 committed any crimes while doing that, but it is of some
8 concern to the United States that he was involved in this
9 fraud scheme involving telemarketing and continued to be in
10 that industry after this scheme.

11 He has no license to engage in telemarketing, and
12 from what the United States can gather, he still had access
13 to customer leads when he was engaging in that activity. So
14 it is of concern.

15 Lastly, Your Honor, the history and characteristics
16 of this defendant would weigh strongly in favor of a
17 significant sentence. As I've indicated, he earned his
18 criminal history category of V. His convictions are for
19 resisting arrest, making harassing phone calls, felony
20 possession of cocaine, battery, and burglary with assault or
21 battery.

22 He engaged in violent and troubling behavior in the
23 underlying facts of many of these convictions. Other arrests
24 are for serious crimes, including possession of an assault
25 rifle as a convicted felon.

1 Despite all this significant criminal history
2 category, and this is specifically to address the Court's
3 concern, he's never received a significant prison sentence.
4 He's been given chance after chance and he continues to
5 recidivate.

6 So we do think that the low-end guideline sentence
7 here would be an appropriate way to address his role in this
8 conspiracy and distinguish him from Eugene Brewington. Even
9 though it is a greater sentence, it is a low-end guideline
10 sentence and it does address his significant criminal
11 history, which he's earned.

12 Beyond his criminal history, Your Honor, his
13 relationship with his family is poor. He's estranged from
14 his father, who couldn't control his behavior growing up.

15 He has two children who he pays no child support
16 for. He's not paid since 2010, and yet in this case, Your
17 Honor, he earned over \$120,000 in just three months.

18 One of the children, from what I gather from the
19 P.S.R., he does not know the last name of. So he's not had a
20 relationship with these children, which I think is
21 demonstrative of his characteristics.

22 In another instance, Your Honor, the Court granted
23 a temporary injunction for protection of one of the children.

24 So I think what the Court is concerned with is
25 disparity, but I don't think disparity is an issue here

1 because this defendant has a significant criminal history
2 whereas Defendant Brewington did not. That was his first
3 criminal conviction.

4 This defendant provided the leads, which were vital
5 to this scheme. He did other things that he's not accepted
6 responsibility for. During his allocution to the Court, he
7 failed to explain what he was doing on that floor, on the
8 second floor.

9 THE COURT: I thought Brewington managed to provide
10 the leads with the laptop that he apparently obtained from
11 Ricardo Bell.

12 MR. SEARLE: Your Honor, that was part of it, but
13 from this defendant's own admissions, he was providing leads
14 to these individuals.

15 THE COURT: You believe that. You believe that he
16 was managing an office upstairs. It wasn't just leads.

17 I mean, my impression from the trial testimony is
18 the primary source of leads was that laptop that was taken
19 from Bell and wound up in the hands of Mr. Brewington.

20 MR. SEARLE: Your Honor, I believe this defendant
21 was doing both, engaging in both. I don't know if the leads
22 that were on that laptop ultimately came from this defendant.
23 We don't have that information.

24 However, what's troubling -- most troubling to the
25 United States is he continues to maintain that all he did

1 here was provide leads. There's never been an explanation to
2 the Court as to what was happening on that second floor,
3 where a number of witnesses have indicated he was actually
4 running his own floor of callers.

5 So I don't think disparity is of grave concern here
6 and I think a low-end guideline sentence appropriately
7 addresses this defendant's role in this conspiracy.

8 THE COURT: All right. Thank you.

9 The Court has asked the defendant why judgment
10 should not now be pronounced, and after hearing the
11 defendant's response, the Court has found no cause to the
12 contrary.

13 The parties have made statements in their behalf or
14 waived the opportunities to do so. And the Court has
15 reviewed the Presentence Report.

16 Mr. Lopardo, your arguments are very clever with
17 regard to two counts versus 16 counts, but they remind me of
18 something I saw a public defender do in a violation of
19 probation hearing a long time ago in St. Augustine, where his
20 client was violated on his probation for testing positive for
21 cannabis. Well, the tests that they administered were tests
22 for five different substances, one of which was cannabis.
23 And when he took the person testing the -- his client through
24 cross-examination, he had the person admit under oath that he
25 had not tested positive for four of the five substances. And

1 then with a look of confusion on his face, he looked at the
2 judge and says, "Since when does someone fail a test for
3 getting 80 percent?"

4 That's sort of the same kind of logic that you're
5 applying here. You seem to be relying on the fact that just
6 based on a very macroview of the case, that he was acquitted
7 of all but two and 14 went down the wayside, so that somehow
8 vindicates him in some way.

9 I don't consider what he was acquitted of. What he
10 was acquitted of, it's not in front of the Court. I'm not
11 going to punish your client or order some sort of sentence
12 based on the fact I suspect something. He was acquitted.
13 That's behind us. The only thing before the Court are the
14 two counts.

15 So in that regard, he's being sentenced according
16 to the two counts, the two counts only, with the appropriate
17 considerations for the guidelines that I'm permitted to take
18 into consideration, and that's it.

19 The problem is the criminal history puts him in a
20 much different situation than Mr. Brewington, as the
21 government correctly points out. But my bone of contention
22 with the government is the assumption that the bottom of the
23 guidelines is the fair and appropriate sentence in every
24 single circumstance or even this one.

25 I have to make a determination on what's fair, and

1 by "What's fair?" what is enough? What is enough to satisfy
2 the statutory purposes of sentencing?

3 And the government's default is that 120 is enough
4 or the appropriate amount. I don't necessarily agree with
5 that because I have to take into consideration disparity.

6 The fact that Mr. Brewington, in my view, according
7 to the three that were tried before this Court, is easily the
8 most culpable of the three. And it seems to me unfair and a
9 violation of the rules of disparity to just give him 120
10 because that's what he scores, based on the criminal history,
11 when a person considerably more culpable, the master mind of
12 the three that came in front of me had a high end of 108. So
13 that's sort of where I'm at.

14 And while I understand that the guidelines are a
15 very valid starting point, I don't think they're a default,
16 definition of fairness, or appropriate.

17 So if you would be kind enough to approach the
18 podium with your client, we're going to wrap up the session
19 with the actual sentence.

20 Mr. Lopardo, please approach the podium with your
21 client.

22 Pursuant to Title 18, U.S. Code, Sections 3551 and
23 3553, it is the judgment of the Court that the Defendant
24 Chima Edozie Aligwekwe is hereby committed to the custody of
25 the Bureau of Prisons to be imprisoned for a term of 108

1 months. This term shall consist of 108 months as to Counts
2 One and Twelve, to run concurrently with each other.

3 Upon release, he shall serve a three-year term of
4 supervised release, and that's concurrent as to Counts One
5 and Twelve.

6 While on supervised release, the defendant shall
7 comply with the standard conditions adopted by the Court in
8 the Middle District of Florida.

9 In addition, he shall comply with the following
10 special conditions: He shall participate in a -- let me take
11 a step back on that because this seems to be boilerplate in
12 some of these sentences.

13 Is there any reason from the government's
14 perspective that other than an independent evaluation and
15 recommendation later, that I need to order now that he
16 participate in a substance abuse program? I don't see any
17 evidence of that in this case.

18 MR. SEARLE: One moment, Your Honor.

19 THE COURT: And if you want to confer with
20 probation, you're welcome to do that. And while you do that,
21 I'm going to continue marching forward. We'll get back to
22 that.

23 The defendant shall participate in a mental health
24 treatment program, outpatient and/or inpatient, and follow
25 the probation officer's instructions regarding the

1 implementation of this Court directive.

2 Further, the defendant shall contribute to the cost
3 of these services, not to exceed an amount determined
4 reasonable by the Probation Office's sliding scale for mental
5 health treatment services.

6 The defendant is prohibited from incurring new
7 credit charges, opening additional lines of credit, or
8 obligating himself for any major purchases without prior
9 approval of the probation officer.

10 The defendant shall provide the probation officer
11 with access to any requested financial information.

12 The defendant, having been convicted of a
13 qualifying felony, shall cooperate in the collection of
14 D.N.A. as directed by the probation officer.

15 The mandatory drug-testing requirements of the
16 Violent Crime Control Act are imposed.

17 The Court orders the defendant to submit to random
18 drug testing, not to exceed 104 tests per year. I'm going to
19 leave that at the discretion of Probation, also.

20 There is no restitution ordered here today.
21 However, the determination of restitution is hereby deferred.

22 Pursuant to Title 18, U.S. Code, Section 3669, the
23 Court sets a hearing regarding restitution on November 22,
24 2016.

25 And, Miss Darleen, what time is that already set

1 for with Mr. Brewington?

2 (No response.)

3 THE COURT: I'll let you get back to me on that
4 one, too.

5 THE COURTROOM DEPUTY: Yes, Judge.

6 Based on the financial status of the defendant, the
7 Court waives imposition of a fine.

8 From the government's perspective, are there any
9 forfeiture matters to consider?

10 MR. SEARLE: Yes, Your Honor. The United States
11 would ask that the Court enter the forfeit --

12 THE COURT: Have you filed --

13 MR. SEARLE: -- forfeiture money judgment that's at
14 Document 140 into the final judgment here.

15 THE COURT: I will do that.

16 It is further ordered the defendant shall pay a
17 special assessment of \$200, 100 per count, which will be due
18 immediately.

19 Getting back to my question for the government on
20 the substance abuse program.

21 MR. SEARLE: Your Honor, from the P.S.R., it does
22 indicate that the defendant has had substance abuse in the
23 past, using crack cocaine in 2002, and has had some issues
24 with alcohol. So we would ask for the Court to require
25 substance abuse treatment.

THE COURT: All right.

I'm going to require that he be evaluated, and if the evaluation reveals that he requires substance abuse treatment, then it will be authorized by the Court.

Also, Miss Darleen, when is the restitution hearing scheduled for, the time?

THE COURTROOM DEPUTY: 9:30 a.m.

THE COURT: All right.

Then we will start that hearing at 9:30 a.m. on
that day.

The Court having pronounced sentence, does counsel for the defendant have any objections to the sentence or the manner in which it was imposed?

From the defense perspective, are you objecting to the sentence as being substantively unreasonable, to preserve your rights on appeal?

MR. LOPARDO: Yes, Your Honor, and renew all other objections made.

THE COURT: All right. That is preserved.

Anything from Probation?

THE PROBATION OFFICER: Yes, Your Honor. As to paragraph 121, the objection that you sustained, is it okay if we put that information in the Statement of Reasons or do you want me to delete it entirely out of the P.S.R.?

If I have to delete it out of the P.S.R., the

1 entire P.S.R. would have to be refiled.

2 THE COURT: It'll be in the Statement of Reasons.
3 I understand. So we don't want to have you do all that over
4 again.

5 THE PROBATION OFFICER: Okay.

6 THE COURT: The defendant is hereby remanded to the
7 -- forgive me.

8 Does the government have any objection to the
9 sentence or the manner in which it was imposed?

10 MR. SEARLE: No, Your Honor.

11 THE COURT: The defendant is hereby remanded to the
12 custody of the U.S. Marshal to await designation by the
13 Bureau of Prisons.

14 In the event of an appeal, Mr. Aligwekwe, you have
15 the right to appeal the judgment and sentence within 14 days
16 of today's date. Failure to appeal within that 14-day period
17 shall constitute a waiver of your right to appeal.

18 Your attorney just objected to the substantive
19 reasonableness of the sentence. So if you're going to appeal
20 that to the Eleventh Circuit Court of Appeals, that needs to
21 happen within the next 14 days.

22 The government may also file an appeal from the
23 sentence.

24 You are entitled to the assistance of counsel in
25 taking an appeal; and if you're unable to afford a lawyer,

1 one will be appointed for you.

2 If you're unable to afford a filing fee, the clerk
3 of court will be directed to accept notice of appeal without
4 such fee.

5 Anything further from the government?

6 MR. SEARLE: No, Your Honor. Thank you.

7 THE COURT: Mr. Lopardo, anything further?

8 MR. LOPARDO: Your Honor, what was the date of the
9 restitution hearing?

10 THE COURT: It's November 22nd at -- did you say
11 9:30?

12 THE COURTROOM DEPUTY: Yes, Judge.

13 THE COURT: At 9:30. All right. We'll see you
14 then.

15 MR. LOPARDO: Will the. . .

16 THE COURT: Are you requesting he be present for
17 the hearing?

18 MR. LOPARDO: Yes, Your Honor.

19 THE COURT: All right. Well, make sure that you
20 notify the government and that Miss Darleen is aware of that.
21 We'll make sure he's here.

22 All right. Anything further from the government?

23 MR. SEARLE: No, Your Honor.

24 THE COURT: Defense?

25 MR. LOPARDO: No, Your Honor.

1 THE COURT: All right. Court's in recess.

2 MR. SEARLE: I'm sorry, Your Honor. I failed to do
3 this. We would move to dismiss the original Indictment.

4 THE COURT: I wondered why Darleen was moving
5 around. All right. That will take place.

6 THE COURTROOM DEPUTY: Thank you, Judge.

7 THE COURT: All right. Court's in recess.

8 (Proceedings concluded at 11:37 a.m.)

9 - - - - -

10 Reporter's Certification

11 I certify that the foregoing is a correct transcript from the
12 record of proceedings in the above-entitled matter.

13 s/Diane Peede, RMR, CRR
14 Official Court Reporter
United States District Court
Middle District of Florida

15 Date: January 17, 2017

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No. _____

In The
Supreme Court of the United States

CHIMA EDOZIE ALIGWEKWE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

PETITIONER'S APPENDIX G

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA,

Case No. :
6:15-cr-249-Orl-41TBS

vs.

CHIMA EDOZIE ALIGWEKWE
EUGENE WARREN BREWINGTON,

Orlando, Florida
November 22, 2016
10:22 a.m.

Defendants.

TRANSCRIPT OF RESTITUTION HEARING
BEFORE THE HONORABLE CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

Counsel for Plaintiff: Andrew C. Searle

Counsel for Defendant Che Lopardo
Chima Edozie Aligwekwe:

Counsel for Defendant Lydia R. Pittaway
Eugene Warren Brewington:

Proceedings recorded by mechanical stenography.
Transcript produced by computer-aided transcription.

Court Reporter: Suzanne L. Trimble, CCR, CRR, RPR
Federal Official Court Reporter
401 West Central Boulevard, Suite 4600
Orlando, Florida 32801
e-mail: trimblecourtreporter@gmail.com

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PROCEEDINGS

2 THE COURTROOM DEPUTY: United States of America v.
3 Chima Edozie Aligwekwe, Case No. 6:15-cr-249. Will counsel
4 please state their appearances for the record?

5 MR. SEARLE: Good morning, Your Honor. For the
6 United States, Andrew Searle, and, Your Honor, I'm joined by
7 Postal Inspector David Keith, the case agent in this matter.

8 THE COURT: Good morning.

9 MR. LOPARDO: Good morning, Your Honor. Che Lopardo
10 on behalf of Chima Aliqwekwe.

11 THE COURT: All right. Good morning, Mr. Lopardo.
12 Are we intending on going fully contested on this restitution
13 hearing?

14 MS. SEARLE: Your Honor, that is my understanding.
15 I haven't received any stipulations.

16 THE COURT: All right. Government, call your first
17 witness.

18 MS. SEARLE: Your Honor, at this time the United
19 States calls Postal Inspector David Keith.

20 THE COURT: Are you going to be asking that I
21 incorporate in my analysis the record of trial in my decision?

22 MS. SEARLE: Yes, Your Honor.

23 | THE COURT: All right. Come on forward.

24

25 | //

POSTAL INSPECTOR DAVID KEITH,

called by Plaintiff, having been first duly sworn, was
examined and testified as follows:

THE COURT: All right. Once seated, make yourself comfortable with the chair's proximity to the microphone. Then go on ahead and state your full name into that microphone.

THE WITNESS: Hello. My name is David Kyou Keith.

THE COURT: Your witness.

MR. SEARLE: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. SEARLE:

Q Sir, for the record, how are you employed?

A I'm a United States postal inspector.

15 Q Were you the case agent in this matter involving Chima
16 Edozie Aliwekwe?

17 A Yes, sir.

18 Q And were you present for the trial in this matter?

19 A Yes, sir.

20 Q Just so we have a record, can you briefly give us a
21 general outline of the scheme that this case involved?

22 THE DEFENDANT: Objection, Your Honor. For the
23 record, I reserve all my rights. I don't have a contract with
24 Mr. Lopardo. He doesn't represent me. I represent myself.

And I now challenge jurisdiction. Under which

1 jurisdiction are these proceedings being held under? Is it
2 the Trading of the Enemies Act?

3 THE COURT: All right. Well, you're not in a
4 position to ask me any actions. I see what's going on here.

5 Mr. Lopardo, your client seems to be interested in
6 proceeding pro se at this point. Are you no longer the
7 attorney of record on this case?

8 MR. LOPARDO: Your Honor, this is the first I've
9 heard of it, so --

10 THE DEFENDANT: I don't have a contract with
11 Mr. Lopardo. He doesn't represent me.

12 THE COURT: Well, I know what you're doing here. I
13 guess we're going down the sovereign citizen, which has been
14 tried so many times and has --

15 THE DEFENDANT: Your Honor, I'm not a sovereign
16 citizen.

17 THE COURT: Well, I don't know what you're doing.
18 But here's what we're gonna do: Until you are representing
19 yourself, then the only person that's gonna address the Court
20 on your behalf on these legal matters is your attorney.

21 So I'm gonna take an opportunity. We are going to
22 take a break. I want you to talk to your attorney. If I need
23 to make a decision you're going to represent yourself, I need
24 to take you through a certain amount of questioning.

25 So talk to your attorney. If when I come back you

1 tell me you want to fire him because he doesn't represent you
2 anymore -- by the way, he currently represents you. So if you
3 want that to change, I need you to tell me that, and I need to
4 ask you some questions. It's called a Faretta inquiry where I
5 can determine whether or not you're competent to represent
6 yourself. So talk to your attorney. If you want to fire him,
7 tell me when I get back, and we'll proceed in that context.

8 So we're going to take as long a break as we need.

9 Ms. Darleen, just let me know when they're ready.

10 MS. SEARLE: Your Honor, one issue. The evidence is
11 gonna be the same for the restitution hearing involving --

12 THE DEFENDANT: Objection, Your Honor.

13 MS. SEARLE: -- defendant Brewington, so --

14 THE COURT: What are you objecting to?

15 THE DEFENDANT: Well, since you don't have
16 jurisdiction, I evoke equity. How can we handle these matters
17 in the private?

18 THE COURT: No. We're not going to do any of this.
19 So whatever you read on the Internet or were told by your
20 jailhouse lawyer is not going to work in here. He's allowed
21 to address the Court, even if you don't want him to.

22 So I'm going to give you this brief opportunity. I
23 can see where we're headed, and if you want to represent
24 yourself, you're perfectly capable of doing that, assuming you
25 make it through the inquiry. Your position is that no --

1 regardless of who is representing the defendant, pro se or
2 Mr. Lopardo, you're gonna have the same presentation, right?

3 MS. SEARLE: Yes, Your Honor, and it would be the
4 same evidence for the defendant Brewington, so --

5 THE COURT: Well, the problem is, if he's
6 representing himself, then he has the opportunity to object --

7 MS. SEARLE: I see.

8 THE COURT: -- and to cross-examine himself. So I
9 need to know what's going on here. So, Mr. Lopardo, talk to
10 your client. I'll be back, and we'll figure out what's going
11 on at that point. Court's going to be in recess.

12 (Recess at 10:27 a.m., until 10:45 a.m.)

13 THE COURT: All right. What's going on,
14 Mr. Lopardo?

15 THE DEFENDANT: Your Honor --

16 THE COURT: Yes.

17 THE DEFENDANT: -- for the record, I reserve all my
18 rights. Mr. Lopardo and I don't have a contract. He doesn't
19 represent me. I represent myself.

20 THE COURT: Are you asking to represent yourself?

21 THE DEFENDANT: Me and Mr. Lopardo don't have a
22 contract.

23 THE COURT: Well, you were determined to be indigent
24 and because of the paperwork you initially filled out, he was
25 assigned to be your attorney. He continues to be your

1 attorney, as all of the matters that were up for trial are
2 still open. So in order to undo that, you need to tell me
3 that you no longer want to be represented by an attorney. Is
4 that the case?

5 THE DEFENDANT: Well, Your Honor, I don't have a
6 contract with Mr. Lopardo.

7 THE COURT: I understand that.

8 THE DEFENDANT: I don't see how he can represent me.
9 I represent myself.

10 THE COURT: Well, let me tell you we're not gonna
11 get into the weeds on this. There isn't a contract
12 individually between an indigent defendant and an attorney.
13 As a matter of right, you have the right to be represented by
14 counsel when you're charged with a criminal offense, whether
15 or not you can afford to pay him.

16 The reason there's not a contract between you and
17 Mr. Lopardo is because you're not paying for your attorney.
18 If you had gone out and hired a private attorney to represent
19 you during this criminal prosecution, yes, you would have some
20 sort of representation agreement between you and your
21 attorney. But because you have been found indigent and you
22 asked for counsel, one was given to you. Because one is given
23 to you, there is no need to have a contract between you and
24 your attorney.

25 Is it your intent to go forward without an attorney

1 at this time?

2 THE DEFENDANT: That is correct, Your Honor. And
3 under what jurisdiction are these proceedings being held?

4 THE COURT: All right. I see where we're at. Based
5 on that question and the fact that you asked it for a third
6 time, it is my finding that you're not competent to represent
7 yourself.

8 So we can do this one of two ways. I'm not letting
9 Mr. Lopardo out. You can either sit and allow him to
10 represent you and abide by the rules of the Court, or I can
11 have you removed, and you can watch from a closed circuit TV
12 in another part of the courthouse. It's your choice.

13 So if your opening salvo to this Court is, Under
14 what authority does a United States district judge have to
15 preside over a restitution hearing subsequent to a criminal
16 jury trial, that is enough for me to conclude that you are
17 not capable of representing yourself.

18 THE DEFENDANT: Your Honor, by law I can challenge
19 jurisdiction at any point during the proceedings.

20 THE COURT: I agree. But I have to make a
21 determination as to whether or not I think based on my
22 interaction with you you're competent to represent yourself.
23 And my finding is that you are not, a matter that you can
24 appeal to the Eleventh Circuit Court of Appeals, if you would
25 like.

1 So that being the case, let's put the witness back
2 on the stand. Go on ahead and feel free to be seated.
3 Mr. Lopardo, you are still representing, over the objections
4 of your client, your client. So go ahead and be seated. All
5 right.

6 Mr. Searle, go on ahead.

7 MR. SEARLE: In order to expedite things, may I
8 approach the witness with what's been marked as Government's 1
9 and Government's 2?

10 THE COURT: You may.

11 MR. SEARLE: And, Your Honor, copies of these
12 exhibits have been provided to defense counsel, as well as the
13 Court.

14 THE COURT: Were these previously admitted in the
15 trial?

16 MR. SEARLE: A form of these charts were admitted or
17 charts that contain the information in these charts were
18 admitted, but these are altered specifically for this
19 restitution hearing to identify the specific victims we've
20 identified that are due restitution.

21 THE COURT: All right. Go on ahead.

22 BY MR. SEARLE:

23 Q Inspector Keith, what were the name of the two companies
24 that were at issue in this fraud scheme?

25 A Time Share Title Services and United Clearing Solutions.

1 Q And you recognize the charts that I've handed you,
2 Government's 1 and Government's 2?

3 A Yes, sir. Exhibit 1 would be the victims that we
4 identified with Time Share Title Services, and Exhibit 2 would
5 be for United Clearing Solutions.

6 Q Did you and another law enforcement officer participate
7 in the preparation of these charts for this specific
8 restitution hearing?

9 A Yes, sir, myself and Orange County Detective Johan
10 Anderson.

11 Q The information that's contained in the charts, are they
12 based on bank records and other evidence you obtained during
13 your investigation?

14 A Yes.

15 Q Do they fairly and accurately reflect the restitution
16 amounts owed to the identified victims of the scheme the
17 defendant was convicted of?

18 A Yes.

19 MR. SEARLE: Your Honor, at this time I offer into
20 evidence Government's 1 and Government's 2.

21 THE COURT: Mr. Lopardo, any objection?

22 THE DEFENDANT: Objection, Your Honor. Again, I
23 don't have a contract with Mr. Lopardo. Mr. Lopardo doesn't
24 represent me, and we still haven't cleared the matter of
25 jurisdiction, Your Honor.

1 THE COURT: My question is for the marshals here.
2 Is there any place that Mr. Aligwekwe can watch the
3 proceedings through a closed-circuit TV?

4 U.S. MARSHAL: Not downstairs in the cell block.
5 There is a method, I believe, that he can hear them in the
6 cell block. He can't see them, but he can hear them as they
7 are going.

8 THE COURT: All right. I'm gonna make a finding
9 that Mr. Aligwekwe continues to interrupt the proceedings. We
10 cannot go forward, and the Court is not going to explain to
11 Mr. Aligwekwe under what authority the Court has to conduct
12 these proceedings.

13 So let's take a break. Let's go on ahead and put
14 him there, and we'll continue with the proceedings.

15 U.S. MARSHAL: Your Honor, I have three other
16 defendants that are upstairs I would like to move, them take
17 them downstairs.

18 THE COURT: Whatever you need to do. Just let me
19 know when you're ready to go.

20 And I'm going to make a finding for the record that
21 the Court's decision is based on the defendant's continued
22 insistence on disrupting the proceedings. We cannot go
23 forward, if he continues interrupting the Court, interrupting
24 counsel, and trying to halt the proceedings. So we're gonna
25 take a break for a moment. As soon as they're set up and we

1 get confirmation of that, we'll continue from this point on.
2 Court is in recess.

3 (Recess at 10:50 a.m., until 11:17 a.m.)

4 THE COURT: Where is my deputy marshal? Come on up
5 to the podium. It's my understanding, if I'm not mistaken,
6 that we're having some difficulty setting up the circumstance
7 where he can listen to the proceedings, but he doesn't want to
8 listen now?

9 U.S. MARSHAL: Larry Brown, for the record, deputy
10 U.S. Marshal.

11 He made the statement on his own back there that he
12 didn't care to hear the hearing, and we didn't need to provide
13 anything for him.

14 THE COURT: So he told you not to provide him
15 anything because he doesn't want to hear the hearing?

16 U.S. MARSHAL: Correct, not only that, Your Honor, I
17 was mistaken. We don't have the ability to do that anyways.

18 THE COURT: Well, we would've looked for a plan B,
19 but I'm not going to bring him back in here because I think
20 that's gonna renew the destructive pattern I've observed
21 previously, but if he's told you and you're telling me that he
22 doesn't want to hear the proceedings, then I'm going to
23 proceed. We'll just let the chips fall where they may.

24 Mr. Searle, are you ready?

25 MR. SEARLE: I am, Your Honor. Now that we don't

1 have that issue to deal with, would it be possible to combine
2 the hearings, and if we have to start over, we haven't gotten
3 that far into the witness' questioning. I'm talking about the
4 restitution hearing for the co-defendant, Mr. Brewington,
5 because it is going to be essentially the same evidence.

6 THE COURT: But Mr. Brewington nor his counsel are
7 here right now, right?

8 MR. SEARLE: Counsel for Mr. Brewington is here.

9 THE COURT: Oh, but is Mr. Brewington waiving his
10 right to be here?

11 MS. PITTAWAY: No, sir, he's here.

12 THE COURT: Oh, well, let's bring him out then.
13 Mr. Lopardo, stay put, and we'll have Mr. Brewington sit next
14 to his attorney. Can we bring Mr. Brewington in?

15 U.S. MARSHAL: I don't know that he's here, Your
16 Honor.

17 THE COURT: I didn't know that we're having
18 Brewington -- I can tell you that I had no idea that there was
19 going to be a restitution hearing for Brewington. So I
20 wouldn't be surprised if he weren't here.

21 MS. PITTAWAY: It was received, reserved, and I have
22 it on my calendar, which I don't always personally calendar.
23 It made its way onto my calendar. I assumed there was a
24 CM/ECF notice and my legal assistant --

25 THE COURT: Well, we'll just conclude that it's my

1 error, but it was on my docket today only as a restitution
2 hearing for Mr. Aligwekwe.

3 MR. SEARLE: I guess probation had the same thing
4 that the Court had in terms of --

5 THE COURT: And Ms. Darleen is looking it up now.
6 You're welcome to remain there, Ms. Pittaway, but your client,
7 unless he accepts the results of this proceeding and waives
8 his right to be present, we'll just have to do it again, but
9 we're here, so you're certainly invited to remain as an
10 observer.

11 MS. PITTAWAY: Your Honor, in utter candor, my
12 client had actually asked to waive his appearance previously.
13 So I --

14 THE COURT: Then I'll allow you to participate, but
15 understand that just because I've been around for a while, it
16 doesn't stop him from saying, *I never waived anything. Show*
17 *me where I waived something*, then we're gonna have to do this
18 again, but all right, I'll take your word for it. Let's go.

19 So what we have previously presented to the Court is
20 Government's Exhibits 1 and 2. They're summaries of
21 information that was provided at trial.

22 Mr. Lopardo, any objection to their admission?

23 MR. LOPARDO: Your Honor, just for the record, just
24 to make clear, my only argument or my primary argument is that
25 notwithstanding my client's own objections that he made, I

1 discussed this with the U.S. Attorney's Office, my objection
2 to it is that there's no nexus because the jury verdict was
3 only limited to \$800. So that's my objection.

4 THE COURT: Mr. Searle, care to respond? I mean,
5 the analysis is a little different. I'll let him make his own
6 argument, but the analysis is a little different for
7 restitution. The restitution is not going to be limited by
8 the verdict form. But I understand the objection.

9 Mr. Searle, care to respond?

10 MR. SEARLE: Yes, Your Honor. I believe the case
11 law specifically allows for restitution to be made in an
12 amount and for conduct beyond what was proven at trial, and
13 the standard is preponderance of the evidence.

14 But I think Mr. Lopardo is making a legal argument
15 and not an evidentiary argument as to the admissibility of the
16 chart. So I think what he's saying goes more to weight and
17 less to admissibility. So I believe that the exhibit should
18 be admitted at this time.

19 THE COURT: All right. Ms. Pittaway, any objection?

20 MS. PITTAWAY: I would join in with Mr. Lopardo's
21 objection. My client's verdict form was different. So I
22 don't know whether or not --

23 THE COURT: No. I understand. Here's what I'll do:
24 I do think that he's laid the appropriate predicate to have
25 this admitted considering the burden, but both of your

1 objections are noted, and you might want to keep that sword in
2 the sheath until your argument because it's your argument that
3 -- I think your argument is it doesn't matter what's on these
4 forms, you believe legally that the Government is limited in
5 their pursuit of restitution to something more applicable that
6 was on the verdict form. So I understand that.

7 The objection as to admissibility of this document
8 is going to be overruled. They'll be admitted and you can use
9 them, but you're welcome to make that legal argument when the
10 Government provides their summation. So they'll be admitted.

11 You can proceed, Mr. Searle.

12 MR. SEARLE: Your Honor, I just want to make a brief
13 argument. Ms. Pittaway was present for the beginning portion
14 of the witness' testimony. So she's had an opportunity to
15 hear all of his testimony thus far. I just want to confirm
16 that for the record.

17 MS. PITTAWAY: That's correct, Judge.

18 THE COURT: All right. Thank you. Feel free to
19 leave.

20 U.S. MARSHAL: Your Honor, are we free to take
21 Mr. Aligwekwe downstairs?

22 THE COURT: Yes, you are. Thank you.

23 BY MR. SEARLE:

24 Q Inspector Keith, very briefly, can you just summarize the
25 columns that are depicted in the two charts that have been

1 admitted, starting with Government's 1?

2 A Yes, sir. The first column is the last -- sorry. The
3 first two columns are the last and first names of the victim
4 that provided a statement to us, their home address with the
5 city, the state, and the zip code.

6 The loss amount is what the victim provided to us
7 about how much they lost to the actions of Time Share Title
8 Services and subsequently United Clearing Solutions, if it's
9 on Exhibit 2.

10 And the last one, the statement received, is if we
11 got a statement from them or a police report where they've
12 reported to the local agency.

13 Q And just so the record is clear, how were these victims
14 identified during your investigation?

15 A A large majority of them were identified through the
16 deposits into the bank accounts that we identified for Time
17 Share Title Services and United Clearing Solutions.

18 Q In addition to those victims, were there also victims
19 that you ultimately received statements from, statements that
20 were made to law enforcement agencies indicating that they
21 were victims to the fraud scheme in this case?

22 A Yes, sir.

23 Q And so the column that indicates *Statement Received*, does
24 that refer to whether you received a statement from the victim
25 or another law enforcement agency received a statement from a

1 victim?

2 A Yes, sir.

3 Q And what did these statements indicate?

4 A They would normally be the victims writing on -- their
5 dealings with one of representatives from Time Share Title
6 Services or United Clearing Solutions, and how much money that
7 they paid with the intent that they thought that they had --
8 there was a buyer for their time share, and they also reported
9 that after the payment was sent in that they received
10 absolutely no services for their payment.

11 Q So the loss amount, does that come from the statement
12 they provided to your agency or another law enforcement
13 agency?

14 A Yes, sir.

15 Q And did any of the victims in this investigation receive
16 any services or refunds from the two companies that were at
17 issue?

18 A No, none.

19 MR. SEARLE: Your Honor, I have nothing further.

20 THE COURT: Cross-examination, we'll start with
21 Mr. Lopardo. By the way, Ms. Pittaway, it was our error. He
22 was supposed to be here. The Court didn't arrange for his
23 transport. So your calendar was correct. The reason it was
24 sent out wrong to everyone else is because we didn't docket
25 him. All right.

1 So, Mr. Lopardo, feel free to proceed with the
2 cross, if you have one.

3 MR. LOPARDO: No, Your Honor.

4 THE COURT: Ms. Pittaway, cross-examination?

5 MS. PITTAWAY: Yes, sir.

6 CROSS-EXAMINATION

7 BY MS. PITTAWAY:

8 Q Now, there was a seizure warrant that was signed and
9 executed regarding the United Clearing Solutions account,
10 correct?

11 A Yes, ma'am, there was.

12 Q Do you recall what the amount of that seizure was?

13 A Somewhere in the neighborhood of 16,000, if I recall.

14 Q Would reviewing the seizure warrant refresh your
15 recollection?

16 A Yeah. That would be fine, yes. I don't know if the
17 seizure warrant would have -- the return would have it. Let
18 me see.

19 MS. PITTAWAY: Permission to approach?

20 THE COURT: You may.

21 BY MS. PITTAWAY:

22 Q Sir, I'm showing you what was previously entered into
23 evidence during the trial as Government's Exhibit 11-E.

24 A Yes.

25 Q Do these documents look familiar? Do they refresh your

1 recollection?

2 A Yes. But this is not for United Clearing Solutions
3 though. This is for Time Share Title Services. We did a
4 seizure warrant for them as well.

5 Q Now, with the seizure that occurred on the bank account,
6 what was the total amount that was seized?

7 A For Time Share -- for the Chase account for Time Share
8 Title Services was \$21,922.38.

9 Q Were there any other seizures that occurred as to any
10 other accounts?

11 A Yes. There was seizure of the Fifth-Third Bank account
12 for United Clearing Solutions.

13 Q And do you recall the approximate figure of that seizure?

14 A That would be about, approximately, 16,000-maybe-400,
15 something like that, in that neighborhood.

16 Q Now, the money that was seized, I want to turn your
17 attention to that money there. Was any of that money
18 disbursed to any of the victims in the case?

19 A No.

20 Q Do you know, as we sit here today, where that money is?

21 A That money is in our -- in a holding account that we have
22 for the inspection service.

23 Q And so it's still available for disbursement, correct?

24 A Yes.

25 MS. PITTAWAY: I have no further questions.

1 THE COURT: All right. Any redirect examination?

2 MR. SEARLE: No, Your Honor.

3 THE COURT: All right. Thank you. Feel free to be
4 seated at counsel table. Is there any more testimony to be
5 provided by the Government?

6 MR. SEARLE: No, Your Honor, just argument.

7 THE COURT: Mr. Lopardo, are you going to be
8 providing any evidence at this time, calling any witnesses?

9 MR. LOPARDO: No, Your Honor.

10 THE COURT: Ms. Pittaway?

11 MS. PITTAWAY: No further evidence, Judge.

12 THE COURT: The burden is the Government's. I'd
13 invite you to make your final argument, and then I'll hear
14 from opposing counsel.

15 MR. SEARLE: Your Honor, at this time based on the
16 evidence, not only at this restitution hearing but the
17 evidence, the overwhelming evidence that was presented at
18 trial, the United States would ask the Court to enter
19 restitution orders in the amounts set forth in these charts as
20 to both defendants, to make restitution to all of the victims
21 listed in the two charts that have been admitted into
22 evidence.

23 THE COURT: So specifically you're asking for
24 \$347,996.21 on Exhibit 1, and then on Exhibit 2 your asking
25 for \$24,350. Do I have that correct?

1 MR. SEARLE: Yes, Your Honor, to be made payable in
2 the individual amounts listed in the charts to the, to the
3 various victims.

4 What was the first amount that the Court referred
5 to?

6 THE COURT: It's at the bottom of page 5 on your --

7 MR. SEARLE: Yes.

8 THE COURT: 347,996.21.

9 MR. SEARLE: Yes.

10 THE COURT: Okay.

11 MR. SEARLE: We believe that we've met our burden of
12 establishing that this is the restitution owed by these
13 defendants based on the preponderance of evidence standard.
14 The Court doesn't need to make specific findings of fact at
15 this restitution, so long as the record contains sufficient
16 data supporting the restitution order. There does not need to
17 be a precise calculation. Specifically the Court need only
18 make a reasonable estimation of loss.

19 I anticipate the objection is going to be that all
20 of these victims were not specifically alleged in the
21 indictment, and all of these victims did not testify at the
22 trial. However, as I've already kind of alluded to, the case
23 law specifically states that when there's a conviction of a
24 conspiracy to defraud or scheme to defraud, the Court can
25 order restitution caused by the entire fraud scheme, including

1 losses caused by other members of the conspiracy which did not
2 specifically involve the two charged defendants. The Court
3 can even order restitution for specific acts of fraud not
4 proved by Government at trial.

5 There's a litany of cases on point that have made
6 these holdings. I'll just cite two of them. One is *United*
7 *States v. Davis*, which is 117 F. 3d 459, which is a 1997
8 Eleventh Circuit opinion. And then the other one is *United*
9 *States v. Alas or Alas, A-1-a-s*, which is at 196 F. 3d 1250,
10 and that's a 1979 Eleventh Circuit opinion. Actually, I think
11 it's a 1999 Eleventh Circuit opinion.

12 Really what the standard is, Your Honor, is a
13 proximate cause standard, and the Court can include any losses
14 resulting from acts taken in furtherance of the conspiracy.

15 So these charts are from individuals who provided
16 statements to law enforcement stating that they are victims
17 and stating that these specific amounts are the amounts that
18 they paid to these two companies that were at the heart of
19 this fraud scheme, which both defendants actively participated
20 in and used as the vehicle to execute these, these fraud
21 schemes.

22 The Court has heard testimony at the sentencing and
23 at the trial that not one victim ever received any refund from
24 these two companies and not one victim ever received the
25 services that they were promised in exchange for their

1 payment. So I believe that we've established these are the
2 restitution amounts.

3 In terms of any money that was seized from accounts,
4 that's not something the Court can take into consideration in
5 terms of setting the restitution order. Down the road, the
6 Attorney General may approve that those funds can be used to
7 pay victims, but that's something that would need to be
8 decided within the Department of Justice, and we can't assure
9 the Court that that will ever be approved.

10 So I've consulted with the forfeiture AUSA in my
11 office, and she's indicated to me that that's a procedure that
12 has to take place within the Department of Justice, and
13 there's no guarantee that that approval will ever take place.

14 So I would ask the Court not to consider any funds
15 that have been seized from any accounts as to what the
16 restitution order should look like here, Your Honor. Thank
17 you.

18 THE COURT: Thank you. Mr. Lopardo.

19 MR. LOPARDO: Yes, Your Honor. Briefly, as I
20 stated, I would make the argument that given my client's
21 situation with the jury verdict being approximately \$800 --

22 THE COURT: So you're in disagreement with -- I
23 mean, the basic premise here that you're in disagreement with
24 the Government on, you believe that legally the Government is
25 limited in their pursuit of restitution to whatever amount the

1 jury made a finding on the verdict form, correct?

2 MR. LOPARDO: That's my argument.

3 THE COURT: Okay. Now, here's the big question:
4 He's come armed with legal authority. Are you asking me to
5 make a novel ruling devoid of any legal authority guiding me
6 in this circuit, or do you have any legal authority that
7 expresses exactly what it is you're arguing?

8 MR. LOPARDO: My argument?

9 THE COURT: Yeah.

10 MR. LOPARDO: I don't have any on point authority at
11 this moment.

12 THE COURT: All right. So you're asking me to go
13 way out on that limb and disagree with current existing case
14 law in the Eleventh Circuit and limit the amount of
15 restitution the Government can pursue to whatever is found on
16 the verdict form?

17 MR. LOPARDO: Correct.

18 THE COURT: All right. Feel free to proceed with
19 the argument.

20 MR. LOPARDO: Having said that, Your Honor, I would
21 ask that if the Court does impose restitution that the Court
22 take into consideration the fact that he has a family and the
23 fact that he is likely going to be indigent when he is
24 released. I understand that the Court is concerned about the
25 victims, but at the same time, in order for him to fully

1 rehabilitate, in whatever order you render I would just ask
2 that you would keep it as less severe as possible, so that
3 when he does become gainfully employed, hopefully he can
4 remain so.

5 THE COURT: All right. Thank you, Mr. Lopardo.

6 Ms. Pittaway. And, Ms. Pittaway, you don't need to
7 do anything further in terms of your client's waiving his
8 right to be here. Your representation to the Court will
9 suffice. I don't want to put any more work on your plate.

10 MS. PITTAWAY: Yes, sir, and I actually have a
11 witness to it, too. So if, for whatever reason, a 2255 should
12 happen down the road, I do have a witness.

13 THE COURT: I trust you anyway. Go on ahead.

14 MS. PITTAWAY: Yes, sir. So turning to the
15 summation on behalf of Mr. Brewington, Mr. Brewington would
16 renew his objection to the facts of the case, his objections
17 as stated in the presentence report and at the time of
18 sentencing, and we would ask for this Court to make specific
19 findings.

20 Turning to the evidence that's been presented by the
21 Government today, there would -- we would ask the Court --
22 notwithstanding the objections, we would ask the Court to have
23 a setoff value for the amounts of money that were in the
24 accounts which were seized. While I understand that
25 Mr. Searle has provided --

1 THE COURT: Do you have those amounts? Do you know
2 what those amounts are at this time?

3 MS. PITTAWAY: One of the amounts is \$21,922.38.
4 And the other figure as attested to is approximately \$16,000.

5 THE COURT: Well, I need a little more than -- all
6 right. I understand. I guess the dilemma here is that in
7 order to go down that road, I would need more information. I
8 mean, it's not a matter of just knocking it off the top.
9 They've itemized each individual victim in this case they
10 allege haven't been made whole at this point.

11 Your argument that they shouldn't have to pay double
12 restitution, I mean, it's a legitimate argument, but I don't
13 know how I would go about doing that at this point. I mean,
14 who was paid that money back, if it was paid back to them at
15 all? And I don't think that's the Government's position.
16 It's been seized --

17 Mr. Searle, did the Government -- there's been a
18 seizure of that money.

19 MR. SEARLE: Yes, Your Honor. And it hasn't been
20 disposed of yet. In order for that to happen, the Court needs
21 to set a restitution order, and then there's an internal
22 process within the Department of Justice to -- because my
23 understanding under the law is that seized assets are not to
24 be used and there's caselaw on point not to use --

25 THE COURT: To pay restitution.

1 MR. SEARLE: To pay restitution. There's a
2 mechanism within the Department of Justice to make funds that
3 have been seized from a frozen account and use that to make
4 some of the victims whole, but that's an internal Department
5 of Justice procedure, and the only way to even start that
6 process is for there to be a finalized restitution order in
7 place, and then there, I believe, is some kind of a hierarchy
8 as to what victims are made whole first.

9 THE COURT: Does that strike you as unusual or
10 curious?

11 MR. SEARLE: Your Honor, I --

12 THE COURT: I'm sure you're not in a position to
13 comment or be critical on DOJ's internal policies, but it
14 seems to me that's the Government's way of announcing that
15 their seizing of these assets is more important than making
16 victims whole. I mean, it is counterintuitive beyond my
17 ability to comprehend why the Government would just -- and
18 what you said a moment ago is they'll return a portion of it.
19 They shouldn't return a portion of it. Every penny should go
20 to the victims before the Government gets a nickel, but that's
21 the Government's position. And I don't work for DOJ. But
22 that, to me, is ridiculous, but I don't expect you to comment
23 on that.

24 MR. SEARLE: Your Honor, it may happen here. It's
25 something --

1 THE COURT: It's not a matter of *may happen*.

2 MR. SEARLE: It's well above my pay grade,
3 obviously.

4 THE COURT: Right. It's not a matter of *it may*
5 *happen*. It's should happen, and it's preposterous if it
6 doesn't.

7 MR. SEARLE: Nonetheless, that has no bearing on
8 what the restitution order should be in this case because --

9 THE COURT: No, I understand. I'm just whining out
10 loud. So your position is I need to make the order, and then
11 DOJ with the seized amounts of money will return a portion of
12 them to the victims, and then it will get squared away on that
13 level. I get that. It's just my, I guess probably more than
14 it should be, audible complaint that the Government should be
15 required as a matter of law to give all of that money to the
16 victims before they could keep a nickel.

17 All right. Go on ahead.

18 MS. PITTAWAY: Yes, sir. And if the Court were not
19 inclined to provide a setoff for the restitution order, if
20 there could be a provision in the restitution order which
21 would prevent or bar double recovery for any of the moneys
22 that are returned from those seized accounts to the victims,
23 it would prevent the double recovery of Mr. Brewington then
24 paying those same victims that same amount of money again. So
25 I'm sure that the Court could provide a provision to prevent

1 that double recovery from occurring.

2 THE COURT: Okay.

3 MS. PITTAWAY: I do have argument to present
4 regarding the scheduled restitution payments. I haven't heard
5 that come up yet. So I don't know if the Court wanted me to
6 proceed into that territory.

7 THE COURT: Well, has your client been ordered after
8 being released to pay a certain amount of money? I mean,
9 that's generally part of the specifics of the supervision.

10 MS. PITTAWAY: The fine was waived at the time of
11 sentencing because the Court found that he had the -- he
12 didn't have the ability and --

13 THE COURT: Right. For example, there's that order
14 that they pay \$25 a month, if they have a non-UNICOR job and
15 another amount if they have a UNICOR job, and then once
16 they're released, then they go on supervised release, and if
17 they're required to pay a certain monthly amount -- I don't
18 recall what it was in this case, but, I mean, you're welcome
19 to make that argument, but understand that unless it's proven
20 that it's a deliberate or malicious or willful refusal to pay
21 restitution, you can't make someone pay what they can't afford
22 to pay, and one of the open-ended comments on that particular
23 part of the conditions of pretrial release is that if any
24 party, the victim, the defendant, or the government can come
25 forward and ask the court to modify the amount, if you can

1 justify the reason for modification. I don't have a job. I'm
2 unemployed. I have these child support payments I have to pay
3 or whatever. You can make the argument now, but that is
4 always an open door for you. They're not gonna put your
5 client in jail because he couldn't afford to pay back
6 restitution or pay back a monthly amount.

7 MS. PITTAWAY: Yes, sir. And if his circumstances
8 were to change, any significant changes in circumstances, he
9 could petition the Court again. It seems that the Court has
10 taken into consideration his inability to pay. Specifically
11 I'm sure that the Court is aware because of the length of
12 incarceration of the sentence, the fact that he has a
13 dependent, and that he has debt from student loans, which was
14 in the presentence report.

15 So with that, with that being said, we would just
16 ask that the scheduled payments reflect his financial status,
17 which I believe the Court has just commented on.

18 THE COURT: Right. And I'll tell you that in
19 terms -- your client has been sentenced to a period of time in
20 confinement. Darleen, do you have the paperwork for me?

21 THE COURTRoom DEPUTY: I do, Judge.

22 THE COURT: All right. Go on ahead and provide it
23 if you would. Thank you.

24 Okay. I did not set a payment schedule. All right.
25 So it's not unusual for me to do that. But I understand and

1 that will be taken into consideration, but remember, whatever
2 the payment schedule is, all it is is a best guess because
3 right now he's unemployed, limited assets, a lot of
4 liabilities because of all of his financial responsibilities
5 outside of the jail. So it's only going to be a best guess,
6 but he's not going to be required to pay any of this until he
7 checks in with his supervising officer, once he's released
8 from confinement. At that point, if he walks out and says,
9 There's no way I can pay this, that's a basis upon which to
10 ask the probation officer to adjust or bring it to the Court
11 for an adjustment. So this is definitely not written in stone
12 at this point because I don't know what his circumstances are
13 going to be went he gets out.

14 MS. PITTAWAY: Yes, sir.

15 THE COURT: Okay. Thank you for that argument.

16 Anything further, Mr. Searle?

17 MR. SEARLE: Your Honor, I just want to be clear,
18 what the Court and Ms. Pittaway were referring would be the
19 payment schedule because the statute specifically states that
20 the defendant's ability to pay is not a factor for the court
21 to consider in setting the amount of restitution.

22 THE COURT: That's not what we're talking about.
23 We're talking about typically in a -- when I'm reading the
24 sentence out, there's a portion of the sentence that says that
25 when he gets out of jail, he will be required to pay this

1 amount per month to satisfy the restitution. So that's all
2 we're talking about. We're not talking about --

3 MR. SEARLE: The schedule.

4 THE COURT: Right. The schedule of payments, not
5 the amount that's going to be due overall.

6 All right. Anything further from the defense,
7 Mr. Lopardo?

8 MR. LOPARDO: No, Your Honor.

9 THE COURT: All right. Anything further?

10 MS. PITTAWAY: No, Judge.

11 THE COURT: All right. Have a good holiday,
12 everyone. The Court is in recess. All right. Please be
13 seated everyone. I'm going to be up here just a minute, but
14 go about your private affairs. Thank you.

15 MR. SEARLE: I'm just inquiring. So will the order
16 be issued in writing?

17 THE COURT: I'm going to issue an endorsed order in
18 writing today or tomorrow, hopefully today. Yeah, I mean,
19 it's just going to be a standard restitution order.

20 MR. SEARLE: I see.

21 THE COURT: But it will be today or tomorrow.

22 MR. SEARLE: Thank you, Your Honor.

23 THE COURT: You're welcome.

24 (WHEREUPON, this matter was concluded at 11:42 a.m.)

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3 CERTIFICATE OF REPORTER

4

5 I certify that the foregoing is a correct transcript of the
record of proceedings in the above-entitled matter.

6

/s/ Suzanne L. Trimble
Suzanne L. Trimble, CCR, CRR, RPR
7 Official Court Reporter

12/30/16
Date

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