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No. 19-6229

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

OLUFOLAJIMI ABEGUNDE,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE

OPINION

BEFORE: WHITE, STRANCH, and MURPHY, Circuit Judges.

JANE B. STRANCH, Circuit Judge. Olufolajimi Abegunde appeals his conviction and sentence for witness tampering and for conspiracy to commit wire and bank fraud, money laundering, and marriage fraud. In this direct appeal, Abegunde contends that: (1) the district court erred in denying his motion to sever the conspiracy to commit marriage fraud count from the other counts pursuant to Federal Rules of Criminal Procedure 8 and 14; (2) the evidence was insufficient to support the jury's verdict of guilty as to the convictions for conspiracy to commit wire fraud and conspiracy to commit money laundering; (3) the venue was improper; (4) the district court abused its discretion by not providing a jury instruction and demarcation between witnesses' dual roles as fact and expert witnesses; and (5) the district court erred in using a "loss chart" to determine the economic loss for the proper sentencing range for Abegunde. For the reasons discussed below, we **AFFIRM** the judgment of the district court.

I. BACKGROUND

A. Facts

This case grows out of business email compromise schemes (BEC). The schemes involved hacking into a company's email servers and creating fake emails directing the company's employees to wire funds into bank accounts controlled by the perpetrators. Typically, after a sum is wired from a BEC, the money is transferred to multiple other bank accounts before reaching its final destination. This "network" of bank accounts exchanges smaller portions of the initial transfer amount in an attempt to clean the money and to avoid detection by banks and law enforcement.[1] Members of the network often do not know one another; they "simply fill a role for some sort of payment along the way." Banks will sometimes contact account owners that are suspected participants in these networks to alert them to fraud on their account. If the account owner lies about the source of the funds, law enforcement considers the statements as evidence that the owner may be a knowing participant.

One of the businesses targeted in a BEC scheme in this case was Crye-Leike, a real estate company in the Western District of Tennessee. A hacker directed a real estate agent to wire $154,000 to a bank account controlled by the perpetrators. The FBI traced the fraudulent Crye-Leike transfer to Javier Luis Ramos-Alonso, Abegunde's co-defendant. Law enforcement then subpoenaed additional bank records associated with Ramos-Alonso and found other suspicious transactions, including suspected BECs involving other businesses. A scheme involving another business, Whatcom, followed a similar pattern. Company emails were compromised, and a fake email instructed an employee to wire funds to an account in the hackers' control. Believing the

[1] Transactions to the network bank accounts are smaller because banks are required by law to report transactions of more than $10,000.

email was authentic, a Whatcom employee wired more than $60,000 to an account controlled by Ramos-Alonso.

Ramos-Alonso's bank records also indicate that he attempted to divide the large amount of money received from the BECs into smaller transfers into other accounts. Wells Fargo flagged Ramos-Alonso's bank account for suspicious activity and a bank investigator contacted him about the large wires and repeated smaller transactions. The investigator also reviewed bank accounts that received wires from Ramos-Alonso. Some of the money was wired to bank accounts with Abegunde's address, and one account also listed Abegunde's phone number. When the investigator called the phone number, Abegunde answered and stated that he had received the money from a friend in Nigeria. Suspecting fraud, Wells Fargo recalled the funds from the account.

Although Abegunde's name was not on the bank accounts, at trial the Government offered evidence that Abegunde was in control of the accounts because they were attached to his address and phone number; Abegunde directed individuals to transfer money into the account; and the individuals whose names were on the account were not in the United States when some of the transactions were processed.

The Government sought to prove that Abegunde used these accounts, as well as nearly 40 other third-party accounts, because many of his personal accounts were closed. These accounts were "used or given out by Mr. Abegunde for other people to put money into [and] were not his own." In Abegunde's own words, he had to "beg, incentivize, [and] lobby people to give [him] their account," to continue his participation in the scheme. Most of this coordination occurred over an encrypted messaging application, WhatsApp.

The Government also provided testimony that Abegunde coordinated currency exchanges, for people seeking exchanges from Nigerian naira to United States dollars, to clean money received from the BEC schemes. Ramos wired $9,000 tied to a BEC scheme to a bank account alleged to be under Abegunde's control. As to the Whatcom BEC, Abegunde provided the account information for one of the accounts he allegedly controlled when a conspirator requested a bank account "fast."

Evidence regarding the bank accounts receiving fraudulent funds showed that some were attached to Abegunde's phone number and address. At least one such account bore the name of an alleged co-conspirator, Ayodeji Ojo. The FBI contacted Abegunde at his home to inquire about suspected fraud. When asked about an "illegal money transfer" on the account, Abegunde condemned people that committed fraud, but claimed that people using or transferring proceeds from a fraudulent scheme were not involved in criminal activity. Even after the officer warned Abegunde about potential liability for receiving and transferring fraudulent proceeds, Abegunde "emphatically disagreed." Abegunde also misrepresented his knowledge of Ojo's involvement in the scheme, but later messaged Ojo and laughed about this concealment. In one communication, Abegunde expressed his fear about allowing "money to be paid into an account that can be tracked" and asked about mitigating the risk of conspiracy to commit fraud. In another exchange, Abegunde said that he really does not know the others involvedor the source for the funds, but they "pay into accounts," and he admitted that his exchanges "clean the cash and eliminate the risk."

Regarding the marriage fraud count, the evidence showed that Abegunde married Edchae Caffey, a member of the United States Army, in 2016. Caffey testified that Abegunde paid her to enter into the marriage so that he could "get a green card." During trial the Government also

provided proof that Abegunde entered the marriage to receive Caffey's military benefits and that Abegunde opened joint accounts with Caffey to transfer fraudulent funds.

B. Procedural History

A grand jury charged Abegunde and several others in a multi-count indictment involving cybercrimes and fraud. Abegunde's case was ultimately severed from all other defendants, except Javier Luis Ramos-Alonso. The grand jury returned a superseding indictment charging Abegunde and Ramos-Alonso with wire fraud conspiracy, in violation of 18 U.S.C. § 1349, and conspiracy to launder money by conducting a financial transaction involving property that represented the proceeds of a specified unlawful activity, in violation of 18 U.S.C. § 1956(h). Ramos-Alonso was also charged with wire fraud, in violation of 18 U.S.C. § 1343. Abegunde was further charged with conspiracy to enter into a marriage for the purpose of evading immigration laws, in violation of 18 U.S.C. § 371, and witness tampering, in violation of 18 U.S.C. § 1512(b). The district court denied Abegunde's motion to sever the marriage-fraud conspiracy count.

The Government presented two law enforcement officers, Marcus Vance and David Palmer, who each testified twice at trial providing evidence as both expert and fact witnesses. Prior to sending the case to the jury, the district court gave the jury an instruction on how to consider the testimony of Agents Vance and Palmer.

After a seven day trial, a jury convicted Abegunde of wire-fraud conspiracy, in violation of 18 U.S.C. § 1349; money-laundering conspiracy, in violation of 18 U.S.C. § 1956(h); conspiracy to enter a marriage for the purpose of evading immigration laws, in violation of 18 U.S.C. § 371; and witness tampering, in violation of 18 U.S.C. § 1512(b). After a three-day sentencing hearing, the district court sentenced Abegunde to 78 months of imprisonment.

II. DISCUSSION

Abegunde challenges: (1) the district court's denial of his motion to sever the marriage fraud count from the other counts; (2) the sufficiency of the evidence for his wire fraud conspiracy and money laundering conspiracy convictions; (3) venue; (4) the district court's lack of demarcation between witnesses' dual roles as fact and expert witnesses; and (5) the district court's use of a "loss chart" during sentencing. We will address each separately.

A. Improper Joinder

Abegunde contends that the district court's failure to sever his marriage fraud count from the other counts resulted in prejudice that prevented the jury from making a reliable judgment about his guilt or innocence. "Misjoinder is a question of law that we review de novo." *United States v. Deitz*, 577 F.3d 672, 692 (6th Cir. 2009). Even where joinder is proper, a defendant may move to sever offenses on the basis that he will be prejudiced by a joinder of the offenses. *United States v. Hang Le-Thy Tran*, 433 F.3d 472, 478 (6th Cir. 2006). We review denial of a severance motion based on a claim of prejudice for abuse of discretion. *United States v. Jacobs*, 244 F.3d 503, 506 (6th Cir. 2001).

Joint trials for defendants listed in the same indictment are preferred to "conserve . . . funds, diminish inconvenience to witnesses and public authorities, and avoid delays in bringing those accused of crime to trial." *United States v. Lane*, 474 U.S. 438, 449 (1986) (quoting *Bruton v. United States*, 391 U.S. 123, 134 (1968)). Indeed, joinder ensures that an alleged criminal act need only be proven once. *United States v. Swift*, 809 F.2d 320, 322 (6th Cir. 1987).

1. Joinder Under Rule 8(b)

Federal Rule of Criminal Procedure 8 governs the conditions under which multiple offenses and defendants may be joined in a single indictment. Because this Rule is designed to

promote judicial economy and avoid "multiplicity of trials" and the "scandal and inequity of inconsistent verdicts," *Zafiro v. United States*, 506 U.S. 534, 537, 540 (1993) (quoting *Bruton*, 391 U.S. at 131 n.6, and *Richardson v. Marsh*, 481 U.S. 200, 210 (1987)), a district court should construe Rule 8 in favor of initial joinder, *United States v. Moreno*, 933 F.2d 362, 370 (6th Cir. 1991). Rule 8(a) governs the joinder of multiple offenses and Rule 8(b) governs the joinder of multiple defendants. Although we have left the issue open, many courts have held that Rule 8(b) (rather than Rule 8(a)) governs a defendant's claim that multiple offenses were improperly joined in a multi-defendant case. *See United States v. Frost*, 125 F.3d 346, 389 (6th Cir. 1997); *United States v. Johnson*, 763 F.2d 773, 776 (6th Cir. 1985). As in *Frost*, we need not conclusively decide the rule that applies in this setting because Abegunde's claim fails even under Rule 8(b)'s stricter joinder rules. Rule 8(b) provides:

> The indictment or information may charge 2 or more defendants if they are alleged to have participated in the same act or transaction, or in the same series of acts or transactions, constituting an offense or offenses. The defendants may be charged in one or more counts together or separately. All defendants need not be charged in each count.

Under Rule 8(b), multiple defendants are properly joined only where each count arises out of the "same act or transaction" or "same series of acts or transactions." *United States v. Hatcher,* 680 F.2d 438, 441 (6th Cir. 1982). Acts or transactions constitute a series "if they are logically interrelated" or "part of a common scheme or plan." *Johnson*, 763 F.2d at 776. We have also determined that joinder is proper where there is "overlapping proof." *Swift*, 809 F.2d at 322.

Even if all counts have a common defendant, the indictment on its face must allege a connection between a co-defendant and the additional count charged to the other defendant. *Hatcher,* 680 F.2d at 441. However, not all defendants need to be charged with the same counts. In *Johnson*, Johnson and four other co-defendants were charged in a conspiracy to produce

fraudulent car titles and sell stolen vehicles. *Johnson*, 763 F.2d at 773–75. In addition to the conspiracy related to the car titles, Johnson and her husband were also charged with mail fraud for sending a false insurance claim based on a fraudulent title. *Id.* at 775. Even though the two other co-defendants were not charged with mail fraud, we concluded that joinder was not improper under Rule 8(b) because Johnson perpetrated the mail fraud through the overarching conspiracy. *Id.* at 776 (stating that "the mail fraud was logically interrelated with the other acts charged in the indictment").

The district court denied Abegunde's motion to sever the marriage fraud count. In the indictment, the Government made several allegations supporting the logical interrelatedness of the conspiracy counts (to commit wire fraud, bank fraud, and money laundering) to the conspiracy to commit marriage fraud. The indictment alleged that Abegunde would pay Caffey to marry him and help him obtain immigration status, and "Abegunde would use the access provided by his fraudulently obtained immigration status to open multiple financial accounts" used to facilitate the conspiracy. Immediately after Abegunde and Caffey were married, they opened two joint Bank of America accounts and Caffey added Abegunde as a co-signor to a USAA account. Days later, there were a series of incoming and outgoing transfers in one Bank of America account in amounts just under $10,000, the threshold for triggering reporting obligations under anti-money laundering laws. Approximately two months after opening, the Bank of America accounts were closed by the bank due to suspicion of fraudulent activity. Moreover, Caffey had expressed her discomfort with being "linked to" those transfers.

As alleged in the indictment, it is reasonable to infer that Abegunde used his marriage to Caffey to facilitate the transfer and receipt of funds obtained through the alleged conspiracies, in which Ramos-Alonso was participant. The evidence of Abegunde's transfers in his joint accounts

with Caffey serve as "overlapping proof" of conspiracy to commit bank fraud and his conspiracy to commit marriage fraud. Evidence that Abegunde used the joint bank accounts from the marriage to transfer money obtained from the BEC schemes, moreover, was also proof of the fraud charges because it demonstrated how Abegunde laundered the money at issue. The district court did not err in denying the motion to sever under Rule 8.

2. Severance Under Rule 14

Abegunde also argues that even if joinder was proper under Rule 8, the court should have granted severance under Rule 14. Where joinder is proper under Rule 8(b), under Rule 14(b), a "strong showing of prejudice" may justify severance. *United States v. Gallo*, 763 F.2d 1504, 1525 (6th Cir. 1985). Severance is within the court's discretion and is required "only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence." *United States v. Ross*, 703 F.3d 856, 884 (6th Cir. 2012) (quoting *Zafiro*, 506 U.S. at 539). To show the court abused its discretion, Abegunde must demonstrate "compelling, specific, and actual prejudice." *Thomas v. United States*, 849 F.3d 669, 675 (6th Cir. 2017); *see also United States v. Martinez*, 432 F. App'x 526, 529 (6th Cir. 2011) (noting that a risk of "simple prejudice" is insufficient to warrant separate trials of co-defendants).

Even if a defendant demonstrates prejudice, courts must balance that with "the interest of the public in avoiding a multiplicity of litigation." *United States v. Saadey*, 393 F.3d 669, 678 (6th Cir. 2005) (quoting *United States v. Wirsing*, 719 F.2d 859, 864–65 (6th Cir. 1983)). Indeed, even when risk of prejudice is high, it may be cured by "less drastic measures, such as limiting instructions." *Ross*, 703 F.3d at 884. "[I]f a jury can properly compartmentalize the evidence as

it relates to the appropriate defendants," a motion for severance should be denied. *United States v. Causey*, 834 F.2d 1277, 1287 (6th Cir. 1987).

At trial, the Government presented evidence to demonstrate that Abegunde used his allegedly fraudulent marriage with Caffey to open joint bank accounts and conduct transactions related to the overarching conspiracies. Abegunde contends that the marriage fraud count should have been severed because the "intricate nature of the offenses and the voluminous amounts of evidence to be presented" may cause jury confusion. But the complexity of the evidence alone does not guarantee severance; rather, Abegunde must explain how and why this evidence would "mislead and confuse the jury in the absence of a separate trial." *United States v. Fields*, 763 F.3d 443, 458 (6th Cir. 2014) (quoting *United States v. Walls*, 293 F.3d 959, 966 (6th Cir. 2002)). In this case, the Government presented evidence that indicates a direct and overlapping connection between the allegations of marriage fraud and the conspiracies to commit fraud and money laundering. Government witnesses provided testimony that Abegunde relied on financial resources obtained from the fraudulent marriage to further the wire fraud and money laundering conspiracies. Moreover, the court instructed the jury to consider evidence on each count separately and "decide whether the government has presented proof beyond a reasonable doubt that a particular defendant is guilty of a particular charge." *See United States v. Cody*, 498 F.3d 582, 588 (6th Cir. 2007) (recognizing that a limiting instruction can overcome the prejudicial effect of improper joinder). Abegunde has not demonstrated compelling, specific, and actual prejudice. Given Abegunde's failure to offer compelling examples of how the Government's evidence may have misled the jury and the district court's limiting instruction, the court did not abuse its discretion in denying the motion for severance under Rule 14.

B. Sufficiency of Evidence

Abegunde challenges the sufficiency of the evidence supporting his convictions of wire-fraud conspiracy, in violation of 18 U.S.C. § 1349, and money laundering conspiracy, in violation of 18 U.S.C. § 1956(h). We review a district court's denial of a motion for judgment of acquittal de novo. *United States v. Ramirez*, 635 F.3d 249, 255 (6th Cir. 2011). "When considering a challenge to the sufficiency of the evidence, 'the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *United States v. Osborne*, 886 F.3d 604, 608 (6th Cir. 2018) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The Court may not "weigh the evidence presented, consider the credibility of witnesses, or substitute [its] judgment for that of the jury." *Id.* (quoting *United States v. Graham*, 622 F.3d 445, 448 (6th Cir. 2010)).

Wire fraud requires proof of three elements. The Government must prove that the defendant: (1) "devised or willfully participated in a scheme to defraud"; (2) "used or caused to be used an interstate wire communication 'in furtherance of the scheme'"; and (3) "intended 'to deprive a victim of money or property.'" *United States v. Faulkenberry*, 614 F.3d 573, 581 (6th Cir. 2010) (quoting *United States v. Prince*, 214 F.3d 740, 748 (6th Cir.2000)). To support a conspiracy to commit wire fraud, the evidence must show that "the defendant 'knowingly and willfully joined in an agreement with at least one other person to commit an act of [wire] fraud and that there was at least one overt act in furtherance of the agreement.'" *United States v. Cunningham*, 679 F.3d 355, 373 (6th Cir. 2012) (quoting *United States v. Jamieson*, 427 F.3d 394, 402 (6th Cir. 2005)).

Similarly, for the money laundering conspiracy the Government had to prove that two or more persons conspired or agreed to commit the crime of money laundering; and that the defendant knowingly and voluntarily joined the conspiracy. *See United States v. Hynes*, 467 F.3d 951, 964 (6th Cir. 2006) (noting that the Government only had to prove that the defendant "agreed with another person to violate the substantive provisions of the money-laundering statute during the period alleged in the indictment"). A money laundering conspiracy does not require proof of an overt act. *Id.*

Here, the Government presented evidence that some of the proceeds from the overarching fraudulent schemes were received by Abegunde. Agent Vance testified that in similar conspiracy cases, it is typical for conspirators to "chop" large sums of money and distribute it through a chain to conceal or disguise the nature, source, or control of the money. *See United States v. Agundiz-Montes*, 679 F. App'x 380, 387 (6th Cir. 2017). A Wells Fargo financial crimes consultant, Brian Ancona, testified that proceeds received from fraudulent schemes were sent to Ramos-Alonso, Abegunde's co-defendant, who then distributed the money into accounts opened by Abegunde or under his control. The criminal agreement from these chain transfers of proceeds "can be inferred from the interdependence of the enterprise." *See United States v. Warman*, 578 F.3d 320, 333 (6th Cir. 2009).

The Government also provided evidence that Abegunde had knowledge of and agreed to participate in the conspiracy. On the date of one of the BECs, Abegunde directed an individual to transfer money into an account linked to his phone number and address. In a conversation with a colleague over WhatsApp, Abegunde admitted that he does not know the men coordinating the scheme, but said that they put money into his accounts, and his exchanges "clean the cash and eliminate the risk." And when the FBI questioned him about his knowledge regarding fraud

occurring on the account, Abegunde's WhatsApp messages indicate that he lied about his involvement and then contacted a co-conspirator to joke about his concealment.

This evidence also supports the money-laundering conspiracy. Abegunde coordinated several transfers of fraudulent proceeds to accounts under his control or the control of his co-conspirators indicating it would clean the money. Abegunde also lied to the FBI and later spoke to his friend about taking advantage of an opportunity. A reasonable trier of fact could find that Abegunde knowingly participated in the distribution cleaning of the proceeds to seek his own financial benefit and that he lied to law enforcement and used a messaging application to conceal his participation in the scheme.

Abegunde does not challenge the existence of the overarching fraudulent schemes, claiming only that "the government failed to present direct evidence of an agreement or consent on the part of Mr. Abegunde to commit the crime of wire fraud or money laundering." Abegunde argues that he did not know every member of the conspiracy, nor did he undertake all of the conspiracy's activities. In discussing the knowledge requirement in a drug conspiracy, however, we have determined that "it is not necessary to show that a defendant knew every member of the conspiracy or knew the full extent of the enterprise." *United States v. Maliszewski*, 161 F.3d 992, 1006 (6th Cir. 1998) (quoting *United States v. Lloyd*, 10 F.3d 1197, 1210 (6th Cir.1993)); *see also Warman*, 578 F.3d at 332 ("[P]roof of a formal agreement is not necessary; 'a tacit or material understanding among the parties' will suffice." (quoting *United States v. Martinez*, 430 F.3d 317, 330-31 (6th Cir. 2005))); *Martinez*, 430 F.3d at 333 (noting that a defendant need not "be an active participant in every phase of the conspiracy, so long as he is a party to the general conspiratorial agreement" (quoting *United States v. Hodges*, 935 F.2d 766, 773 (6th Cir. 1991))). Given Abegunde's conduct in directing fraudulent proceeds, communications indicating he was aware

that the proceeds might not be legitimate, and his attempts to conceal the nature of his relationship with Ojo, a reasonable factfinder could find Abegunde guilty of wire fraud conspiracy and money laundering conspiracy. The district court did not err in denying the motion for judgment of acquittal.

C. Venue

Abegunde argues that his prosecution for wire fraud in the Western District of Tennessee was improper because there was not a direct link to the jurisdiction. Because Abegunde did not raise this venue objection in the district court, we review his objection to venue for plain error. *United States v. Parlier*, 570 F. App'x 509, 512 (6th Cir. 2014). To prevail under plain error, Abegunde must show "an error that is clear or obvious, affecting [his] substantial rights, and seriously affecting the fairness, integrity or public reputation of judicial proceedings." *United States v. Lopez-Medina*, 461 F.3d 724, 746 (6th Cir. 2006).

The Constitution and the Federal Rules of Criminal Procedure require that a crime be prosecuted and tried in the district where the crime was committed. *See* U.S. Const. art. III § 2; U.S. Const. amend. VI; Fed. R. Crim. P. 18. As a continuing offense, wire fraud is subject to the provisions of 18 U.S.C. § 3237 and thus can be "prosecuted in any district in which such offense was begun, continued, or completed." 18 U.S.C. § 3237(a); *see United States v. Grenoble*, 413 F.3d 569, 573 (6th Cir. 2005) (stating that under 18 U.S.C. § 3237, wire fraud is a continuing offense). Conspiracy to commit wire fraud is also a continuing offense and may be prosecuted "in any district where the conspiracy was formed or in any district where an overt act in furtherance of the conspiracy was performed." *United States v. Scaife*, 749 F.2d 338, 346 (6th Cir. 1984). "A conspiracy defendant need not have entered the district so long as this standard is met." *Id.*

Abegunde does not dispute that the Government's evidence linked him to an account that received $9,000 of $154,000 in fraudulent funds from a company in the Western District of Tennessee. Abegunde's counsel acknowledged that those proceeds related to the Western District of Tennessee. The trial record shows that overt acts committed in furtherance of the conspiracy were performed in this district. Venue was proper.

D. Jury Instructions

Abegunde contends that the district court abused its discretion by failing to provide a cautionary jury instruction regarding the dual witness roles of Agents Vance and Palmer. "Evidentiary determinations, including whether a district court failed to differentiate between a witness's fact and expert testimony, are reviewed for an abuse of discretion." *United States v. Barron*, 940 F.3d 903, 920 (6th Cir. 2019). Even when a court abuses its discretion, however, evidentiary errors are subject to harmless error review. *United States v. Kilpatrick*, 798 F.3d 365, 378 (6th Cir. 2015). An error is not to be deemed harmless if it affects substantial rights or affects the outcome of the court's proceedings. *United States v. Inman*, 666 F.3d 1001, 1006 (6th Cir. 2012) (per curiam).

When a law enforcement officer testifies as both a lay witness and an expert witness, there is risk that: (1) the expert will later "receive[] 'unmerited credibility' for lay testimony," (2) the "witness's dual role . . . confuse[s] the jury," and (3) "the jury may unduly credit the opinion testimony of an investigating officer based on a perception that the expert was privy to facts about the defendant not presented at trial." *United States v. Rios*, 830 F.3d 403, 414 (6th Cir. 2016) (quoting *United States v. Freeman*, 498 F.3d 893, 903 (9th Cir. 2007) and *United States v. York*, 572 F.3d 415, 425 (7th Cir. 2009)). "[T]he district court and the prosecutor should take care to assure that the jury is informed of the dual roles of a law enforcement officer as a fact witness and

an expert witness, so that the jury can give proper weight to each type of testimony." *Lopez-Medina*, 461 F.3d at 743 (quoting *United States v. Thomas*, 74 F.3d 676, 683 (6th Cir. 1996)).

In *United States v. Barron*, a criminal defendant challenged the dual role of testimony provided by a law enforcement officer. 940 F.3d at 920. Prior to submitting the case to the jury, the court gave an instruction distinguishing the dual roles of the law enforcement officer's testimony and the proper weight to give to each testimony. *Id.* at 920–21. The instructions mirrored the Sixth Circuit's pattern jury instruction on dual witnesses. *See* Sixth Circuit Pattern Jury Instruction 7.03A. On facts substantially similar to this case, we found the jury instructions were adequate and that the district court did not abuse its discretion or plainly err in giving the pattern instruction. *Id.* at 921.

During trial, the Government presented FBI Agents Marcus Vance and David Palmer as both expert and lay fact witnesses. Vance's testimony as an expert began on the second day of trial, and two days later, he testified as a fact witness. Similarly, Palmer testified as an expert on the third day of trial, and testified as a fact witness two days later. At the close of Vance's expert testimony, the Government asked the district court to explain the change in the nature of his testimony before he returned as a fact witness. The court declined to communicate a specific demarcation, stating that an instruction during trial would not "mean[] that much to the jury" and that "it is hard to draw the line." At the close of evidence, however, the court explained that Agents Vance and Palmer testified as both expert and fact witnesses and instructed the jury on the proper weight to give to each form of testimony:

> As to the testimony on facts, consider the factors discussed earlier in these instructions for weighing the credibility of witnesses. As to the testimony on opinions, you do not have to accept Special Agents Vance and Palmer's opinions. In deciding how much weight to give it, you should consider the witnesses' qualifications and how they reached their conclusions, along with the other factors discussed in these instructions for weighing the credibility of witnesses.

(R.252, Jury Instructions, Page ID 996) This instruction is consistent with the Sixth Circuit Pattern Jury Instruction 7.03A. The court further reminded the jury that they "alone decide how much of a witness's testimony to believe, and how much weight it deserves." Moreover, the opinion and fact testimonies were provided on different days. *See United States v. Tocco*, 200 F.3d 401, 419 (6th Cir. 2000) (noting that dual roles of a witness can be properly demarcated when testimony occurs at different times during trial in conjunction with limiting instructions).

Abegunde points to *United States v. Lopez-Medina* to contend that since there was not a clear demarcation during the testimony, he is entitled to relief. Though a district court can cure potential challenges to jury confusion by providing a "clear demarcation between expert and fact witness roles," *Lopez-Medina*, 461 F.3d at 744, this harm may also be cured by providing "an adequate cautionary jury instruction," *United States v. Young*, 847 F.3d 328, 357 (6th Cir. 2017). That is what happened here. There was no abuse of discretion here because the court temporally separated opinion and fact testimony and provided a clear instruction before jury deliberations explaining the roles of each dual witness and the proper weight to assign to each.

E. Loss Chart

Finally, Abegunde argues that the district court erred in using the loss chart to determine his sentencing range because there were no allegations made that established that the transactions were in any way illegal. We review whether actions or events are "relevant conduct" under § 1B1.3(a)(1)(A) de novo; factual findings underlying the district court's determination that conduct is "within the scope" of, "in furtherance" of, and "reasonably foreseeable" in connection with jointly undertaken criminal activity are reviewed for clear error. *United States v. Tocco*, 306 F.3d 279, 284 (6th Cir. 2002). At sentencing, the district court may consider any relevant evidence as long as it is supported by sufficient indicia of reliability. USSG § 6A1.3(a).

Sentencing Guideline § 2B1.1(b)(1), the loss provision, directs a court to increase an offense level based on the amount of economic "loss" that resulted from the defendant's conduct. "In calculating the Guidelines loss under U.S.S.G. § 2B1.1(b)(1), district courts include losses sustained from relevant conduct under U.S.S.G. § 1B1.3." *United States v. Catchings*, 708 F.3d 710, 720 (6th Cir. 2013). This "relevant conduct" may be considered if it is "part of the same course of conduct or common scheme or plan as the offense of conviction." *United States v. Hill*, 79 F.3d 1477, 1481 (6th Cir.1996) (quoting USSG § 1B1.3(a)(2)). "To qualify as part of a 'common scheme or plan' under the 'relevant conduct' guideline, the offenses 'must be substantially connected to each other by at least one common factor, such as common victims, common accomplices, common purpose, or similar *modus operandi*.'" *Id.* (quoting USSG § 1B1.3, cmt. n.9(A) (1995)). The district court "need only make a reasonable estimate of the loss . . . based on available information," and its "loss determination is entitled to appropriate deference." USSG § 2B1.1 cmt. n.3(C).

Relevant conduct includes all criminal conduct committed, aided, abetted, counselled, commanded, induced, procured or willfully caused by Abegunde. USSG § 1B1.3(a)(1)(A). Conduct of others is only relevant when it is "within the scope" of, "in furtherance" of, and "reasonably foreseeable" in connection with jointly undertaken criminal activity. USSG § 1B1.3 cmt. n.3(A). District courts must make "particularized findings with respect to both the scope of the defendant's agreement and the foreseeability of his co-conspirators' conduct before holding the defendant accountable for the scope of the entire conspiracy." *United States v. Campbell*, 279 F.3d 392, 400 (6th Cir. 2002) (emphases omitted).

Abegunde's initial Presentence Report determined that the loss caused was $793,447.69. The calculation was based, in part, on a loss chart that included 81 transactions involving

Abegunde and his alleged co-conspirators. The chart included the date of the transaction, the bank and account information of the transaction, the third-party name on the account, and the amount that was transferred. Most of the transactions were under $10,000. On the second day of the sentencing hearing, the district court allowed both parties to present their arguments concerning the loss chart. Based on the evidence demonstrating the same modus operandi, the district court concluded that Abegunde was a "downstream middleman money launderer" where his role was to help "clean the funds" obtained by the overarching BECs. The court calculated the loss amount associated with Abegunde's offense conduct at $596,926.11 and ultimately determined that the loss chart could be used to determine economic loss and the appropriate sentencing range for Abegunde.

On appeal, Abegunde argues that the Government failed to provide evidence that the transactions were illegal or that he knew or should have known that the transactions were from funds illegally obtained. The Government's witness admittedly could not pinpoint the original source of the funds, other than one $9,000 transfer that occurred in October 2016. The Government argues that Abegunde conducted currency exchanges with a fee to third-parties to clean the money received through the illegal conspiracy. It notes that the record contains evidence that each transaction was directly linked to a communication in Abegunde's phone where he solicited a third party to use their account to transfer funds. Each transaction had a similar pattern: someone would approach Abegunde saying he had a certain amount of money and wanted to do a deal, the two would work out an exchange rate, and Abegunde would provide a third-party account to conduct the transaction. Of the 81 transactions, there were 10-12 "repeat customers." Abegunde's written communications expressed frustration with his personal accounts being closed and his interest in conducting transactions that could not be tracked.

The district court did not err in determining that Abegunde's conduct was "within the scope" of, "in furtherance" of, and "reasonably foreseeable" in connection with jointly undertaken criminal activity. Abegunde's participation in the conspiracy, even if limited, was a necessary component for cleaning money obtained fraudulently and a part of a chain commonly seen in fraud and money laundering schemes. Given the repeated nature and pattern of the transactions, the known relations of some of the parties in the transactions, and the communications tying Abegunde directly to each transaction, the district court appropriately found by a preponderance of the evidence that the third-party transactions were commanded by Abegunde and were "relevant conduct" for the purposes of sentencing. *United States v. Donadeo*, 910 F.3d 886, 901 (6th Cir. 2018) ("the government must prove the amount of loss attributable to a defendant . . . by a preponderance of the evidence").

III. CONCLUSION

For the reasons explained above, we AFFIRM Abegunde's convictions and sentence.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Deborah S. Hunt
Clerk

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: April 06, 2021

Olufolajimi Abegunde
C.I. Reeves III
P.O. Box 2038
Pecos, TX 79772

Re: Case No. 19-6229, *USA v. Olufolajimi Abegunde*
Originating Case No.: 2:17-cr-20238-7

Dear Mr. Abegunde,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Beverly L. Harris
En Banc Coordinator
Direct Dial No. 513-564-7077

cc: Mr. Timothy Charles Flowers
Ms. Debra Lynn Ireland
Mr. John Keith Perry Jr.

Enclosure

No. 19-6229

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Apr 06, 2021
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,)
)
Plaintiff-Appellee,)
)
v.) ORDER
)
OLUFOLAJIMI ABEGUNDE,)
)
Defendant-Appellant.)

Before: WHITE, STRANCH, MURPHY, Circuit Judges.

The court received a petition for panel rehearing or rehearing en banc from Olufolajimi Abegunde. Upon careful consideration, the original panel concludes that with two exceptions the petition simply reargues the issues already decided, which the panel did not misapprehend or overlook any point of law or material fact in issuing the order denying Abegunde's appeal. *See* Fed. R. App. P. 40(a)(2). As to the first exception—the venue challenge pertaining to Abegunde's marriage-fraud conspiracy count—rehearing is improper because no venue challenge pertaining to this count was raised in his brief on appeal. As to the second exception—that plain-error review should not have applied to the wire-fraud conspiracy venue challenge—rehearing is similarly improper because Abegunde did not address the government's argument that Abegunde had forfeited the challenge. *Cf. United States v. Ramer*, 883 F.3d 659, 682 (6th Cir. 2018). Accordingly, the original panel adheres to its original disposition and denies the request for a panel rehearing. We express no opinion on the merits of these issues and this denial is without prejudice to any collateral-review claims of ineffective assistance of counsel.

The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc. Therefore, en banc rehearing is denied.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

APPENDIX C

No. 19-6229

IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

OLUFOLAJIMI ABEGUNDE,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE, NO. 2:17-CR-20238 (LIPMAN, D.J.)

BRIEF FOR APPELLEE UNITED STATES OF AMERICA

D. MICHAEL DUNAVANT
United States Attorney
Western District of Tennessee

DEBRA L. IRELAND
Assistant United States Attorney
Western District of Tennessee
Assistant United States Attorney
167 North Main Street, Suite 800
Memphis, Tennessee 38103
(901) 544-4231
deb.ireland@usdoj.gov

BRIAN A. BENCZKOWSKI
Assistant Attorney General
Criminal Division

TIMOTHY C. FLOWERS
Senior Trial Attorney, Computer Crime and Intellectual Property Section
Criminal Division
United States Department of Justice
1301 New York Avenue, N.W.
Suite 600
Washington, DC 20530
(202) 353-0684
Timothy.Flowers2@usdoj.gov

TABLE OF AUTHORITIES

Cases: Page(s)

Statutes

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STATEMENT REGARDING ORAL ARGUMENT

The Government believes that "the facts and legal arguments are adequately presented in the briefs and record," Fed. R. App. P. 34(a)(2)(C), and that oral argument is unnecessary in this case.

STATEMENT OF JURISDICTION

Defendant Olufolajimi Abegunde appeals the district court's final judgment in this criminal case. The district court (Lipman, J.), which had jurisdiction under 18 U.S.C. 3231, entered judgment on October 23, 2019. R.323: Judgment, at PageID 1596. Abegunde filed a timely notice of appeal on October 25, 2019. R.324: Notice of Appeal, at PageID 1604. This Court has jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a).

ISSUES PRESENTED

I. Whether the district court appropriately exercised discretion in refusing to sever a count of conspiracy to commit marriage fraud from charges of wire-fraud conspiracy, money-laundering conspiracy, and witness tampering, where the defendant used the marriage to gain access to bank accounts, conspirators, and criminal resources associated with his fraud scheme.

II. Whether sufficient evidence proved that the defendant was a member of a conspiracy to launder the proceeds of fraudulent internet schemes where money associated with the scheme had been moved to accounts controlled by defendant, and where defendant's encrypted messages showed that he knowingly brokered financial exchanges involving illicit funds.

III. Whether the government established venue for the wire-fraud conspiracy in the Western District of Tennessee.

IV. Whether the district court properly instructed the jury on its consideration of witnesses who testified as to both fact and opinion when it issued the relevant Sixth Circuit pattern instruction.

V. Whether, at sentencing, the district court properly determined the amount of loss attributable to the defendant under U.S.S.G. § 2B1.1 when it included, as "relevant conduct," additional transactions that had the same indicia of fraud, reflected a common modus operandi, and moved through accounts under the control of the defendant during the conspiracy period.

STATEMENT OF THE CASE

I. Procedural History.

A jury convicted Olufolajimi Abegunde of wire-fraud conspiracy, in violation of 18 U.S.C. § 1349; money-laundering conspiracy, in violation of 18 U.S.C. § 1956(a)(1)(B) and § 1956(h); conspiracy to enter a marriage for the purpose of evading immigration laws, in violation of 18 U.S.C. § 371; and witness tampering, in violation of 18 U.S.C. § 1512(b). The district court sentenced Abegunde to 78 months of imprisonment.

II. Statement of Facts.

A. Hackers targeted a Memphis real-estate company and redirected thousands of dollars in escrowed funds.

In the summer of 2016, Crye-Leike, a Memphis-based real estate company, suffered repeated attempts by hackers to access the company's email servers, also located in Memphis. R.346: David Palmer Testimony, at PageID 2811; *id.* at 2813; *see also* R.353: Geoffrey Fargo Testimony, at PageID 2935–37. The hacking scheme targeted the company's real-estate agents. R.345: Angie Kirkpatrick Testimony, at PageID 2642–46. As they finalized a real-estate transaction, the agents received a fraudulent email directing them to send funds escrowed for the transaction to bank accounts controlled by malicious actors. *Id.* at PageID 2644–45; R.353: Fargo Testimony, at PageID 2936. This scheme—commonly known as a

business email compromise ("BEC")—stole the buyer's down payments. R.345: Kirkpatrick, at PageID 2646; R.353: Marcus Vance Testimony, at PageID 3061–62; R.332: David Palmer Testimony, PageID 1918–19. Crye-Leike lost thousands of dollars due to this hacking effort. R.345: Angie Kirkpatrick Testimony, at PageID 2647.

In one instance, a closing attorney in Memphis received an email from an individual purporting to be Angie Kirkpatrick, a Crye-Leike agent. *Id.* at PageID 2643–46. The email directed the attorney to wire approximately $154,000.00 in closing funds to a bank account in the name of "John Hester Alonso," who was not a party to the transaction. *Id.* at PageID 2646; R.353: Marcus Vance Testimony, at PageID 3059–66. This email was fake; malicious actors had hacked Kirkpatrick's email, monitored the account for pending transactions, and sent a fake email prompting the closing attorney wire money to the Alonso account rather than to the intended beneficiary. R.345: Angie Kirkpatrick Testimony, at PageID 2646–47.

B. Co-defendant Ramos collected funds from this and other similar schemes, and redistributed them to other accounts.

The FBI traced the redirected funds to Javier Luis Ramos-Alonso ("Ramos") in California. R.353: Marcus Vance Testimony, at PageID 3066; 3108. When investigators queried law enforcement databases, they identified other suspicious

real estate transactions connected to Ramos. *See id.* at PageID 3108–09; *see also* R.346: David Palmer Testimony, at PageID 2814.

Of note, Ramos had received a large deposit in October 2016 from Whatcom Land Title Company in Bellingham, Washington. R.353: Marcus Vance Testimony, at PageID 3073–74; *id.* at PageID 3108–11; *see also id.*, Colleen Baldwin Testimony, at PageID 2959–63; *id.* at PageID 2949. Whatcom had also been the victim of a business email compromise involving Ramos. R.353: Marcus Vance Testimony, at PageID 3108–11; *see also id.*, Colleen Baldwin Testimony, at PageID 2959–63. The scheme followed the same pattern. Shortly before the closing date on a real-estate transaction, a fraudulent email purportedly from the seller's agent directed a Whatcom employee to wire more than $60,000.00 to a Wells Fargo account in the name of "Luis Alonso" rather than to the intended destination. R.353: Colleen Baldwin Testimony, at PageID 2959–63. Ramos controlled this account (*Id.*, Marcus Vance Testimony at PageID 3059; 3066; *see also id.*, Brian Ancona Testimony, PageID 3019–24; 3032), and Whatcom suffered significant financial and reputational consequences. *Id.*, Colleen Baldwin Testimony, at PageID 2961–65.

Ramos did not work in real estate; he was a cook at a local restaurant who received and disbursed fraudulently obtained money at the direction of "Tammy Dolan"—a fake online persona of someone who had recruited, groomed, and

directed Ramos as part of a romance scam. R.353: Michael Hinton Testimony at PageID 2985-86; *id.* at PageID 3001–02; *id.* at PageID 3012–13; R:346, Marcus Vance Testimony, at PageID 2765. By 2016, Ramos had earned the confidence of his criminal counterparts. R.353: Marcus Vance Testimony, at PageID 3108–10. When Dolan needed to transfer a large sum of fraudulently obtained funds, she turned to Ramos, who divided the funds into smaller amounts and redirected them to strangers' accounts at Dolan's direction. *Id.*

C. Accounts controlled by Abegunde received the diverted funds.

A Wells Fargo investigator called Ramos about the Whatcom transaction. R.353: Brian Ancona Testimony, at PageID 3022. Ramos responded that he had sent the money as part of a work-from-home opportunity. *Id.* The investigator then reviewed a list of bank accounts to which Ramos had wired portions of the $60,000.00. *Id.* Two of the account holders—Ayodeji Ojo and Oluwabukola Oguntoye—had the same Georgia address. *Id.* at PageID 3024.

These accounts were under Abegunde's control, as evidenced, in part, by point-of-sale transactions that took place when the named account holders were not in the United States. *See* R.346: Marcus Vance Testimony, PageID 2664–65; *id.* at 2795–96; R.353: Carlos Carrasquillo Testimony, PageID 3148–52; R.346: David Palmer Testimony, PageID 2893–94. The phone number associated with one

account also belonged to Abegunde. When the investigator called it, the speaker claimed that he had received the money from a friend in Nigeria. R.353: Brian Ancona Testimony at PageID 3025; R.346: David Palmer Testimony, at PageID 2875. After receiving this information, Wells Fargo recalled the wire transfer based on fraudulent conduct. R.353: Brian Ancona Testimony, at PageID 3026.

This episode tracked Abegunde's dealings with banks. Because many of his own accounts had been closed, R.346: Marcus Vance Testimony, at PageID 2785–88, Abegunde used accounts in the names of others to accept funds and convert United States currency to Nigerian Naira. *Id.* at PageID 2785–89. Abegunde conducted this business over WhatsApp, an encrypted messaging service, and he had to "beg, incentivize, and lobby" to use others' accounts because he did not have accounts of his own. R.333: Marcus Vance Testimony, at PageID 2302; R.346: Marcus Vance Testimony, at PageID 2780; *id.* at PageID 2785–88. And despite claiming to be a legitimate businessman, he did not want funds to be paid into accounts that could be "tracked" back to him. R.346: Marcus Vance Testimony, at PageID 2685.

By October 2016, Abegunde had full access and control over the accounts where Ramos had deposited the fraud proceeds. *Id.* at PageID 2794–96. In fact, on the day of the Whatcom BEC, Abegunde provided the details of the Ojo account to

a conspirator who needed an account "fast." *Id.* at PageID 2795; R.333: Marcus Vance Testimony, at PageID 2219–21. Nine days later, Abegunde provided the wiring details for this account, which had since been locked by the bank, and lamented that "I just thought that if the money eventually entered the account, we will figure a way for me to get it." R.333: Marcus Vance Testimony, at 2268–69. At that point, he provided the details of the Oguntoye account. *Id.* at PageID 2270.

D. Abegunde lied to the FBI about his role in these transactions.

In early 2017, the FBI interviewed Abegunde at the Georgia address listed on the Ojo account. R.353: Kevin Hall Testimony, at PageID 3173–75. Abegunde lived at that address with his ex-wife and daughter. *Id.* at PageID 3182; R.334: Olufolajimi Testimony, at PageID 2439. During the interview, Abegunde lied about his relationship with Ojo, R.333: Marcus Vance Testimony, at PageID 2283, misrepresented the nature of his business, R.346: Marcus Vance Testimony, at PageID 2779, and instructed the agent that there was nothing wrong with using fraudulently obtained funds to conduct his transactions; only the person who had stolen the money by fraud was culpable. R.353: Kevin Hall Testimony, at PageID 3179–80.

After this conversation, Abegunde messaged Ojo over WhatsApp and discussed how he had lied. R.333: Marcus Vance Testimony, at PageID 2282–83.

Ojo claimed that Abegunde had acted correctly by lying, and that there was "no crime on seeing [an] opportunity and taking it." *Id.* at PageID 2283. To this, Abegunde simply stated, "LOL," the common abbreviation for "laughing out loud." *Id.*

E. The government charged Abegunde.

The grand jury charged Abegunde, Ojo, Ramos, and eight others in a largescale conspiracy to defraud. R.3: Indictment, PageID 3. Abegunde moved for—and the Government consented to—severance because the eight co-defendants remained fugitives or were in extradition proceedings. R.156: Mot. to Sever, PageID 621. Abegunde was detained pending trial. *See* R.83: Minute Entry.

During his detention, Abegunde contacted Edchae Caffey—his then-wife who was a member of the United States Army. R.354: Edchae Caffey Testimony, PageID 3254; 3260; 3262. Investigators learned that Abegunde used his joint accounts with Caffey to facilitate BEC transactions and to launder the proceeds of their brokered marriage. *Id.* at PageID 3274–75; *see also* R.333: Marcus Vance Testimony, PageID 2262–64. Abegunde further directed friends and conspirators to send emails and documents to Caffey to maintain the façade of a legitimate relationship, and he tried to dissuade Caffey from cooperating with the government. R.354: Caffey Testimony, at PageID 3294–96. He also tried to make her believe the case was not

going to proceed by posing as his attorney, writing a motion to dismiss, and sending it to Caffey. *Id.* at PageID 3295–96. The attorney had not written, or approved the writing of, such a motion. R.333: Testimony of William Massey, at PageID 2212.

Based on this evidence, the grand jury returned a superseding indictment and added charges of witness tampering and conspiracy to commit marriage fraud. R. 164, Superseding Indictment, at PageID 638.

F. The jury convicts Abegunde on all charges.

On the eve of trial, Abegunde filed a pretrial motion to sever the marriage fraud conspiracy count from the remaining charges. R. 238, Mot. to Sever, at PageID 935. The district court denied Abegunde's motion. R.240: Minute Entry.

After the government presented its case, Abegunde testified in his defense that he ran a legitimate money exchange service; that his marriage to Caffey was legitimate; that the funds from the Whatcom BEC had been wired by mistake; and that he had admonished his friend Ojo about the transaction. R.334: Olufoliajimi Abegunde Testimony, PageID 2356–57; 2361–64; 2368; 2378–80; 2384; 2387–88; 2394–99. At the close of the evidence, the jury found Abegunde guilty on all counts.[1] R.259: Verdict, PageID 1052. The district court subsequently sentenced Abegunde to 78 months in prison. R.323: Redacted Judgment, PageID 1598.

[1] The jury found Ramos guilty of wire fraud but acquitted him of conspiracy to commit wire fraud and conspiracy to commit money laundering.

III. Rulings Presented For Review.

On appeal, Abegunde raises five issues. He argues that: the district court abused its discretion in denying him severance of the marriage fraud count from the other fraud charges; the government did not present direct evidence of an overt agreement to participate in the conspiracy; his connection to the Western District of Tennessee was insufficient to establish venue there; the district court did not properly instruct the jury on witnesses who provide both fact and opinion testimony; and the district court's determination of relevant conduct for sentencing purposes resulted in an improperly calculated advisory guideline range.

SUMMARY OF THE ARGUMENT

This Court should affirm the verdict and sentence. The government presented ample evidence showing that Abegunde knowingly participated in a scheme to defraud. Abegunde agreed with other individuals to launder fraud proceeds through an ever-changing series of bank accounts bearing the names of people and entities that had no relationships to the transactions. Whether the money originated with a business email compromise in the Western District of Tennessee or in the state of Washington, or with a fraudulent marriage, Abegunde knew the origins.

The district court's decision to deny severance of the conspiracy to commit marriage fraud charge reflected an appropriate exercise of its discretion because the marriage-fraud activity bore a direct relationship to the other charges.

The government established venue in the Western District of Tennessee for the wire-fraud conspiracy because an overt act in furtherance of the conspiracy occurred in the district.

The district court adequately instructed the jury on the manner in which it should consider two law-enforcement witnesses who provided fact and opinion testimony. In fact, the court issued the Sixth Circuit's pattern instruction discussing this matter.

Finally, the district court found that additional transactions by Abegunde

qualified as "relevant conduct" for purposes of the loss calculation at sentencing. Over three hearings, the court weighed the proof, raised questions, and collected additional information before deciding what Abegunde was responsible for, and what he owed. Abegunde has shown no clear error in the court's findings.

ARGUMENT

I. The district court properly denied severance of the conspiracy to commit marriage fraud charge because Abegunde used the fraudulent marriage to gain access to bank accounts through which to launder fraud proceeds.

A. *Standard of Review*

Whether charges or defendants are properly joined is a question of law, reviewed *de novo*. *United States v. Dietz*, 577 F.3d 672, 692 (6th Cir. 2009). Misjoinder, as a matter of law, mandates severance. *Id.*

If joinder is proper, the court may still consider a defendant's motion to sever charges. *United States v. Hang Le-Thy Tran*, 433 F.3d 472, 478 (6th Cir. 2006); *United States v. Gallo*, 763 F.2d 1504, 1524–25 (6th Cir. 1985). Denial of a motion to sever is reviewed for abuse of discretion, and will stand unless the defendant makes "a strong showing" of prejudice, *Gallo*, 763 F.2d at 1525, by demonstrating that a specific trial right was compromised or that denial of severance kept the jury from making a "reliable judgment about guilt or innocence" on each count. *Zafiro v. United States*, 506 U.S. 534, 539 (1993).

B. *Joinder was proper under Rule 8(a)*

An indictment may charge a defendant in separate counts with two or more offenses if the offenses charged are of the same or similar character, based on the same act or transaction, or connected with or constitute parts of a common scheme or plan. Fed. R. Crim. P. 8(a). Acts or transactions constitute a series "if they are logically interrelated." *United States v. Johnson*, 763 F.2d 773, 776 (6th Cir. 1985) (internal citations omitted). Rule 8(a) should be construed in favor of joinder. *Deitz*, 577 F.3d at 692. The presumption is designed to "promote the goals of trial convenience and judicial efficiency." *Thomas v. United States*, 849 F.3d 669, 675–76 (6th Cir. 2017). Whether charges are properly joined is evaluated based on the "allegations on the face of the indictment." *Id.* at 675.

The government properly joined the marriage-fraud conspiracy with the remaining counts. The indictment alleged that Abegunde and other co-conspirators opened bank accounts for the purposes of receiving fraudulently obtained funds and concealing the source of those funds. R.165: Superseding Indictment, at PageID 664, 668. Critically, Abegunde used the immigration status he obtained through his fraudulent marriage with Caffey "to open multiple financial accounts for business and personal use." *Id.* at PageID 671. Those accounts then facilitated Abegunde's receipt and transfer of funds obtained through fraudulent activities. *Id.*

The indictment further identified overt acts, taken by Caffey and Abegunde in the course of their marriage, that furthered the overall conspiracy:

- Caffey opened a joint bank account and added Abegunde as a co-signor to her USAA bank account. *Id.*
- Caffey and Abegunde opened accounts at Bank of America, but the accounts were closed due to suspicion of fraud. *Id.* at PageID 672.
- Caffey texted Abegunde messages in which she expressed anger at the ways he was using their bank accounts, writing "I don't want my name linked to shit like this all the transfers and shit I don't like it" and "[i]f you are going to use the usaa bank account for shit like that I'm going to close the account." *Id.*
- There was a pattern of incoming and outgoing wires in amounts just under $10,000. *Id.* at PageID 673.

In short, the marriage fraud allowed Abegunde to create additional bank accounts to receive, disguise, and launder money from victims of internet and computer fraud. From the face of the indictment, this charge is demonstrably related to and intertwined with the fraud and money-laundering courts. Joinder of the charges was proper as a matter of law.

Abegunde cursorily complains that the indictment charged him, but not co-defendant Ramos, with marriage-fraud conspiracy. R.32: Appellant's Br. at 13. That observation does not establish misjoinder. In *Johnson*, this Court considered whether a mail fraud charge against one defendant, Rosemary Johnson, should have

been severed from charges against four other defendants involved in a scheme to transport and sell stolen vehicles. Johnson was not charged with the same crimes, and was the sole co-defendant charged with mail fraud. 763 F.2d at 776. The Court nevertheless held that joinder was appropriate because Johnson and the other defendants all received fraudulent vehicle titles from the same source and each used the titles they obtained to perpetrate a fraud. All the transactions charged in the indictment were thus "logically interrelated." *Id.* As explained above, the same is true here.

C. *Denial of severance was well within the court's discretion*

Even when counts are properly joined under Rule 8(a), a district court may grant a severance motion if joinder "appears to prejudice a defendant." Fed. R. Crim. P. 14(a). That decision is within the court's "sound discretion," and this Court will find an abuse of discretion only upon a defendant's "strong showing of prejudice." *United States v. Tran*, 433 F.3d 472, 478 (6th Cir. 2006); *see also, e.g.*, *United States v. Saadey*, 393 F.3d 669, 678 (6th Cir. 2005) (a defendant must show "compelling, specific and actual prejudice" resulting from the refusal to sever). "Foremost among the [] circumstances [relevant to a motion to sever] is a balancing of the interest of the public in avoiding a multiplicity of litigation." *Saadey*, 393 F.3d at 678 (internal quotation marks omitted) (alterations in original).

Abegunde has not shown that the district court abused its discretion by refusing to grant a severance under Rule 14(a). The interest in judicial economy was served by joining all the counts in a single trial. Evidence that Abegunde entered a fraudulent marriage explained how he obtained access to financial resources, including bank accounts, which Abegunde then used to receive and launder the proceeds of the larger wire fraud scheme. For instance, the jury learned Abegunde used a USAA bank account jointly held with Caffey to conduct transactions, and that an individual that Abegunde recruited made at least six cash deposits into it. R.346: Marcus Vance Testimony, at PageID 2681–83. Indeed, even if the district court had granted Abegunde's motion to sever, this proof would have been admissible in a separate trial on the fraud charges because it demonstrated how Abegunde was able to launder fraud proceeds. Such overlapping proof alone demonstrates that the district court's decision was not an abuse of discretion.

Abegunde asserts simply that the district court's denial of severance led to "overwhelming prejudice" and "[ac]cumulation of prejudice during trial" that had a "substantial and injurious influence" on the jury. R.32: Appellant's Br. at 18. Such conclusory statements are not sufficient to warrant reversal. *See United States v. Soto*, 794 F.3d 635, 657 (6th Cir. 2015) (defendant "needs to offer more than conclusory statements to show that the joinder prejudiced his defense."); *Tran*, 433

F.3d at 478 ("The defendant's conclusory statement that the joinder of the counts 'affected' the jury's ability to render a fair and impartial verdict does not suffice to show substantial prejudice.").

Finally, the district court instructed the jury that it must consider the evidence as to each count separately and "decide whether the government has presented proof beyond a reasonable doubt that a particular defendant is guilty of a particular charge." R.252: Jury Instructions, at PageID 1000. This Court has previously held that such an instruction will be "sufficient to overcome the prejudicial effect of [an] improper joinder," *United States v. Cody*, 498 F. 3d 582, 588 (6th Cir. 2007), as the jury is presumed to follow its instructions. *See United States v. Walls*, 293 F.3d 959, 966 (6th Cir. 2002) ("[j]uries are presumed to be capable of following instructions, like those given in this case, regarding the sorting of evidence"); *see also Zafiro*, 506 U.S. at 539 (even where the risk of prejudice is high, "less drastic measures [than severance], such as limiting instructions, often will suffice to cure any risk of prejudice"). In light of this cautionary instruction, Abegunde's "unproven assertion[s] [are] not compelling evidence of actual prejudice." *Saadey*, 393 F.3d at 679.

The denial of his motion for severance was therefore not an abuse of discretion.

II. Ample evidence supports the jury's verdict that Abegunde entered a conspiracy to receive and launder the proceeds of fraudulent internet schemes.

A. *Standard of Review*

Abegunde challenges the sufficiency of his convictions for conspiracy to commit wire fraud and money laundering, but not for marriage-fraud conspiracy or witness tampering. This Court conducts a de novo review of those challenges. *United States v. Howard*, 621 F.3d 433, 459 (6th Cir. 2010). In doing so, the Court asks whether, when "viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original); *United States v. Kennedy*, 714 F.3d 951, 957 (6th Cir. 2013). The Court must "draw all available inferences and resolve all issues of credibility in favor of the jury's verdict." *United States v. Sliwo*, 620 F.3d 630, 640 (6th Cir. 2010) (citations and internal quotations omitted). A "defendant bringing such a challenge bears a 'very heavy burden.'" *United States v. Daniel*, 329 F.3d 480, 485 (6th Cir. 2003) (quoting *United States v. Vannerson*, 786 F.2d 221, 225 (6th Cir. 1986)).

B. The proof documented Abegunde's participation in the charged conspiracies.

Abegunde asserts that "the government failed to present direct evidence of an agreement or consent on the part of [him] to commit the crime of wire fraud or money laundering." R.32: Appellant's Br. at 23. Not so. Ample evidence—both direct and circumstantial—proved that Abegunde entered into an agreement, and thus entered the conspiracies.

Wire fraud consists of three elements. The government must prove "that the defendant devised or willfully participated in a scheme to defraud[,] that he used or caused to be used an interstate wire communication in furtherance of the scheme [,] and . . . that he intended to deprive a victim of money or property." *United States v. Faulkenberry*, 614 F.3d 573, 581 (6th Cir. 2010) (internal quotation marks omitted). Because the Government charged Abegunde with conspiracy to commit wire fraud, the government had to prove that "two or more persons conspired, or agreed, to commit the crime of [wire fraud]" and "that the defendant knowingly and voluntarily joined the conspiracy." *United States v. Rogers*, 769 F.3d 372, 377 (6th Cir. 2014).

With respect to the money-laundering conspiracy, the government had to similarly prove that two or more persons conspired or agreed to commit the crime of money laundering; and that Abegunde knowingly and voluntarily joined the conspiracy. *See United States v. Hynes*, 467 F.3d 951, 964 (6th Cir. 2006). Because the government proceeded on a concealment theory, it had to show that Abegunde

conspired to "conduct[ ] a financial transaction with criminal proceeds, with knowledge that the money was the proceeds of unlawful activity, and with knowledge that the transaction was designed, in whole or in part, to conceal or disguise the nature, location, source, ownership, or control of the money." *United States v. Agundiz-Montes*, 679 F. App'x 380, 387 (6th Cir. 2017) (alteration in original).

Abegunde does not challenge the overall existence of the conspiracies; just his connections to them. R.32: Appellant's Br. at 23. And for good reason. The trial evidence showed two schemes—premised on business email compromises—that "intend[ed] to deprive another . . . of money or property by means of false or fraudulent pretenses, representations, or promises." *United States v. Daniel*, 329 F.3d 480, 485 (6th Cir. 2003) (defining a scheme to defraud). The first scheme stole $154,000 from a Memphis-based real-estate sale; the second diverted more than $60,000 from a similar transaction in Bellingham, Washington. The jury heard that Tammy Dolan—herself a sweetheart scammer—funneled these proceeds through Ramos, who then redistributed them in smaller amounts to bank accounts controlled by multiple people, including Abegunde. That effort—collecting illegal proceeds, dividing them up into small amounts, and funneling them through a network of intermediaries—makes the money difficult to track. R.353: Marcus Vance

Testimony, at PageID 3099; *see also id.* at 3104 ("[Y]ou quickly get to 15 or 20 people that you have to track from a single business e-mail compromise."). These facts amply establish the charged wire-fraud and money-laundering-concealment conspiracies. In fact, the conduct follows a classic "chain" conspiracy, commonly found in drug cases, where the criminal agreement "can be inferred from the interdependence of the enterprise." *See United States v. Warman*, 578 F.3d 320, 333 (6th Cir. 2009); *see also* R. 333: Testimony of Marcus Vance, at PageID 2297 ("I won't withhold your money. I know it's a chain.").

The trial evidence further documented Abegunde's participation in, and knowledge of, this conspiracy. When the Wells Fargo investigator and the FBI questioned him about the Whatcom BEC, Abegunde lied about his involvement and said he was merely moving money. *See e.g.*, *Unger v. Bergh*, 742 F. App'x 55, 68 (6th Cir. 2018) ("A jury may infer consciousness of guilt from evidence of lying or deception."). He then contacted Ojo and laughed about there being "no crime in seeing an opportunity and taking it." *See* R.333: Marcus Vance Testimony, at PageID 2283. This sequence directly incriminates Abegunde in the fraud conspiracy. He received the proceeds of a crime, lied about it to the FBI, and joked about his conduct with a co-conspirator. The jury rightly concluded as much.

The same evidence implicates Abegunde in the money-laundering conspiracy. He accepted small transfers of fraud proceeds in bank accounts bearing the names and identifiers of other individuals—just as he did on previous occasions. Abegunde arranged the transactions through encrypted WhatsApp communications, which are difficult to track. R.346: Marcus Vanuce Testimony, at PageID 2685. That conduct supplied the jury with the proof of Abegunde's participation in a concealment-based conspiracy to commit money laundering. *See, e.g.*, *Agundiz-Montes*, 679 F. App'x at 387–88 (sufficient evidence of concealment where "Lara-Chavez held six accounts at Chase Bank, directed his coconspirators to deposit cash in even, whole-dollar amounts no greater than $10,000, and shuffled funds between his personal and business accounts").

In response, Abegunde asserts a lack of "direct" evidence of a conspiratorial agreement, but "proof of a formal agreement is not necessary; a tacit or material understanding among the parties' will suffice." *Warman*, 578 F.3d at 332–33 (internal quotation marks omitted). An agreement may be proven by "circumstantial evidence such as inferences from the conduct of the alleged participants or from circumstantial evidence of a scheme." *See United States v. Smith*, 320 F.3d 647, 653 (6th Cir. 2003). That is precisely what the government did here, and the jury fairly credited that proof.

C. Abegunde's contrary arguments lack merit.

None of Abegunde's responses undermine the sufficiency of the trial evidence. For instance, Abegunde proffers innocent explanations for his conduct. R.32: Appellant's Br. at 22–24. But he presented these same explanations when testifying on his own behalf. *See* R.334: Abegunde Testimony, at PageID 2405– 07. The jury accordingly considered his version of events and rejected it. *See United States v. Avery*, 128 F.3d 966, 971 (6th Cir. 1997) (jury fairly credited circumstantial evidence of wrongdoing over the "innocent explanation[s] for the incriminating facts proved by the government"). This Court does not second-guess such credibility determinations when conducting a sufficiency review.

Abegunde also proclaims innocence because he did not commit the Crye-Leike or Whatcom BECs. That is beside the point. A defendant need not "be an active participant in every phase of the conspiracy, so long as he is a party to the general conspiratorial agreement. *United States v. Martinez*, 430 F.3d 317, 333 (6th Cir. 2005). The trial proof documented Abegunde's involvement in accepting and laundering the proceeds of those frauds. That conduct was consistent with Abegunde's pattern of financial dealings—which involved involuntary bank account closures, transactions through approximately 40 accounts owned by third parties, Abegunde's efforts to "beg, incentivize, and lobby" with other people to allow him

access to their accounts, and Abegunde's remarks preferring a "cash structure" because those transactions were easier to "clean." R.333: Marcus Vance Testimony, at PageID 2302; *id.* at PageID 2307. Even if Abegunde did not personally participate in the Crye-Leike or Whatcomm BECs, the jury had ample evidence to conclude that he knowingly participated in the broader conspiracy to divert and launder those fraud proceeds.

Finally, Abegunde maintains that he did not know Ramos—the individual who transferred the fraud proceeds into bank accounts that Abegunde controlled. That observation ignores blackletter conspiracy law: "it is not necessary to show that a defendant knew every member of the conspiracy or knew the full extent of the enterprise." *United States v. Maliszewski*, 161 F.3d 992, 1006 (6th Cir. 1998). Even if Abegunde's assertion were true, it does nothing to dispel the jury's verdict that he joined the larger conspiracy.

III. The government established venue for the wire-fraud conspiracy count in the Western District of Tennessee.

A. *Standard of Review*

Abegunde objects that the government failed to establish venue in the Western District of Tennessee for the wire-fraud conspiracy. Typically, this Court reviews for abuse of discretion the district court's decision whether to dismiss for lack of venue. *United States v. Fonseca*, 193 F. App'x 483, 492 (6th Cir. 2006) (per curiam)

(citing *United States v. Brika,* 416 F.3d 514, 527 (6th Cir. 2005)). Because Abegunde did not raise this venue objection in the district court, however, this Court reviews only for plain error, "requiring an error that is clear or obvious, affecting a defendant's substantial rights, and seriously affecting the fairness, integrity or public reputation of judicial proceedings." *United States v. Lopez–Medina,* 461 F.3d 724, 746 (6th Cir. 2006).

At bottom, the precise standard of review is academic because Abegunde fails to show error, plain or otherwise.

B. *Because an object of the wire-fraud conspiracy occurred in Memphis, venue was appropriate in the Western District of Tennessee.*

Both the Sixth Amendment and Fed. R. Crim. P. 18 require that defendants be tried in the district where their crime was "committed." U.S. Const. amend. IV; Fed. R. Crim. P. 18; *see also* U.S. Const. art. iii, § 2, cl. 3. When multiple counts are alleged in an indictment, as in this case, the government must prove that venue is proper on each count by a preponderance of the evidence. *United States v. Beddow*, 957 F.2d 1330, 1335 (6th Cir. 1992); *see also United States v. Zidell*, 323 F.3d 412, 420–21 (6th Cir. 2003) (noting that the government need only present proof sufficient to allow a rational trier of fact to conclude that venue was proper by a preponderance of the evidence).

Because wire fraud is a "continuing offense," *see United States v. Grenoble*, 413 F.3d 569, 573 (6th Cir. 2005), it "may be . . . prosecuted in any district in which such offense was begun, continued, or completed." 18 U.S.C. § 3237(a); *see also Zidell*, 323 F.3d at 422. A conspiracy to commit wire fraud or money laundering is also, by extension, a continuing offense. *See Smith v. United States*, 568 U.S. 106, 111 (2013) ("Conspiracy is a continuing offense.").

As a consequence, conspiracy crimes may be prosecuted "in any district where an overt act in furtherance of the conspiracy was performed." *United States v. Scaife*, 749 F.2d 338, 346 (6th Cir. 1984); *see also United States v. Crozier*, 259 F.3d 503, 519 (6th Cir. 2001) ("[V]enue is proper in any district where the conspiracy was formed or where an overt act in furtherance of the conspiracy was performed.").

That rule resolves this claim. The indictment alleged multiple overt acts in furtherance of the wire-fraud conspiracy. Of note, a co-conspirator sent a fraudulent email directing a Memphis-based attorney to wire approximately $154,000.00 in closing funds to a bank account controlled by Ramos. *See* R.165: Superseding Indictment, at PageID 665. Because that overt act occurred in the Western District of Tennessee, the government properly charged the wire-fraud conspiracy in that district. Venue is accordingly "proper as to all co-conspirators, including [Abegunde]." *Crozier*, 259 F.3d at 519.

Abegunde emphasizes that his personal connection to the Western District of Tennessee was "minimal and indirect"—he simply obtained $9,000 in proceeds from a conspiracy that included acts that took place in Memphis. R.32: Appellant's Br. at 26. That assertion is irrelevant for purposes of the venue inquiry, which simply asks whether an overt act occurred in the district. *See Zidell*, 323 F.3d at 422 ("To satisfy the terms of [18 U.S.C. § 3237(a)], it is not essential that the defendant ever have been physically present in the district in question, so long as 'the offense continued into' this district.").

Abegunde further asserts that his prosecution in the Western District of Tennessee is unconstitutional. That claim lacks merit. As noted above, this Court has long held that conspiracies qualify as "continuing offenses," and 18 U.S.C. § 3237(a) accordingly authorizes their prosecution in any district where an overt act in furtherance of the conspiracy was performed. Such a "venue provision is not unconstitutional because a conspiracy is a continuing offense that is committed everywhere the overt acts are committed." *United States v. Myers*, 854 F.3d 341, 354 (6th Cir. 2017).

IV. The district court adequately instructed the jury on its consideration of two law-enforcement witnesses who provided fact and opinion testimony.

A. Background

During the government's case, FBI Special Agent Marcus Vance testified

about his specialized knowledge regarding complex financial crimes, explained how such schemes were perpetrated, described the types of transactions that indicate fraud, and informed the jury about investigative strategies. Days later, the government recalled Agent Vance to testify about the actions that he personally took during this investigation.

FBI Special Agent David Palmer—a cybercrimes specialist—similarly testified about cybercrime schemes, such as business email compromises and romance or "advance fee" scams. He also explained the process of forensically examining digital devices like smartphones, computers, and tablets, and how investigators can confirm that the extracted digital contents are reliable copies of the information on the device. Agent Palmer was later recalled as a fact witness to testify about his work on this case.

The government asked the district for permission to proceed in this fashion. R.235: Mtn. in Limine, at PageID 912; R.236: Trial Brief, at PageID 925.[2]

The government asked the district court to explain the nature of the agents' testimony to the jury while they remained on the witness stand. Although the court declined to categorize the agents as "opinion" witnesses, it instructed the jury that agents had testified at different points, and that the jury would be given an instruction

[2] Neither the United States nor Mr. Abegunde requested transcripts of jury selection or final pre-trial discussions before the district court.

about the difference between fact and opinion testimony. R.353: Marcus Vance Testimony, at PageID 3132; *see also* R.333: Marcus Vance Direct, at PageID 2216 ("And, Members of the Jury, if you remember, I told you that the two agents may be allowed to be recalled by the Government.").

Before deliberations began, the district court reminded the jury that it had "heard testimony of Special Agents Vance and Palmer, who testified as to both facts and opinions." R.252: Jury Instructions, at Page ID 996. The court then instructed the jury that "[e]ach of these types of testimony should be given the proper weight":

> As to the testimony on facts, consider the factors discussed earlier in these instructions for weighing the credibility of witnesses. As to the testimony on opinions, you do not have to accept Special Agents Vance and Palmer's opinions. In deciding how much weight to give it, you should consider the witnesses' qualifications and how they reached their conclusions, along with the other factors discussed in these instructions for weighing the credibility of witnesses.

Id. Finally, the court reminded the jury that "you alone decide how much of a witness's testimony to believe, and how much weight it deserves. *Id.*

B. Standard of Review

This Court reviews "[e]videntiary determinations, including whether a district court failed to differentiate between a witness's fact and expert testimony, . . . for an abuse of discretion." *United States v. Barron*, 940 F.3d 903, 920 (6th Cir. 2019). If such an evidentiary error occurred, this Court will ask whether it was harmless, *id.*—

i.e., whether the government can show "by a preponderance of the evidence that the error did not materially affect the verdict." *United States v. Young*, 847 F.3d 328, 350 (6th Cir. 2017). Without an objection from the defendant though, review is for plain error. *Id.*

C. The district court adequately distinguished the dual nature of the witness testimony through its cautionary instruction and demarcation efforts.

Federal Rule of Evidence 701 limits opinion testimony of a lay witness to that which is based on the witness's perception, helpful to understanding their testimony or a fact at issue, and not based on "scientific, technical, or other specialized knowledge." Fed. R. Evid. 701. Otherwise, opinion testimony is reserved for a person who has particular training, education, skill, knowledge or experience may offer an opinion if that opinion will help the trier of fact understand the witness's testimony or determine a fact at issue. Fed. R. Evid. 702.

The Sixth Circuit permits a witness to offer both fact and opinion testimony. *United States v. Barron*, 940 F.3d 903, (6th Cir. 2019) (internal citations omitted). This is so even for law enforcement witnesses. *Id.* As long as the court and prosecutors take care to instruct the jury as to the dual role of the witness, the jury will be able to give proper weight to each type of testimony. *Id.*

There are two primary ways to ensure the jury is adequately advised: by providing a cautionary jury instruction and by providing "clear demarcation" between the witness's fact and opinion testimony. *Id.* The district court used both techniques in this case.

First, the district court issued a cautionary instruction—specifically, Sixth Circuit Pattern Jury Instruction 7.03A—as part of its jury charge. This Court has held that such an instruction adequately informs the jury about the dual nature of a witness's testimony and how it should weigh that different testimony. *See Barron*, 940 F.3d at 920–921.

Second, the district court provided clear demarcation between the witness's fact testimony and opinion testimony. When each witness first took the stand and offered opinion testimony, the court instructed the jury that it would hear from that witness later during trial as to his personal involvement in the case. R.353: Marcus Vance Testimony, at PageID 3140; R.332: David Palmer Testimony, at PageID 2002. The court also temporally separated the opinion and fact testimony from each witness—Agent Vance testified on March 12 and March 14-15, 2019; Agent Palmer on March 13 and March 15, 2019. *See United States v. Tocco*, 200 F.3d 401, (6th Cir. 2000) (noting with approval that dual roles of a witness can be properly

demarcated and emphasized when the witness's fact testimony and witness testimony occur at different times during trial).

On appeal, Abegunde complains only that "there was no jury instruction regarding Agent Vance and Agent Palmer's dual witness roles nor a clear demarcation between their expert opinion and fact testimony." R.32: Appellant's Br. at 29. That is factually incorrect. As discussed above, the district court demarcated the testimony and used the Sixth Circuit pattern instruction to explain that dual nature to the jury. No abuse of discretion occurred.

D. Any error was harmless.

Even if this Court were to find the district court abused its discretion, in bifurcating the testimony of Special Agents Vance and Palmer, Abegunde is not entitled to relief because the error was non-constitutional in nature, and any "error, defect, irregularity, or variance that does not affect substantial rights must be disregarded." *United States v. Young*, 847 F.3d 328, 349 (6th Cir. 2017) (internal citations omitted).

Here, no substantial right was violated—as to both agents, the jury heard the same testimony in two segments that it would otherwise have heard in one longer period of testimony. The opinion portion provided a foundation for interpretation of evidence to come; the fact testimony laid out the development of the case.

Separating opinion from fact by time helped provide clarity, something that is in the best interest of all parties. This Court should not find prejudice to the defendant on these grounds.

V. The record supports the district court's loss calculation at sentencing.

A. Background

Sentencing Guideline § 2B1.1 directs sentencing courts to impose an enhancement based on the loss amount associated with the offense. "In calculating the Guidelines loss under U.S.S.G. § 2B1.1(b)(1), district courts include losses sustained from relevant conduct under U.S.S.G. § 1B1.3." *United States v. Catchings*, 708 F.3d 710, 720 (6th Cir. 2013). "Relevant conduct" includes "all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant." U.S.S.G. § 1B1.3(a)(1)(A).

The Probation Office calculated the loss attributable to Abegunde at nearly $800,000. R.274: PSR, at Page ID 1142. The amount comprised (1) losses from the two BECs; (2) $7,429.59 in benefits that Abegunde received through his fraudulent marriage to Caffey; and (3) approximately $570,000.00 in transactions that he conducted through third-party accounts that he did not want traced to him. *See id.* at PageID 1152–54.

At sentencing, FBI Agent Vance created a chart of the third-party transactions showing the $570,000.00 that flowed through third-party accounts. R.316-1: Exhibit A, at PageID 1501–03. Agent Vance testified that this was a "conservative" estimate of the Abegunde's conduct. *See* R.329: Marcus Vance Testimony, at PageID 1656.

Because Abegunde objected to the chart, the district court continued the hearing and allowed the parties to supplement the factual and legal record surrounding the chart. *See id.* at PageID 1685–86. Of note, the government provided excerpts of WhatsApp messages between Abegunde and coconspirators about the disputed transactions. When the parties reconvened, the district court methodically reviewed Agent Vance's chart line by line, and conspirator by conspirator, explaining in detail why each transaction involved conduct on Abegunde's part that was relevant to the charged conspiracies.

The district court accordingly calculated the loss amount associated with Abegunde's offense conduct at $596,926.11. R.331: October 22, 2019 Hr'g, at PageID 1872 ("So together that's $596,926.11."). That finding, along with other relevant Guidelines provisions that are not in dispute here, resulted in a Guidelines range of 78 to 97 months. The district court sentenced the Defendant to 78 months—at the low end of this range.

Abegunde appeals on one ground: whether the district court, in calculating his loss amount, erred by including the third-party transactions as relevant conduct. *See* R.32: Appellant's Br. at 31.

B. Standard of Review

Whether certain actions or events qualify as relevant conduct under § 1B1.3(a)(1)(A) is reviewed by this Court *de novo*, while the factual findings underlying the district court's determination that conduct is "within the scope" of, "in furtherance" of, and "reasonably foreseeable" in connection with jointly undertaken criminal activity are reviewed for clear error. *United States v. Tocco*, 306 F.3d 279, 284 (6th Cir. 2002).

C. The record supports the district court's finding that Abegunde's transactions through third-party accounts constitute "relevant conduct" for purposes of the loss calculation.

The district court classified the $570,000.00 in transactions that Abegunde conducted through third-party accounts as "relevant conduct" under Section 1B1.3(a)(1)(A). Because the record amply supports that factual finding, the district court properly included that figure in its loss amount.

The jury convicted Abegunde of conspiracies to commit wire fraud and money laundering that spanned from 2014 through 2018. The trial evidence showed that Abegunde used various third-party bank accounts to further these conspiracies.

At sentencing, the government introduced a chart of 81 transactions involving Abegunde and his co-conspirators. Each transaction resembled the Whatcom BEC discussed at trial, and involved the encrypted messaging platform WhatsApp. *See* R.329: Marcus Vance Testimony, at PageID 1655–57. The government also attached communications in conjunction with each participant—including those introduced to Abegunde by coconspirator Ayodeji Ojo—to demonstrate that they should be included in Abegunde's relevant conduct determination.

Based on these similarities, the district court found that these transactions constituted "relevant conduct." The court stated that Abegunde similarly "structure[d] these transactions in ways that . . . attempt[] to allude anyone from looking into the transactions, whether they be banks or law enforcement." R.330: September Sentencing Hr'g, at PageID 1709. The court further noted that Abegunde, despite purporting to run a legitimate business, conducted these transactions over an encrypted messaging platform and used the names and accounts of individuals who were unrelated to the underlying business deals. *Id.* at PageID 1709–10. The court accordingly found that these transactions followed "the modus operandi of the scheme," specifically observing that Abegunde "didn't know the people whose money he was moving" and used "strangers and acquaintances to move the money into accounts in other peoples' names who were not connected to

the transactions." *Id.* at PageID 1710; *see also* R.331: October Sentencing Tr., at Page ID 1858.

Abegunde has shown no clear error in these findings. The district court carefully examined each of the 81 transactions identified by the government—line by line and actor by actor. The court then articulated the reasons—which included Abegunde's own words—why it included the particular transaction as relevant conduct in the loss amount. *See* R.331: October Sentencing Tr., at Page ID 1858 (describing importance of Abegunde's own words). Abegunde's brief fails to even discuss (much less challenge) the district court's factual findings regarding each individual transaction.

Instead, Abegunde cursorily asserts that the government failed to "establish[] that the transactions were in any way illegal." *See* R.32: Appellant Br. at 31. With respect to each transaction, however, the district court found "enough indicia of . . . the same modus operandi that is *more likely than not to include criminal conduct.*" R.330: September Sentencing Hr'g, at Page ID 1740–41 (emphasis added). And the pain-staking detail that the district court offered in arriving at the loss amount undercuts any argument that the court's "evaluation of the loss was not only inaccurate, but was outside the realm of permissible computations." *See United States v. Greco*, 734 F.3d 441, 446–47 (6th Cir. 2013) (explaining that a court's

estimate of loss is entitled to deference, and that a defendant must show that the calculation was outside the realm of permissible computations).

CONCLUSION

This Court should affirm the district court's judgment.

Respectfully submitted,

D. MICHAEL DUNAVANT
United States Attorney
Western District of Tennessee

DEBRA L. IRELAND
Assistant United States Attorney
Western District of Tennessee
Assistant United States Attorney

BRIAN A. BENCZKOWSKI
Assistant Attorney General
Criminal Division

TIMOTHY C. FLOWERS
Senior Trial Attorney, Computer Crime and Intellectual Property Section
Criminal Division
United States Department of Justice

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation provided in Rule 32(a)(7)(C)(i) of the Federal Rules of Appellate Procedure. The brief contains 9,815 words of Times New Roman (14-point) proportional type, from the Statement of Jurisdiction through the Conclusion. Microsoft Word is the word-processing software that I used to prepare this brief.

/s/ Debra L. Ireland
DEBRA L. IRELAND
Assistant United States Attorney

DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

Appellee, pursuant to Sixth Circuit Rules 28(c) & 30(b), hereby designates the following filings in the District Court's record as entries that are relevant to this appeal:

DESCRIPTION OF ENTRY	DATE	RECORD ENTRY #	PAGE ID #'s
W.D. Tenn. 2:17-cr-20238			
Indictment	8/24/2017	3	3
Minute Entry	2/20/2018	83	N/A
Motion to Sever	8/24/2018	156	621
Superseding Indictment	8/29/2018	164	638
Superseding Indictment Penalty Copy	8/29/2018	165	664-673
Motion in Limine	3/3/2019	235	912
Trial Brief	3/3/2019	236	925
Motion for Separate Trial on Counts	3/6/2019	238	935
Minute Entry	3/11/2019	240	N/A
First Supplemental Jury Instructions	3/19/2019	252	996-1000
Jury Verdict	3/20/2019	259	1052
Presentence Report Final	6/13/2019	274	1142-1154
Sentencing Memorandum	10/11/2019	316-1	1501-03

Redacted Judgment	10/23/2019	323	1596-1598
Notice of Appeal	10/25/2019	324	1604
Sentencing Hearing	7/24/2019	329	1655-1686
Sentencing Hearing	9/6/2019	330	1709-10, 1740-41
Sentencing Hearing	10/22/2019	331	1858-1872
Trial Transcript 3-13-19	12/6/2019	332	1918-2002
Trial Transcript 3-14-19	12/6/2019	333	2212-2307
Trial Transcript 3-18-19	12/6/2019	334	2356-2407
Trial Transcript 3-11-19	12/13/2019	345	2642-2647
Trial Transcript 3-15-19	12/13/2019	346	2664-2894
Trial Transcript 3-12-19	12/31/2019	353	2935-3182
Trial Transcript 3-14-19	12/31/2019	354	3254-3296
Sixth Circuit 19-6229			
Appellant Brief	03/19/2020	32	13-31

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief for Plaintiff-Appellee United States was served upon counsel for Olufolajimi Abegunde,

John Keith Perry, Jr., Esq.
5699 Getwell Road, Bldg. G5
Southaven, MS 38672
(662) 536-6868

by filing with the Court's CM/ECF system this 4th day of June, 2020.

/s/ Debra L. Ireland
DEBRA L. IRELAND
Assistant United States Attorney

APPENDIX D

IRELAND

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	**SUPERSEDING INDICTMENT**
	)	
Plaintiff,	)	
	)	**Criminal No.: 17-CR-20238-SHL**
vs.	)	
	)	**18 U.S.C. § 1349**
OLUFALOJIMI ABEGUNDE,	)	**18 U.S.C. § 1343**
a/k/a "FJ"	)	**18 U.S.C. § 1956(h)**
a/k/a "EFJAY"	)	**18 U.S.C. § 371**
	)	**18 U.S.C. § 1512(b)**
and,	)	
	)	
JAVIER LUIS RAMOS ALONSO,	)	
	)	
Defendants.	)	

SUPERSEDING INDICTMENT

THE GRAND JURY CHARGES:

Background

At all times relevant to this information:

1. A "business email compromise" (BEC) is a type of computer intrusion that occurs when an employee of a company is fooled into interacting with an email message that appears to be, but is not, legitimate. The bogus email usually contains either an attachment or a link to a malicious website. Clicking on either will release a virus, worm, spyware, or other program application (also known as "malware") that subsequently infects the employee's email account and/or computer. Frequently, the malware spreads throughout the business' entire computer network. The malware, once executed, can

harvest information, including credentials, and give the intruding party access to sensitive company information.

2. In one common BEC scam, an intruder monitors email to determine when a large financial transaction is going to take place. After initial transfer or wiring instructions are conveyed between legitimate parties to the transaction, the intruder sends a follow-up email that appears to be coming from the original legitimate sender. This "spoofed" email contains a change of plans, instructing that the money being wired go instead to a different account—one that is under the intruder's control and set up for the purpose of receiving the redirected funds.

3. Electronic mail (email) is sent and received over the Internet. Data sent over the Internet is broken up into manageable chunks known as "packets."

4. Text messages, or simply "texts," are electronic messages consisting of alphabetic and numeric characters between two or more mobile devices, desktop/laptop computers, or other similar electronics.

5. Facebook was an internet service provider and social networking site whose normal activities took place in interstate and foreign commerce, and had an effect on interstate and foreign commerce. Facebook Messenger was a messaging application that allowed users to communicate electronically using mobile devices, desktop/laptop computers, or other similar electronics.

6. WhatsApp was an encrypted electronic communications platform whose normal activities took place in interstate and foreign commerce, and had an effect on interstate and foreign commerce. The application, which can be operated from mobile

devices or desktop/laptop computers, allowed for the sending of text messages and voice calls, as well as video calls, images and other media, documents, and user location.

7. Google LLC ("Google") was an internet service provider whose normal activities took place in interstate and foreign commerce, and had an effect on interstate and foreign commerce. Gmail is a free email service developed and hosted by Google.

8. Hotmail was a free email platform developed and hosted by Microsoft Corporation.

9. "Company A" is a full-service real estate company headquartered in Memphis, Tennessee, with 115 offices and more than 3,000 licensed sales associates located throughout its nine-state area of service. Company A's email servers are maintained in Memphis.

10. Bank of America Corporation is a multinational banking and financial services corporation headquartered in Charlotte, North Carolina, operating in the United States and approximately 40 other countries. Bank of America is a member of and insured by the Federal Deposit Insurance Corporation (FDIC).

11. The United Services Automobile Association (USAA) is a diversified financial services group of companies that is headquartered in San Antonio, Texas, with subsidiaries that offer banking, investing, and insurance services to people and families who serve, or have served, in the United States military.

12. Wells Fargo is a multinational banking and financial services corporation headquartered in San Francisco, California, that operates in the United States and in approximately 35 other countries. Wells Fargo is a member of and insured by the FDIC.

13. PNC Financial Services Group, commonly known as PNC Bank, is a bank holding company and financial services corporation based in Pittsburgh, Pennsylvania. PNC Bank is a member of and insured by the FDIC.

14. Tricare is a health care program of the United States Department of Defense Military Health System. Tricare provides civilian health benefits for U.S. Armed Forces military personnel, military retirees, and their dependents.

15. **OLUFOLAJIMI ABEGUNDE** is a citizen of Nigeria who resided in Atlanta, Georgia, United States, after being paroled into the United States for an "Alien Relative" adjustment to his immigration status. **ABEGUNDE** used and controlled several email accounts, folajimiabegunde@gmail.com, fj.abegunde@fjwilliamsltd.com, ayodejiabegunde1@gmail.com, and folajimi.abegunde@fjwilliamsltd.com.

16. Ayodeji Olumide Ojo ("Ojo") was a Nigerian citizen residing in Nigeria, but who also stayed with **ABEGUNDE** in Atlanta, Georgia, when visiting the United States. Ojo used and controlled the email account as dejiojoo@yahoo.com.

17. **JAVIER LUIS RAMOS ALONSO** was a resident of the United States who resided in California. Ramos used and controlled the email account alonsoluis32@gmail.com.

18. Olubunmi Makinwa was a citizen of Nigeria who resided with **ABEGUNDE** in Atlanta, Georgia. Makinwa used and controlled the email account olubunmimakinwa@yahoo.com.

19. Edchae Caffey was a United States Citizen and a member of the United States Army, who, during the relevant time period, was stationed in either the United

States or deployed to Korea. Caffey used and controlled the email account yesitscaffey@gmail.com.

20. A.A. was an American citizen and member of the United States Army, who resided in the Fayetteville, North Carolina.

21. W.H. was a Nigerian citizen visiting the United States. W.H. used and controlled the email account [REDACTED]@gmail.com.

22. A.K. is a citizen of the United States, residing within the Western District of Tennessee.

23. W.M. was an attorney and citizen of the United States, residing within the Western District of Tennessee.

24. W.D.M. was an attorney and citizen of the United States, residing within the Western District of Tennessee.

COUNT ONE

Wire Fraud Conspiracy – 18 U.S.C. § 1349

Paragraphs 1 through 24 are re-alleged and incorporated by reference as if fully set forth herein.

25. From at least on or about July 2014, through August 28, 2018, in the Western District of Tennessee and elsewhere, the defendants,

OLUFOLAJIMI ABEGUNDE, a/k/a "FJ" and "EFJAY"
and
JAVIER LUIS RAMOS ALONSO

knowingly and willfully conspired and agreed, with other persons known and unknown to the grand jury, to commit the offenses of wire fraud and bank fraud; that is, the defendant:

(a) Pursuant to Title 18, United States Code, Section 1343, devised and intended to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations, and promises, and for the purpose of executing and attempting to execute such scheme and artifice, transmitted and caused to be transmitted in interstate and foreign commerce certain wire communications;

(b) Pursuant to Title 18, United States Code, Section 1344, knowingly executed and attempted to execute a scheme and artifice to obtain funds under the custody and control of financial institutions, by means of false and fraudulent pretenses, representations, and promises.

Object of the Conspiracy

26. It was the object of the conspiracy that the defendant and his coconspirators would unjustly enrich themselves and each other from multiple complex financial fraud schemes conducted via the internet. The various fraud schemes included, among others, business email compromise, romance scams, advance-fee scams, and fraudulent marriages. The proceeds of these scams were transmitted within the United States and/or to Africa through a network of both complicit and unwitting individuals recruited through the various scams.

Manner and Means

The object of the conspiracy was to be accomplished by the following manner and means, among others:

27. It was a part of the conspiracy that a member of the conspiracy would obtain, or cause to be obtained, unauthorized access into potentially vulnerable email and

business servers, masking their presence and identities through Virtual Private Networks (VPNs) and other means. After gaining unauthorized access, members of the conspiracy would monitor the email accounts of professionals in the real estate field to determine when fund transfers were scheduled to take place. Thereafter, a member of the conspiracy would, in general, spoof emails and send communications, or cause emails to be spoofed and sent, under the identity of the target of the spoof, and in particular, the emails of parties to financial transactions involving real estate. These spoofed emails would redirect wires and transfers of funds to accounts under the control of members of the conspiracy.

28. It was a part of the conspiracy that members of the conspiracy would seek out and identify potential money mules—both witting and unwitting—through the perpetuation of various online scams, including romance scams. Coconspirators would carry on, or cause to be carried on, fictitious online romantic relationships with the victims in order to convince them to carry out various acts that furthered the objective of the conspiracy. These acts included, among other things, transferring the proceeds of the conspiracy via wire transfer, U.S. Mail, and other means.

29. It was a part of the conspiracy that the defendant and others would open, or cause to be opened, bank accounts for the purpose of receiving fraudulently obtained funds, and then send fraudulently obtained funds to other accounts under the control of the defendant and other co-conspirators or unwitting victims. When bank accounts were closed due to suspicion of fraudulent activity, coconspirators lied to bank investigators and/or law enforcement, and then perpetuated the conspiracy by opening additional accounts.

30. It was a part of the conspiracy that members of the conspiracy would instruct individuals who received fraudulently obtained funds to forward most or all the proceeds to other members of the conspiracy, both witting and unwitting, for further transfers in order to obfuscate the source and/or the ultimate destination of the funds.

31. To accomplish the object of the conspiracy, coconspirators committed the following acts, among others, in furtherance of the conspiracy:

a. In or about January 2015, Ojo opened bank accounts ending in 3770 and 0845 with Bank of America. In or about June 2016, these accounts were flagged for suspicion of fraud and subsequently closed.

b. In or about August 2016, Ojo opened a new account ending in 9962 at Wells Fargo and, with permission, used **ABEGUNDE's** address and phone number to register the account. **ABEGUNDE** knew that Ojo needed a United States address to associate because Ojo was a resident of Nigeria and did not reside in the United States.

c. On or about July 25, 2016, W.M., a Memphis-based lawyer, acted as the closing attorney for a real estate transaction involving A.K., a realtor for Company A. As W.M. prepared the transfer of proceeds from the sale of a property to a seller's bank account, he received an email from A.K. directing that the proceeds be redirected to a different bank account. A.K. had neither sent, nor been asked by the client to send, the different account information.

d. On or about July 25, 2016, approximately $154,000, with those funds representing the BEC of Company A described in the subparagraph above, was transferred to a Bank of America bank account ending in 7688 that was controlled by **RAMOS ALONSO**.

e. In or about July 2016 "Tammy Dolan," an online moniker for a romance scammer who claimed to live in Africa, alerted **RAMOS ALONSO** to the incoming $154,000 deposit to his Bank of America account ending in 7688.

f. On or about October 3, 2016, approximately $61,000—with those funds representing the BEC of a Washington company—was transferred to a Wells Fargo bank account ending in 9483 that was controlled by **RAMOS ALONSO**. Like with the July BEC, "Tammy" alerted **RAMOS ALONSO** that the funds would be deposited into his account.

g. On or about October 4 through 6, 2016, **RAMOS ALONSO** conducted approximately seven (7) wire transfers of $10,000 or less that were sent to bank accounts around the country, including to one controlled by Ojo and bearing **ABEGUNDE's** address and contact information.

h. On or about October 11, 2016, during a telephone conversation with a Wells Fargo investigator about the Washington BEC, **ABEGUNDE**—posing as Ojo—lied and/or misrepresented the source and disposition of the funds in the account.

i. On or about October 11, 2016, during a telephone conversation with a Wells Fargo investigator about the Washington BEC, **RAMOS ALONSO** admitted to receiving large wire transfers and then sending smaller amounts to individuals whose true identities were unknown to him.

j. On or about November 2, 2016 **ABEGUNDE** registered FJ Williams, a company allegedly devoted to alcohol importation, with the Georgia Secretary of State, listing himself as Chief Executive Officer and Ayodeji Olumide Ojo as Chief Financial Officer.

k. On or about November 1, 2016 **ABEGUNDE** arranged for Ojo to travel from Nigeria to the United States. Ojo resided with **ABEGUNDE** during this visit.

l. On or about March 15, 2017, **ABEGUNDE**, when confronted by agents of the Federal Bureau of Investigation, lied and/or misrepresented his knowledge of fraudulent conduct, his relationship with Ojo, and the business activities of FJ Williams. Following the interview with FBI agents, ABEGUNDE contacted Ojo via WhatsApp messenger and told Ojo "Your name is in FJ Williams. I lied about that."

m. In or about July 2017, while discussing numerous financial transactions, **ABEGUNDE** warned Ojo that "[t]he Anti-Money Laundering policy reason for flagging is 10k." Despite this warning, **ABEGUNDE** conducted numerous transactions over the life of the conspiracy of just below the $10,000 threshold.

COUNT TWO

Wire Fraud – 18 U.S.C. § 1343

The facts set forth in paragraphs 1 through 24 and paragraphs 27 through 31 are re-alleged and incorporated by references as if fully set forth herein.

32. In or about July 2016, in the Western District of Tennessee and elsewhere, the defendant, **JAVIER LUIS RAMOS ALONSO,** devised and intended to devise a scheme to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises.

33. On or about July 25, 2016, for the purpose of executing the scheme described above, and attempting to do so, the defendant caused to be transmitted by means of wire communication in interstate commerce, the signals and sounds described below for Count Two as follows:

2	7/25/16	**JAVIER LUIS RAMOS ALONSO** accepted a $154,371 wire, representing the proceeds of a BEC of Company A in Memphis, TN, into his Bank of America account ending 7688, and then subsequently deposited the proceeds of this and/or subsequent BECs electronically into an account controlled by Ayodeji Olumide Ojo in Atlanta, GA.

All in violation of Title 18, United States Code, Sections 1343 and 2.

COUNT THREE

Money Laundering Conspiracy – 18 U.S.C. § 1956(h)

The facts set forth in paragraphs 1 through 24 and paragraphs 27 through 31 above are re-alleged and incorporated by reference as if fully set forth herein.

34. Beginning in at least July 2014, and continuing thereafter until at least March 2018, in the Western District of Tennessee and elsewhere, the defendants,

OLUFOLAJIMI ABEGUNDE, a/k/a "FJ" and "EFJAY"
and
JAVIER LUIS RAMOS ALONSO

did knowingly combine, conspire and agree with other persons known and unknown to the grand jury, to commit offenses against the United States in violation of Title 18, United States Code, Section 1956, specifically to knowingly conduct and attempt to conduct, financial transactions affecting interstate and foreign commerce, which transactions involved the proceeds of specified unlawful activity, that is, wire fraud, mail fraud, and unauthorized access of a protected computer, knowing that the transactions were designed in whole or in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of specified unlawful activity, and that while conducting and attempting to conduct such financial transactions, knew that the property

involved in the financial transactions represented the proceeds of some form of unlawful activity; all in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i). The manner and means used to accomplish the objectives of the conspiracy included, among others, all of the acts described in paragraphs 27 through 31 of this Indictment, all in violation of Title 18, United States Code, Sections 1956(h).

COUNT FOUR

Conspiracy – 18 U.S.C. § 371

Paragraphs 1 through 24 and paragraphs 27 through 31 are re-alleged and incorporated by reference as if fully set forth herein.

35. From at least on or about April 2016, through up and until the time of Indictment, in the Western District of Tennessee and elsewhere, the defendant,

OLUFALOJIMI ABEGUNDE, a/k/a "FJ" and "EFJAY"

and others known and unknown, unlawfully, willfully, and knowingly agreed, combined, and conspired, to violate Section 1325(c), Title 8 United States Code—that is, having devised and intended to devise a scheme and artifice to enter into marriage for the purpose of evading a provision of the immigration laws of the United States.

Object of the Conspiracy

36. It was the object of the conspiracy that the defendant and his co-conspirators would unjustly enrich themselves through using the proceeds, fruits, and/or access provided by their criminal conduct. It was further the object of the conspiracy that the defendant and his co-conspirators would use the proceeds, fruits, and/or access provided by their criminal conduct to provide an air of legitimacy to their lifestyles.

Manner and Means of the Conspiracy

The object of the conspiracy was to be accomplished by the following manner and means:

37. It was a part of the conspiracy that **ABEGUNDE** would purport to divorce his wife, Makinwa, but continue to reside with Makinwa in Georgia, United States. It was also part of the conspiracy that Makinwa would purport to divorce her husband, **ABEGUNDE**, but continue to reside with **ABEGUNDE** in Georgia, United States. Makinwa would purport to be married to M.G. over the life of the conspiracy.

38. It was a part of the conspiracy that A.A. would introduce **ABEGUNDE** to a United States citizen who would be willing to enter into marriage with **ABEGUNDE**, but not reside or have a marital relationship with **ABEGUNDE**.

39. It was a part of the conspiracy that Caffey would enter into marriage with **ABEGUNDE**, but not reside with or have a marital relationship with **ABEGUNDE**.

40. It was part of the conspiracy that Caffey and **ABEGUNDE** would memorize fictitious answers to interview questions that were commonly asked by United States immigration officials. Caffey and **ABEGUNDE** memorized these answers to trick immigration officials and law enforcement into believing that the marriage was legitimate.

41. It was a part of the conspiracy that Caffey would facilitate the provision of benefits that Caffey was entitled to receive through her active-duty status in the U.S. Army for the benefit of **ABEGUNDE** and his child, including health care coverage through Tricare.

42. It was a part of the conspiracy that Caffey would receive payment in exchange for marrying **ABEGUNDE**.

43. It was part of the conspiracy that Caffey would assist **ABEGUNDE** in opening bank accounts for his and their use.

44. It was a part of the conspiracy that **ABEGUNDE** would use the access provided by his fraudulently obtained immigration status to open multiple financial accounts for business and personal use.

45. It was also part of the conspiracy that **ABEGUNDE** would use his fraudulently obtained immigration status in the United States to open bank accounts, or cause bank accounts to be opened, to facilitate the receipt and transfer of funds obtained through fraudulent activities.

Overt Acts

46. In order to accomplish the object of the conspiracy, the defendant and his co-conspirators committed the following acts, among others, in furtherance of the conspiracy:

a. On or about May 6, 2016, **ABEGUNDE** and Caffey were married in North Carolina.

b. On or about May 6, 2016, Caffey opened a joint bank account ending in 0875 at Bank of America in her and **ABEGUNDE's** names.

c. On or about May 31, 2016, Caffey added **ABEGUNDE** as a co-signor to her account at USAA. Regarding this USAA account, **ABEGUNDE** texted Caffey, "We need a joint account for the purpose of making all these payments. That is why we have the USAA." Over the life of the conspiracy, **ABEGUNDE** sent Caffey's marriage payments to the Bank of America account.

d. In or about June 30, 2016, after sending Caffey a marriage payment, **ABEGUNDE** texted Caffey that he would be "grateful if [she] took [the money] out in piecemeal" because he wanted to [try] to create the perception of realistic activities on the account." **ABEGUNDE** further said that removing "all of the money at one swoop . . . raises some eyebrows."

e. On or about May 6, 2016, Caffey obtained a military-spouse identification document for **ABEGUNDE**. In or around that date, Caffey also asked **ABEGUNDE** if he would be requesting a military-dependent ID for his daughter. **ABEGUNDE** responded, "Let me speak with my wife. I will let you know."

f. On or about May 6, 2016, Caffey obtained access to Tricare for **ABEGUNDE** and his daughter from his relationship with Makinwa.

g. On or about May 6, 2016, Caffey and **ABEGUNDE** opened accounts ending in 0875 and 0888 with Bank of America. On or about July 2016, the accounts ending in 0875 and 0888 were closed due to suspicion of fraudulent activity.

h. On or about June 9, 2016, Caffey texted **ABEGUNDE** in relation to the closed Bank of America accounts. She said, "I don't want my name linked to shit like this all the transfers and shit I don't like it," and that "[i]f you are going to use the usaa bank account for shit like that I'm going to close the account."

i. In July 2016, when discussing an apparent missed marriage payment to Caffey, **ABEGUNDE** stated, "I get the sense that you are doing me a favour. Let me state it as clearly as possible that you are not doing me a favour. There are benefits for both parties."

j. On or about May 13, 2016, **ABEGUNDE** received $9,855 in the joint bank account ending in 0875 from Zainab A. Arowolo from Nigeria.

k. On or about May 19, 2016, **ABEGUNDE** withdrew $9,160 in cash from the joint bank account ending in 0875.

l. On or about May 20, 2016, **ABEGUNDE** received $9,855 in the joint bank account ending in 0875 from Zainab A. Arowolo from Nigeria.

m. On or about May 24, 2016, **ABEGUNDE** wrote a cashier's check for $9,800 to Ranson Corp. from the joint bank account ending in 0875.

n. On or about February 2018, **ABEGUNDE** and W.H. discussed Caffey's possible reactions in the event that her criminal activities with **ABEGUNDE's** became known. In Nigerian Pidgin, **ABEGUNDE** instructed W.H. to speak with Caffey and attempt to get her to see things in a positive way; otherwise it would "affect both sides" if she decided to "scatter the bin."

o. On or about March 6, 2018, W.H., on behalf of **ABEGUNDE**, emailed Caffey two Microsoft Word documents titled, respectively, "PR Interview Questions and Answers 1" and "PR Interview Questions and Answers 2." The subject of the email read "Documents for Abegunde FJ," with the substance of the message as follows: "Please see attached for your reference[.] You may be asked any of the following questions just in case your[sic] forgot."

p. On or about April 14, 2018, W.H., on behalf of **ABEGUNDE**, emailed Caffey a 25-page document containing a document entitled "Reflections," as well as a Motion to Dismiss that had been purportedly drafted by W.D.M. The Motion to Dismiss bore W.D.M.'s name and professional association, but had neither been drafted nor ratified by

W.D.M. The "Reflections" document contained several misleading and/or untruthful statements regarding **ABEGUNDE**'s criminal activities, as well as a section describing "Issuing my wife a Grand-Jury Target Letter," where **ABEGUNDE** stated that the government was trying to get Caffey to turn against him.

q. On or about May 9, 2018, Caffey and **ABEGUNDE** had a phone conversation discussing their fraudulent marriage. Caffey admitted that "[t]his shit is not sitting well with me," and that "I think the cat is out of the bag already."

r. On or about July 2, 2018, **ABEGUNDE** filed a "letter from Olufalojimi Abegunde" that contained several attachments. In those writings, **ABEGUNDE** continued to maintain that Caffey, a U.S. service member, was his legitimate wife.

s. On or about July 7, 2018, **ABEGUNDE** received an email stating, "Jbim Washington. Joint Base Lewis-McChord (McChord air [sic] Force Base."

All in violation of Title 18, United States Code, Section 371.

COUNT FIVE

Witness Tampering – 18 U.S.C. § 1512(b)

Paragraphs 37 through 46 are re-alleged and incorporated by reference as if fully set forth herein.

47. On or about the 14th day of April, 2018, in the Western District of Tennessee, the defendant, **OLUFALOJIMI ABEGUNDE**, did knowingly engage in misleading conduct toward Edchae Caffey by causing documents to be sent to her that contained falsities and misrepresentations in an effort to cause and induce Caffey to withhold her testimony from an official proceeding, specifically the trial of **ABEGUNDE**, all in violation of Title 18, United States Code, Sections 1512(b)(2)(A) & 2.

NOTICE OF INTENT TO SEEK FORFEITURE

1. The allegations contained in Counts One through Five of this Indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

Upon conviction for violating Title 18, United States Code, Section 1349, conspiracy to commit wire fraud, the defendants, **OLUFALOJIMI ABEGUNDE** and **JAVIER LUIS RAMOS ALONSO**, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), any property, real or personal, which constitutes or is derived from proceeds traceable to the offense. The property to be forfeited includes, but is not limited to, the following:

a. pursuant to Title 18, United States Code, Section 982(a)(2)(A), any property, real or personal, constituting, or derived from, proceeds obtained directly or indirectly as a result of such offense; and

If any of property described above, as a result of any act or omission of the defendants:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to or deposited with a third party;

c. has been placed beyond the jurisdiction of the court;

d. has been substantially diminished in value; or

d. has been commingled with other property which cannot be divided without difficulty;

the United States shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Sections 982(b), all pursuant to Title 18, United States Code, Sections 982(a)(2)(B), 982(b) and Title 21, United States Code, Section 853.

A TRUE BILL:

_____

FOREMAN

_____

D. MICHAEL DUNAVANT
UNITED STATES ATTORNEY

_____

DATE

IRELAND

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	SUPERSEDING INDICTMENT
	)	
Plaintiff,	)	
	)	
vs.	)	Criminal No.: 17-cr-20238-SHL
	)	
OLUFALOJIMI ABEGUNDE,	)	18 USC § 1349
a/k/a "FJ"	)	18 USC § 1343
a/k/a "EFJAY"	)	18 USC § 1956(h)
	)	18 USC § 371
and,	)	18 USC § 1512(b)
	)	
JAVIER LUIS RAMOS ALONSO,	)	
	)	
Defendants.	)	

NOTICE OF PENALTIES

COUNT 1

(Conspiracy to Commit Fraud – 18 U.S.C. § 1349)

OLUFOLAJIMI ABEGUNDE, a/k/a "FJ" and "EFJAY"
and
JAVIER LUIS RAMOS ALONSO

[Nmt 20 years, nmt $250,000 fine, or both, plus a period of supervised release of nmt 3 years; together with a mandatory special assessment of $100 per count of conviction.]

COUNT 2

(Wire Fraud – 18 U.S.C. § 1343)

JAVIER LUIS RAMOS ALONSO

[Nmt 20 years, nmt $250,000 fine, or both, plus a period of supervised release of nmt 3 years; together with a mandatory special assessment of $100 per count of conviction.]

COUNT 3

(Money Laundering – 18 U.S.C. § 1956(h))

OLUFOLAJIMI ABEGUNDE, a/k/a "FJ" and "EFJAY"
and
JAVIER LUIS RAMOS ALONSO

[Nmt 20 years, nmt $500,000 fine or twice the value of the property involved in the transaction, whichever is greater, plus a period of supervised release nmt 3 years, together with a mandatory special assessment of $100.]

COUNT 4

(Conspiracy to Commit Marriage Fraud – 18 U.S.C. § 371)

OLUFOLAJIMI ABEGUNDE, a/k/a "FJ" and "EFJAY"

[Nmt 5 years, nmt $250,000 fine or both, plus a period of supervised release of nmt 3 years, and a mandatory special assessment of $100.]

COUNT 5

(Witness Tampering – 18 U.S.C. § 1512(b))

OLUFOLAJIMI ABEGUNDE, a/k/a "FJ" and "EFJAY"

[Nmt 20 years, nmt $250,000 fine or both, plus a period of supervised release of nmt than 5 years, and a mandatory special assessment of $100.]

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CR. NO. 17-20238-SHL
	)	
OLUFALOJIMI ABEGUNDE and	)	
JAVIER LUIS RAMOS ALONSO,	)	
	)	
Defendants.	)	

Members of the Jury:

It is now my duty to instruct you on the rules of law that you must follow and apply in deciding this case. When I have finished and after closing arguments, you will go to the jury room and begin your discussions -- what we call your deliberations.

I will start by explaining your duties and the general rules that apply in every criminal case.

Then I will explain some rules that you must use in evaluating particular testimony and evidence in this case.

Then I will explain the elements, or parts, of the crimes that the defendants are accused of committing.

And last, I will explain the rules that you must follow during your deliberations in the jury room, and the possible verdicts that you may return.

Please listen very carefully to everything I say.

(1.02)
Jurors' Duties

You have two main duties as jurors. The first one is to decide what the facts are from the evidence that you saw and heard here in court. Deciding what the facts are is your job, not mine, and nothing that I have said or done during this trial was meant to influence your decision about the facts in any way.

Your second duty is to take the law that I give you, apply it to the facts, and decide if the government has proved the defendants guilty beyond a reasonable doubt. It is my job to instruct you about the law, and you are bound by the oath that you took at the beginning of the trial to follow the instructions that I give you, even if you personally disagree with them. This includes the instructions that I gave you before and during the trial, and these instructions. All the instructions are important, and you should consider them together as a whole.

Perform these duties fairly. Do not let any bias, sympathy or prejudice that you may feel toward one side or the other influence your decision in any way.

(1.03)
Presumption of Innocence, Burden of Proof, Reasonable Doubt

As you know, both of the defendants have pleaded not guilty to the crimes charged in the indictment. The indictment is not any evidence at all of guilt. It is just the formal way that the government tells each defendant what crime he is accused of committing. It does not even raise any suspicion of guilt.

Instead, the defendants start the trial with a clean slate, with no evidence at all against them, and the law presumes that they are innocent. This presumption of innocence stays with them unless the government presents evidence here in court that overcomes the presumption, and convinces you beyond a reasonable doubt that they are guilty.

This means that the defendants have no obligation to present any evidence at all, or to prove to you in any way that they are innocent. It is up to the government to prove that they are guilty, and this burden stays on the government from start to finish. You must find the defendant you are considering not guilty unless the government convinces you beyond a reasonable doubt that he is guilty.

The government must prove every element of the crime charged beyond a reasonable doubt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt. Possible doubts or doubts based purely on speculation are not reasonable doubts. A reasonable doubt is a doubt based on reason and common sense. It may arise from the evidence, the lack of evidence, or the nature of the evidence.

Proof beyond a reasonable doubt means proof which is so convincing that you would not hesitate to rely and act on it in making the most important decisions in your own lives. If you are convinced that the government has proved the defendants guilty beyond a reasonable doubt, say so by returning a guilty verdict. If you are not convinced, say so by returning a not guilty verdict.

(1.04)
Evidence Defined

You must make your decision based only on the evidence that you saw and heard here in court. Do not let rumors, suspicions, or anything else that you may have seen or heard outside of court influence your decision in any way.

The evidence in this case includes only what the witnesses said while they were testifying under oath and the exhibits that I allowed into evidence. Nothing else is evidence. The lawyers' statements and arguments are not evidence. Their questions and objections are not evidence. My legal rulings are not evidence. And my comments and questions are not evidence.

During the trial I did not let you hear the answers to some of the questions that the lawyers asked. I also ruled that you could not see some of the exhibits that the lawyers wanted you to see. And sometimes I ordered you to disregard things that you saw or heard, or I struck things from the record. You must completely ignore all of these things. Do not even think about them. Do not speculate about what a witness might have said or what an exhibit might have shown. These things are not

evidence, and you are bound by your oath not to let them influence your decision in any way.

Make your decision based only on the evidence, as I have defined it here, and nothing else.

(1.05)
Consideration of Evidence

You are to consider only the evidence in the case. You should use your common sense in weighing the evidence. Consider the evidence in light of your everyday experience with people and events, and give it whatever weight you believe it deserves. If your experience tells you that certain evidence reasonably leads to a conclusion, you are free to reach that conclusion.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this an "inference." A jury is allowed to make reasonable inferences, unless otherwise instructed. Any inferences you make must be reasonable and must be based on the evidence in the case.

The existence of an inference does not change or shift the burden of proof from the government to the defendant.

1.06
Direct and Circumstantial Evidence

Some of you may have heard the terms "direct evidence" and "circumstantial evidence." Direct evidence is simply evidence like the testimony of an eyewitness which, if you believe it, directly proves a fact. If a witness testified that he saw it raining outside, and you believed him, that would be direct evidence that it was raining.

Circumstantial evidence is simply a chain of circumstances that indirectly proves a fact. If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude that it was raining.

It is your job to decide how much weight to give the direct and circumstantial evidence. The law makes no distinction between the weight that you should give to either one, or say that one is any better evidence than the other. You should consider all the evidence, both direct and circumstantial, and give it whatever weight you believe it deserves.

Also you should not assume from anything I may have said or done that I have an opinion concerning any of the issues before you in this case. Except for my instructions to you, you should disregard anything I may have said in arriving at your own decision concerning the facts.

If you have taken notes, please remember that your notes are not evidence. You should keep your notes to yourself. They can only be used to help refresh your personal recollection of the evidence in the case.

If you cannot recall a particular piece of evidence, you should not be overly influenced by the fact that someone else on the jury appears to have a note regarding that evidence. Remember, it is your recollection and the collective recollection of all of you upon which you should rely in deciding the facts in this case.

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone or smart phone, or computer, the Internet, any Internet service, or any text or instant messaging service, any Internet chat room, blog, or website, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict. In other words, you cannot talk to anyone on the phone, correspond with anyone, or electronically communicate with anyone about this case. You can only discuss the case in the jury room with your fellow jurors during deliberations when all jurors are present. I expect you will inform me if you become aware of another juror's violation of these instructions.

You may not use these electronic means to investigate or communicate about the case because it is important that you decide this case based solely on the evidence presented in this courtroom. Information on the Internet or available through social media might be wrong, incomplete, or inaccurate. You are only permitted to discuss the case with your fellow jurors during deliberations because they have seen and heard the same evidence you have. In our judicial system, it is important that you are not influenced by anything or anyone outside of this

courtroom. Otherwise, your decision may be based on information known only by you and not your fellow jurors or the parties in the case. This would unfairly and adversely impact the judicial process. A juror who violates these restrictions jeopardizes the fairness of these proceedings, and a mistrial could result, which would require the entire trial process to start over.

It is important that you decide this case based solely on the evidence presented in this courtroom.

(1.07)
Credibility of Witnesses

Another part of your job as jurors is to decide how credible or believable each witness was. This is your job, not mine. It is up to you to decide if a witness's testimony was believable, and how much weight you think it deserves. You are free to believe everything that a witness said, or only part of it, or none of it at all. But you should act reasonably and carefully in making these decisions. Let me suggest some things for you to consider in evaluating each witness's testimony.

Ask yourself if the witness was able to clearly see or hear the events. Sometimes even an honest witness may not have been able to see or hear what was happening, and may make a mistake.

Ask yourself how good the witness's memory seemed to be. Did the witness seem able to accurately remember what happened?

Ask yourself if there was anything else that may have interfered with the witness's ability to perceive or remember the events.

Ask yourself how the witness acted while testifying. Did the witness appear honest? Or did the witness appear to be lying?

Ask yourself if the witness had any relationship to the government or the defendant, or anything to gain or lose from the case that might influence the witness's testimony. Ask yourself if the witness had any bias, or prejudice, or reason for testifying that might cause the witness to lie or to slant the testimony in favor of one side or the other.

Ask yourself if the witness testified inconsistently while on the witness stand, or if the witness said or did something (or failed to say or do something) at any other time that is inconsistent with what the witness said while testifying. If you believe that the witness was inconsistent, ask yourself if this makes the witness's testimony less believable. Sometimes it may; other times it may not. Consider whether the inconsistency was about something important, or about some unimportant detail. Ask yourself if it seemed like an innocent mistake, or if it seemed deliberate.

And ask yourself how believable the witness's testimony was in light of all the other evidence. Was the witness's testimony

supported or contradicted by other evidence that you found believable? If you believe that a witness's testimony was contradicted by other evidence, remember that people sometimes forget things, and that even two honest people who witness the same event may not describe it exactly the same way.

These are only some of the things that you may consider in deciding how believable each witness was. You may also consider other things that you think shed some light on the witness's believability. Use your common sense and your everyday experience in dealing with other people. And then decide what testimony you believe, and how much weight you think it deserves.

(1.09)
Lawyer's Objections

There is one more general subject that I want to talk to you about before I begin explaining the elements of the crimes charged.

The lawyers for both sides objected to some of the things that were said or done during the trial. Do not hold that against either side. The lawyers have a duty to object whenever they think that something is not permitted by the rules of evidence. Those rules are designed to make sure that both sides receive a fair trial.

Do not interpret my rulings on their objections as any indication of how I think the case should be decided. My rulings were based on the rules of evidence, not on how I feel about the case. Remember that your decision must be based only on the evidence that you saw and heard here in court.

(7.01)
Introduction

That concludes my explanations of your duties and the general rules that apply in every criminal case. Next I will explain some rules that you must use in considering some of the testimony and evidence in this case.

7.02B
Defendant's Testimony

You have heard the defendants testify. Earlier, I talked to you about the "credibility" or the "believability" of the witnesses. And I suggested some things for you to consider in evaluating each witness's testimony.

You should consider those same things in evaluating the defendants' testimony.

(7.20)
Statement by Defendant

You have heard evidence that the defendant, Olufolajimi Abegunde, made a statement in which the government claims he admitted certain facts. You have also heard evidence that the defendant Javier Luis Ramos-Alonso made a statement in which the government claims he admitted certain facts.

In each case, it is for you to decide whether the defendants made these statements, and if so, how much weight they deserve. In making these decisions, you should consider all of the evidence about the statements, including the circumstances under which the defendants allegedly made them.

You may not convict any defendant solely upon his own uncorroborated statement or admission.

Law Enforcement Witnesses

You have heard the testimony of law enforcement officials. The fact that a witness may be employed by the city, county, state, or federal government as a law enforcement official does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness.

It is your decision, after reviewing all the evidence, whether to accept the testimony of each law enforcement witness and to give to that testimony whatever weight, if any, you find it deserves.

(7.03A)
Fact and Opinion Testimony

You have heard testimony of Special Agents Vance and Palmer, who testified as to both facts and opinions. Each of these types of testimony should be given the proper weight.

As to the testimony on facts, consider the factors discussed earlier in these instructions for weighing the credibility of witnesses. As to the testimony on opinions, you do not have to accept Special Agents Vance and Palmer's opinions. In deciding how much weight to give it, you should consider the witnesses' qualifications and how they reached their conclusions, along with the other factors discussed in these instructions for weighing the credibility of witnesses.

Remember that you alone decide how much of a witness's testimony to believe, and how much weight it deserves.

(7.08)
Testimony of an Accomplice

You have heard the testimony of Ahmed Alimi and Edchae Caffey. You have also heard that they were involved in the same crime that Olufolajimi Abegunde is charged with committing. You should consider their testimony with more caution than that of other witnesses.

Do not convict the defendant based on the unsupported testimony of such a witness, standing alone, unless you believe their testimony beyond a reasonable doubt.

The fact that Ahmed Alimi and Edchae Caffey have pleaded guilty to a crime is not evidence that the defendant is guilty, and you cannot consider this against the defendant in any way.

(7.17)
Translations of Recordings

You have heard some recorded conversations that were received in evidence, and you were given some written translations of the recordings.

These translations are evidence in this case.

(2.01)
Introduction

This concludes the part of my instructions explaining your duties and the general rules that apply in every criminal case. In a moment, I will explain the elements of the crimes that each defendant is accused of committing.

But before I do that, I want to explain that each defendant is only on trial for the particular crimes charged in the indictment. Your job is limited to deciding whether the government has proved this defendant guilty of the crimes charged.

Also keep in mind that whether anyone else should be prosecuted and convicted for these crimes is not a matter for you to consider. The possible guilt of others is no defense to a criminal charge. Your job is to decide if the government has proved the defendants in this case guilty. Do not let the possible guilt of others influence your decision in any way.

(2.01D)
Multiple Defendants Charged
with Different Crimes

The defendants have been charged with different crimes. I will explain to you in more detail shortly which defendants have been charged with which crimes. But before I do that, I want to emphasize several things.

The number of charges is not evidence of guilt, and should not influence your decision in any way. And in our system of justice, guilt or innocence is personal and individual. It is your duty to separately consider the evidence against each defendant on each charge, and to return a separate verdict for each one of them. For each one, you must decide whether the government has presented proof beyond a reasonable doubt that a particular defendant is guilty of a particular charge.

(1.03)
Indictment, Not Guilty Plea

I told you at the outset that this case was initiated through an indictment. An indictment is but a formal method of accusing the defendant of a crime. It includes the government's theory of the case, and we will be going over in a few minutes the substance of the indictment. The indictment is not evidence of any kind against an accused.

The defendants have pleaded not guilty to the charges contained in the indictment. This plea puts in issue each of the essential elements of the offenses as described in these instructions and imposes upon the government the burden of establishing each of these elements by proof beyond a reasonable doubt.

Not Reading the Indictment

I am not going to read the indictment to you again, but you will have a copy of the indictment with you in the jury room during deliberations.

(3.01A & 10.02)

COUNT 1
Wire Fraud Conspiracy - 18 U.S.C. § 1349

Elements: Wire Fraud Conspiracy

Count 1 of the superseding indictment accuses both of the defendants of conspiring to commit wire fraud, in violation of federal law. For you to find either of the defendants guilty of this crime, you must be convinced that the government has proved both of the following elements beyond a reasonable doubt as to that defendant:

First: That two or more persons conspired, or agreed, to commit the crime of wire fraud; and

Second: That the defendant knowingly joined the conspiracy.

The elements of the crime of wire fraud are:

First: That the defendant knowingly participated in, devised, or intended to devise a scheme to defraud in order to obtain money or property, that is,

Second: That the scheme included a material misrepresentation or concealment of a material fact;

Third: That the defendant had the intent to defraud; and

Fourth: That the defendant used wire, radio, or television communications, or caused another to use wire, radio, or television communications in interstate or foreign commerce in furtherance of the scheme.

Now I will give you more detailed instructions on some of these terms.

A "scheme to defraud" includes any plan or course of action by which someone intends to deprive another of money or property by means of false or fraudulent pretenses, representations, or promises.

The term "false or fraudulent pretenses, representations, or promises" means any false statements or assertions that concern a material aspect of the matter in question, that were either known to be untrue when made or made with reckless indifference to their truth. They include actual, direct false

statements as well as half-truths and the knowing concealment of material facts.

An act is "knowingly" done if done voluntarily and intentionally, and not because of mistake or some other innocent reason.

A misrepresentation or concealment is "material" if it has a natural tendency to influence or is capable of influencing the decision of a person of ordinary prudence and comprehension. To act "with intent to defraud" means to act with an intent to deceive or cheat for the purpose of either causing a financial loss to another or bringing about a financial gain to oneself or another person.

To "cause" wire, radio, or television communications to be used is to do an act with knowledge that the use of the communications will follow in the ordinary course of business or where such use can reasonably be foreseen.

The term "interstate or foreign commerce" includes wire, radio, or television communications which crossed a state line.

It is not necessary that the government prove all of the details alleged concerning the precise nature and purpose of the scheme, or that the use of the wire, radio, or television communication was intended as the specific or exclusive means of accomplishing the alleged fraud, or that the defendant obtained money or property for his own benefit.

You must be convinced that the government has proved all of these elements beyond a reasonable doubt in order to find any one of the defendants guilty of conspiracy to commit wire fraud.

(3.02)

Agreement

With regard to the first element—a criminal agreement—the government must prove that two or more persons conspired, or agreed, to cooperate with each other to commit the crime of wire fraud.

This does not require proof of any formal agreement, written or spoken. Nor does this require proof that everyone involved agreed on all the details. But proof that people simply met together from time to time and talked about common interests, or engaged in similar conduct, is not enough to establish a criminal agreement. These are things that you may consider in deciding whether the government has proved an agreement. But without more, they are not enough.

What the government must prove is that there was a mutual understanding, either spoken or unspoken, between two or more people, to cooperate with each other to commit the crime of wire fraud. This is essential.

An agreement can be proved indirectly, by facts and circumstances which lead to a conclusion that an agreement

existed. But it is up to the government to convince you that such facts and circumstances existed in this particular case.

(3.03)

Defendant's Connection to the Conspiracy

If you are convinced that there was a criminal agreement, then you must decide whether the government has proved that the defendants knowingly and voluntarily joined that agreement. You must consider each defendant separately in this regard. To convict any defendant, the government must prove that he knew the conspiracy's main purpose, and that he voluntarily joined it intending to help advance or achieve its goals.

This does not require proof that a defendant knew everything about the conspiracy, or everyone else involved, or that he was a member of it from the very beginning. Nor does it require proof that a defendant played a major role in the conspiracy, or that his connection to it was substantial. A slight role or connection may be enough.

But proof that a defendant simply knew about a conspiracy, or was present at times, or associated with members of the group, is not enough, even if he approved of what was happening or did not object to it. Similarly, just because a defendant may have done something that happened to help a conspiracy does not necessarily make him a conspirator. These are all things that

you may consider in deciding whether the government has proved that a defendant joined a conspiracy. But without more they are not enough.

A defendant's knowledge can be proved indirectly by facts and circumstances which lead to a conclusion that he knew the conspiracy's main purpose. But it is up to the government to convince you that such facts and circumstances existed in this particular case.

(2.09)
Deliberate Ignorance

Next, I want to explain something about proving a defendant's knowledge.

No one can avoid responsibility for a crime by deliberately ignoring the obvious. If you are convinced that the defendant deliberately ignored a high probability that fraud was being committed, or that transactions were fraudulent or the proceeds of fraud, then you may find that he knew that fraud was being committed, or that transactions were fraudulent or the proceeds of fraud,

But to find this, you must be convinced beyond a reasonable doubt that the defendant was aware of a high probability that fraud was being committed, or that transactions were fraudulent or the proceeds of fraud, and that the defendant deliberately closed his eyes to what was obvious. Carelessness, or negligence, or foolishness on his part is not the same as knowledge, and is not enough to convict. This of course, is all for you to decide.

(10.02)

COUNT 2
Wire Fraud - 18 U.S.C. § 1343

Elements: Wire Fraud

Count 2 of the superseding indictment accuses Javier Luis Ramos-Alonso of committing wire fraud, in violation of federal law. For you to find the defendant guilty of this crime, you must be convinced that the government has proved all of the following elements beyond a reasonable doubt:

First: That the defendant knowingly participated in, devised, or intended to devise a scheme to defraud in order to obtain money or property, that is,

Second: That the scheme included a material misrepresentation or concealment of a material fact;

Third: That the defendant had the intent to defraud; and

Fourth: That the defendant used wire, radio, or television communications, or caused another to use wire, radio,

or television communications in interstate or foreign commerce in furtherance of the scheme.

The terms "scheme to defraud," "false or fraudulent pretenses, representations, or promises," "knowingly," "material," "with intent to defraud," "cause to be used," and "interstate or foreign commerce" were explained earlier in my instructions, and have the same meanings here.

It is not necessary that the government prove all of the details alleged concerning the precise nature and purpose of the scheme, or that the use of the wire, radio, or television communication was intended as the specific or exclusive means of accomplishing the alleged fraud or that the defendant obtained money or property for his own benefit.

You must be convinced that the government has proved all of these elements beyond a reasonable doubt in order to find the defendant guilty of wire fraud.

(4.01)
Aiding and Abetting

For you to find the defendant guilty of the crime charged in count two, it is not necessary for you to find that he personally committed the crime. You may also find him guilty if he intentionally helped or encouraged someone else to commit the crime. A person who does this is called an aider and abettor.

But for you to find the defendant guilty of the crime as an aider and abettor, you must be convinced that the government has proved each and every one of the following elements beyond a reasonable doubt:

First: That the particular crime was committed.

Second: That the defendant helped to commit the crime or encouraged someone else to commit the crime; and

Third: That the defendant intended to help commit or encourage the crime.

Proof that the defendant may have known about the crime, even if he was there when it was committed, is not enough for

you to find him guilty. You can consider this in deciding whether the government has proved that he was an aider and abettor, but without more, it is not enough.

What the government must prove is that the defendant did something to help or encourage the crime with the intent that it be committed.

If you are convinced that the government has proved all of these elements, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about any one of these elements, then you cannot find the defendant guilty of any crime as an aider and abettor.

(3.01A & 11.02)

COUNT 3
Money Laundering Conspiracy - 18 U.S.C. § 1956(h)

Elements: Conspiracy to Commit Money Laundering

Count 3 of the superseding indictment accuses both defendants of conspiracy to commit money laundering, in violation of federal law. For you to find either defendant guilty of this crime, you must be convinced that the government has proved all of the following elements beyond a reasonable doubt as to that defendant:

First: That two or more persons conspired, or agreed, to commit the crime of money laundering; and

Second: That the defendant knowingly joined the conspiracy.

The elements of the crime of money laundering are:

First: That the defendant conducted or attempted to conduct a financial transaction;

Second: That the financial transaction involved property that represented the proceeds of wire fraud or computer fraud;

Third: That the defendant knew that the property involved in the financial transaction represented the proceeds from some form of unlawful activity, and

Fourth: That the defendant knew that the transaction was designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds of wire fraud or computer fraud.

Now I will give you more detailed instructions on some of these terms.

The term "financial transaction" means a) a transaction which in any way or degree affects interstate or foreign commerce involving the movement of funds by wire or other means; or involving one or more monetary instruments; or involving the transfer of title to any real property, vessel, or aircraft; or b) a transaction involving the use of a financial institution which is engaged in, or the activities of which, affect interstate or foreign commerce in any way or degree.

The term "financial institution" means:

(A) an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));

(B) an agency or branch of a foreign bank in the United States;

(C) a currency exchange;

(D) an issuer, redeemer, or cashier of travelers' checks, checks, money orders, or similar instruments;

(E) an operator of a credit card system;

(F) a loan or finance company;

(G) a licensed sender of money or any other person who engages as a business in the transmission of funds, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system;

(H) persons involved in real estate closings and settlements; or

(I) the United States Postal Service.

The word "conducts" includes initiating, concluding, or participating in initiating or concluding a transaction.

The word "proceeds" means any property derived from, obtained, or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity.

The phrase "knew the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the defendant knew the funds involved in the transaction represented the proceeds of some form, though not necessarily which form, of activity that constitutes a felony under state, federal or foreign law. The government does not have to prove the defendant knew the property involved represented proceeds of a felony, as long as he knew the property involved represented proceeds of some form of unlawful activity.

The instructions for "agreement," "deliberate ignorance," and "role in the conspiracy" given earlier also apply to this offense.

If you are convinced that the government has proved all of these elements, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about any one of these elements, then you must find the defendant not guilty of this charge.

(3.01A & 3.05)

COUNT 4
Conspiracy - 18 U.S.C. § 371

Elements: Conspiracy to Commit an Offense

Count 4 of the superseding indictment charges Olufolajimi Abegunde with conspiracy to enter into a marriage for the purpose of evading a provision of the immigration laws of the United States. It is a crime for two or more persons to conspire, or agree, to commit a criminal act, even if they never achieve their goal.

A conspiracy is a kind of partnership. For you to find the defendant guilty of the conspiracy charge, the government must prove each and every one of the following elements beyond a reasonable doubt:

First: That two or more persons conspired, or agreed, to commit the crime of entering into a marriage for the purpose of evading a provision of the immigration laws of the United States;

Second: That the defendant knowingly joined the conspiracy; and

Third: That a member of the conspiracy did one of the overt acts described in the indictment for the purpose of advancing the conspiracy.

The third element that the government must prove in Count 4 is that a member of the conspiracy did one of the overt acts described in the indictment for the purpose of advancing or helping the conspiracy.

The indictment lists overt acts. The government does not have to prove that all of these acts were committed, or that any of these acts were themselves illegal.

But the government must prove that at least one of these acts was committed by a member of the conspiracy, and that it was committed for the purpose of advancing or helping the conspiracy. This is essential.

The elements of the crime of entering into a marriage for the purpose of evading a provision of the immigration laws of the United States are:

First: That Olufolajimi Abegunde entered into a marriage with Edchae Caffey;

Second: That Olufolajimi Abegunde knowingly entered into the marriage for the purpose of evading the United States immigration laws; and

Third: That Olufolajimi Abegunde knew or had reason to know of the relevant immigration laws.

You must be convinced that the government has proved all of these elements beyond a reasonable doubt in order to find the defendant guilty of the conspiracy charge.

COUNT 5

Witness Tampering - 18 U.S.C. § 1512(b)

Elements: Witness Tampering

Count 5 of the superseding indictment charges Olufolajimi Abegunde with witness tampering.

For you to find the defendant guilty of this charge, the government must prove each and every one of the following elements beyond a reasonable doubt:

First: That the defendant knowingly engaged in misleading conduct toward another person; and

Second: That the defendant took such action with the intent to cause or induce the person to withhold testimony from an official proceeding.

If you are convinced that the government has proved each of these elements, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about any one of these elements, then you must find the defendant not guilty of this charge.

(3.06)
Unindicted, Unnamed, or
Separately Tried Co-Conspirators

Now, some of the people who may have been involved in these events are not on trial. This does not matter. There is no requirement that all members of a conspiracy be charged and prosecuted, or tried together in one proceeding.

Nor is there any requirement that the names of the other conspirators be known. An indictment can charge a defendant with a conspiracy involving people whose names are not known, as long as the Government can prove that the Defendant conspired with one or more of them. Whether they are named or not does not matter.

(3.07)
Venue

Now, some of the events that you have heard about happened in other places. There is no requirement that the entire conspiracy take place here in the Western District of Tennessee. But for you to return a guilty verdict on the conspiracy charge, the government must convince you that either the agreement, or one of the overt acts or acts in furtherance took place here in the Western District of Tennessee.

Unlike all of the other elements that I have described, this is just a fact that the government only has to prove by a preponderance of the evidence. This means the government only has to convince you that it is more likely than not that a part of the conspiracy took place here.

Remember that all the other elements I have described must be proved beyond a reasonable doubt.

(3.10)
Pinkerton Liability for Substantive Offenses Committed by Others

Counts 1 and 3 of the indictment accuse the defendants of conspiring to commit the crimes of wire fraud and money laundering. Count 4 charges one defendant with engaging in conspiracy to enter into marriage to evade provisions of immigration law.

There are two ways that the government can prove defendants guilty of conspiracy crimes. The first is by convincing you that the defendant personally committed or participated in the crime. The second is based on the legal rule that all members of a conspiracy are responsible for acts committed by the other members, as long as those acts are committed to help advance the conspiracy, and are within the reasonably foreseeable scope of the agreement.

In other words, under certain circumstances, the act of one conspirator may be treated as the act of all. This means that all of the conspirators may be convicted of a crime committed by only one of them, even though they did not all personally participate in that crime themselves.

But for you to find either one of the defendants guilty of conspiracy in any of the counts based on this legal rule, you must be convinced that the government has proved each and every one of the following elements beyond a reasonable doubt:

First: That the defendant was a member of the conspiracy charged in the count you are considering;

Second: That after he joined the conspiracy, and while he was still a member of it, one or more of the other members committed the relevant crime. For count 1, the crime of wire fraud; for count 3, the crime of money laundering; and for count 4, the crime of evading immigration law.

Third: That the crime was committed to help advance the conspiracy; and

Fourth: That the crime was within the reasonably foreseeable scope of the unlawful project.

In each case, this does not require proof that the defendant specifically agreed or knew that the crime would be committed. But the government must prove that the crime was

within the reasonable contemplation of the persons who participated in the conspiracy. No defendant is responsible for the acts of others that go beyond the fair scope of the agreement as the defendant understood it.

If you are convinced that the government has proved all of the elements of the count you are considering, say so by returning a guilty verdict on that charge. If you have a reasonable doubt about any one of them, then the legal rule that the act of one conspirator is the act of all would not apply for the count under consideration.

(3.12)
Duration of a Conspiracy

One of the questions in this case is whether a defendant engaged in a conspiracy. This raises the related question of when a conspiracy comes to an end.

A conspiracy ends when its goals have been achieved. But sometimes, a conspiracy may have a continuing purpose, and may be treated as an ongoing, or continuing, conspiracy. This depends on the scope of the agreement.

If the agreement includes an understanding that the conspiracy will continue over time, then the conspiracy may be a continuing one. And if it is, it lasts until there is some affirmative showing that it has ended. On the other hand, if the agreement does not include any understanding that the conspiracy will continue, then it comes to an end when its goals have been achieved. This is all for you to decide.

(4.01A)
Causing an Act

For you to find a defendant guilty of a charged crime, it is not necessary for you to find that he personally committed the acts charged in the indictment. You may also find him guilty if he willfully caused an act to be done which would be a federal crime if directly performed by him or another.

But for you to find a defendant guilty of causing a crime charged in the indictment, you must be convinced that the government has proved each and every one of the following elements beyond a reasonable doubt:

First: That the defendant caused a particular person to commit a specific act;

Second: If the defendant or another person had committed the act, it would have been the crime charged in the indictment; and

Third: That the defendant willfully caused the act to be done.

Proof that the defendant may have known about the crime, even if he was there when it was committed, is not enough for you to find him guilty. You may consider this in deciding whether the government has proved that he caused the act to be done, but without more it is not enough. What the government must prove is that the defendant willfully did something to cause the acts to be committed.

If you are convinced that the government has proved all of these elements, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about any one of these elements, then you cannot find the defendant guilty of the crime charged.

2.08
Inferring Required Mental State

Next, I want to explain something about proving a defendant's state of mind.

Ordinarily, there is no way that a defendant's state of mind can be proved directly, because no one can read another person's mind and tell what that person is thinking.

But, a defendant's state of mind can be proved indirectly from the surrounding circumstances. This includes things like what the defendant said, what the defendant did, how the defendant acted, and any other facts or circumstances in evidence that show what was in the defendant's mind.

You may also consider the natural and probable results of any acts that the defendant knowingly did or did not do, and whether it is reasonable to conclude that the defendant intended those results. This, of course, is all for you to decide.

(2.12)
Use of the Word
"and" in the Indictment

Although the indictment charges that the statutes were violated by acts that are connected by the word "and," it is sufficient if the evidence establishes a violation of the statute by any one of the acts charged. Of course, this must be proved beyond a reasonable doubt.

2.04
On or About

Next, I want to say a word about the dates mentioned in the indictment. The government does not have to prove that the alleged crimes happened on the exact dates mentioned. But the government must prove that the crimes happened reasonably close to those dates.

2.06
Knowingly

The word "knowingly," as that term is used from time to time in these instructions, means that the act was done voluntarily and intentionally and not because of mistake or accident.

Summary

If you find that the government has proved beyond a reasonable doubt each of the elements of the offense charged in the count you are considering as set out under these instructions, then you must return a verdict of guilty for that count. If you find that the government has not proved beyond a reasonable doubt each of the elements of the offense charged in the count you are considering as set out in these instructions, then you must return a verdict of not guilty as to that count.

(8.01, .03-.06, .08)
Deliberations and Verdicts

That concludes the part of my instructions explaining the elements, or parts, of the crimes that the defendants are accused of committing. Now let me finish up by explaining some things about your deliberations in the jury room, and your possible verdicts.

First, I caution you, members of the jury, that you are here to determine from the evidence in this case whether the defendants are guilty or not guilty of the crimes set out in the indictment. The defendants are on trial only for the specific offenses alleged in the indictment.

Also, the question of punishment should never be considered by the jury in any way in deciding the case. If the defendants are convicted, the matter of punishment is for the court to determine.

You are here to determine the guilt or innocence of the accused defendants from the evidence in this case. You are not called upon to return a verdict as to the guilt or innocence of any other person or persons. You must determine whether or not the evidence in the case convinces you beyond a reasonable doubt

of the guilt of the accused without regard to any belief you may have about the guilt or innocence of any other person or persons.

Any verdict you reach in the jury room, whether guilty or not guilty, must be unanimous. In other words, to return a verdict you must all agree. Your deliberations will be secret; you will never have to explain your verdict to anyone.

It is your duty as jurors to discuss the case with one another in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after full consideration of the evidence with the other members of the jury. While you are discussing the case, do not hesitate to re-examine your own opinion and change your mind if you become convinced that you were wrong. But do not give up your honest beliefs solely because the others think differently or merely to get the case over with.

Remember, that in a very real way you are judges -- judges of the facts.

When you go to the jury room you should first select one of your members to act as your presiding juror. The presiding juror will preside over your deliberations and will speak for you here in court. Be sure to only discuss the case when everyone is present so everyone can be a part of all of the deliberations.

A form of verdict has been prepared for your convenience. The verdict form will be placed in a folder and handed to you by the Court Security Officer. At any time that you are not deliberating (i.e., when at lunch or during a break in deliberations), the folder and verdict form should be delivered to the Court Security Officer who will deliver it to the courtroom Deputy Clerk for safekeeping.

[READ VERDICT FORM]

You will take the verdict form to the jury room and when you have reached unanimous agreement you will have your presiding juror fill in the verdict form, date and sign it, and then return to the courtroom.

If you should desire to communicate with me at any time, please write down your message or question and pass the note to the Court Security Officer who will bring it to my attention. I will then respond as promptly as possible after conferring with counsel, either in writing or by having you return to the courtroom so that I can address you. Please understand that I may only answer questions about the law and I cannot answer questions about the evidence. I caution you, however, with regard to any message or question you might send, that you should not tell me your numerical division at the time.

If you feel a need to see the exhibits which are not being sent to you for further examination, advise the Court Security Officer and I will take up your request at that time.

Any questions about the process?

We will now hear closing arguments by counsel.

[Closing arguments.]

You may now retire to begin your deliberations. Remember to only discuss the case when everyone is present, and your first order of business is to choose a presiding juror.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
V.	)	Cr. No. 17-20238-SHL
	)	
OLUFALOJIMI ABEGUNDE and	)	
JAVIER LUIS RAMOS ALONSO,	)	
	)	
Defendants.	)	

V E R D I C T

We, the members of the jury in the above-styled and numbered cause find:

COUNT 1:

Wire Fraud Conspiracy - 18 U.S.C. § 1349

Olufolajimi Abegunde _____ Not Guilty _____ Guilty

Javier Luis Ramos-Alonso _____ Not Guilty _____ Guilty

COUNT 2:

Wire Fraud - 18 U.S.C. § 1343

Javier Luis Ramos-Alonso _____ Not Guilty _____ Guilty

COUNT 3:

Money Laundering Conspiracy - 18 U.S.C. § 1956(h)

Olufolajimi Abegunde _____ Not Guilty _____ Guilty

Javier Luis Ramos-Alonso _____ Not Guilty _____ Guilty

COUNT 4:

Conspiracy - 18 U.S.C. § 371

Olufolajimi Abegunde _____ Not Guilty _____ Guilty

COUNT 5:

Witness Tampering - 18 U.S.C. § 1512(b)

Olufolajimi Abegunde _____ Not Guilty _____ Guilty

_____ _____

DATE

PRESIDING JUROR

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
V.	)	Cr. No. 17-20238-SHL
	)	
OLUFALOJIMI ABEGUNDE and JAVIER LUIS RAMOS ALONSO,	)	
	)	
Defendants.	)	

V E R D I C T

We, the members of the jury in the above-styled and numbered cause find:

COUNT 1:

Wire Fraud Conspiracy - 18 U.S.C. § 1349

Olufolajimi Abegunde	_____	Not Guilty	X	Guilty
Javier Luis Ramos-Alonso	X	Not Guilty	_____	Guilty

COUNT 2:

Wire Fraud - 18 U.S.C. § 1343

Javier Luis Ramos-Alonso	_____	Not Guilty	X	Guilty

COUNT 3:

Money Laundering Conspiracy - 18 U.S.C. § 1956(h)

Olufolajimi Abegunde ____ Not Guilty X Guilty

Javier Luis Ramos-Alonso X Not Guilty ____ Guilty

COUNT 4:

Conspiracy - 18 U.S.C. § 371

Olufolajimi Abegunde ____ Not Guilty X Guilty

COUNT 5:

Witness Tampering - 18 U.S.C. § 1512(b)

Olufolajimi Abegunde ____ Not Guilty X Guilty

March 20th, 2019
DATE

PRESIDING JUROR