No. 19-6299

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-SHL

PETITION FOR PANEL REHEARING OR REHEARING EN BANC
PURSUANT TO RULE 35 FEDERAL RULES OF APPELLATE PROCEDURE

OLUFOLAJIMI ABEGUNDE (MBA)
#71343-019 (IN PRO SE)
REEVES COUNTY DETENTION CENTER III
P.O. BOX 2038
PECOS, TX 79772

MARCH 5, 2021

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Issues Presented

I. The Court Panel's decision in affirming Appellant's Conviction violates The Due process Clause of the Fourteenth Amendment; and is in conflict with the precedent set by the United States Supreme Court in Jackson V. Virginia, 443 U.S. 307, 316, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979) that Due Process requires that the essential elements of a crime be proven beyond a reasonable doubt to ensure that no person shall be made to suffer the Onus of a criminal conviction except upon sufficient proof.

II. The second issue/question of exceptional importance and for which the Courts Panel's decision is in conflict with authoritative decisions of the Fifth Circuit in United States V. Ongaga, 820 F.3d 152, 159-161 (5th Cir. 2016) and the Eleventh Circuit in United States v. Rojas, 713 F.3d 1317, 1320 (11th Cir. 2013) is whether the explicit language of 8 U.S.C. § 1325 (c) — the substantive criminal statute related to the marriage fraud conspiracy count — compels the conclusion reached by the Panel, that marriage fraud and by extension marriage fraud conspiracy is a continuing offense.

III. The third set of issues are regarding Venue and how the Panel's decision is in conflict with long established precedents set, and decisions reached by The Sixth Circuit; are in conflict with the United States Constitution; and is in conflict with the Federal Rules of

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Crimal Procedure :

A) The Courts Panel's ruling is in conflict with precedents set by The Sixth Circuit in United States v. Wood, 364 F.3d 704, 713 (6th Cir. 2004); Supported in United States v. Grenoble, 413 F.3d 569, 573 (6th Cir. 2005) and United States v. Jamal, 246 Fed Appx. 351, 364 (6th Cir. 2007), and recently reaffirmed in United States v. Petlechkov, 922 F.3d 762, 769 (6th Cir. 2019). The precedent is with regards the Sixth Circuits explanation of the plain reading of the text of 18 U.S.C. § 3237(a) with respect to venue in fraud cases.

B) Also, with regards to the issue of venue, the Court's Panel's ruling in the instant case is in conflict with the precedent set by the Sixth Circuit in United States v. Ramer, 883 F.3d 659, 682 (6th Cir. 2018) regarding the impact of a general challenge to the sufficiency of the evidence on venue.

C) Also regarding venue, the Courts Panel's ruling in the instant case is in conflict with long recognized Sixth Circuit precedents, The United States Constitution, and the Federal Rules of Criminal Procedure. This particular conflict is with respect to the requirement that the government prove venue for all counts in an indictment by a preponderance of the evidence, as recognized by the Sixth Circuit in United States v. Beddow, 957 F.2d 1330, 1335 (6th Cir. 1992); Supported in United States v. Zidell, 323 F.3d

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412, 420-21 (6th Cir. 2003) and United States v. Wood, 364 F.3d 704, 713-14 (6th Cir. 2004), — United States v. Grenoble, 413 F.3d 569, 572 (6th Cir. 2005); and recently affirmed in United States v. Petlechkov, 922 F.3d 762, 770 (6th Cir. 2019).

IV The Courts Panel's ruling in the instant case — regarding the loss chart and relevant conduct — is in conflict with long established precedent set by the Sixth Circuit in United States v. Catchings, 708 F.3d 710, 720 (6th Cir. 2013); United States v. Maken, 510 F.3d 654, 658-59 (6th Cir. 2007); and United States v. Shafer, 199 F.3d 826, 831 (6th Cir. 1999) that relevant conduct must be criminal conduct.

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Background

Appellant earned a Master of Business Administration (MBA) from Mays Business School, Texas A $ M University, College Station, Texas; graduating with the class of 2016. Subsequently after, in an attempt to provide solutions to a devastating economic crisis in Nigeria (Appellants country of origin) that led to a shortage of the Worlds reserve currency for international trade and international commerce — the United States Dollar (USD) — Appellant founded a Money Service Business (MSB) with a focus on brokering International money remittances and currency exchanges.

Appellants business — FJ Williams Inc. DBA TranzAlert — was duly licensed and registered with all the extant industry regulatory bodies that include the Financial Crimes Enforcement Network (FINCEN) U.S. Department of the Treasury; Georgia Department of Banking and Finance, and the Central Bank of Nigeria (CBN). In other words, Appellant's business went through, and successfully navigated the same rigorous vetting process as MSB's such as Western Union and Money Gram.

In August 2016, a long time friend of Appellant, Mr. Ojo, visited the U.S. from Nigeria with a pregnant wife and infant daughter, and were hosted by Appellant. Ojo possessed a totally legitimate check that he needed to cash to take care of his trip as well as health expenses associated with his pregnant wife. On encountering failure to cash the check due to its size, it was suggested by a banker that Ojo open a new bank account, deposit the check, and wait for the check to clear.

Ojo chose Wells Fargo bank. Since Ojo was staying at Appellants house, and since Ojo did not have a U.S. telephone number —

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a requirement to open the bank account — Ojo sought and Appellant granted Ojo permission to use Appellant's address and phone number to open the account.

In early October 2016, around two months after Ojo departed the U.S., Appellant received a phone call from Brian Ancona of Wells-Fargo who stated that a certain Alonso was in the bank and was seeking a reversal of a $9,000 that Alonso had inadvertently deposited into Ojo's bank account. Appellant told Brian Ancona to hold while Appellant attempted to call the owner of the account, a friend who had returned to Nigeria, and patch Ancona to Ojo. The call was unsuccessful. Ojo subsequently called back, and Appellant conveyed the issue, and advised Ojo to immediately authorize the refund since Appellant did not want to get caught in the middle of any issue. When Ancona called back, Appellant communicated that Ojo had authorized the reversal, and Ancona expressed gratitude.

In early March 2017, FBI agents visited Appellant's home asking for Ojo. In wide ranging "convivial" interactions that digressed to fraud, Appellant vociferously condemned all aspects and kinds of fraud. Appellant also stated that a MSB is not required to know the sources of funds it transacts in. Appellant strongly insisted on the point that as long as the MSB does not know the sources of the funds it transacts in, the MSB cannot be liable for any such criminally obtained funds. Appellant fully co-operated with the FBI agents by providing them Ojo's contact information and ensuring that Ojo contacted them after they left Appellants home.

On February 8, 2018; while Appellant was at the airport in Atlanta, Georgia; to Appellants shock and utter devastation, Appellant

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was arrested and eventually presented with an indictment that charged Appellant with Wire Fraud Conspiracy, Money Laundering Conspiracy, and Aggravated Identity Theft in the Western District of Tennessee — a district Appellant had absolutely no connection with.

Appellant would later find out that the reason for Appellants indictment was related to the earlier phone call from Arcana where Appellant facilitated the reversal of the inadvertent $9,000.

Since Appellant was absolutely convinced that he had done no wrong, Appellant indicated that he would proceed to trial. However, two months after a trial date was set, the government returned a grand-jury superseding indictment that substituted the Aggravated Identity Theft charge for a Marriage Fraud Conspiracy charge (with regards to a marriage that was entered into in the Eastern District of North Carolina; and added a Witness Tampering count.

Appellant proceeded to trial and was found guilty. Appellant then appealed his conviction — challenging the sufficiency of the evidence on all counts — as well as the sentence. The Court affirmed the District Courts Judgment.

I. The Courts Panels decision violates the Due Process Clause of the Fourteenth Amendment; and is in conflict with the precedent set in Jackson V. Virginia, 443 U.S. 307, 316, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979) that due process requires that essential elements of a crime be proven beyond a reasonable doubt to ensure that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof?

More particularly, were the inferences that the panel used to justify its ruling supported by the evidence on record?

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Did the panel omit critically vital evidence on the record in reaching its decision?

Appellant recognizes that although circumstantial evidence alone can support a conviction, there are times that it amounts to only a reasonable speculation and not to sufficient evidence. See, e.g., United States V. Adams, 722 F.3d 788, 836 (6th Cir. 2008) (finding evidence placing Newman at the scene of the crime was reasonably speculative, and insufficient to satisfy the Jackson standard); Parker V. Renico, 506 F.3d 444, 452 (6th Cir. 2007) (evidence that Parker was in a car containing guns with men who planned a murder was too speculative to support a finding that Parker constructively possessed the firearm); Brown V. Palmer, 441 F.3d 347, 352 (6th Cir. 2006) (finding evidence that Brown was present at the scene and had some acquaintance with the perpetrator insufficient to support conviction of armed robbery and car-jacking under an aiding and abetting theory); Fuller V. Anderson, 662 F.2d, 423-24 (6th Cir. 1981) (Verdict for felony murder not supported by evidence showing only that Fuller was present at the scene of the arson where evidence did not establish beyond a reasonable doubt that Fuller consciously acted to aid in the arson); Hopson V. Foltz, No. 86-1155, 818 F.2d 866, 1987 U.S. App. LEXIS 6596, at *5 (6th Cir. May 20, 1987) (evidence insufficient to support conviction of second-degree murder on theory of aiding and abetting where there was no proof "that Hopson acted in pre-concert with [the shooter] to commit the murder or that he said or did anything to support, encourage or incite the commission of the crime.").

There is no bright line test to determine when facts

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amount to only a reasonable speculation and not to sufficient evidence. However, where the evidence taken in the light most favorable to the prosecution creates only a reasonable speculation that a defendant was present at the crime, there is insufficient evidence to satisfy the Jackson standard. Newman V. Metrish, 543 F.3d 793 (6th Cir. 2008).

"An inference is not suspicion or guess. It is a reasoned, logical decision to conclude that a disputed fact exists on the basis of another fact that is known to exist." Siewe v. Gonzalez, 480 F.3d 160, 168 (2d Cir. 2007)(alterations omitted)(quoting Bickerstaff v. Vassar Coll., 196 F.3d 435, 448 (2d Cir. 1999)).

"Impermissible speculation on the other hand, is a complete absence of probative facts to support the conclusion reached." Lavender v. Kurn, 327 U.S. 645, 653, 66 S. Ct. 740, 90 L.Ed. 916 (1946). While the court must defer to a jury's reasonable inferences, the court gives no deference to a jury's impermissible speculation. United States V. D'Amato, 39 F.3d 1249, 1256 (2nd Cir. 1994).

The line between permissible inference and speculation "is drawn by the laws of logic" and not "judicial idiosyncrasies." Tose v. First Pa. Bank, N.A., 648 F.2d 879, 895 (3d Cir. 1981). As the Supreme Court has instructed, "the essential requirement is that mere speculation be not allowed to do duty for probative facts, after making allowance for all reasonably possible inferences favoring the party whose case is attacked." Galloway v. United States, 319 U.S. 372, 395, 63 S. Ct. 1077, 87 L.Ed. 1458 (1943). Thus, in a criminal case, "the government must do more than introduce evidence" at least as consistent with innocence as with guilt. D'Amato, 39 F.3d 1249, 1256 (quoting United States V. Mulheren,

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938 F.2d 364, 372 (2d Cir. 1991)).

At times, it may be difficult to distinguish between inference and speculation, as some speculation may indeed be reasonable. Reasonable speculation occurs when the finder of fact concludes that a disputed fact exists that is within the realm of possibility, but the conclusion reached is nevertheless unreasonable because it is not logically based on another fact known to exist. See Langston v. Smith, 630 F.3d 310, 314 (2d Cir. 2011) (noting distinction between "reasonable speculation" and sufficient evidence"); Leonard B. Sand et al., Modern Federal Jury Instructions § 6.01 (2011) ("The process of drawing inferences from facts in evidence is not a matter of guess work or speculation. An inference is a deduction or conclusion which... the jury [is] permitted to draw ... from facts which have been established by direct or circumstantial evidence."); See also O'Laughlin v. O'Brien, 568 F.3d 287, 301-02 (1st Cir. 2009); Newman v. Metrish, 543 F.3d 793, 796-97 (6th Cir. 2008). Indeed, the court "may not credit inferences within the realm of possibility when those inferences are unreasonable." United States v. Quattrone, 441 F.3d 153, 169 (2d Cir. 2006).

"When a fact to be proved is also an element of the offense ... It is not enough that the inferences in the governments favor are permissible. The Court must also be satisfied that the inferences are sufficiently supported to permit a rational juror to find the element, like all elements, is established beyond a reasonable doubt." United States v. Martinez, 54 F.3d 1040, 1043 (2d Cir. 1995); See also Sand et al., Supra § 6.01 ("whether based upon direct or circumstantial evidence, or upon logical, reasonable inferences drawn from such evidence, [the jury] may be satisfied of the guilt

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of the defendant beyond a reasonable doubt before it may convict."). "It would not satisfy the constitution to have a jury determine that the defendant is probably guilty." United States v. Lorenzo, 534 F.3d 153, 159 (2d Cir, 2008)(Internal quotation marks and alternations omitted).

Personal beliefs, conjecture, and/or speculation are not considered to be direct evidence. Grizzell v. City of Columbus Police, 461 F.3d 711, 724 (6th Cir. 2006).

An opinion is simply not evidence of wrongdoing. United States v. Paulus, 2019 U.S. App. LEXIS 18770 (6th Cir. 2006).

Discussion

The Rule 29 Motion Challenging The Sufficiency Of The Governments Evidence

"A properly instructed jury may occasionally convict even when it can be said that no rational trier of fact could find guilt beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 317, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979).

A Rule 29 motion calls on the Court to distinguish between reasonable inferences and speculation. Each step in the inferential chain must be supported by evidence that allows the jury to "draw reasonable inferences from basic facts to ultimate facts." Coleman v. Johnson, 566 U.S. __, __, 132 S. Ct. 2060, 2064, 182 L. Ed. 2d 978 (2012). "Although a jury may infer facts from other facts that are established by inference, each link in the evidentiary chain must be sufficiently strong to avoid a lapse into speculation." Piaskowski v. Bett, 256 F.3d 687, 693 (7th Cir. 2001)

In assessing whether the evidence permits an inference beyond a reasonable doubt, special care must be taken to guard

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against the possibility that a defendant might be found guilty by either speculation or mere association. Circumstantial evidence that leads only to a strong suspicion that someone is involved in criminal activity is no substitute for guilt beyond a reasonable doubt. Piaskowski, 256 F.3d at 992.

In the instant case, it appears that the Courts Panel elevated unfounded conclusions reached by the government to Oracular status by giving the perception that the government is omniscient and can do no wrong. The situation is so catastrophic to the extent that no attempt was made by the Courts Panel to cross-reference the inferences put forward by the government with the evidence on record. Of the highest significance, the Courts Panel omitted, and did not take into account critically vital exculpatory evidence that exonerate Appellant. Thus, in reaching its Judgment, the Courts panel displayed a troubling level of cognitive dissonance (induced by the government) by forcing conjecture — not supported by the evidence, and that do not fit — into a predetermined set of assumptions. Hence, Appellant was calamitously prejudiced.

Ordinarily, the Panels decision should set off alarm bells because the Panels Judgment seriously affects the fairness, integrity, and the public reputation of judicial proceedings.

As such, Appellant pleads that the Panel or the full Circuit Court review the governments conclusions / inferences, and evaluate whether the evidence used to support these conclusions actually create reasonable inferences or an inferential chain that establishes each element of the charged offenses beyond a reasonable doubt.

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Appellant further pleads that the Panel or the full Court consider each inference, together with the corresponding supporting evidence in isolation, and then evaluate the cummulative effect on the inferential chain. If a necessary inference relies on speculation, conjecture, false misrepresentations, or is immaterial; such an inference, or such inferences would be Unreasonable and impermissible.

Upon considering each inference, the Panel, or the full Court will find that the inferences are impermissibly speculative. The chain of inferences the government attempts to forge fails in multiple places. The scant evidence — the purely speculative opinions, through guess work, of the case agents, and prosecutors — falls far short of meeting the burden of proof beyond a reasonable doubt, because the evidentiary gaps would have required the jury to speculate as to Appellants guilt.

The Court will also find that the government presented as evidence a combination of: false misrepresentations of material fact, taking immaterial conversations out of context, totally benign actions or remarks by Appellant, inter alia.

The government's evidence did not connect the links in the logical chain: None of the 50,000 pages of evidence containing Appellants communications showed an agreement between Appellant and any other indicted co-conspirator or anyone else, to engage in a Business Email Compromise (BEC); Appellants Communications did not reveal any agreement to defraud any individual or business; or any agreement to engage in any criminal activity related to Wire fraud or Money laundering. Appellant's communications reflect Money remittances and currency exchange transactions

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that are wholly legitimate and cannot be associated with any form of criminal activity.

Besides the officers that investigated the case, no witness testified that Appellant agreed to or engaged in any type of wire fraud or money laundering.

A) The government entire case rests on a $9,000 deposit that was inadvertently made into an account for which the only connection to Appellant is the highly remote fact that Appellant granted a friend — who had no other simple recourse — permission to use Appellants home address and telephone number to open the bank account that received the $9,000 two months after the bank account was opened.

Regarding the $9,000 transaction, evidence on the record actually shows that Appellant has no connection whatsoever with the $9,000 transaction. The evidence on the record actually shows that Appellant was instrumental in reversing the inadvertently deposited funds. To show that there was absolutely no nexus between Appellant and the $9,000, Appellant states that:

1) The government presented summary charts at trial that contain currency exchange and International money remittance brokered transactions by Appellant. The evidence on record shows that there was no basis for including the $9,000 transaction to the summary chart. This is because Rule 1006 Federal Rules of Evidence provides that "the proponent of the summary [chart] must also have made the documents available" to the other side so the opposing party can "attack the authenticity or accuracy of a chart, summary, or calculation, with

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an opportunity to prepare for cross-examination, or to offer exhibits of it's own as rebuttal evidence." United States v. Bray, 139 F.3d 1109 (6th Cir. 1998). At trial, the government tendered these supporting documents for its summaries in evidence. These documents include records of Appellants day-to-day business transactions in the form of Instant Message communications, photographs of deposit slips, photographs of checks and other financial instruments, Voice recordings etc. At trial, while the government provided exhaustive documents relating to Appellants communications that were retrieved from Appellants phone; the government did not present a single supporting document regarding the alleged $9,000 fraudulent transaction. There were no Instant message communications between Appellant and Ojo, or Appellant and anyone else on or around the date when the $9,000 was deposited into Ojo's account — that was related to a $9,000 transaction. Furthermore, Appellant did not receive any photographs of any deposit slip relating to the $9,000 transaction on or around the date of the deposit. As such, there was no justification for including the $9,000 transaction on the summary chart.

B) Regarding the governments theory that Appellant actually controlled Ojo's account, there is no actual evidence on the record to support this conclusion. The panel concluded that Appellant controlled Ojo's account based on the conjectural supposition that "individuals whose names were on the account were not in the United States when some of the transactions were processed." The conclusion that Appellant controlled Ojo's account does not follow logically from the fact that transactions were

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processed on Ojo's account when Ojo was not in the United States. The government failed to present any evidence that showed I.P. (Internet Protocol) address location matches showing that Ojo's online bank account was accessed at Appellants home, or through Appellants cell phone during periods when Ojo was definitely not present in the United States. Additionally, the search of Appellant's home did not yield or turn up any of Ojo's financial instruments. There were no debit or credit cards found at —— Appellants home. Furthermore, no pictures or CCTV footage showed Appellant using Ojo's bank debit/credit cards at locations where transactions on Ojo's account were processed. 2) At best, the conclusion that Appellant controlled Ojo's bank account because Appellant directed individuals to "transfer money into the account," and because transactions were processed on the account when Ojo was not present in the United States amounts to Reasonable Speculation, which occurs when a conclusion is reached that a disputed fact exists that is within the realm of possibility, but the conclusion reached is nevertheless Unreasonable, and thus impermissible because it is not logically based on another fact known to exist. See Langston v. Smith, 630 F.3d 310, 314 (2d Cir. 2011)(noting distinction between "reasonable speculation" and "sufficient evidence"); Leonard B. Sand et al., Modern Federal Jury Instructions ¶ 6.01 (2011)("The process of drawing Inferences from facts in evidence is not a matter of guess work or Speculation. An Inference is a deduction or conclusion which... the jury [is] permitted to draw... from facts which have been established by direct or circumstantial evidence."); See also O'Laughlin v. O'Brien, 568 F.3d 287, 301-02 (1st Cir. 2009);

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Newman v. Metrish, 543 F.3d 793, 796-97 (6th Cir. 2008). Indeed, the Court "may not credit inferences within the realm of possibility when those inferences are unreasonable." United States v. Quattrone, 441 F.3d 153, 169 (2d Cir. 2006).

Filling the "evidentiary void," as the government did, with "guesswork" and "speculation" is impermissible. United States v. Garcia, 919 F.3d 489, 500 (7th Cir. 2019).

3) Further evidence on the record reflects the fact that Appellant had no control over Ojo's bank account, and thus nothing to do with the $9,000 transaction. For example, evidence on the record reflects the fact that on the day Appellant received the phone call from Brian Ancona regarding the $9,000 deposit, Appellant strongly admonished Ojo for Ojo's carelessness in giving out his account number to someone who is not trust worthy, that is, the person that influenced the $9,000 deposit into Ojo's bank account. 4) Additionally, on prior occasions, as part of the conduct of Appellants day to day business operations, Appellant had sent Ojo photographs of deposit slips that reflect deposits into Ojo's accounts. These deposits were acknowledged by Ojo. If Appellant controlled Ojo's account, why would Ojo acknowledge deposits into his own account. Appellant must point out the critically vital reality that the inference that Appellant controlled Ojo's bank account does not follow logically from the facts that Ojo's bank account had Appellants address and phone number attached to it; that Appellant (as part of Appellants day-to-day business operations) directed Appellants customers to deposit funds for remittances and/or currency exchanges into Ojo's bank account; and the fact that transactions

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were processed on Ojo's account when Ojo was not in the United States. Such an inference is incorrect, and thus impermissible because there are gaps in the logic — evidentiary voids — reflected in the huge leap from each fact to the inference without the required evidence, as well as leaving out too many steps between each fact and the inference.

5) Finally regarding the theory that Appellant controlled Ojo's account and was thus aware of the $9,000 transaction, evidence on the record — the record of Appellants discussions with the FBI agents when they visited Appellant's home in March 2017, records prepared by the agents — reflect the fact that when Ojo called the agents via the phone number that Appellant provided to Ojo, Ojo told the agent that Ojo had directed a certain Leke Adeniga to deposit the funds into Ojo's bank account after they agreed on a Dollar to Nigerian Naira exchange rate.

C) Of the highest significance is the critically vital testimony of the government witness's that investigated the case both at trial and at sentencing: that they "admittedly could not pinpoint the original source of the funds [that Appellant's business dealt in, contained in the government's Summaries], other than the $9,000 transfer that occured in October 2016." This testimony is of the highest consequence since Appellant has showed — through the evidence on the record — that the government failed to prove beyond a reasonable doubt that Appellant was connected to the depositing of the $9,000 transaction. The impact of a combination of the facts that Appellant was not connected to the $9,000

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deposit, and the agents testimony that the government could not pin point the sources of other funds besides the $9,000, In other words, the funds other than the $9,000 cannot be linked with fraud; is extremely powerful, and fully exonerates Appellant. The inferences implied from these key evidence is that the $9,000 transaction aught to be removed from the summary chart because there is not proof to show a connection between Appellant and the $9,000. All other transactions on the summary can be directly linked to Appellant through evidence on the record. Excluding the $9,000 from the summary chart is of monumental significance because it fully sanitizes the summary chart and re-inforces the fact that Appellant ran a perfectly legitimate business with no proven links to fraud. The facts also show that the $9,000 was not the norm in Appellants business dealings.

D) The agents testimony combined with the fact that the government failed to prove beyond a reasonable doubt that Appellant was connected to the $9,000 deposit, (especially the agents testimony at trial that only the $9,000 deposit could be linked to fraud) is of materially vital importance because it nullifies and invalidates a number of conclusions reached by the panel: 1) It nullifies the conclusion that "The government also provided testimony that Abegunde coordinated currency exchanges ..., to clean money received from BEC Schemes." If Appellant is not connected to the $9,000 transaction, and since the agent testified that only the $9,000 transaction can be linked to fraud, this conclusion is invalidated.

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2) The conclusion that "Abegunde opened joint accounts with Caffey to transfer fraudulent funds." Relatedly, the conclusion that "Evidence that Abegunde used the joint bank accounts from the marriage to transfer money obtained from the BEC schemes ..." also "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." also "In this case, the Government, 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." These conclusions amount to eggregiously false misrepresentations of material facts. The agents testimony that only the $9,000 transaction can be linked to fraud further nullifies these conclusions.

3) The monumental consequences of the nullification of the above conclusions —— are that the essential elements of the wire fraud and money laundering conspiracies would not be proven beyond a reasonable doubt as Due Process requires. Additionally, since the false misrepresentations of material facts— that are nullified by the agents testimony— were used to justify the joinder of offenses, that is, the joinder of the wire fraud and money laundering conspiracies with the conspiracy to commit marriage fraud; the joinder of offenses

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is improper. As the panel stated: ... "Abegunde must explain how and why this evidence [presented by the government to justify the joinder] would 'mislead, and confuse the jury in the absence of a separate trial." The explanation is simply that the conclusions used to justify the joinder are not supported by the evidence, and is contrary to the agents testimony that the only funds that could be linked to fraud is the $9,000 deposit into Ojo's account. This testimony by the agent implies that the funds associated with Appellants and Appellant's wife's joint bank account are not connected to fraud.

4) Furthermore, the conclusions — that "Abegunde coordinated several transfers of fraudulent proceeds to accounts under his control or the control of his co-conspirators..." and "Given Abegunde's conduct in directing fraudulent proceeds, communications..." — are not supported by the evidence, and are contrary to the agents testimony that the only funds that can be linked with fraud is the $9,000 deposit. There is also no evidence of any communication between Appellant and Ojo, or Appellant and Alonso, or between Appellant and anyone else regarding the $9,000 transaction.

E) The conclusion — that amounts to a false misrepresentation of material fact — that "Suspecting fraud, Wells Fargo recalled the funds [the $9000] from the account." The fact that Appellant was instrumental in the reversal of the funds that were deposited into Ojo's account was not in dispute at trial, as the record reflects. The first time the government raised the false misrepresentation of the

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Vitally material fact the bank unilaterally reversed the $9,000 transaction was at trial summation. The fact is that, the conclusion that Wells Fargo recalled the funds from Ojo's account is not supported by the evidence, and is in fact contrary to the evidence on the trial record. The evidence on record shows that Brian Ancona, the Wells Fargo investigator testified under cross-examination that Appellant actually co-operated with the reversal of the funds, which was the objective of the call — getting authorization for the reversal. Secondly, and of extremely significant importance is the fact that evidence on the record reflects the fact that Alonso also deposited funds into Ojo's wife's bank account at the same time the $9,000 was deposited into Ojo's account. However, the evidence on record reflects the absolutely undisputed fact that the funds deposited into Ojo's wife's account were not recalled by Wells-Fargo bank. This was the case even though it was known by the Wells-Fargo investigator that the funds in Ojo's wife's account were suspicious in nature, and were part of the proceeds of fraud as the $9,000 that was deposited into Ojo's account. Based on this critically vital fact, the inference can be conclusively drawn that if the bank indeed had the capability to unilaterally reverse the $9,000 from Ojo's bank account, without Appellants intervention — in getting Ojo to approve the reversal, and communicating Ojo's decision to Ancona — then the bank would have reversed the transaction into Ojo's wife's account. The evidence on the record reflects the fact that this did not happen. Lastly regarding this point, the implication of Appellant's noble gesture of facilitating the reversal

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of the $9,000 transaction is highly significant because "A scheme to defraud requires "sufficient evidence of several misrepresentations," and "includes any plan or course of action by which someone intends to ... deprive another by deception of money or property by false or fraudulent pretenses, representations, or promises." United States V. Rathburn, 771 Fed. Appx. 614, 612 (6th Cir. 2019); United States v. Daniel, 329 F.3d 480, 485. By Appellant working to ensure the reversal of the funds that were deposited into Ojo's account by Alonso; Appellant demonstrated that Appellant did not intend to deprive anyone of their possessions.

F) Other Conclusions That Amount To False Misrepresentations of Material Facts, That Are Not Supported By The Evidence on Record: 1) The conclusion that "Approximately two months after opening, [Appellant and Appellant's wifes joint bank account] the Bank of America accounts were closed by the bank due to suspicion of fraudulent activity." This statement is blatantly false, It is unsupported by the evidence, and it is infact contrary to the agents testimony at trial. Under cross-examination, the question regarding the exact reasons why bank accounts associated with Appellant were closed, were repeatedly put to the agents on numerous occasions through out the trial. In response, the agents stated that they did not know the reasons. As such, since there is absolutely no evidence on the trial record that any account directly associated with Appellant was closed due to suspicion of fraud, the conclusion that the accounts were closed due to suspicion of fraud is purely speculative and thus

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Impermissible.

2) The conclusion — that amounts to a false misrepresentation of material fact — that "As to Whatcom BEC, Abegunde provided the account information for one of the accounts he allegedly controlled when a conspirator requested a bank account 'fast.'" This statement is absolutely false. Appellant never had any conversations with any conspirator on the Indictment besides Ojo, who is a long time friend. Appellant did not have any discussions with Alonso, and did not even know of, or know Alonso. As already demonstrated, there is absolutely no evidence on the record of any conversation between Appellant and anyone else regarding the $9,000 transaction on or around the date of the Whatcom BEC. Neither is there any picture of a $9,000 transaction deposit slip that shows a transaction that originated from California, Alonso's location when he carried out the deposit.

G) The Court's Panel Taking Benign, Immaterial, Unrelated, and Statements That Have Absolutely No Nexus to the BEC That Occured In the Western District of Tennessee Out of Context, and Presenting These Isolated Statements (In the wrong Context) As Evidence of Money Laundering Conspiracy: The Court's Panel relied on a hodge podge of statements attributable to Appellant that occured many months after the BEC's In the Western District of Tennesse, and elsewhere. These Out-of-Context statements are manifold, and Appellant will not attempt to address every one of them individually. However, Appellant must point out the fact that a key element of Money Laundering conspiracy is that

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the allegedly laundered funds, or the funds in question be obtained illegally. According to the testimony of the agents that investigated the case, the only funds that can be linked with fraud is the $9,000 deposit into Ojo's account. Additionally, as has been demonstrated based on the evidence on the record, there is absolutely no connection between Appellant and the $9,000 transaction. The only remote connection is that Appellant facilitated the reversal of the funds.

1) The only misleading statements Appellant will address are that "Appellant expressed his fear about allowing money to be paid into an account that can be tracked." and that "his exchanges clean cash and eliminate risk." On cross-examination Appellant addressed this out-of-context statements headon when Appellant testified that the statement was in line with Appellants business model of strictly dealing in cash transactions, with very rare exceptions, and with absolutely no wire transfers. Appellant went on to state that Appellant's model was designed to guard against Alonso's situation where illegally obtained funds are wired into accounts by unknown persons that can carry out the wire transfers anonymously. With cash however, there is accountability. Firstly, the remitter or customer trying to exchange currency has to go into a bank to deposit the cash. In the bank there are always cameras. Secondly, the customer would have to engage with a cashier or banker who witnesses the transaction. Third, the customer receives a receipt which contains vital information such as the date and time of the transaction, the exact location where the transaction took place, the transaction amount. It is these receipts that were used to prepare the

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summaries by the government. Again, the evidence on record reflects the key fact that there was no receipt retrieved from Appellants communication devices, on or around the days of the BEC's that showed a $9,000 transaction conducted in California, where Alonso made the deposit. Appellant must point out the vital fact that in dealing in cash (with rare exceptions) Appellant's business process guarantees accantability, sanitizes the transactions, and attempts to eliminate risk of fraudulent transactions. The record reflects that Appellant's business managed this process relatively successfully, since no transaction associated with fraud was linked to Appellant.

H) Finally, Appellant must address the conclusion that the use of WhatsApp implies Appellant intended to conceal Appellants business dealings. Here the panel concluded that "Abegunde knowingly participated in the distribution cleaning of the proceeds ... and used a messaging application [WhatsApp] to conceal his participation in the scheme." This conclusion is very troubling because the inference that Appellant engaged in concealment money laundering conspiracy does not follow logically from the fact that Appellant's business used WhatsApp as a tool to conduct business. There are innumerable gaps in this logic. First, one out of three human beings on earth use WhatsApp. Does this mean that two billion people use WhatsApp for the purpose of concealing their actions and communications. Secondly, the encryption feature is only one feature out of many features, isolating only the encryption feature leaves gaps in this logic. Third, and of significant concern is, who exactly, did the Panel conclude, was Appellant concealing Appellants communications from?

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Is it legal for the government to track the peoples' communications real time? Would this not be a constitutional violation? The evidence on record contains around 50,000 pages of Appellants communications that were retrieved from Appellants electronic devices. These communications include Whats App messages that were presented to the jury at trial. For the jury to have access to Appellants Whats App communications, simply means that these communications were not deleted by Appellant. Hence the inference can be drawn that there was no intent by Appellant to conceal Appellants Whats App communications. Finally, Appellants Whats App communications did not uncover any evidence — implicit or explicit — between Appellant and anyone else to defraud any individual or entity of their possessions. What Appellant's communications via Whats App reveal is how Appellant conducted Appellants licensed and registered Money Service Business.

Further Discussion

Regarding the instant case, Appellant is very disheartened because the finder of fact should not draw unreasonable inferences. United States v. Abner 35 F.3d 251, 255 (6th Cir. 1994). Additionally Appellant is concerned the finders of fact did not recall the Supreme Court's long-standing admonition" that "Charges of conspiracy are not to be made out by piling inference upon inference..." United States v. Sliwo, 620 F.3d 630, 635, 638 (6th Cir 2010) (quoting Direct Sales Co. v. United States 319 U.S. 703, 711, 63 S.Ct 1265, 87 L. Ed. 1674 (1943)). "[A] verdict may not rest on mere suspicion, speculation, or conjecture, or an overly attenuated piling of inference on inference." United States v.

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Rojas Alvarez, 451 F.3d 320, 333 (5th Cir. 2006) (alteration in original).

Additionally, Appellant's communications — filtered through the experience of case agents — regarding other situations totally unrelated to the underlying case, and without any corroboration that Appellant engaged in criminal activities, are not enough to support a criminal conviction. See Piaskowski v. Bett, 256 F.3d 687, 693 (7th Cir 2001) (reversing verdict based on "conjecture camoflaged as evidence"). The evidence presented by the government simply cannot support a reasonable finding of guilt because it does not satisfy the "state of near certitude" required by Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed 2d 560 (1970). The jury could only have concluded that Appellant engaged in the wire fraud and money laundering conspiracies by crossing "the line between what inferences the evidence supports and what is more in the realm of speculation." United States v. Jones, 713 F.3d 336, 349 (7th Cir. 2013). The weak "web of inferences" in the instant case is something a rational juror does not follow. United States v. Suddarth, 795 Fed. Appx. 377, 383 (6th Cir. 2019)

Further illustrating the weakness of the governments case is the fact that the quantum and quality of evidence offered against Appellant were noticably weaker than the evidence in a number of cases where the Sixth Circuit reversed convictions for insufficient evidence. For example in United States v. Sliwo, 620 F.3d 630 (6th Cir. 2010), Defendant Sliwo's conviction was overturned for lack of sufficient evidence. The Court held that it was a step too far to find that Sliwo knew

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that marijuana was in a van simply because he was involved in the run-up to the acquisition of the marijuana and served as a lookout when the drugs were actually loaded into the van — even though he was not present to see the marijuana being loaded into the van. No evidence was presented that demonstrated Sliwo's knowledge that the purpose of the scheme was the acquisition of marijuana. The government only showed that the Defendant, Sliwo, was involved in a scheme, and the evidence of his participation in transporting the empty van and serving as a lookout would not allow a rational jury to find beyond a reasonable doubt that Sliwo conspired to possess with intent to distribute marijuana. Id. at 638.

Another case in which the Sixth Circuit found evidence insufficient, United States V. Parkes, 668 F.3d 295 (6th Cir. 2012), Defendant Parkes, a bank executive, was charged with being a part of a conspiracy to commit bank fraud, along with the bank's president, and alleged co-conspirator, Goddard. The government put forward the theory that the fraud was a joint effort by Parkes and Goddard to circumvent Bank and FDIC lending limits. Regarding the insufficiency of the governments case, the Court expressed surprise that the government offered no testimony from Goddard to establish that Parkes cooperated in, or even knew of the scheme; eventhough Goddard had already pleaded guilty with an agreement requiring him to testify "completely and truthfully ... if called upon by the United States to do so." Id. at 301. The Court acknowledged that "while that failure does not directly impact the sufficiency of the evidence, it does leave the evidentiary cupboard bare."

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Id. at 301. While also acknowledging that cases can be properly proved with circumstantial evidence, the Court held that "no rational trier of fact could travel this pathway of inferences without succumbing to reasonable doubt." Id. at 301 The Court thus held that the evidence was insufficient to prove —— Parkes guilt beyond a reasonable doubt because the government offered no direct and insufficient circumstantial evidence to show that Defendant knew about or participated in the bank president's fraud, a fraud that the bank president had independent reasons for creating.

Cases where the government tried to bridge the evidentiary gap — as it did in the instant case, by relying heavily on agents' opinions — have not fared well in other Circuit Courts of Appeals. In United States v. Yang, 745 F.2d 733 (2d Cir. 1984), the Second Circuit reversed the conspiracy conviction of one defendant. The Court explained that the most the evidence established was that "the defendant was aware of the conspiracy and associated with some of its members" — not enough to prove her own guilt beyond a reasonable doubt. Id. at 738-39. The agent's expert opinion did not carry the day but was still deemed admissible because it "was not used to explain the absence of any corroborating physical evidence in the government's case." Id at 761. Nevertheless, the expert opinion drew a word of "caution" because it was "offered to establish that ambiguous conduct constitutes criminal activity." Id. at 765 (Newman J. concuring). Judge Newman explained that one must question whether an expert's opinion that events he observes "constitute [a crime] provides

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very much, if any, assistance to a jury, beyond whatever inference is available to be drawn by the jury from all the evidence ... Whatever slight probative value arises from an expert's personal opinion that an observed transaction involved [criminal activity] must be carefully weighed against the distinct risk of prejudice. The "aura of special reliability and trustworthiness" surrounding expert testimony, which ought to caution its use, United States v. Fosher, 590 F.2d 381, 383 (1st Cir. 1979); United States v. Amaral, 488 F.2d 1148, 1152 (9th Cir. 1973), especially when offered by the prosecution in criminal cases, United States v. Green, 548 F.2d 1261, 1268 (6th Cir. 1977), poses a special risk in a case [such as the instant case]. That risk arises because the jury may infer that the agent's opinion about the criminal nature of the defendant's activity is based on knowledge of the defendant beyond the evidence at trial. United States v. Garcia, 919 F.3d 489, 502 (7th Cir. 2019) (quoting Young, 745 F.2d at 765). The risk is further increased when the opinion is given by "the very officers who were in charge of the investigation." Young, 745 F.2d at 766 (quoting United States v. Sette 334 F.2d 267, 269 (2d Cir. 1964).

The hazard of permitting [such] opinion in evidence ought to make Courts cautious in assessing the sufficiency of a case based heavily on such an opinion. If the observed actions of a defendant do not establish a prima facie case, [then the] expert's opinion that [the defendant's] actions are criminal may carry the prosecution's proof above the requisite line. It is one thing to permit a jury to weigh that opinion in

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considering an otherwise adequate case; It is quite another matter to let that opinion salvage an insufficient case. Young, 745 F.2d at 765-66 (Internal citations omitted); See also United States v. Boissoneault, 926 F.2d 230, 234-35 (2d Cir. 1991) (reversing conviction for possession of Cocaine with intent to distribute, and endorsing Judge Newman's concurrence in Young; agent's expert opinion could not supply sufficient evidentiary basis to infer intent to distribute beyond a reasonable doubt); Sette 334 F.2d 269 (reversing conviction because sole evidence that defendant engaged in illegal gambling was two agents' "opinion testimony" based on "their observations and their general knowledge of the gambling business"; this did not "suffice [] to make a case for the jury" where agents "utterly failed" to follow through on surveillance and other evidence-gathering efforts — "the proper and recognized manner of proving" the offense).

In a similar and more recent case United States v. Garcia 919 F.3d 489 (7th Cir. 2019), the Seventh Circuit held that the agent's experience let him offer informed and perhaps accurate speculation about the likely meaning of defendant Garcia's calls with another co-defendant. The Court also held that Garcia's conversations were certainly suspicious, and might well have supported applications for search warrants or further wire-taps. The Court went further to recognize the possibility, and perhaps the likelyhood that Garcia was guilty in fact. But "cryptic conversations, filtered through an agent's experience ... without any corroboration" that Garcia was actually engaged in criminal activity, "were not sufficient to support a criminal conviction." Garcia, 919 F.3d at 504. See also Piaskowski, 256 F.3d at 693

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(reversing verdict based on "conjecture camoflaged as evidence").

Returning to the instant case, where there was an unbelievably gargantuan amount of cognitive dissonance, such that pieces of evidence that did not fit, were forced into a pre-determined set of assumptions. Furthermore, there was a complete disregard, and blind eyes were turned to the exculpatory nature of the context of Appellants conversations. There was also a failure to acknowledge the key fact that the actual meaning, and accurate interpretation of Appellants conversations would greatly depend on the context in which the conversations occured. As a matter of fact, the government unilaterally chose the context through which to interprete conversations between Appellant and Appellants customers or Appellants associates by assuming that Appellant was guilty of the charged offenses. In the instant case, if one starts with the assumption that Appellant indeed engaged in criminal acts, then the evidence provided by the government — conversations between Appellant and Appellants associates regarding currency exchanges and international funds remittances— probably make sense. However, if one starts with the concept of the "presumption of innonence" — a fundamental principle, and the bedrock of more than 200 years of American jurisprudence — then some further corroboration is needed to prove guilt beyond a reasonable doubt. See Garcia, 919 F.3d at 495.

The record of Appellants case at trial reinforces the fact that the government failed to provide any corroboration of Appellant's criminal conduct. Hence, the government bridged the evidentiary gap by totally ignoring the underlying predicate offenses. The

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government's strategy was to divert the attention of the triers of fact by substituting facts for conjecture, innuendo, and speculation via the platform provided by the District Court — granting the agents that investigated the case the status of "Agents' With Specialized Knowledge" — for the injection of virtually unrestrained opinions. Given this platform, the government thus fully capitalized on the opportunity by raising incidents that have absolutely no nexus to the predicate offenses. Of the highest significance is the fact that the agents' testimony did not only pose a direct conflict of interest as the agents' in particular, and the government in general had a vested interest in Appellants conviction; the agents' opinion testimony actually prejudiced Appellant in the most patently unfair manner.

The innuendo's, conjecture, and innumerable speculation put forward by the government in the instant case are not just unreasonable, they are impermissible. Simply put, the United States of America's criminal justice system "does not tolerate the conviction and imprisonment of people based on suspicion, speculation, and association... The government must present direct or circumstantial evidence of each element of each charged offense." United States v. Jones 713 F.3d 336, 352 (7th Cir. 2013). Circumstantial evidence that leads only to a "strong suspicion that someone is involved in criminal activity is no substitute for proof beyond a reasonable doubt." Garcia, 919 F.3d at 503 (quoting Piaskowski, 256 F.3d at 692). And evidence that calls for inferences that are "motivated or made possible by speculation ... will fail to carry the governments burden." —— Garcia, 919 F.3d at 503; Jones, 713 F.3d at 347. "In our republic, a specu-

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lative possibility that a man's conduct violated the law should never be enough to justify taking his liberty." United States v. Davis, 139 S. Ct 2319, 2335, 204 L. Ed. 2d 757, 777, 2019 U.S. LEXIS 4210; (2019).

Conclusion

At most, the case the government presented established "reasonable speculation" that Appellant may have run Appellant's business in an unorthodox manner. However, based on the manifold cases cited in the discussion herein, "reasonable speculation" is insufficient to sustain a verdict. Tanner v. Yukins, 867 F.3d 661, 672 (6th Cir. 2017). Mere suspicion cannot sustain a verdict of guilt beyond a reasonable doubt. See Copeland v. Brewer, 99 F. Supp. 3d 754, 2015 U.S. Dist. LEXIS 49202 (E.D. Mich. 2015); United States v. Jenkins, 345 F.3d 928, 942 (6th Cir. 2003); Hayter Oil Co., of Greenville, Tennessee 51 F.3d 1265, 1271, N. 5 (6th Cir. 1995) (quoting United States v. Van Hee, 531 F.2d 352, 357 (6th Cir. 1976)) ("[e]vidence that at most establishes no more than a choice of reasonable probabilities cannot be said to be sufficiently substantial to sustain a criminal conviction upon appeal.").

Additionally, "the meager circumstantial evidence" presented by the government is simply to innocuous to convict Appellant of the charged offenses, particularly since much of it is "conjecture camouflaged as evidence." Matthews v. Jackson, 328 F. Supp. 3d 743; 2018 U.S. Dist. LEXIS 73915 (E.D. Mich., 2018); Copeland v. Brewer, 99 F. Supp. 3d 754; 2015 U.S. Dist. LEXIS 49202 (E.D. Mich. 2015); Piaskowski, 256 F.3d at 693.

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As demonstrated, since the jury had to rely on impermissible speculation at trial, the jury could not have reasonably inferred Appellant's guilt beyond a reasonable doubt. Additionally, regarding the instant case, if all the evidence is considered in the light most favorable to the prosecution, there remains reasonable doubt because the triers of fact would have been limited by what inferences reason would have let them draw.

Finally, the requirement of proof beyond a reasonable doubt in a criminal case is "bottomed on a fundamental value determination in our society that it is far worse to convict an innocent man than to let a guilty man go free." Patterson v. New York, 432 U.S. 197, 208, 53 L.Ed. 2d, 281 97 S.Ct. 2319 (1977).

II. The Second Issue/Question — of Exceptional Importance Presented for Panel Re-Hearing or Re-Hearing En Banc is Whether The Explicit Language of The Substantive Criminal Statute Related To The Marriage Fraud Conspiracy Count, Compels The Conclusion That The Panel Reached That Marriage Fraud is a Continuing Offense. The State is 8 U.S.C. §1325(d).

Discussion

Instances where the Sixth Circuit has adjudicated cases related to Marriage Fraud, in recent times, are extremely rare. More rare, or even non-existent are Sixth Circuit cases adjudicating whether Marriage Fraud is a continuing offense.

However, the Fifth and Eleventh Circuit Courts of Appeals recently ruled that Marriage Fraud Conspiracy is not

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a continuing offense. Hence, the question presented for Panel Rehearing or Rehearing En Banc is Whether or not Marriage Fraud Conspiracy is a continuing offense.

In United States V. Ongaga, 820 F.3d 152, 159-161 (5th Cir. 2016), the Fifth Circuit asserted that only when "the explicit language of the substantive criminal statute compels such a conclusion" or "the nature of the crime involved is such that Congress must assuredly have intended that it be treated as a continuing one" will [the Court] construe an offense as continuing.

[The Court] thus should begin with the [substantive] statute. The Marriage Fraud Statute reads:

Any individual who knowingly enters into a marriage for the purpose of evading any provision of the Immigration laws shall be imprisoned for not more than 5 years, or fined not more than $250,000 or both. The elements of Marriage Fraud require only that the defendant (1) knowingly enter into a marriage (2) for the purpose of evading any provision of the immigration laws. Nothing in the Statute's plain language, for instance, indicates that a person need actually apply for immigration benefits to violate the statute. Actions occuring after the marriage do not constitute elements of the offense under § 1325 (c). Instead, all elements of Marriage Fraud are satisfied when the defendant enters into the marriage. In sum, the plain language of the statute does not compel the conclusion that Marriage Fraud is a continuing offense. Ongaga, 820 F.3d at 160.

Neither is the nature of the crime such that Congress

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would have intended it to be treated as a continuing offense. Typically, such crimes are those which involve an "ongoing threat of harm" or those "offenses that prohibit an individual from remaining in an unlawful condition or status." There is no ongoing threat of harm from having entered into a marriage to evade the immigration laws unless those laws are actually violated. In that case, fraudulently obtaining immigration benefits or lying to federal agents, [or other unlawful actions after the marriage was entered into] are themselves crimes. Furthermore, being married — even for the purpose of evading immigration laws — is not itself an unlawful condition or status. Id.

The Fifth Circuit therefore concluded that Marriage Fraud is not a continuing offense.

Appellant must point out the fact that a Writ of Certiorari was filed by the government in the Ongaga case challenging the ruling of the Fifth Circuit. However, the Writ was denied by the United States Supreme Court in Ongaga v. United States, 2016 U.S. LEXIS 5574 (U.S., Oct. 3, 2016).

Prior to Ongaga, the Eleventh Circuit had ruled that Marriage Fraud is not a continuing offense in United States v. Rojas, 713 F.3d 1317 (11th Cir. 2013). In Rojas, the Eleventh Circuit held the the starting point for statutory interpretions purposes "is the language of the statute itself." United States v. Zuniga-Artega, 681 F.3d 1220, 1223 (11th Cir. 2012) (internal quotation marks omitted).

"A continuing offense is one which is not complete upon the first act, but instead continues to be perpetuated over time." United States v. De La Mata, 266 F.3d 1275, 1288 (11th Cir.

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2001).

"Offenses should not be considered continuing unless the explicit language of the ... statute compels such a conclusion, or the nature of the crime involved is such that Congress must assuredly have intended that it be treated as a continuing [offense]." Id at 1289 (alterations in original)(internal quotation marks omitted). Here, Congress's use of the phrase "enters into" in the explicit language of the Statute — an act that can only occur on the singular date that a marriage takes place — upends the District Court's conclusion that Marriage Fraud is a continuing offense. Rojas, 718 F.3d at 1320.

Conclusion

The discussions above are of critically significant importance because a Marriage that occured in May 2016 in the Eastern District of North Carolina, could not have continued into the Western District of Tennessee in July, 2016. Furthermore, the marriage could not have continued into the Western District of Washington in October 2016.

Hence, the justification for the joinder of offenses in the instant case based on the grounds that the marriage fraud offense continued into the Western District of Tennessee is thus extinguished, and therefore nullified.

III. The Third Set of Issues Presented for Panel Rehearing or Rehearing En Banc are Regarding Venue and How the Court Panel's Decision Is In Conflict With Precedents Set and Decisions Reached By The Sixth Circuit Court of Appeals; Are In Conflict With The United States

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Constitution; and are In Conflict With The Federal Rules of Criminal Procedure.

A) The Courts Panels Ruling Is In Conflict With Sixth Circuit Precedents Set In United States V. Wood, 364 F.3d 704 (6th Cir. 2004); Supported In United States V. Grenoble, 413 F. 3d 569 (6th Cir. 2005) and United State V. Jamal, 246 Fed Appx. 351 (6th Cir. 2007); and recently reaffirmed in United States V. Petlechkov, 922 F.3d 762 (6th Cir. 2019). The Precedent Is With Regards the Sixth Circuit's Explanation of The Plain Reading of the Text of 18 U.S.C. § 3237(a) With Respect to Venue in Fraud Cases.

Discussion

Proper venue in a criminal case is an "essential part[] of a free and good government." United states V. Petlechkov, 922 F.3d 762, 766 (6th Cir. 2019) (quoting The Federal Former, In 2 THE COMPLETE ANTI-FEDERALIST 230 (Herbert J. Storing ed. 1981).

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.

Determining proper venue is a two-step process. If the criminal statute has a specific venue provision, then Courts must accept that Congressional choice (assuming it is otherwise Constitionally permissible). If not, then Courts determine the proper venue based on "the nature of the crime alleged and the location of the act or acts constituting it." Travis V. United States, 364 U.S. 631, 635, 81 S. Ct.

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358, 5 L.Ed. 2d 340 (1961); See also United States v. Rodriguez-Moreno, 562 U.S. 275, 279, 119 S.Ct. 1239, 143 L.Ed. 2d 388 (1999).

The Sixth Circuit has consistently applied 18 U.S.C. § 3237(a) as the applicable criminal statute that provides the specific statutory venue provision for fraud cases, Wire fraud, and mail fraud. In Petlechkov, 922 F.3d at 769, a mail fraud case, the Sixth Circuit applied 18 U.S.C. § 3237(a) as the criminal statute that provides the specific statutory venue provision. The Court has also applied 18 U.S.C. § 3237(a) in wire fraud cases.

18 U.S.C. 3237(a) provides in pertinent part that "Any offense involving... transportation in interstate or foreign commerce ... is a continuing offense and except as otherwise expressly provided by an enactment of Congress, may be inquired of and prosecuted in any district from, through, or into which such commerce ... moves." United States v. Grenoble, 413 F.3d 569, 573 (6th Cir. 2005) (quoting 18 U.S.C. 3237(a)). In cases involving fraud, venue is proper and may be inquired of and prosecuted in any district from, through, or into which such commerce, mailmatter, or imported object or person moves... United States v. Jamal, 246 Fed. Appx. 351, 364 (6th Cir. 2007). Jamal, 246 Fed. Appx. 351 and Grenoble, 413 F.3d 569 are visa fraud —— and wire fraud cases respectively.

The Sixth Circuit has explained that "[a] plain reading of the text" shows "that venue in a wire fraud case is limited to districts where the transportation in interstate or foreign commerce is deposited, received, or moves through." Petlechkov, 922 F.3d at 769 (alteration in original); United States v.

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Wood, 364 F.3d 704, 713 (6th Cir. 2004)(citing 18 U.S.C. 3237(a)) (emphasis added).

"[W]ire fraud statutes do not punish fraudulent schemes — only the illegal use of the mails or wire facilities in furtherance of such schemes. As a result, federal courts should focus only on the specific geographic characteristics of the charged mailing or wire transmission — meaning where did it originate, terminate, or pass through." Jack E. Robinson, The Fed. Mail and Wire Fraud Statutes: Correct Standards for Determining Jurisdiction and Venue, 44 Willamette L. Rev. 479, 532 (2008).

The government must prove venue for each count by a preponderance of the evidence. United States v. Beddow, 957 F.2d 1330, 1335 (6th Cir. 1992). The government does not need to present direct evidence of venue. Instead, the government can prove venue based on a reasonable inference from circumstantial evidence. United States v. Charlton, 372 F.2d 663, 664-65 (6th Cir. 1967); 2 Charles A. Wright and Arthur R. Miller, FEDERAL PRACTICE and PROCEDURE: CRIMINAL § 307.

So, to prove venue for the wire fraud conspiracy count, the government needed to show that the wire transmission related to the fraudulently obtained $9000 moved through the Western District of Tennessee... Wood, 364 F.3d at 713.

In the instant case, the evidence on the record reflects the fact that the basis for which the Court Panel reached its conclusion that venue was proper in the Western District of Tennessee are based on — inaccurate assertions. The Panel stated that: "Abegunde does not dispute that the Government's evidence linked him to an account that received $9,000 of $154,000

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In fraudulent funds from a company in the Western District of Tennessee." The trial record, and the government actually dispute this assertion by the Courts Panel. Appellant will address this point in detail.

The Court Panel went on to state that: "Abegunde's counsel acknowledges that these proceeds related to the Western District of Tennessee." Abegunde's Counsel— In the Initial "Brief of Defendant-Appellant Olufolajimi Abegunde"— stated that: "In the present case, the only transaction that haled Mr. Abegunde into the Western District of Tennessee was the $9,000.00 transaction taken from a real estate company in Memphis, Tennessee." ... See Document 32 Page 26, Paragraph 2, Case: 19-6229— Brief of Defendant-Appellant Olufolajimi Abegunde.

To clarify the exact facts with respect to the evidence on the record, and to dispel the inaccurate, and therefore misleading assertion that Appellant was linked to a fraud that occured in the Western District of Tennessee, Appellant states that:

1) The unfortunate fact is that the above statement attributable to Abegunde's Counsel is actually a gross misrepresentation of the facts of the case. The statement is not supported by the evidence on record, and is infact contrary to the evidence on the record. Appellant must state that immediately Appellant became aware of this crucially consequential error on the brief, Appellant reached out to Counsel— on innumerable occassions via multiple channels— to correct the error. In response, and to Appellants consternation, Counsel stated that

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the Court's Panel would review all of the evidence on the record; as well as the trial transcripts in full, in order to get to the roots of the entire case in general, and the issue of venue in particular. Unfortunately, this did not happen.

Nevertheless, the government came to Appellants rescue by presenting the actual facts regarding the issue of venue. The government, in its "Brief for Appellee United States of America" clarified Counsels inaccurate statement when it stated that: "Of note, Ramos [Alonso] received a large deposit [of $60,000] in October 2016 from Whatcom Land Title Company in Bellingham, Washington. See Document 36, Page 13, Paragraph 2, Case: 19-6229 - Brief for Appellee United States of America. The government went on to state that: "The investigator then reviewed a list of bank accounts to which Ramos [Alonso] had wired portions of the $60,000.00. Two of the account holders — Ayodeji Ojo and Oluwabukola Oguntoye — had the same Georgia address. Id at Page 14, Paragraph 2.

Appellant must point out the fact that in the governments "Statement of Facts" on its "Brief of Appellee United States of America," regarding the facts surrounding the Memphis real estate firm, Crye-Leike, that was defrauded of $154,000.00 in the Summer of 2016; there was absolutely no mention of any $9,000.00 transaction. Furthermore, regarding this fraud that took place in the Western District of Tennessee, there was no allegation by the government that Appellant controlled any account that received the proceeds of this fraud.

To summarize, Whatcom Land Title Company, located in

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the Western District of Washington (In Bellingham, Washington) was defrauded via a Business Email Compromise (BEC). The proceeds of the fraud, $60,000.00, was transferred to Ramos Alonso's account in California where Ramos Alonso lived. Ramos Alonso then deposited part of the proceeds — $9,000.00 — of the fraud into a bank account domiciled in Atlanta, Georgia.

2) As has been demonstrated, Appellant must reinforce the key fact that the government failed to provide the required evidence to show that the account that received the $9,000.00 deposit was controlled by Appellant. Appellant must also point out the fact that the only thing that remotely connects Appellant to the said bank account is that the bank account was opened using Appellant's residential address, and phone number, by an individual other than Appellant.

3) Of crucially consequential significance is the absolute fact that the government failed to present any scintilla of evidence showing that the Washington BEC and all the transactions associated with the Washington BEC originated, terminated, or moved through the Western District of Tennessee. That is, there is absolutely no evidence on the record that shows a nexus between the $9,000.00 transaction, and the Western District of Tennessee

4) Of also crucially consequential significance is the absolute fact that regarding the BEC that occured in the Western District of Tennessee in the Summer of 2016, when Ojo and his wife had not even arrived in the United States, and had therefore not opened any bank accounts; the government failed to provide

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any form of evidence whatsoever that proximately or remotely connects Appellant to the said Memphis BEC.

5) To further buttress the fact that the government lacked venue for the Wire fraud conspiracy cant; at sentencing, the government failed to prove — by a preponderance of evidence as required — that Appellant was in any way, shape, or form linked to the BEC that took place in the Western District of Tennessee in the summer of 2016 (July 2016). Furthermore, the $154,000.00 loss amount tied to the Memphis BEC (the BEC that occured in the Western District of Tennessee) was not included in calculating the loss amount ascribed to Appellant in the form of relevant conduct.

Conclusion

In order to prove venue in the Western District of Tennessee, Sixth Circuit precedent required that the government show that the transportation in interstate or foreign commerce — connected to Appellant — originated, terminated, or moved through the Western District of Tennessee. To do that, the government must present enough evidence to allow a rational juror to find venue by a preponderance of the evidence. See Wood, 364 F.3d at 713-14; United States v. Greene, 995 F.2d 793, 801-02 (8th Cir. 1993). However, "no evidence cannot be a preponderance of the evidence." Petlechkov, 922 F.3d at 770.

In the instant case, there is simply no evidence on the record, direct or circumstantial, that the BEC and all the transactions associated with it, that involved the transportation in interstate or foreign commerce — and that was immaterially, remotely, inconsequentially, and one for which there was an

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Insufficient legal basis for establishing a nexus to Appellant — originated, terminated, or moved through the Western District of Tennessee. Cf. Johnson v. Coyle, 200 F.3d 987, 994-95 (6th Cir. 2000) (holding that no rational juror could have found defendant guilty of kidnapping when the government did not present any evidence of kidnapping as defined by state law).

Accordingly, no rational juror could have found that the government proved venue for the wire fraud conspiracy count in the present case. Hence, the conviction of Appellant on this count should not stand.

B) Also, With Respect To The Issue of Venue, The Court Panel's Ruling In The Instant Case Is In Conflict With The Precedent The Sixth Circuit Set In United States v. Ramer, 883 F.3d 659 (6th Cir. 2018), Regarding The Impact of A General Challenge To The Sufficiency of The Evidence. on Venue

Discussion

Quoting the exact words used by the Sixth Circuit in Ramer, 883 F.3d at 682: "We therefore hold that a general challenge to the government's proofs in a Rule 29 motion for judgment of acquittal suffices to preserve the issue of venue." Id.

The Courts ruling in Ramer is significantly pertinent to the instant case for the reason that while Appellant made a general challenge to the sufficiency of the evidence on all counts via a Rule 29(c) — Federal Rules of Criminal Procedure — Motion for Judgment of Acquittal; the Court's

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Panel did not consider the issue of venue for de novo review on all counts, as required by the Sixth Circuit in Ramer.

As a matter of fact, the Panel reviewed the issue of venue only for the wire fraud conspiracy count. Additionally, rather than a de novo review of the wire fraud conspiracy count, as required by Ramer, the Panel reviewed the issue of venue for plain error. Furthermore, the Panel did not review the issue of venue for the marriage fraud conspiracy count at all.

As Appellant will show, the Panel's ruling in the instant case regarding the issue of venue had devastatingly prejudicial consequences on Appellant, as the government failed to prove the counts of wire fraud conspiracy; by extension, the count of money laundering conspiracy; and the count of marriage fraud conspiracy by a preponderance of the evidence as Sixth Circuit precedent requires.

C) Also Regarding Venue, The Courts Panels Ruling In The Instant Case Is In Conflict With Long Recognized Sixth Circuit Precedents, The United States Constitution, and The Federal Rules of Criminal Procedure. This Conflict Is With Respect To The Requirement That The Government Prove Venue for All Counts In An Indictment By A Preponderance of The Evidence, As Recognized By The Sixth Circuit In United States v. Beddow, 957 F.2d 1330 (6th Cir. 1992); Supported In United States v. Zidell, 323 F.3d 412 (6th Cir 2003) and United States v. Wood, 364

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F.3d 704 (6th Cir. 2004) and United States v. Grenoble, 413 F.3d 569, 572 (6th Cir. 2005); and recently affirmed in United States v. Petlechkov, 922 F.3d 762 (6th Cir. 2019).

Discussion

As already stated, 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. Cons. art III § 2; U.S. Const. amend. VI; Fed. R. Crim. P. 18.

Additionally, the Sixth Circuit has long recognized that 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. Beddow, 957 F.2d at 1335; See also Zidell, 323 F.3d at 420-21 (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).

Furthermore, the Sixth Circuit has held that "the government must prove venue count-by-count," Petlechkov, 922 F.3d at 770, and to do that it must present enough evidence to allow a rational juror to find venue by a preponderance of the evidence. See Wood, 364 F.3d at 713-14.

Appellant has already demonstrated that in the instant case, the government failed to provide the required evidence to show that venue was proper in the Western District of Tennessee for the Wire fraud conspiracy count, and by extension, the money laundering conspiracy count.

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Regarding the Marriage fraud Conspiracy count, evidence on the record reflects the absolute fact that Appellant "entered into" Appellant's marriage in the Eastern District of North Carolina, a location that is definitely not the Western District of Tennessee. Based on this singular fact alone, it is abundantly, unequivocally, and incontrovertibly clear-cut that Venue was improper for the marriage fraud Conspiracy Count in the Western District of Tennessee. Additionally, "no evidence cannot be a preponderance of the evidence." Petlechkov, 922 F.3d 770. And there is simply no evidence, direct or circumstantial that Appellant entered into Appellants marriage in the Western District of Tennessee. Id. Accordingly, the Court must reverse Appellant's Conviction for the Marriage fraud Conspiracy Count since no rational juror could have concluded that Appellant "entered into" Appellants marriage in the Western District of Tennessee. United States V. Kernell 667 F.3d 746, 750 (6th Cir. 2012); United States V. Cooper, 40 F. App'x 39, 40 (6th Cir. 2002).

Conclusion

As demonstrated via all the arguments put forward by Appellant regarding the issue of venue:

Appellant was Severely prejudiced by the Conflict posed by the Panel not following set precedent by the Sixth Circuit regarding the Courts explanation of the plain reading of 18 U.S.C. 3237(a). The evidence on record, as well as the application of the Sixth Circuits explanation of the plain reading of 18 U.S.C 3237(a) would have resulted in the adjudication that Venue was improper for the Wire fraud

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conspiracy count, and by extension, the money laundering conspiracy count.

As previously stated, Appellant was devastatingly prejudiced by the Conflict in the Panel not following the Sixth Circuit precedent in United States v. Ramer, 883 F.3d 659, 682 (6th Cir. 2018). Had the Panel reviewed the marriage fraud conspiracy count for venue de novo, the Panel would have determined that there was absolutely no evidence presented by the government that Appellant entered into Appellants marriage in the Western District of Tennessee; thereby making Venue improper for the marriage fraud conspiracy count.

Finally regarding the issue of venue, Appellant has demonstrated that the government failed to provide the required evidence to establish venue for the charged substantive offenses. As such, venue was improper for the wirefraud conspiracy count, and by extension, the money laundering conspiracy count. Venue was also improper for the marriage fraud conspiracy count.

IV. The Court Panel's Ruling In The Instant Case - Regarding Relevant Conduct - Is In Conflict With Long Established Precedent Set By The Sixth Circuit In United States v. Catchings, 708 F.3d 710, 720 (6th Cir. 2013); United States v. Maken, 510 F.3d 654, 658-59 (6th Cir. 2007), and United States v. Shafer, 199 F.3d 826, 831 (6th Cir. 1999) that Relevant Conduct must be criminal conduct.

Discussion

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The Sixth Circuit has established that although "relevant conduct is not limited to conduct for which the defendant has been convicted," the conduct must "amount[] to an offense for which a criminal defendant could potentially be incarcerated." Catchings, 708 F.3d at 720. See also Maken, 510 F.3d at 658-59; Shafer, 199 F.3d at 831.

In short, "relevant conduct under [U.S.S.G.] §1B1.3 must be criminal conduct." Catchings, 708 F.3d at 720; See also United States v. Schaefer, 291 F.3d 932, 940 (7th Cir. 2002) (noting that its holding "that relevant conduct under §1B1.3 of the [sentencing] Guideline is limited to criminal conduct" is "amply supported" by case law in the Third, Fifth, and Eigth Circuits).

Regarding the Seventh Circuit holding that relevant conduct under §1B1.3 of the [Sentencing] Guidelines is limited to criminal conduct is amply supported by case law in other circuits, some of these rulings in other Circuit Courts are pertinent to the instant case. For example, in United States v. Peterson, 101 F.3d 375, 385 (5th Cir. 1996) the Fifth Circuit vacated a [U.S.S.G.] §2F1.1(b)(1) loss calculation in a securities fraud case because the District Court "made no determination as to whether the defendant's conduct with regards the $1.3 million loss to the ABFL was actually criminal conduct rather than a violation of the fiduciary agreement making the defendant civilly liable." 101 F.3d at 385. Of vital pertinence to the instant case, the Fifth Circuit expressed concern that if relevant conduct were not limited to criminal conduct, defendants could be more Seve-

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rely punished by "having their guideline range increased for activity which is not prohibited by law but merely morally distasteful or viewed as simply wrong by the sentencing Court." Id; accord United States V. Dove, 247 F.3d 152, 155 (4th Cir. 2001) (rejecting argument that "non-benign conduct "may properly be considered as relevant conduct" and following Peterson.) See also United States v. Dickler, 64 F.3d 818, 830 (3d Cir. 1995) (agreeing with other Circuits that relevant conduct must be criminal); United States V. Sheahan, 31 F.3d 595, 600 (8th Cir. 1994) (noting that government has burden of proving by a preponderance of evidence that defendant's conduct was criminal in nature before the District Court can rely on it as relevant conduct).

With respect to the instant case, Appellant has already detailed how the Court's Panel took a hodge podge of benign, Immaterial, unrelated (to the fraud that occured in the Western District of Tennessee), and statements that have absolutely no nexus to the Business Email Compromise (BEC) that occured in the Western District of Tennessee out of Context; and Improperly used these statements as evidence of money laundering Conspiracy.

Appellant has also demonstrated — through extant Sixth Circuit case law — that a key element of money laundering conspiracy is that the allegedly laundered funds, or the funds in question be obtained illegally.

Furthermore, according to the testimony of the agents that investigated the case, the only funds on the governments Summary sheet / chart — that supposedly displayed laundered

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funds — that can be linked with fraud or any type of illegal activity is the $9,000 deposit into Ojos bank account. Additionally, Appellant has demonstrated, through the evidence on record, that there is absolutely no connection between Appellant and the said $9,000 transaction. Appellant also showed — through extant Sixth Circuit case law — that by Appellant facilitating the reversal of $9,000.00, Appellant demonstrated that Appellant did not intend to dispossess any individual or business of their funds.

Appellant also demonstrated that the conclusion that Appellant engaged in concealment money laundering does not follow logically from the fact that Appellant used WhatsApp — an instant messaging tool — to conduct Appellants Money Service Business (MSB). Appellant demonstrated that such an inference is incorrect because there are gaps in the logic, reflected in the huge leap from one statement (Appellant used WhatsApp to conduct business) to another (Appellant engaged in concealment money laundering conspiracy) without the required evidence; as well as leaving out too many steps in between the two statements. Additionally, WhatsApp has an abundance of features besides the encryption feature. Isolating only the encryption feature leaves gaps in the logic.

Of significantly high importance, Appellant pointed out the fact that the use of third-party bank accounts in the conduct of Appellants business is not in any way, shape, or form illegal. The use of these third-party bank accounts was in line with Appellants Money Service Business (MSB) model and process. Also of critically vital significance is the fact that

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there is absolutely no evidence on the record that bank accounts associated with Appellant were closed on suspicion of fraud.

Also of vital importance is the fact that Appellant clarified Appellants conversation that was taken out of context regarding Appellant's business decision to deal in cash and not wire transfers. Appellant elucidated the facts by elaborating on how this business decision was made to ensure that what happened to Ramos Alonso — where unknown individuals wired fraudulently obtained funds into his bank account — does not happen to bank accounts Appellant provided to customers for currency exchanges and international funds remittances. Appellants business process thereby ensured that the funds - Appellant business dealt in - are clean; and that risk is eliminated.

While it is conceivable that Appellants business model may have been perceived to be unorthodox, morally distasteful, or simply wrong by the district court; there is however absolutely no evidence that Appellant engaged in criminal activity.

To conclude, Since the government failed to provide the required evidence to prove that Appellant engaged in criminal activity with respect to all the transactions on the Summary / Loss chart; the Chart should not have been admissible, and Appellant should not have been convicted. Additionally, Since the Sixth Circuit has ruled that Relevant Conduct must be Criminal Conduct; and Since there is no evidence of any criminal activity related to Appellant

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with respect to the transactions on the Summary/Loss Chart; then the transactions on the chart shaild not be treated as loss in relation to Relevant Conduct

Concluding Summary — The Ramifications of The Arguments Offered By Appellant

Through comprehensive clarifications of the facts of the Instant case, — based on the evidence on the record — and through citing extant case law from the Sixth Circuit, Other Circuit Courts, and the U.S. Supreme Court:

Firstly, Appellant has demonstrated that Appellants convictions violated the Due Process Clause of the Fourteenth Amendment, which forbids convictions "except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which [the defendant] is charged." Jackson v. Virginia, 443 U.S. 307, 315, 99 S.Ct. 2781, 61 L.Ed. 2d 560 (1979) (quoting In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed. 2d 368 (1970). This requirement "provides concrete substance for the presumption of innocence — that bedrock 'axiomatic and elementary principle' whose enforcement lies at the foundation of our criminal law." Winship, 397 U.S. at 363 (quoting Coffin v. United States, 156 U.S. 432, 453, 15 S.Ct. 394, 39 L.Ed. 481 (1895).

Secondly, Appellant has demonstrated that the government failed to present any evidence to substantiate its assertion that bank accounts associated with Appellants marriage received fraudulently obtained funds. Additionally, Appellant has also demonstrated — through extant case law — that since marriage

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fraud conspiracy is not a continuing offense, a marriage that was entered into in the Eastern District of North Carolina could not have continued into the Western District of Tennessee. Appellant has also demonstrated that no rational trier of fact could have found that the government presented the required evidence to show that Appellant "entered into" Appellants marriage in the Western District of Tennessee. Hence Venue was improper for the marriage fraud conspiracy Count in the Western District of Tennessee. The ramification of these facts is that all possible factual or legal justifications for the joinder of offenses in the instant case have been eliminated and obliterated.

Thirdly, regarding the issue of venue, Appellant has demonstrated that none of the substantive offenses charged by the government continued into the Western District of Tennessee. And since the government failed to provide the required evidence to prove venue; Venue was improper for the Wire fraud conspiracy count, and by extension the money laundering conspiracy count. Venue was also improper for the marriage fraud conspiracy count

Finally, Appellant has demonstrated that the loss chart should not have been admissible, Appellant should not have been convicted, and Appellant should not have been sentenced to 78 months in prison.

Conclusion

WHEREFORE, premises considered, Appellant Olufolajimi Abegunde (MBA) respectfully pleads that the Court reverse

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Appellants conviction on all counts. Appellant further prays for such other relief to which Appellant may be entitled in either law or equity.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he deposited a copy of the Petition for Panel Re-Hearing or Re-Hearing En Banc - Pursuant to Rule 35 Federal Rules of Appellate Procedure - in the prison mail box system at the Reeves County Detention Center III on the 5th day of March, 2021; for onward transmission to the:

Office of the Clerk
United States Court of Appeals
For The Sixth Circuit
100 East Fifth Street
Potter Stewart U.S. Courthouse
Cincinnati, Ohio 45202-3988

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