21-8204 ORIGINAL

No.

In The
Supreme Court of the United States

OCTOBER TERM 2022

REGINALD BROWN, Petitioner,
v.
UNITED STATES OF AMERICA, Respondent.

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

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Pursuant to Supreme Court Rule 10, a review is warranted as this case present an important question of federal law that has not been, but should be, settled by the Supreme Court (Rule 10(b).

The Supreme Court should review the federal law granting Federal Judges discretion to sever cases when one codefendant opts to the status of pro se.

I. Where the district court violates the rule announced in the 6th Amendment when the government court appointed attorney failed to raise the issue of forfeiture with the 11th Circuit Court of Appeals. Defendant is unable to address this issue due to the failure to raise the issue in the Appeals Court. Presently, there are no current remedy to correct such error. Mr. Brown suffered actual prejudice from the court appointed attorney failure to raise the issue with the appeals court. Mr. Brown was denied his constitutional right and seeks immediate remedy to raise the issue of forfeiture with the 11th Circuit Court of Appeals.

II. Where the district court violate the Order of Forfeiture for substitute Asset until all legal proceedings are concluded to included but not limited to form 2255. The process for ineffective counsel fails to allow the defendant to solely address forfeiture. The district court having knowledge that the government court appointed attorney failed to raise the issue and there is no other process offered to raise the issue of forfeiture.

III. Where the district court violate the rule announced in Honeycutt v.

United States when they held them jointly and severally liable for the forfeiture judgment overlooking established standards of the law in Honeycutt v. United States 6/5/2017- U.S. Supreme Court.

IV. Where the district court violate the rule announced in the 5th Amendment when they failed to allow co-defendant (Katrina Brown) have a hearing as requested after giving a sworn statement (3) three times. Katrina Brown being unavailable during trial due to representing herself, pro se status stated she would testify that Reginald Brown was without knowledge of any criminal activities.

V. Where the district court violate the rule announced in the 6th Amendment when the government assigned court appointed attorney using terms like "shell companies", "tearful confessions", "and "false invoices" set a bad atmosphere for his case. From the onset, Mr. Brown maintains his innocence. However, the government court appointed attorney proceeded with his trial strategy of conceding guilt which violated Mr. Brown's Sixth Amendment

VI. Where the district court violate the rule announced in the 6th Amendment when the government assigned court attorney failed to object to false numbers at a reasonable time. The government assigned court appointed attorney failed to investigate the funds disbursements to show business related expenses opposed to personal expenses. There was no presentation to gather receipts and contract with entertainers and presented them to the jury

so that they could see how funds were spent. The government court appointed attorney proceeded with his trial strategy of conceding guilt which violated Mr. Brown's Sixth Amendment.

VII. Where the district court violate the rule announced in the 6th Amendment when the government assigned court attorney failed to utilize the court financed accountant Timothy H. Myers, CPA as order by Judge James R. Klindt. Attempting to challenge a government's case in a case that involves restitution and, or forfeiture without obtaining your own forensic accountant was not in Mr. Brown's interest. The government court appointed attorney proceeded with his trial strategy of conceding guilt which violated Mr. Brown's Sixth Amendment.

VIII. Where the district court violated the rule announced in the 5th Amendment when the government took Mr. Brown property (3063 Ray Road, Jacksonville, Florida 32209) for forfeiture substitute. The district court was informed that the government court appointed attorney failed to raise the forfeiture opposition with the 11th Circuit Court of Appeals. But for this action, Mr. Brown is denied his constitutional right. The court appointed attorney proceeded with her strategy of conceding the issue was not raised in district court after being advised which violated Mr. Brown's Fifth Amendment and Sixth Amendment.

STATEMENT OF THE ISSUES

1. Whether the district court erred by denying the motions for severance?

2. Whether the district court erred by denying the motion forjudgment of acquittal?

3. Whether the district court erred by failing to guarantee the defendant protection under the fifth amendment and the six amendments by denying his motion for reconsideration of the motion for final order of forfeiture for substitute asset?

4. Whether the right to due process is compromised when a defendant' co-defendant chooses representation governing pro se? The constitution extends the right to opt to the status of pro se; however, when one's rights impedes on the rights of another, we must review the issue in the case at bar. This was prejudicial to the substantial right of the defendant to a fair trial.

5. Whether The Supreme Court should modify the federal law denying citizens the right to address forfeiture when the defendant's court appointed attorney failed to raise the issue with the court appeals? In the case at bar, the court appointed attorney failed to raise opposition of forfeiture.

6. Whether the Supreme Court should modify the federal law denying citizens the fundamental right to address opposition to forfeiture when filing form 2255, Ineffective Counsel? Currently, there are no remedies for a defendant to challenge the appeals court when an attorney fails to raise the issue during the appeal. The defendant is forced to grapple with being denied the right to due process. This is prejudicial to the substantial right of the defendant to a fair trial.

7. Whether the federal government violated the 5th Amendment by taking Mr. Brown property, 3063 Ray Road, Jacksonville, Florida 32209, after being informed that the court appointed failed to raise the issue of forfeiture and there is no process to allow Mr. Brown or an attorney to request a second hearing with the Court of Appeals.

LIST OF PARTIES

The parties to this Writ of Certiorari appear in the cation of the cause on the title page. (Katrina Brown was a co-defendant in the District Court case. Ms. Katrina Brown is an appellant in 20-14254. Both parties Reginald Brown and Katrina Brown filed separate briefs to the Eleventh Circuit; however, both cases were argued during the same hearing. The Eleventh Circuit Court of Appeals issued a consolidated opinion addressing Katrina Brown and Reginald Brown's arguments see Appendix (A).)

PROCEEDINGS IN FEDERAL TRIAL AND APPELLATE COURTS DIRECTLY RELATED TO THE CASE

United States District Court, MIDDLE DISTRICT OF FLORIDA:
United States v. Katrina Brown, No 3:18-cr-00089-MMH-JRK (November 3, 2019)
United States Court of Appeals (11th Cir.)
United States v. Katrina Brown No. 20-14254 (November 19, 2021)

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In The
Supreme Court of the United States

October Term, 2022

REGINALD BROWN, PETITIONER
V.
UNITED STATES OF AMERICA, RESPONDENT

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

PETITITION FOR A WRIT OF CERTIORARI

The petitioner, Reginald Brown, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit, entered in the above-entitled proceeding on November 19, 2021.

OPINION BELOW

The opinion of the Court of Appeals for the Eleventh Circuit is not published. The Eleventh Circuit's opinion dated November 19, 2021, is contained within appendix (A).

JURISDICTION

The Eleventh Circuit issued its decision on November 19, 2021. The jurisdiction of this Court is invoked under 28 U.SC. section 1254. Mr. Brown timely filed this petition pursuant to this Court's Order Regarding Filing Deadlines (May 9, 2022) and Rule 29. Rule 13 (3) states" ...But if a petition for rehearing is timely filed in the lower court by any party, or if the lower court appropriately entertains an untimely petition for rehearing or sua sponte considers rehearing, the time to file the petition for writ of certiorari for all parties (whether or not they requested rehearing or joined in the petition for rehearing) runs from the date of denial of rehearing or, if rehearing is granted, the subsequent entry of judgment." The February 8, 2022, Order from the Eleventh Circuit denying the appellants' Petition(s) for Rehearing is located at appendix (D).

CONSTITUTIONAL AND STATUTORTY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides that:
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

The Sixth Amendment of the United States Constitution provides that:
In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Forfeiture pursuant to §853(a)(1) is limited to property the defendant himself acquired as the result of the crime. In this case, the Government has conceded that Terry Honeycutt [Honeycutt v. United States], 137 S Ct (2017) had no ownership interest in his brother's store and did not personally benefit from the Polar Pure sales.
Does the federal forfeiture statute, which requires any person convicted under federal guidelines to forfeit any proceeds obtained from that crime, require joint and several liability among co-

conspirators for the forfeiture of any reasonably foreseeable proceeds of the conspiracy? Because forfeiture pursuant to Section 853(a)(1) of the Comprehensive Forfeiture Act of 1984 is limited to property the defendant himself acquired as the result of the crime, that provision does not permit forfeiture regarding Terry Honeycutt, who had no ownership interest in his brother's store and did not personally benefit from the illegal sales.

STATEMENT OF THE CASE

This direct appeal arises from the judgment and sentence in which the district court adjudicated Appellant, REGINALD BROWN, guilty of multiple counts of criminal conduct and sentenced him to a total of eighteen-months imprisonment. (Dkt.424). Mr. Brown is currently on Supervised Probation until May 2025.

Previously, the *Information* charged Mr. Brown and co-defendant Katrina Brown with multiple counts of criminal conduct.[1] Count One charged each with conspiracy to commit mail and wire fraud in violation of Section 18 U.S.C. §1349. Counts Two through Fourteen charged each with substantive counts of mail fraud in violation of U.S.C. §1341 and §2. Counts Fifteen through Twenty-Seven charged each with substantive counts of wire fraud in violation of 18 U.S.C. §1343 and §2. Counts Twenty-Eight through Thirty-Three charged each with substantive counts of money laundering in violation of 18 U.S.C. §1957 and §2. Mr. Brown alone was charged with a failure to file a 1040 tax form in Count 38. (Dkt.l). The essence of the wire fraud, mail fraud, and money laundering allegations was that Mr. Brown and Katrina Brown allegedly concocted a scheme to defraud certain lenders of funds intended to finance a separate business venture of Katrina Brown. The business[1] Mr. Brown and co-defendant Katrina Brown are not related.

Venture was the production and distribution of a highly regarded barbeque

sauce perfected by Katrina Brown's father. (Dkt. 1)

Motion to Sever

Prior to trial, Mr. Brown moved three times to sever his trial from that of Katrina Brown. (Dkt.59, Dkt.166, Dkt.224). Initially, Mr. Brown submitted an affidavit in conjunction with the first motion to sever, in which Katrina Brown averred that she would offer exculpatory testimony in favor of Mr. Brown if tried separately. (Dkt.68). Specifically, Katrina Brown averred that she did not conspire with Mr. Brown in any way. (Dkt.68). In the *Order* denying the first motion to sever, the district court noted that neither defendant was entitled to a severance on this basis, citing that the affidavit did not contain any specific factual allegations. (Dkt.114 p.13)

Thereafter, Katrina Brown submitted an affidavit stating that she would testify for Mr. Brown if the trials were severed and detailing the substance of her testimony. (Dkt.273-1). In response to the affidavit, Mr. Brown filed a thirdmotion to sever and cited the need for her exculpatory testimony in support of the severance. (Dkt.224 p.2- 5)

Procedurally, the district court denied this motion as untimely because the affidavit filed by Katrina Brown did not constitute newly discovered evidence. The district court reasoned that nothing prevented Mr. Brown from himself describing the nature of Katrina Brown's testimony or "reaching out to Katrina Brown in an effort to procure a more detailed affidavit." (Dkt.237 p.12- 13). Substantively, the court denied the motion on the basis that the affidavit did not set forth exculpatory information, but rather inculpated Mr.

Brown in the conspiracy charge. The court further reasoned that few statements in the affidavit could be viewed as exculpatory to Mr. Brown. (Dkt.237 p.13)

A. THE INDICTMENT
APPENDIX C

B. DATES OF TRIAL

Mr. Brown went to a jury trial (with the co-defendant Katrina Brown) during the time period of September 23, 2019, to October 2, 2019.

C. VERDICT OF THE JURY

Following deliberations, the jury convicted Mr. Brown on all counts as charged, except for Count 12 (October 13, 2014, UPS mailing) for which the jury found him not guilty. (Dkt.281)

D. SENTENCE OF THE APPELLANT

Prior to sentencing, Mr. Brown objected to the addition of a sophisticated means enhancement and the absence of a minor role reduction.

As for the absence of a minor role reduction, Mr. Brown argued that he was substantially less culpable than Katrina Brown because he was not involved in the planning and development of the business that served as the basis of conviction. He also argued that he "acted largely at the behest of Katrina Brown" and that "the degree of his decision-making authority was fully circumscribed by Katrina Brown." (Ex.C; Dkt.400 p.2; Dkt.492 p.211).

As for the sophisticated means enhancement, Mr. Brown objected to the addition of the sophisticated means enhancement in the PSR. (Dkt.400 p.l). However, the district court overruled the objection. The court cited the creation of fake invoices, shell companies, and bank accounts to further the scheme. But the court also cited the behavior of Katrina Brown alone in the enterprise There is the evidence that Ms. Brown knowingly and intentionally cycled through the authorized purposes of the funds.

She would inquire of Mr. Palmisano how much money was left for

employee training or inventory or equipment, and she -- and in doing so, she kept track of the amounts so that she knew what bucket to put the next false invoice in. That is, when she ran out of available money for one, she moved to the next.

There's also evidence that -- presented at trial that Ms. Brown conducted research regarding what a legitimate cost of the various types of the equipment would be. And that is further evidence of the subterfuge and the attempt to conceal what the true purpose of the funds were.

There's also the fact that the offense conduct went on for a significant period of time, 14 to 15 months.

And in order to have it continue over that significant period of time and to conceal the offense for that time, that required an understanding of the authorized uses of funds, and the budget for each, and the shift from one to the next. And by doing so, the defendants were able to hide the fact that the company was failing for well over a year, at least.

And, of course, the fact that the money was -- was -- the ultimate receipt of the money was hidden by paying it to Mr. Brown's companies and then, sometimes in cash and sometimes in check, returning it to Basic Products or to Ms. Brown.

And last, of course, one of the things that the Eleventh Circuit decisions look at is whether there is coordinated conduct by the defendants. And, of course, there was here.

Ms. Brown would submit the draw and would cause BizCapital to mail the funds to Mr. Brown, and then Mr. Brown knew what to do. He would receive the checks. He would deposit the

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Ms. Brown would submit the draw and would cause BizCapital to mail the funds to Mr. Brown, and then Mr. Brown knew what to do. He would receive the checks. He would deposit the checks. And then he would either withdraw the checks, withdraw cash to give to Ms. Brown, or write checks back to Basic Products. And that's coordinated conduct regarding -- regarding the offense conduct.

And so for all of those reasons, the defendants ' objection to the application of the sophisticated means enhancement is overruled and is properly scored by the probation office.

(Dkt.493 p.64- 66). But when discussing the leadership sentencing enhancement for Katrina Brown, the district court further elaborated:

... the evidence is that Ms. Brown prepared the fake invoices, that Ms. Brown opened the corporations or set up the corporations. In preparing the fake invoices, Ms. Brown controlled the scheme. She determined when draws would be made, she determined how much money would be sought, and she participated significantly in the commission of the offense by submitting the draw requests.

(Dkt.493 p.67)

After ruling on objections to the PSR, the district court found Mr. Brown' s Offense Level at 22 with a Criminal History Category I. (Dkt.493 p.90). This resulted

in a Sentencing Guidelines range of 4 l-to-51-months imprisonment. (Dkt.493 p.90).

Defense counsel requested a non-prison sentence pursuant to SH. (Dkt.493 p.158)

Ultimately, the district court departed downward and sentenced Mr.Brown to 18-months imprisonment on all charges, to run concurrently, followed by three years of supervised release. (Dkt.494p.36)

This direct appeal of judgment and sentence now follows. (Dkt.454)

(APPENDIX (B))

REASONS FOR GRANTING THE PETITION

The Fifth Amendment to the United States Constitution provides that:
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation. This issue addresses the depriving of property...violating the 5th Amendment of the Constitution by depriving one from his/her property without due process and not about the forfeiture/restitution in the case at bar. The New Evidence is clear and strongly convincing.

I am confident that I've established strongly convincing reasons with two of the three standards for Reconsideration. I clearly understand that the forfeiture should have been raised with the 11th Circuit Court of Appeals and this court has concluded this matter. The issue is whether a defendant can return and raise an issue with the 11th Circuit Court after discovering the assigned attorney refuses or neglect to raise during the hearing?

SUMMARY OF THE ARGUMENT

First, the district court abused its discretion by denying the motion to sever Mr. Brown's trial from that of the co-defendant on both procedural and substantive grounds. Procedurally, Mr. Brown had no way of knowing what his co-defendant was willing to testify to without her affidavit. Substantively, Ms. Brown's allegations rebutted the government's claim that Mr. Brown did not do any meaningful work for Basic Products (paragraph 5), that Mr. Brown had no knowledge or involvement with the production of the binders submitted to the City of Jacksonville to induce a funds transfer (paragraph 6K and Counts 26 and 27), and that Mr. Brown had nothing to do with the preparation of invoices submitted to BizCapital and the City of Jacksonville (paragraph 6M and all of the mail fraud counts: 2- 12, 14).

Second, the evidence was insufficient for the jury to find beyond a reasonable doubt that Mr. Brown willfully and knowingly conspired with, or aided and abetted with, his co-defendant to commit mail fraud, wire fraud, or money laundering. The evidence did not establish that Mr. Brown knew Katrina Brown was submitting fraudulent invoices to the lenders on his behalf. While there is some evidence that Mr. Brown *should have known* about Katrina Brown's actions, the government did not prosecute him on this theory. Even if Mr. Brown had some knowledge of Katrina Brown's fraudulent requests to the lenders, there is no evidence that Mr. Brown willfully joined and participated in the conspiracy.

Third, the district court reversibly erred in overruling the objection to the sophisticated means sentencing enhancement. Specifically, the district court reversibly erred in finding that Mr. Brown used sophisticated means as the offense conduct relied upon by the court was committed by Katrina Brown, not Reginald Brown.

Fourth, the district court reversibly erred by taking Mr. Brown property knowing that the court appointed attorney failed to raise the issue of forfeiture with the 11th Circuit Court. ...violating his 5th Amendment of the Constitution by depriving one from his/her property without due process and not about the forfeiture/restitution. Currently, the defendant is unable to return and raise an issue with the 11th Circuit Court after discovering the assigned attorney refused or neglected to raise during the hearing.

Fifth, the district court reversibly erred by not

Finally, the district court reversibly erred in denying a minor role reduction in sentencing for Mr. Brown. By the district court's own findings, Mr. Brown's conduct was minor compared to that of Katrina Brown. All that was required of Mr. Brown in committing the offense was two steps: cash or deposit the checks, then turn the proceeds over to Ms. Brown.

ARGUMENT

I. SEVERANCE: Under Rule 14(a), Federal Rules of Criminal Procedure (2019), the district court abused its discretion by denying the motion to sever Mr. Brown's trial from that of the co-defendant on both procedural and substantive grounds.

In the proceedings below, the *Indictment* jointly charged Appellant, REGINALD BROWN, and this co-defendant, Katrina Brown, with one count of conspiracy to commit mail fraud and wire fraud (Count 1), twelve counts of aiding and abetting mail fraud (Counts 2- 14[3]) , twelve counts of aiding or abetting wire fraud (Counts 15- 27), and six counts of aiding and abetting money laundering (Counts 28- 33).[4] Viewing the evidence in a light most favorable to the government, the nature of the conspiracy, mail

[3] Mr. Brown was found not guilty of Count 14.

[4] Mr. Brown alone was charged with one count of failure to file a 1040 tax form in Count 38.

fraud, wire fraud, and money laundering charges were that the co-defendants allegedly concocted a scheme to defraud lenders of funds intended to finance Katrina Brown's family barbeque sauce business. According to the government's case, Katrina Brown received a small business loan for which Mr. Brown would submit fake invoices to the lenders for work he never performed (mail fraud), deposit those funds (wire fraud), then turn the money over to Katrina Brown (money laundering).

Prior to trial, Mr. Brown moved three times to sever his trial from that of Katrina Brown. (Dkt.59, Dkt.166, Dkt.224). Initially, Mr. Brown submitted an affidavit in conjunction with the first motion to sever, in which Katrina Brown averred that she would offer exculpatory testimony in favor of Mr. Brown if tried separately, testimony that she could not offer in tried jointly. (Dkt.68; see Dkt.337 p.159- 160). Specifically, Katrina Brown averred that she did not conspire with Mr. Brown in any way. (Dkt.68). In the *Order* denying the first motion to sever, the district court noted that neither defendant was entitled to a severance on this basis, citing that the affidavit did not contain any specific factual allegations. (Dkt.114 p.13)

Thereafter, Katrina Brown submitted an affidavit averring that she would testify for Mr. Brown if the trials were severed and detailing the substance of her testimony. (Dkt.273-1). In response to the affidavit, Mr. Brown filed a third motion to sever and cited the need for her exculpatory testimony in support of the severance. (Dkt.224 p.2- 5)

However, the district court abused its discretion in denying the motions to sever: procedurally, Mr. Brown had no way of knowing the potential substance of the co-defendant's testimony without her affidavit, and substantively, Ms. Brown's allegations rebutted the government's claim that Mr. Brown did not do any meaningful work for Basic Products (paragraph 5), that Mr. Brown had no knowledge or involvement with the production of the binders submitted to the City of Jacksonville to induce a funds transfer (paragraph 6K and Counts 26 and 27), and that Mr. Brown had nothing to do with the preparation of invoices submitted to BizCapital and the City of Jacksonville (paragraph 6M and all of the mail fraud counts: 2- 12, 14).

Law

A district court's denial of a motion to sever co-defendants is reviewed for abuse of discretion. United States v. Lopez, 649 F.3d 1222, 1235- 1236 (11th Cir. 2011).

Under Rule 14(a), Federal Rules of Criminal Procedure (2019), a district court may order severance of defendants where the consolidation of trials appears to prejudice a defendant.

Pursuant to this rule, grounds for severance include when a co-defendant refuses to give exculpatory testimony in a joint trial based on self-incrimination. United States v. Chavez, 584 F.3d 1354, 1360-1361 (11th Cir. 2009). A defendant seeking to sever for this purpose must show the following: (1) a bona fide need for the testimony; (2) the substance of the requested testimony; (3) the exculpatory nature of the testimony; and (4) the likelihood that the co-defendant would testify at a separate trial. United States v. Machado, 804 F.2d 1537, 1544 (11th Cir. 1986).

When a defendant makes this showing, a district court must: (1) examine the significance of the testimony in relation to the defendant's theory of defense; (2) assess the extent of prejudice caused by the absence of the testimony; (3) consider the effects on judicial administration and need for economy; and (4) give weight to the timeliness of the motion. Id.;see also United States v. Cobb, 185 F.3d 1193, 1197 (11th Cir. 1997) (reversing denial of severance where co-defendant's testimony was necessary to contradict the claims of the government's sole eyewitness).

But under Rule 12(c)(3), a district court may consider a motion filed outside of established deadlines if the party shows good cause.

Argument

Both procedurally and substantively, the district court abused its discretion in denying Mr. Brown's motions to sever his trial from that of his co-defendant.

Procedurally, Mr. Brown had no way of knowing what his co-defendant, whose position was already adverse to his own, was willing to testify to without her affidavit and to what extent she was willing to testify. Because Katrina Brown's willingness to testify is an essential element of the severance test for exculpatory testimony, see Machado, 804 F.2d 1537, 1544, the district court abused its discretion in denying the motion as untimely filed. Moreover, Mr. Brown's due process right to a full and fair opportunity to challenge the evidence against him is paramount to any artificial deadline imposed by the district court.

Substantively, the allegations contained in the affidavit were necessary for

Mr. Brown ' s defense and exculpated him in numerous ways. See Machado, *supra.* Katrina Brown's allegations rebutted the government's claim that Mr. Brown did not do any meaningful work for Basic Products (paragraph 5), which applied to all charges. Her allegation that Mr. Brown had no knowledge and involvement with the production of the binders submitted to the City of Jacksonville to induce a funds transfer (paragraph 6K) is exculpatory for Mr. Brown as to Counts 26 and 27. And Katrina Brown's allegation that Mr. Brown had nothing to do with the preparation of invoices submitted to BizCapital and the City of Jacksonville (paragraph 6M) is exculpatory for Mr. Brown to all of the mail fraud counts: 2- 12 and 14.

The government's evidence of Mr. Brown's participation in the conspiracy was largely circumstantial: no witness testified that she or he overheard Mr. Brown and Katrina Brown discussing submitting fraudulent invoices to BizCapital or City of Jacksonville to trigger loan disbursements. No witness testified that she or he observed Mr. Brown create any invoice for which he did not perform the work contained therein. No witness directly testified that Mr. Brown knew about or willfully joined any conspiracy to defraud the lenders. Indeed, most of the government ' s witnesses testified that they had no contact or communication with Mr. Brown in connection with the creation of invoices, submission of invoices, or disbursements related to those invoices. And, during closing arguments, the government admitted that Katrina Brown registered the companies owned by Mr. Brown with the State of Florida (using her email to do so) and created the invoices from those companies which she then submitted to BizCapital and the City of Jacksonville to obtain grant money. (Dkt.515 p.12). Admitting Mr. Brown did not create those invoices, the government asked the jury to circumstantially infer that Mr. Brown knew about those invoices, that he knew they were fraudulent, that he knew his companies were not entitled to the disbursements of funds, that he knew Basic Products was not producing barbeque sauce, and yet he agreed to take part in the conspiracy.

But based upon this evidence, Mr. Brown's defense was that he had no knowledge of Katrina Brown's actions, meaning that he did not knowingly and willfully participate in any conspiracy to commit mail fraud, wire fraud, or money laundering, or that he aided or abetted in those offenses in any way. See Dkt.515 p.107-109. Because Katrina Brown was the only person with direct knowledge of how those invoices were created and the only person with direct knowledge of Mr. Brown's lack of knowledge of her activities regarding the loan disbursements, her testimony was absolutely essential to Mr. Brown's defense. See Machado, *supra.* To deprive him of this full and fair opportunity to defend against the evidence presented against him, on both procedural and substantive grounds, deprived Mr. Brown of due process of law.

Because the district court abused its discretion in denying the motion to sever both procedurally and substantively, and because denying Mr. Brown the opportunity to present Katrina Brown's exculpatory testimony in his defense deprived him of due process of law, Mr. Brown asks this Court to vacate his conviction and sentence, order his case severed from that of his co-defendant, and award him a new trial.

II. **FORFEITURE:** Federal Statute—21 U.S.C 853—mandates forfeiture of "any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of" certain drug crimes. This case concerns how §853 operates when two or more defendants act as part of a conspiracy. Specifically, the issue is whether, under §853, a defendant may be held jointly and severally liable for property that his co-conspirator derived from the crime but that the defendant himself did not acquire. The Court holds that such liability is inconsistent with the statute's text and structure, the district court abused its discretion by denying the motion to sever Mr. Brown's trial from that of the co-defendant on both procedural and substantive grounds.

Argument

Both procedurally and substantively, the district court abused its discretion in denying Mr. Brown to challenge the forfeiture. Mr. Brown was unable to address forfeiture with the 11th Circuit Court due to the failure of the court appointed attorneys in both the district and appeals court direct disregard of Mr. Brown's request.

Honeycutt v. United States, 137 S. Ct. (2017) Hence, because forfeiture pursuant to §853(a)(1) is limited to property the defendant himself acquired as the result of the crime, that provision did not permit forfeiture with regard to Terry Honeycutt, who had no ownership interest in his brother's store and did not personally benefit from the illegal sales. **Mr. Brown had "no ownership" interest in Katrina Brown, co-defendant company nor did Mr. Brown personally benefit from the sales.**

(a) Section 853(a) limits forfeiture to property flowing from, §853(a)(1), or used in, §853(a)(2), the crime itself—providing the first clue that the statute does not countenance joint and several liability, which would require forfeiture of untainted property. It also defines forfeitable property solely in terms of personal possession or use. Section 853(a)(1), the provision at issue, limits forfeiture to property the defendant "obtained, directly or indirectly, as the result of" the crime. Neither the dictionary definition nor the common usage of the word "obtains" supports the conclusion that an individual "obtains" property that was acquired by someone else. And the adverbs "directly" and "indirectly" refer to how a defendant obtains the property; they do not negate the requirement that he obtain it at all. Sections 853(a)(2) and 853(a)(3) are in accord with this reading.

(b) Joint and several liability is also contrary to several other provisions of §853. Section 853(c), which applies to property "described in subsection (a)," applies to tainted property only. See *Luis* v. *United States*, 578 U. S. ___, ___. Section §853(e)(1) permits pretrial asset freezes to preserve the availability of property forfeitable under subsection (a), provided there is probable

cause to think that a defendant has committed an offense triggering forfeiture and "the property at issue has the requisite connection to that crime." *Kaley* v. *United States*, 571 U. S. ___, ___. Section 853(d) establishes a "rebuttable presumption" that property is subject to forfeiture only if the Government proves that the defendant acquired the property "during the period of the violation" and "there was no likely source for" the property but the crime. These provisions reinforce the statute's application to tainted property acquired by the defendant and are thus incompatible with joint and several liability. Joint and several liability would also render futile §853(p)—the sole provision of §853 that permits the Government to confiscate property untainted by the crime.

The plain text and structure of §853 leave no doubt that Congress did not, as the Government claims, incorporate the principle that conspirators are legally responsible for each other's foreseeable actions in furtherance of their common plan. See *Pinkerton* v. *United States*. Congress provided just one way for the Government to recoup substitute property when the tainted property itself is unavailable—the procedures outlined in §853(p). And as is clear from its text and structure, §853 maintains traditional *in rem* forfeiture's focus on tainted property unless one of §853(p)'s preconditions exist.

III. SUFFICIENCY OF THE EVIDENCE: Under Rule 29, Federal Rules of Criminal Procedure (2019), the evidence was insufficient for the jury to find beyond a reasonable doubt that Mr. Brown willfully and knowingly conspired with, or aided and abetted with, his co-defendant to commit mail fraud, wire fraud, or money laundering.

In the proceedings below, the *Indictment* jointly charged Mr. Brown and co-defendant Katrina Brown with one count of conspiracy to commit mail fraud and wire fraud (Count 1), twelve counts of aiding or abetting mail fraud (Counts 2- 14[5]), twelve counts of aiding or abetting wire fraud (Counts 15- 7), and six counts of aiding or abetting money laundering (Counts 28- 33).[6] Viewing the evidence in a light most favorable to the government, the nature of the conspiracy, mail fraud, wire fraud, and money laundering charges were that the co-defendants allegedly concocted a scheme to defraud lenders of funds intended to finance Katrina Brown's family barbeque sauce business. According to the government's case, Katrina Brown received a small business loan for which Mr. Brown would submit fake invoices to the lenders for work he never performed (mail fraud), deposit those funds (wire fraud), and then turn the money over to Katrina Brown (money laundering).

By the government's own admission at trial, Katrina Brown registered the companies owned by Mr. Brown with the State of Florida (using her own email to do so) and created the invoices from those companies which she then submitted to BizCapital and the City of Jacksonville in order to obtain grant money. (Dkt.515 p.12). Viewing the evidence in a light most favorable to sustaining the verdict, Mr. Brown then deposited

those checks, then returned most of the proceeds to Katrina Brown.

At the close of all evidence, defense counsel moved for a judgment of acquittal on the basis that there was insufficient evidence that Mr. Brown knowingly and willfully conspired to commit wire fraud or mail fraud, insufficient evidence that he aided or abetted Katrina Brown in the substantive acts of mail fraud, wire, fraud, or money launder. (Dkt.340 p.122- 126). The district court denied the motion. (Dkt.340 p.165-172)

However, there was insufficient evidence presented for a jury to find beyond a reasonable doubt that Mr. Brown knew that Katrina Brown was submitting falsified

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[5] Mr. Brown was found not guilty of Count 14.

[6] Mr. Brown alone was charged with one count of failure to file a 1040 tax form in Count 38.

invoices to the lenders. As such, there was insufficient evidence that Mr. Brown knowingly and willfully conspired with Katrina Brown to commit mail fraud or wire fraud, or that he aided and abetted her efforts in any way.

Law

The sufficiency of the evidence against a defendant is a question of law which is reviewed de novo. United States v. Joseph, 709 F.3d 1082 (11th Cir. 2013). The appellate court must view the evidence in a light most favorable to the government. Glasser v. United States, 315 U.S. 60, 62 (1942). However, an appellate court must reverse a defendant's conviction if no reasonable construction of the evidence would permit the jury to find the defendant guilty beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307 (1979).

In or to sustain a conviction for conspiracy under 18 U.S.C. § 371, the government must prove: (1) the existence of an agreement to achieve an unlawful purpose; (2) the defendant's knowing and voluntary participation in the conspiracy. and (3) the commission of an over act in furtherance of the conspiracy. See United States v. Brcnson, 104 F.3d 1267 (11th Cir. 1997).

Where a defendant does not know about the conspiracy, and therefore does not willfully join the criminal enterprise, the conviction for conspiracy but be reversed.

United States v. Willner, 795 F.3d 1297,1307 (11th Cir. 2015). In Willner, this Court noted that no witness directly testified that the doctor knew about or willfully joined the healthcare fraud conspiracy. There was no witness who testified that she or he observed the doctor alter or create any document connected with the conspiracy or witnessed the doctor submit any document to Medicare as part of the conspiracy. Id.

As in this case, the government relied upon circumstantial evidence that the doctor created and altered documents connected with the conspiracy. Although the doctor altered patient files to make them Medicare compliant, the evidence established that this occurred during audits. The remainder of the government's evidence that the doctor participated in the conspiracy was based upon inferences.

Id. At 1307. Specifically, the government asked the jury to infer that the doctor participated in the conspiracy because the doctor "signed scores of patients' charts without reviewing them and without having treated the patients." Id. at 1308- 1309. However, this Court held. that such was insufficient to establish the doctor's participation in the conspiracy because the evidence did not establish that the doctor knew the patients were not eligible for Medicare benefits:

> We hold that the district court erred by failing to grant Dr. Abreu's Rule 29 motion for judgment of acquittal. We conclude that no reasonable juror could find beyond a reasonable doubt that Dr. Abreu falsified patient eligibility records as alleged in the indictment. There is some evidence that Dr. Abreu should have known about the conspiracy, but the Government did not prosecute her on that theory. Even if Dr. Abreu knew of the conspiracy, there is no evidence in the record proffered to us by the Government that Dr. Abreu willfully joined and participated in it. There is no evidence that she gained anything from the conspiracy. We reverse her conviction, vacate her sentence, and remand to the district court with instructions that it enter a judgment of acquittal.

Id. 1309- 1310.

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Argument

Similar to the doctor in Willner, there was insufficient evidence in this case for the jury to find beyond a reasonable doubt that Mr. Brown willfully and knowingly conspired to commit mail fraud or wire fraud, that he aided or abetted his co-defendant in committing mail fraud or wire fraud, or that he aided or abetted money laundering.

As in Willner, no witness testified that she or he overheard Mr. Brown and Katrina Brown discussing submitting: fraudulent invoices to BizCapital or City of Jacksonville in order to trigger loan disbursements. No witness testified that she or he observed Mr.

Brown create any invoice for which he did not perform the work contained therein. No witness directly testified that Mr. Brown knew about or willfully joined any conspiracy to defraud the lenders. See Willner, 795 F.3d 1308- 1309. Instead, the majority of the government's witnesses testified that they had no contact or communication with Mr. Brown:

- Although there was a multitude of email and written communications from and to Katrina Brown in the case, FBI Special Agent Angela Hill admitted that there was no email correspondence from Mr. Brown surrounding any of the businesses. (Dkt.334 p.139)

- Although he worked with Katrina Brown over the disbursement of funds, BizCapital's Frank Palmisano testified that he did not have any contact or communication with Mr. Brown over the submission of any mvmce or disbursement connected with any invoice. (Dkt.339 p.108)

- Although she worked with Katrina Brown regarding the disbursement of funds, City of Jacksonville city credit compliance manager Jane Boudanever testified that she had any contact or communication with Reginald Brown regarding any invoice or disbursement of funds.

- Although she worked with Katrina Brown to produce bottle label artwork, Reka Horvath testified that she did never did any work for anyone named Reginald Brown or RB Packaging LLC. (Dkt.335 p.141, 146)

- Although he issued quotes to Katrina Brown for bakery equipment, Ronald Ross testified that he never did business withanyone named Reginald Brown or RB Packaging LLC. (Dkt.335 p.171- 173, 177)

- Although he worked with Katrina Brown regarding inspection of wholesale food facilities, Michael Hall testified that he did not know Reginald Brown and did not testify he had any contact with anyone named Reginald Brown. (Dkt.335 p.183)

- Although he gave Katrina Brown a quote for corrugated cardboard, Mark Miller affirmatively testified that he had no contact with anyone named Reginald Brown. (Dkt.336 p.38)

- Although multiple witnesses testified that they visited the manufacturing facility, no one testified that they ever saw Mr. Brown present on those premises.

Instead, the government proceeded on a theory of circumstantial evidence to support the charges of conspiracy, aiding or abetting mail fraud, aiding or abetting wire fraud, and aiding or abetting money laundering. Specifically, the government asked the jury to

infer that Mr. Brown participated in the conspiracy because he deposited checks sent to him by the lenders and turned the proceeds over to Katrina Brown. However, the government admitted that Katrina Brown created those invoices herself, that Katrina Brown alone requested the loan draws, and that she even created the companies for which Mr. Brown was the registered owner. Despite the multitude of emails between Katrina Brown and the lenders, it is telling that the government was unable to produce any email or letter or even text message indicating that Mr. Brown knew about any conspiracy to defraud the lenders and willfully participated therein.

As this Court held in Willner, such was simply insufficient to establish Mr. Brown's participation in the conspiracy because the evidence did not establish that the Mr. Brown knew Katrina Brown was submitting fraudulent invoices to the lenders on his behalf. While there is some evidence that Mr. Brown *should have known* about Katrina Brown's actions, the government did not prosecute him on this theory. Even if Mr. Brown had some knowledge of Katrina Brown's fraudulent requests to the lenders, there is no evidence that Mr. Brown "willfully joined and participated in [the conspiracy]." See 795 F.3d at 1310.

Accordingly, the district court reversibly erred by denying the judgment of acquittal on all counts aside from the tax count. Mr. Brown asks this Court to reverse his conviction, vacate his sentence, and remand with instructions to enter a judgment of acquittal.

IV. SOPHISTICATED MEANS ENHANCEMENT: Under Section 2Bl.l(b)(9)(C), the district court reversibly erred in overruling the objection to the sophisticated means sentencing enhancement.

As for the sophisticated means enhancement at sentencing, Mr. Brown objected to the addition of the sophisticated means enhancement in the PSR. (Dkt.400 p.1). However, the district court overruled the objection. The court cited the creation of fake invoices, "shell companies," and bank accounts to further the scheme. But the court also cited the behavior of Katrina Brown alone in the enterprise:

> There is the evidence that Ms. Brown knowingly and intentionally cycled through the authorized purposes of the funds.
>
> She would inquire of Mr. Palmisano how much money was left for employee training or inventory or equipment, and she -- and in doing so, she kept track of the amounts so that she knew what bucket to put the next false invoice in. That is, when she ran out of available money for one, she moved to the next.
>
> There's also evidence that -- presented at trial that Ms. Brown conducted research regarding what a legitimate cost of the various types of the equipment would be. And that is further evidence of the subterfuge and the

attempt to conceal what the true purpose of the funds were.

There's also the fact that the offense conduct went on for a significant period of time, 14 to 15 months.

And to have it continue over that significant period of time and to conceal the offense for that time, that required an understanding of the authorized uses of funds, and the budget for each, and the shift from one to the next. And by doing so, the defendants were able to hide the fact that the company was failing for well over a year, at least.

And, of course, the fact that the money was -- was -- the ultimate receipt of the money was hidden by paying it to Mr. Brown's companies and then, sometimes in cash and sometimes in check, returning it to Basic Products or to Ms. Brown.

And last, of course, one of the things that the Eleventh Circuit decisions look at is whether there is coordinated conduct by the defendants. And, of course, there was here.

Ms. Brown would submit the draw and would cause BizCapital to mail the funds to Mr. Brown, and then Mr. Brown knew what to do. He would receive the checks. He would deposit the checks. And then he would either withdraw the checks, withdraw cash to give to Ms. Brown, or write checks back to Basic Products. And that's coordinated conduct regarding -- regarding the offense conduct.

And so, for all of those reasons, the defendants' objection to the application of the sophisticated means enhancement is overruled and is properly scored by the probation office.

(Dkt.493 p.64- 66). But when discussing the leadership sentencing enhancement for Katrina Brown, the district court further elaborated:

... the evidence is that Ms. Brown prepared the fake invoices, that Ms. Brown opened the corporations or set up the corporations. In preparing the fake invoices, Ms. Brown controlled the scheme. She determined when draws would be made, she determined how much money would be sought, and she participated significantly in the commission of the offense by submitting the draw requests.

(Dkt.493 p.67)

Law

A district court' s finding that sophisticated means were used in committing the offense is a finding of fact that is reviewed for clear error. United States v. Barakat, 130 F.3d 1448, 1456- 1457 (11th Cir. 1997).

A two-point enhancement is applied in fraud cases that involve the use of "sophisticated means." U.S.S.G. § 2Bl.l(b)(9)(C). The commentary instructs that "sophisticated means" means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense. United States v. Barrington, 648 F.3d 1178, 1199 (11th Cir. 2011).

Argument

The district court reversibly erred in finding that Mr. Brown used sophisticated means as the offense conduct relied upon by the court was committed by Katrina Brown, not Reginald Brown. See Barakat, 130 F.3d at 1456- 1457.

The district court acknowledged that Katrina Brown applied for the loans, created the shell companies, researched the services or goods would cost for other vendors, created fake invoices based upon that research, determined how much money she could request for each good or service, and requested the fake draws from BizCapital. All that was left for Mr. Brown to do was cash the checks and turn over a portion of the funds to Katrina Brown.

Simply cashing a check and turning the funds over to Katrina Brown was not anywhere near as sophisticated as employing an intricate and complex computer program to commit the offense, selling, or transferring goods or funds to out-of-state or foreign buyers to avoid detection, creating fake identifications to allow other to assist in committing fraud, or using over one hundred access devices and a SpoofCard website to disguise identification in order to commit fraud. See United States v. Hatala, 552 Fed. Appx. 28 (2d Cir. 2014) (affirming application of sophisticated means enhancement where the defendant used intricate and complex computer programs to commit fraud); United States v. Coviello, 225 F.3d 54 (1st Cir. 2000) (affirming application of sophisticated means enhancement where the defendant sold to out of state and foreign buyers to avoid detection), United States v. Clark, 417 Fed. Appx. 906 (11th Cir. 2011) (affirming sophisticate means enhancement for an intricate check-cashing scheme where postal employees paid others to steal boxes of checks from the post office,

then distributed the stolen checks along with false identification to at least five other check runners to cash the checks).

United States v. Isaraphanich, 6:13-cr-226 (M.D.Fla. 2016) (defendant used over 100 access devices to commit fraud and used a SpoofCard website to disguise his identity).

The sheer fact that the effort was, to a small degree, coordinated is not enough to apply the sophisticated means enhancement to Mr. Brown. Mr. Brow n's role in the conspiracy was limited to cashing checks and turning those funds back over to Katrina Brown. This does not satisfy the standard to apply the sophisticated means enhancement. Accordingly, the district court clearly erred in applying the two-level sophisticated means enhancement to Mr. Brown.

V. MINOR ROLE REDUCTION: Pursuant to Section 3Bl.2(b), the district court reversibly erred in denying a min or role reduction in sentencing for Mr. Brown.

Prior to sentencing, Mr. Brown objected to the addition of a sophisticated means enhancement and the absence of a minor role reduction. As for the absence of a minor role reduction, tvlr. Brown argu0ed that he was substantially less culpable than Katrina Brown because he was not involved in the planning and development of the business that served as the basis of conviction. He also argued that he "acted largely at the behest of Katrina Brown" and that "the degree of his decision-making authority was fully circumscribed by Katrina Brown." (Ex.C; Dkt.400 p.2; Dkt.492 p.211).

At sentencing, the government outlined how Katrina Brown was more involved in the planning, development, and execution of the scheme:

> What is important is the dominion and control over the business and over the fraud, that she absolutely ran the show. She was the one submitting the false invoices. She was the one in communication with the lender. She was the one -- she incorporated RB Packaging and A Plus Training for Reginald Brown. Then she decided, once RB Packaging and A Plus Training got the money pursuant to the false invoices, where it was going to be divvied up and how it was going to be divvied up and what it was going to be used for. So she was -- she was much more in charge of the offense and she decided when the fraudulent invoices were going to be submitted, for what, for how much, and then again how the money was going to be split."

(Dkt.492 p.211- 212)

In ruling that Mr. Brown was not eligible for the minor role adjustment, the district court found that he was essential to the criminal enterprise:

> He certainly -- Mr. Brown certainly appears to be less culpable than Ms. Brown in that Ms. Brown devised the scheme and she controlled it. But she -- but he is not substantially less culpable. And he isn't because the scheme involving the two of them simply could not have happened without him.
>
> He willingly allowed the corporations to be opened in his name. He willingly opened the bank accounts. He deposited the checks that he received with copies of the false invoices included with each check that he received, according to the
> trial testimony.

> He then withdrew the moneys in cash or wrote checks and returned portions of the cash to Ms. Brown and wrote checks to Basic Products. And Mr. Brown was content to keep for himself the portion of the proceeds that were then available to him, despite having done nothing to actually earn that.
>
> So while he may be less culpable, he's not substantially less culpable, and a minor role adjustment is not warranted. And so the objection to the absence of a minor role adjustment is overruled.

(Dkt.493 p.69- 70). But the district court also recognized, when discussing the leadership enhancement for Katrina Brown, the extent of Katrina Brown's participation in and control over the offense conduct:

> ... the evidence is that Ms. Brown prepared the fake invoices, that Ms. Brown opened the corporations or set up the corporations. In preparing the fake invoices, Ms. Brown controlled the scheme. She determined when draws would be made, she determined how much money would be sought, and she participated significantly in the commission of the offense by submitting the draw requests.

(Dkt.493 p.67). In the motion for release pending appeal, Mr. Brown argued that most facts relied upon by the district court in denying the minor role adjustment focused on the behavior of Katrina Brown rather than Mr. Brown. (Dkt.451 p.2- 3)

Law

A district court's finding that the minor role adjustment is inapplicable is a finding of fact that is reviewed for clear error. United States v. Barakat, 130 F.3d 1448, 1456- 1457 (11th Cir. 1997).

Section 3B 1.2(b) provides for a two-level reduction in sentence if the defendant was a minor participant in the criminal activity. This Court has instructed district courts to consider "the defendant's role in the relevant conduct for which she has been held accountable at sentencing [and] her role as compared to that of other participants in her relevant conduct" in addition to the totality of the circumstances enumerated in Amendment 794. See United States v. Presendieu, 880 F.3d 1228, 1250 (11th Cir. 2018).

Clarifying the minor role reduction guideline, Amendment 794 provides a non-exhaustive list of factors for a district court to consider when determining whether a defendant qualifies for a minor role reduction in sentence: (1) "the degree to which the defendant understood the scope and structure of the criminal activity".

(2) "the degree to which the defendant participated in planning or organizing the criminal activity"; (3) "the degree to which the defendant exercised decision-making authority or

influenced the exercise of decision-making authority"; (4) "the nature and extent of the defendant's participation in the commission of the criminal activity, including the acts the defendant performed and the responsibility and discretion the defendant had in performing those acts"; and (5) "the degree to which the defendant stood to benefit from the criminal activity. " U.S.S.G. § 3B1.2 cmt. n.3(C)(2015).

Argument

The district court erred in denying Mr. Brown a minor role reduction at sentencing. See Barakat, 130 F.3d at 1456- 1457. By the district court's findings, Mr. Brown' s conduct was minor compared to that of Katrina Brown:

> ...the evidence is that Ms. Brown prepared the fake invoices, that Ms. Brown opened the corporations or set up the corporations. Inpreparing the fake invoices, Ms. Brown controlled the scheme. She determined when draws would be made, she determined how much money would be sought, and she participated significantly in the commission of the offense by submitting the draw requests.

See Dkt.493 p.67. All that was required of Mr. Brown in committing the offense was two steps: cash or deposit the checks, then turn the proceeds over to Ms. Brown.

As to the first factor in Amendment 794, there was no evidence presented that Mr. Brown understood the scope of Katrina Brown' s criminal activity (i.e., that Basic Products was not bottling barbeque sauce). Indeed, there was no testimony that anyone who visited the manufacturing facility ever saw Mr. Brown present on the premises, that they communicated with Mr. Brown in issuing quotes upon which Katrina Brown based the invoices, or that they communicated with Mr. Brown in any way regarding the disbursement of funds from the lenders.

As to the second factor, both the government the district court admitted that Katrina Brown "controlled the scheme": she created the fake invoices, she opened the corporations, she determined what draws would be made, she determined how much money would be sought by each draw request, and she submitted each draw request to the lender. Mr. Brown played no part in any of these activities.

As for the third factor, Mr. Brown did not exercise any decision-making authority, nor did he influence the exercise of decision-making authority. All decisions regarding the draw requests were made by, and controlled by, Katrina Brown.

As for the fourth factor, the extent of Mr. Brown's participation in the commission of the criminal activity was limited to two minor acts: cashing or depositing the checks, then turning the proceeds over to Katrina Brown.

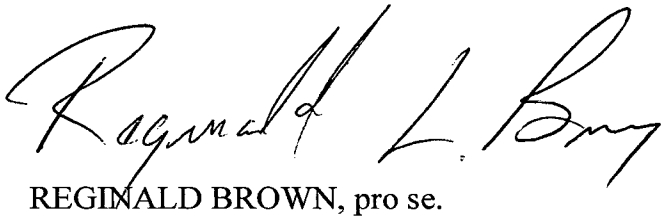
As for the fifth and final factor, Mr. Brown stood to benefit very little from the criminal activity as compared to that of Katrina Brown. See U.S.S.G. m § 3Bl.2 cmt. n.3(C).

In sum, the only steps required of Mr. Brown to participate in the alleged criminal conduct was for him to cash or deposit checks, then turn the proceeds over to Katrina Brown. These two steps were minor in comparison to the criminal acts of Katrina Brown. Accordingly, the district court clearly erred by denying the minor role adjustment in sentencing for Mr. Brown.

CONCLUSION

WHEREFORE, The Petition for writ of certiorari should be granted. Mr. Brown requests that this Court reverse his conviction and award him any, and all further relief to which he is entitled. For the foregoing reasons, Mr. Brown respectfully request that this court issue a writ of certiorari to review the judgment of the 11th Circuit Court of Appeals.

RESPECTFULLY SUBMITTED,



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