

Appendix A - Opinion Below

UNPUBLISHED

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

No. 18-4160

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHARLES MENSAH,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore.
George L. Russell, III, District Judge. (1:14-cr-00600-GLR-6)

Submitted: January 31, 2019

Decided: March 26, 2019

Before AGEE, DIAZ, and RICHARDSON, Circuit Judges.

Affirmed by unpublished per curiam opinion.

G Arthur Robbins, CHESAPEAKE MERIDIAN, Annapolis, Maryland, for Appellant.
Robert K. Hur, United States Attorney, Judson T. Mihok, Assistant United States
Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

A jury convicted Charles Mensah of conspiracy to commit bank and wire fraud, in violation of 18 U.S.C. § 1349 (2012), and bank fraud, in violation of 18 U.S.C. §§ 2, 1344 (2012). The district court sentenced him to 30 months' imprisonment. On appeal, Mensah challenges his convictions on the grounds that the district court erred by denying his Fed. R. Crim. P. 14(a) motion to sever his trial from that of his codefendants, denying his related Fed. R. Crim. P. 33 motion for a new trial, and declining to issue a proposed jury instruction. He also argues that the district court erred by applying Sentencing Guidelines enhancements relating to loss amount and the number of victims. *See U.S. Sentencing Guidelines Manual* § 2B1.1(b)(1)(G), (b)(2)(A) (2016). Finding no reversible error, we affirm.

We review the district court's denial of Mensah's Rule 14(a) motion for abuse of discretion, and we will not reverse absent a showing of "clear prejudice." *United States v. Dinkins*, 691 F.3d 358, 367-68 (4th Cir. 2012). Mensah first claims that such prejudice arose from the testimony of two of his coconspirators, which, he argues, would have been inadmissible had the district court tried him individually. We disagree. As the district court held, the coconspirators' testimony was probative of Mensah's knowing involvement in the conspiracy with which he was charged. We conclude that Mensah suffered no undue prejudice from its admission.

Mensah, a native of Ghana, further argues that he was prejudiced by the testimony of two confidential informants, who made isolated references to West Africans and their supposed inclination to commit fraud. The informants' testimony, while relevant to

charges against one of Mensah's codefendants at trial, likely would not have been admissible in a trial of Mensah alone. However, we find the record insufficient to demonstrate that the informants' remarks about West Africans resulted in clear prejudice to Mensah. Accordingly, we affirm the district court's denial of Mensah's motion to sever.

We also review for abuse of discretion the district court's order denying Mensah's Rule 33 motion. *United States v. Burfoot*, 899 F.3d 326, 340 (4th Cir. 2018). Mensah contends that the district court erroneously denied this motion by declining to grant him a separate trial. Because we disagree that a separate trial was necessary, we conclude that the district court did not abuse its discretion in denying Mensah's motion for a new trial.

Next, Mensah claims that the district court erred by refusing to give a jury instruction specifically defining the concept of reasonable doubt. "The law is well-settled in this Circuit that a judge is not allowed to define reasonable doubt unless requested to do so by the jury." *United States v. Patterson*, 150 F.3d 382, 389 (4th Cir. 1998); *accord United States v. Smith*, 441 F.3d 254, 270 (4th Cir. 2006). Because binding Fourth Circuit precedent barred Mensah's proposed instruction, the district court did not abuse its discretion by declining to issue it. *See United States v. Bartko*, 728 F.3d 327, 343 (4th Cir. 2013) (stating standard of review).

Finally, Mensah argues that the district court erred in applying the challenged Sentencing Guidelines enhancements. The district court's findings as to loss amount and number of victims included several instances of fraud by Mensah's coconspirators, and Mensah claims that he did not know of these transactions. "In determining whether a

district court properly applied the advisory Guidelines, including application of any sentencing enhancements, we review the district court's legal conclusions *de novo* and its factual findings for clear error." *United States v. Layton*, 564 F.3d 330, 334 (4th Cir. 2009); *see* 18 U.S.C. § 3742(e) (2012). "[C]lear error occurs when a district court's factual findings are against the clear weight of the evidence considered as a whole." *United States v. Martinez-Melgar*, 591 F.3d 733, 738 (4th Cir. 2010) (internal quotation marks omitted).

We discern no clear error in the district court's factual findings. Even assuming that Mensah lacked actual knowledge of his coconspirators' fraudulent activities, the evidence at trial supported the district court's conclusion that these activities were "reasonably foreseeable" to him. *See* USSG § 1B1.3(a)(1)(B)(iii). Because the district court did not clearly err in applying either enhancement, we affirm Mensah's sentence.

Accordingly, we affirm the judgment of the district court. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

Appendix B - Notice of Judgment

FILED: March 26, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUITNo. 18-4160, US v. Charles Mensah
1:14-cr-00600-GLR-6

NOTICE OF JUDGMENT

Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

PETITION FOR WRIT OF CERTIORARI: To be timely, a petition for certiorari must be filed in the United States Supreme Court within 90 days of this court's entry of judgment. The time does not run from issuance of the mandate. If a petition for panel or en banc rehearing is timely filed, the time runs from denial of that petition. Review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for compelling reasons.

(www.supremecourt.gov)

VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED

COUNSEL: Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's web site, www.ca4.uscourts.gov, or from the clerk's office.

BILL OF COSTS: A party to whom costs are allowable, who desires taxation of costs, shall file a [Bill of Costs](#) within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

PETITION FOR REHEARING AND PETITION FOR REHEARING EN

BANC: A petition for rehearing must be filed within 14 calendar days after entry of judgment, except that in civil cases in which the United States or its officer or agency is a party, the petition must be filed within 45 days after entry of judgment. A petition for rehearing en banc must be filed within the same time limits and in the same document as the petition for rehearing and must be clearly identified in the title. The only grounds for an extension of time to file a petition for rehearing are the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or an extraordinary circumstance wholly beyond the control of counsel or a party proceeding without counsel.

Each case number to which the petition applies must be listed on the petition and included in the docket entry to identify the cases to which the petition applies. A timely filed petition for rehearing or petition for rehearing en banc stays the mandate and tolls the running of time for filing a petition for writ of certiorari. In consolidated criminal appeals, the filing of a petition for rehearing does not stay the mandate as to co-defendants not joining in the petition for rehearing. In consolidated civil appeals arising from the same civil action, the court's mandate will issue at the same time in all appeals.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist: (1) a material factual or legal matter was overlooked; (2) a change in the law occurred after submission of the case and was overlooked; (3) the opinion conflicts with a decision of the U.S. Supreme Court, this court, or another court of appeals, and the conflict was not addressed; or (4) the case involves one or more questions of exceptional importance. A petition for rehearing, with or without a petition for rehearing en banc, may not exceed 3900 words if prepared by computer and may not exceed 15 pages if handwritten or prepared on a typewriter. Copies are not required unless requested by the court. (FRAP 35 & 40, Loc. R. 40(c)).

MANDATE: In original proceedings before this court, there is no mandate. Unless the court shortens or extends the time, in all other cases, the mandate issues 7 days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay issuance of the mandate. If the petition or motion is denied, the mandate will issue 7 days later. A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay. (FRAP 41, Loc. R. 41).

FILED: March 26, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4160
(1:14-cr-00600-GLR-6)

UNITED STATES OF AMERICA

Plaintiff - Appellee

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Defendant - Appellant

J U D G M E N T

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

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

/s/ PATRICIA S. CONNOR, CLERK

Appendix C - Mandate

FILED: April 17, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4160
(1:14-cr-00600-GLR-6)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

CHARLES MENSAH

Defendant - Appellant

M A N D A T E

The judgment of this court, entered March 26, 2019, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk