

1 IN THE UNITED STATES DISTRICT
2 FOR THE WESTERN DISTRICT OF TENNESSEE
3 WESTERN DIVISION

4
5 UNITED STATES OF AMERICA,

6 Plaintiff,

7 vs.

NO. 2:17-cr-20238

8 OLUFOLAJIMI ABEGUNDE,

9 Defendant.

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13 SENTENCING HEARING

14
15 BEFORE THE HONORABLE SHERYL H. LIPMAN, JUDGE

16
17 Wednesday

18 24th day of July, 2019

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23 CANDACE S. COVEY, RDR, CRR
24 OFFICIAL REPORTER
25 FOURTH FLOOR FEDERAL BUILDING
 MEMPHIS, TENNESSEE 38103

UNREDACTED TRANSCRIPT

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A P P E A R A N C E S

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EXHIBIT INDEX

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(None marked.)

1 Wednesday

2 July 24, 2019

3 The Sentencing hearing in this case began on this
4 date, Wednesday, 24th day of July, 2019, at 1:30 p.m., when
5 and where evidence was introduced and proceedings were had as
6 follows:

7

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9

10 THE COURT: Good afternoon. Let's come on up to
11 the podium. Let's see where we're going with this. Good
12 afternoon, Mr. Abegunde.

13 THE DEFENDANT: Good afternoon, ma'am.

14 THE COURT: We are here for your sentencing.
15 I've got a presentence report with two addenda. One, I
16 guess, filed yesterday, I assume. Did you all --

17 MS. IRELAND: Yes, Your Honor.

18 THE COURT: -- see that and have a chance to
19 review it?

20 MR. PERRY: Yes, Your Honor.

21 THE COURT: I've got the Government's position
22 paper. I've got the Defendant's position paper. It was
23 late, 15 days late. It was not like a typical position
24 paper. I read -- I wrote in my notes here it was more like
25 an answer to a complaint where there was an answer to every

1 paragraph which struck me as something that probably took a
2 little longer than the average.

3 MR. PERRY: Yeah.

4 THE COURT: But do get them in on time. It, you
5 know, puts Probation in a position of doing what they had to
6 do here, which was kind of scrambling to file that addendum.

7 MR. PERRY: Yes, Your Honor.

8 THE COURT: Any other documents I should have?

9 MR. PERRY: Not from the Defendant, Your Honor.

10 MS. IRELAND: No, Your Honor, but there is an
11 outstanding motion for judgment of acquittal.

12 THE COURT: Yes. We'll rule on that in due
13 course.

14 MS. IRELAND: Thank you.

15 THE COURT: Mr. Perry, have you and Mr. Abegunde
16 read and discussed the presentence report?

17 MR. PERRY: We have, Your Honor.

18 THE COURT: The filing of the Defendant has a
19 couple of objections. First, the first is an objection to
20 numerous factual assertions that don't go to the calculation
21 of the guidelines. And that gets to the detailed nature of
22 the particular position paper. I'm not inclined to go into
23 each of those. I don't need to make a finding as to those
24 because it doesn't affect the guideline sentence. Anything
25 else to say about that, Mr. Perry?

1 MR. PERRY: Your Honor, I just wanted to -- if
2 whenever I try and we're not successful at trial, I just get
3 kind of paranoid about waiving something that I want to take
4 up on appeal at some point. So I did a bit of overkill, and
5 I apologize for that. But that's why I did that. So I
6 understand the Court's position, you know, particularly for
7 time's sake. I appreciate the Court's position, so...

8 THE COURT: Okay. And I guess that should be the
9 overriding objection. The Defense has clearly objected to
10 the factual findings because the Defense contests --
11 continues to contest the underlying factual issues.

12 MR. PERRY: Yes, Your Honor.

13 THE COURT: Okay. And in that same vein, one of
14 the specific objections to the calculation of the guidelines
15 was to paragraph 48, related to the additional points for
16 money laundering. That's, you know, that's the jury verdict.
17 Or that's supported by the jury verdict. So, you know, your
18 objection for the record to make sure your position is
19 clear --

20 MR. PERRY: Yes, Your Honor.

21 THE COURT: -- is clear. But there's a jury
22 verdict that would argue otherwise.

23 MR. PERRY: I understand.

24 THE COURT: The one objection though I want to
25 deal with goes to the amount of the loss. I was a little

1 unclear about -- I understand the Defendant's position that
2 it should only be \$9,000, I think is the -- at most \$9,000.
3 But I wasn't clear how we got to the 793,000 rounding off.
4 So if someone could walk me through how we get to that
5 figure.

6 MR. FLOWERS: So our understanding is if you
7 start with the chart that has all the third party accounts on
8 it, Your Honor, Special Agent Vance went through the chats,
9 and in a very conservative manner detailed transactions that
10 he can confirm that went through third party accounts. And
11 there are more to it than that, but he in a very
12 under-inclusive way came up with that is the 571,083 dot 01.

13 THE COURT: Okay.

14 MR. FLOWERS: So that's the basis. Then our
15 understanding is if you then add essentially what is the
16 \$154,000 from the Crye-Leike BEC and then the 60 some odd
17 thousand from the Whatcom Title BEC, then that should -- and
18 then the TRICARE which is 7,800, approximately \$7,800. Then
19 that should arrive at the 793,447.69. So within the 550 to
20 \$1.5 million range, ma'am.

21 Now that amount does not include -- so in
22 paragraph 36, there are two components. There was a third
23 party account portion that is detailed. Then earlier on in
24 the paragraph, that does not include the approximately
25 \$650,000 that went through the F.J. -- the specifically named

1 F.J. Williams accounts.

2 THE COURT: Right.

3 MR. FLOWERS: Without conceding anything there,
4 we're not conceding that that was legitimate, we believe
5 there are very strong arguments that it's likely that those
6 were money laundering activities. But we elected to
7 concentrate on the third party accounts plus the two business
8 e-mail compromises that were known and traced as well as the
9 TRICARE amounts, Your Honor. And that arrives at a figure,
10 the figure that is specified.

11 THE COURT: Okay.

12 MR. FLOWERS: Does it all add up, Your Honor?

13 THE COURT: It does. So 793,447.69 is third
14 party claims Crye-Leike, Whatcom.

15 MR. FLOWERS: Plus TRICARE.

16 THE COURT: Plus TRICARE, right. All right.
17 Does the Government intend to present any proof?

18 MR. FLOWERS: No, Your Honor. Special Agent
19 Vance would essentially just testify, we anticipate, to
20 exactly what I just said. If you'd like to hear from him
21 with that regard but by way of proffer, he would essentially
22 say what I have just said.

23 THE COURT: How do we know -- Crye-Leike, you
24 know, we've got statements in the presentence report that
25 were backed up by the testimony at trial, same with Whatcom.

1 The third party claims though, how do I know that you're not
2 double counting?

3 MR. FLOWERS: So he did eliminate the \$9,000 from
4 the Ayodeji transaction to eliminate double counting with
5 that. With regards to each one of these, they do not include
6 -- at least they should not. So the Crye-Leike BEC was in or
7 on about July 25th, 2016. So if you'll notice that the
8 transactions on that chart between 6/29 and 8/19, we did not
9 include those around there, which would, we think, eliminate
10 or at least diminish the likelihood of double counting.

11 With regards to the Whatcom BEC on or about
12 October 3rd, it says the Ayodeji Ojo \$9,000 previously
13 referenced and then it was subtracted from the end of that.
14 In that as well, we did not include the \$9,000 that was
15 intended for the Oguntoye account, which we also believe
16 Mr. Abegunde had ownership or at least control over. The
17 Olubunmi Makinwa transaction, we do not believe that that was
18 directly traced, at least not to our knowledge from that BEC.
19 Thus it should be counted. So by taking away what we know,
20 we eliminated the likelihood of double counting.

21 Now, with regards more fundamentally to the rest
22 of these transactions, since we exclusively used, I believe,
23 exclusively used the WhatsApp communication surrounding them,
24 it's necessarily going to be under-inclusive because Special
25 Agent Vance only included those transactions that he could

1 verify, either by what was said went through or whether there
2 was some other indication of a picture or something like
3 that. It did not include any transactions where they went to
4 telephone and then spoke or any other transactions they might
5 have done in e-mail or in person that would have been
6 included. This is a very conservative, just with what we
7 were able to verify with the records themselves on the
8 encrypted messaging platform and nothing else.

9 We know, based on these third party accounts, why
10 those names were being used because they didn't -- because
11 Mr. Abegunde did not want to do transactions into accounts
12 that could be tracked. And he knew that he had to use third
13 party accounts because his own accounts had been repeatedly,
14 over the course of time, shut down. We know this from his
15 own words that he had to beg, incentivize and plead
16 individuals to use their accounts in question.

17 So based on the common MO with the two BECs that
18 we have traced, as well as the accounts and questions we
19 detailed here, we believe that the common modus operandi, the
20 common purpose being to launder funds and even with the
21 common accomplice which was Mr. Ramos on the July 25th BEC
22 and the October 3rd BEC, all those things together bring the
23 totality of the that universe into relevant conduct and can
24 be included in the fraud calculation.

25 THE COURT: I think I need to hear from Agent

1 Vance, Special Agent Vance, to just hear and -- Mr. Perry,
2 any comment now?

3 MR. PERRY: I would rather, if need be, cross
4 examine Special Agent Vance if it's going to be by way of
5 testimony that you hear from him. But I do want to have a
6 comment at the end of whatever they have regarding these
7 amounts.

8 THE COURT: Yeah. I'll give you that
9 opportunity. Okay.

10 MR. FLOWERS: Yeah. So I guess the Government
11 calls Special Agent Marcus Vance.

12 THE COURT: Do y'all want to sit back down,
13 Mr. Perry?

14 MR. PERRY: Yes, Your Honor.
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TESTIMONY OF MARCUS VANCE

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1 * * *

2 **MARCUS VANCE,**

3 **was called as a witness and having first been duly sworn**
4 **testified as follows:**

5
6 **DIRECT EXAMINATION**

7 **BY MR. FLOWERS:**

8 Q. Good afternoon, Special Agent Vance. You've testified
9 here before, but could you please reintroduce yourself to the
10 Court?

11 A. My name is Marcus Vance. I'm a special agent with the
12 FBI here in Memphis.

13 Q. And just for the purposes of the record, could you
14 please just spell your name?

15 A. M-A-R-C-U-S V-A-N-C-E.

16 Q. What is your relationship to the case here?

17 A. I'm one of the co-case agents on this case.

18 Q. Did you prepare a chart of third party accounts in
19 connection with this proceeding?

20 A. I did.

21 Q. In general, what does this chart show?

22 A. It represents times when I went through Mr. Abegunde's
23 phone, and it appears that a deal was brokered between him
24 and another individual when they would agree on a rate. They
25 would agree on a dollar amount that would go through, and an

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1 account would be asked for. Mr. Abegunde would give out an
2 account that was not his personal account or not his
3 F.J. Williams account. And based on those text messages, it
4 appeared that the deal was brokered, I included it. If it
5 started out and they started negotiating and then it went to
6 a phone call or there was a screenshot that I didn't have
7 access to, I just moved on to the next one.

8 Q. And how did you select the date range in question
9 here?

10 A. I believe this was the date range of the conspiracy.

11 Q. And when larger amounts were negotiated for smaller
12 transactions, what did you do with those types of records?

13 A. So for example, if they were talking about \$60,000 and
14 Mr. Abegunde said that he wanted to do 10 or 20, I would only
15 include his portion of what he negotiated. I would leave the
16 rest of it off the chart. There were other times when there
17 would be a large amount of money and he would want all of it,
18 so if they split it, let's say it was 35,000 and he split it
19 into four different accounts, then I would include all of
20 that.

21 Q. So does this chart then include every single
22 transaction that Mr. Abegunde did?

23 A. By no means.

24 Q. What types of things did you not include?

25 A. I did not include anything that went through his

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1 F.J. Williams account, so this is all just third party
2 accounts. I did not include anything that I did not have
3 access to. So if there was something done by e-mail, phone,
4 another messaging application, it's not included. And as I
5 said before, if it looked like it started and it probably
6 happened but I couldn't quite confirm it based on the text, I
7 didn't include it.

8 Q. Now, did you encounter any evidence in the messages of
9 why you honed in on those third party accounts specifically?

10 A. Yes. Because through the course of our investigation,
11 Mr. Abegunde had several of his own accounts closed, and it
12 would often be the case he either had none or just one
13 account open, and he openly stated he did not want to risk
14 getting his accounts closed, so he had to find other people.
15 He would beg, pay, plead, to use their accounts. And he
16 would push money through their accounts.

17 Q. Does this list include any cash transactions that
18 might have been performed in conjunction with Mr. Abegunde?

19 A. They don't always state how they're going to do it in
20 these messages. It's just whether the deal looked like it
21 was brokered and it happened, I included it.

22 Q. Now, I believe you mentioned, Special Agent Vance,
23 that there were times that you would include a larger amount
24 being done in a transaction. What types of circumstances
25 would those be?

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1 A. Only when he wanted the full amount that was asked for
2 or he asked for a certain amount. And often the case, if it
3 was a large dollar amount, let's say over \$10,000, he would
4 typically split it into multiple accounts, whether it was
5 four different individual's accounts or maybe in some cases
6 he would split it between two of Ms. Makinwa's accounts.

7 Q. But if you go down all of these individual
8 transactions, do you know that each and every one is actually
9 -- is tied to fraud?

10 A. I do not.

11 Q. So then what types of factors were you evaluating, in
12 addition to what you've mentioned, in presenting this
13 information?

14 A. We just took everything into account that went on in
15 this investigation. Mainly his own words. How he liked the
16 cash structured. He wanted to keep things clean. He did not
17 want to use his own account. And he was pushing it through
18 third party accounts. Therefore we believe the majority, if
19 not all of this, would be fraudulent.

20 MR. FLOWERS: Your Honor, the Government has no
21 further questions, but may I ask a few clarifying or
22 follow-up questions pending Mr. Perry's cross examination?

23 THE COURT: Mr. Perry?

24 **CROSS-EXAMINATION**

25 **BY MR. PERRY:**

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1 Q. Special Agent Vance, you investigated all of the
2 different transactions involved in this case? The
3 transactions, in other words, that were listed in the
4 indictment, particularly the \$9,000 transaction?

5 A. Yeah. I reviewed the majority of the financials
6 involved in this case, yes.

7 Q. And the \$9,000 transaction, you were able to determine
8 came from a specific source?

9 A. Yes. We were able to track that all the way back to
10 the beginning source, correct.

11 Q. And it had something directly to do with the business
12 e-mail compromise, correct?

13 A. Yes. There was proceeds from that.

14 Q. And out of that \$9,000 source that you were able to
15 tell the specific business e-mail compromise, you were able
16 to name a specific amount, and you testified to that amount
17 during trial, correct?

18 A. Yes, sir.

19 Q. Now, also -- and I'm going to go up a couple of
20 questions before I go down to the questions you were asked
21 just a moment ago. The \$7,429.59 amount, TRICARE benefits,
22 were you a part of that investigation that determined that
23 amount of loss?

24 A. I believe that was calculated by the Army.

25 Q. And did you receive that information?

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1 A. I believe it was sent to Agent Palmer, and then it was
2 pushed on up. I did not calculate the TRICARE.

3 Q. But you were aware of that TRICARE number as a part of
4 your investigation?

5 A. Yes.

6 Q. And you were specific about how that those benefits
7 were retained by Mr. Abegunde as it related to his daughter
8 because of the fraudulent marriage account, correct?

9 A. I don't know how they calculated and how they came up
10 with their loss. We asked them to calculate it. They sent
11 us and that's what we reported.

12 Q. That was a poorly questioned question. I guess what
13 I'm trying to get at, you were specific about the fact that
14 that 7,400 odd dollars was related directly to the marriage
15 fraud?

16 A. Yes, it is.

17 Q. Or somebody was specific about that?

18 A. That's my understanding, yes.

19 Q. And that those benefits came as a byproduct of being
20 married fraudulently in the United States?

21 A. Correct.

22 Q. On -- and I'm just going to go to the first of these.
23 I've got 81 transactions, correct? Do you have your chart in
24 front of you?

25 A. I do. I don't have a count, but I have the

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1 transactions in front of me.

2 Q. And if I say it's 81, give or take one or two?

3 A. I'll take your word.

4 Q. All right. And the first one I have is January 19th,
5 2016.

6 A. Yes, sir.

7 Q. Do you have that?

8 A. Yes.

9 Q. Wells Fargo and account ending number is 4350?

10 A. Yes.

11 Q. And it has Odunuga is the last name, it appears. I'm
12 trying to say it.

13 A. I'll go with that.

14 Q. I'll go with the spelling of the last name.

15 O-D-U-N-U-G-A. Do you see what line I'm coming from?

16 A. Yes, sir.

17 Q. That \$2550, do you know where it came from?

18 A. I do not recall which individual he was negotiating
19 with. I did not put that in my chart. I only listed the
20 account that he gave out.

21 Q. Do you know what business e-mail compromise it came
22 from?

23 A. I do not.

24 Q. Do you know what transaction or what person who had
25 that money in an account that that account was stolen from?

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1 A. I do not.

2 Q. Do you know whether or not it was procured through any
3 other ways? In other words, somebody gave the money that
4 earned it painting houses and gave that money to whomever
5 gave it to Mr. Abegunde. Do you know any of that
6 information?

7 A. I do not know the source of the funds.

8 Q. Second line. Nathan Ojo. \$15,000. It says
9 February 10, 2016, Ecobank. Do you know where those \$15,000
10 funds came from?

11 A. I do not know the original source, no.

12 Q. Do you have any testimony, not even beyond a
13 reasonable doubt, but just by evidence that seemed more
14 likely than not, where that \$15,000 came from?

15 A. Again, I do not where they came from.

16 Q. Those are the first two out of the 81. Let's go to
17 the second page.

18 A. Okay.

19 Q. August 29th, 2016. It has N-A-N-A. What is N-A-N-A?

20 A. They did not -- he did not necessarily give out a bank
21 account. He just -- I think he listed someone's name, and it
22 was understood which account he was referring to.

23 Q. And that's from Mr. Osiberu?

24 A. Yes. Either that or Osanupe. I'm not sure which line
25 you're on, but...

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1 Q. Abioye Osiberu?

2 A. Yes.

3 Q. It's been a few months back. I forgot the actual --
4 it was a big Baja Fresh, I think, is that the person that
5 owned the Baja Fresh account that you're aware of?

6 A. I don't think so.

7 Q. Okay. It was a name that I saw some in the
8 information at trial in preparing for trial. But it has
9 \$5,000. Can you tell the Court where that \$5,000 came from?

10 A. No.

11 Q. And I just went through, I guess, a few from the three
12 pages. 81 transactions. Out of any of those transactions
13 other than the one that you backed the \$9,000 out of, can you
14 tell this Court where those funds came from?

15 A. No. I don't have the source of funds for the others
16 on this chart.

17 Q. Do you have a person who you could go to and tell the
18 Court this is the person that was victimized in this
19 particular case? In other words, money was stolen from this
20 person's account?

21 A. No.

22 Q. And you don't -- you're not claiming that they were
23 from any other source, and I know that it has to do with the
24 money laundering account. It wasn't any other alleged
25 illegal activity, i.e., selling narcotics or trafficking or

TESTIMONY OF MARCUS VANCE

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1 anything like that, correct?

2 A. I do not know the source, no.

3 Q. Of any of them? As to the -- in paragraph 41, the
4 loss of \$68,998.43. It's not your testimony that you have
5 any way of saying that Mr. Abegunde actually received or did
6 anything related to any of these proceeds at all?

7 A. I do not have the PSR in front of me.

8 MR. PERRY: May I approach, Your Honor?

9 THE COURT: Yes.

10 BY MR. PERRY:

11 Q. Paragraph 41. I think that's dealing with the
12 \$68,000. I believe that might be the WhatsApp account.

13 A. Okay. And what was the question?

14 Q. Is that part of the \$9,000 that was -- did the \$9,000
15 that was supposed to have been structured and that was placed
16 in Mr. Ojo's account and that the testimony supported the
17 fact that it came out of -- that Mr. Abegunde, I guess,
18 reimbursed that \$9,000 amount, did that \$9,000 have anything
19 to do with that 68,000 that you're referencing in -- that's
20 being referenced rather in paragraph 41?

21 A. I guess I'm not entirely sure what that \$68,000
22 represents. I know that the \$9,000 is tied to the Whatcom.

23 Q. The Whatcom?

24 A. Whatcom through Ramos to Ojo's account via
25 Mr. Abegunde.

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1 Q. Other than that \$9,000 amount, is there any specific
2 amount that you can tell this Court that Mr. Abegunde
3 received funds from that were a part of your investigation
4 regarding the business e-mail compromise or any of the
5 transactions involving any kind of, I guess, closing
6 settlement accounts and those types of things that were a
7 part of your investigation?

8 A. You're asking to the source of the funds again?

9 Q. Correct.

10 A. No. Only the \$9,000 was tracked back to the source.
11 That was not the purpose of the chart.

12 MR. PERRY: May I approach just to get my --

13 THE COURT: Yes.

14 MR. PERRY: I don't have anything further from
15 the agent.

16 THE COURT: Okay. Mr. Flowers, any redirect?

17 MR. FLOWERS: Just a few questions, Your Honor.

18 **REDIRECT EXAMINATION**

19 **BY MR. FLOWERS:**

20 Q. Special Agent Vance, did you also track money to an
21 account held in the name of Ms. Oguntoya?

22 A. I did.

23 Q. And to what fraud event did that account relate?

24 A. She was supposed to receive funds from the Whatcom
25 BEC. Money did end up in her account, but we could not

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1 necessarily track it back to the BEC.

2 Q. Approximately how much was involved in the Whatcom
3 business e-mail compromise?

4 A. About \$60,000.

5 Q. Now, Special Agent Vance, you listed quite a few names
6 in here. Were there discussions in the messages of accounts
7 being closed over the course of the conspiracy?

8 A. Yes. He mentioned multiple times that he was getting
9 frustrated, he was upset. His accounts were getting closed
10 over and over again.

11 Q. What were the context of those conversations?

12 A. They -- mainly just frustration. He was trying to do
13 deals with people or talking to, I guess, either business
14 partners or friends, and he was just clearly upset with his
15 situation and what was happening to his business.

16 Q. Did he mention not wanting to do transactions into
17 accounts that could be tracked?

18 A. He did.

19 Q. Did he mention concern for conspiracy to commit fraud?

20 A. He did.

21 Q. You mentioned the name Abioye Osiberu. Mr. Perry
22 mentioned that. Do you know who that is, Special Agent
23 Vance?

24 A. I believe that's Ojo's wife.

25 Q. Who's Ms. Oguntoye?

TESTIMONY OF MARCUS VANCE

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1 A. Ms. Oguntoye is -- was that Alimi's wife or something
2 like that?

3 Q. I'm not answering questions here, Special Agent Vance.

4 A. I'm sorry. It's been a minute. I'm trying to keep
5 track. Yes. Mr. Ojo and Ms. Oguntoye were married.
6 Mr. Alimi and Abioye were married.

7 Q. And some other names here on this chart. Olubunmi
8 Makinwa, do you know who that is, Special Agent Vance?

9 A. That was Mr. Abegunde's first wife.

10 Q. There's a Meredith Grundy. Do you know who Meredith
11 Grundy is, Special Agent Vance?

12 A. That is who Ms. Makinwa married.

13 Q. So just to clarify, you don't know every single person
14 on this list?

15 A. Certainly not.

16 Q. You just know that money went through those accounts?

17 A. I know under the direction of Mr. Abegunde, he told
18 people to send money through these third party accounts.

19 MR. FLOWERS: No further questions at this time.
20 Your Honor, I think I'll just reserve the rest for argument.

21 THE COURT: Okay. Let me -- Agent Vance, let me
22 make sure I understand. So what you traced is Mr. Abegunde
23 communicating with some other person whose name isn't listed
24 here to try to convert money from -- Nigerian money into
25 dollars or dollars into Nigerian, one or the other, I guess.

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1 THE WITNESS: Correct. They basically had a
2 similar pattern. Someone would approach Mr. Abegunde saying
3 they had a certain amount of money, and they wanted to do a
4 deal. They would work on the exchange rate. They would
5 agree to that. Then they would say how much money they
6 wanted to do. They would confirm that. Then the individual
7 would ask for an account, and instead of giving out
8 F.J. Williams, his business account, he would give out a
9 third party account. And then at that point, I would
10 consider the deal was happening, and I would list it on the
11 account. If anywhere in there they started to negotiate and
12 it broke off, I didn't count it.

13 THE COURT: If it ultimately went to
14 F.J. Williams account, you didn't count it.

15 THE WITNESS: Did not count it.

16 THE COURT: So the conclusion you're drawing is
17 that he chose these third party accounts because the money
18 involved from his end was obtained in some fraudulent way.

19 THE WITNESS: I believe that when he only had one
20 account left, he knew that a lot of this money would be
21 fraudulent, and he did not want that tied to his
22 F.J. Williams account because he did not want to risk getting
23 that account closed. So therefore, he laundered the money
24 through third party accounts to cover his own account.

25 THE COURT: So it actually argues that

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1 F.J. Williams account may be totally legitimate, I mean, in
2 your approach to it.

3 THE WITNESS: I think we just did that for
4 conservative reasons. I believe a lot of the money going to
5 the F.J. Williams accounts was not legitimate either. That's
6 why they kept getting closed. But we just wanted to take a
7 very conservative approach to the dollar amount.

8 THE COURT: So the list in the chart, there could
9 be -- well, let me ask. When you were tracing all this, were
10 you tracing multiple people he was doing business with? One
11 primary person? Is there as many as 81 people he was doing
12 business with?

13 THE WITNESS: Certainly not. I didn't keep
14 track. I would say it was eight to ten. 10 to 12. I mean,
15 he had repeat customers, if you will.

16 THE COURT: Okay. On looking at the
17 October 3rd -- well, first at July of 2016. So the
18 Crye-Leike business compromise was July of 2016, correct?

19 THE WITNESS: Yeah. End of July, yes.

20 THE COURT: Okay. How do we know that
21 August 19th, August 22nd, I mean, those transactions in mid
22 to late August don't include money that was part of that
23 Crye-Leike business e-mail compromise?

24 THE WITNESS: I can't say that we know that for a
25 fact because we know in some instances the money would go

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1 through multiple mules before it would end up in the final
2 destination. So it is possible that a small percentage of
3 this could be double counted. There's just really no way of
4 me to know the source of every single transaction.

5 THE COURT: Do you recall in tracing some of this
6 where it did go through multiple accounts what was, say, the
7 longest time period it seemed to take to get to its final
8 destination?

9 THE WITNESS: I don't know that I could say that
10 for certain. I know in working this case and other cases,
11 it's not uncommon for mules to pass through two to three
12 different accounts that could take a week, two weeks at a
13 time. It usually moves fairly quickly, but sometimes with
14 wires, it has to sit in the account for a little bit before
15 they allow it to move out. But I don't have an exact time
16 range.

17 THE COURT: Okay. Looking at the October 3rd,
18 2016, the second one, not, you know, you backed out the 9,000
19 that is the first listing there. But the second one, how do
20 we know that 7,000 isn't tied to Whatcom?

21 THE WITNESS: Again, I guess I wouldn't know for
22 certain that that one was not being double counted. I can
23 only do the ones that I could trace back to the source of the
24 funds, and that would be the ones via Ramos.

25 THE COURT: Okay. And the 24,840 and a penny

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1 that went through a Caffey joint account, does that
2 include -- what does that include?

3 THE WITNESS: So there was very few transactions
4 in that account. It was essentially she got paid, I believe,
5 \$5,000 as her first payment for the fraudulent marriage. And
6 then there was two subsequent either cashier's checks or
7 wires that came in, and then wires that went out of that
8 account. And those were the ones that she questioned him
9 about, you know, I don't like this stuff going on in my
10 account and that kind of thing.

11 THE COURT: So does the 24 include the five plus
12 the wires?

13 THE WITNESS: Yes.

14 THE COURT: Okay.

15 THE WITNESS: I believe that number is inclusive
16 of all of the activity that went on in that account. But I
17 think there was less than ten transactions total. There
18 wasn't very many.

19 THE COURT: Okay. And the amount he ended up
20 paying her was 5,000?

21 THE WITNESS: That was the initial. I believe
22 she may have received some more payment along that summer,
23 but I know they were arguing back and forth about getting the
24 rest of the payment.

25 THE COURT: But it didn't go through that account

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1 or?

2 THE WITNESS: No. That account got shut down.

3 THE COURT: Right, right. Okay.

4 All right. Do you all have any questions based
5 on my questions?

6 MR. PERRY: I don't, Your Honor.

7 MR. FLOWERS: No, Your Honor.

8 THE COURT: All right. You may step down. Thank
9 you, Agent.

10 All right. Do you all want to come back up for
11 argument? I guess, Mr. Flowers, it's your burden.

12 MR. FLOWERS: At the start, the Government would,
13 I mean, concede that this, calculating loss in a situation
14 like this is very difficult. And because it is difficult to
15 calculate, the Government has elected to take a conservative
16 tact here, using the third party accounts and not the
17 F.J. Williams accounts which were also -- there was proof
18 elicited at trial. In doing so, just to be crystal clear,
19 Your Honor, we're not conceding that that account was
20 legitimate. I understand that there was a line of questions
21 in that regard.

22 In fact, we think the facts at trial showed from
23 lies to PNC Bank representatives to the accounts being closed
24 down to having anti-money laundering policies that were
25 blatantly not followed, that at least percentages of funds

1 going through that account were fraudulent. But given other
2 evidence that we have, including the third party accounts and
3 the chats surrounding why that network of individuals
4 existed, including Mr. Abegunde's explicit statements that he
5 did not want to have financial transactions that could be
6 tracked, which is mind boggling when you have an individual
7 who's purporting to operate a legitimate business. Why you
8 would want to have transactions that could not be tracked.

9 All the way to having this financial network of
10 individuals he had to beg, plead and incentivize to use. As
11 well as other explicit discussions in those messages about
12 accounts being closed down. Having to migrate to other
13 individuals or having problems associated with those
14 accounts. All of those facts and the common modus operandi
15 with the two business e-mail compromises at issue in this
16 case carry the very strong inference that the money going
17 through that network of accounts was fraudulent in nature.

18 Now, Mr. Perry's point of we cannot specifically
19 point to individual transactions that say this came from the
20 fraud in question, there is truth to that. We cannot point
21 with precision that each individual one of those -- each one
22 of those individual transactions was fraudulent in nature.
23 But with what we do know, including the MO and the other
24 factors that we have taken at issue, we believe on a
25 preponderance and even at a slightly higher standard, we can

1 show that the fraud in those accounts and -- excuse me -- the
2 funds going through those accounts was fraudulent in nature
3 and the furtherance of the scheme in question.

4 Now again, the Government concedes this is
5 difficult when you have cyber frauds and you have individuals
6 in a network that exists to obscure and obfuscate the source
7 of the funds in question, that making those calculations in
8 question is difficult. But in taking a conservative attack
9 and trying to be restrained in counting those calculations,
10 the Government believes that both highlights the seriousness
11 and breadth of Mr. Abegunde's conduct without pushing the
12 envelope, so to speak, and including every single transaction
13 in question. And this is an understanding that we must only
14 make a reasonable estimate.

15 Now, a few things to sort of close. There's been
16 a lot of talk about \$9,000. Yes, there was a \$9,000
17 transaction that went from the Whatcom BEC to a number of
18 individuals or -- excuse me -- to Mr. Ramos, then to a number
19 of individuals. Two of those transactions, one of which was
20 completed, were destined for accounts that were used or
21 controlled by Mr. Abegunde. And I believe Special Agent
22 Vance's testimony corroborates this. There were times at
23 which a larger amount of money was brought to Mr. Abegunde,
24 and they negotiated smaller amounts. This is exactly what
25 happened throughout trial, as we're showing all of the

1 different transactions that occurred, not only with Mr. Ramos
2 but with Mr. Abegunde.

3 We have larger amounts of money that are then
4 funneled in smaller amounts and increments through a network
5 of individuals. And that is all not just in furtherance of
6 conspiracy but to try and conceal the source and nature of
7 the proceeds in question. So given what we've seen and the
8 totality of the evidence and what we've portrayed and
9 explained here with regards to these third party accounts,
10 the Government respectfully submits that that account should
11 be -- that amount -- excuse me -- should be included in
12 Mr. Abegunde's loss calculation.

13 Oh, yes. Ms. Ireland did remind me. I'm sorry.
14 I understand that the parties were there for trial. We heard
15 the proof that was elicited. There were explicit messages
16 along the lines of wanting to keep money clean and conduct
17 transactions in certain manners as to keep -- have the funds
18 be -- have the funds be cleaned in an easier manner. The
19 Government would note that only one thing needs to be
20 cleaned, and that's something that is dirty. And all of
21 those messages in question, in addition to everything I've
22 said, just lends further support that the third party network
23 was being used within the furtherance of fraud.

24 THE COURT: Are you -- in terms of -- I think the
25 part of the argument you kind of skipped over is just the

1 foundational part of why this should be relevant conduct.

2 MR. FLOWERS: Well, there are a few things. It's
3 involving -- it's the same pattern. It's the same -- and I
4 don't have the language of 1B1.3 in front of me. The same
5 types of --

6 THE COURT: Common scheme or plan or same course
7 of conduct.

8 MR. FLOWERS: Yeah. Same course of conduct
9 where, as I explained with the business e-mail compromise
10 where you have larger amounts of money that were being broken
11 down and funneled through accounts, that's essentially what
12 Special Agent Vance testified to is you had amounts of money
13 being broken down to and funneled through accounts. Given
14 that framework, the Government submits that that should be
15 included in relevant conduct, based on the structure of those
16 transactions. How the individuals in question within this
17 case behaved and -- yes, Your Honor, I believe that's it.

18 With a common purpose as well, Your Honor, the
19 common purpose, which I believe is also under 1B1.3 as well.

20 THE COURT: Okay. All right. Mr. Perry?

21 MR. PERRY: I respectfully disagree. I disagree
22 with the premise. I disagree with the notion that when
23 you're trying to calculate actual loss based on activity that
24 was supposed to have taken place victimizing individuals that
25 you're not using victimized individuals to establish it. If

1 there's a common scheme and plan, based on Mr. Flowers'
2 analysis, if a person is before you and the scheme and plan
3 had to do with Mr. Abegunde laundering proceeds from cocaine
4 sales, his theory would be well, we know that this money
5 traveled down Highway 55 and up until or whatever direction
6 it came from, and we know Mr. Abegunde rode that way. How
7 many times did he drive that way? Oh, he drove that highway,
8 you know, 20 times over the last ten years, et cetera, et
9 cetera, and we know...

10 Well, did he ever have cocaine in his car? No.
11 Did he ever have any conversations with anyone where he's
12 explicitly said these are the proceeds, et cetera, from this?
13 No. Do you have any nexus to what Mr. Abegunde is doing to
14 sell or the procurement of cocaine or whatever it might be
15 that is illegal? None of these transactions.

16 THE COURT: Does that -- let me pick apart your
17 example here. Does that really -- is that really a good
18 example here where, you know, according to Special Agent
19 Vance's testimony -- and I think it was shown in some of the
20 documents we saw during trial where, you know, we sort of do
21 have the effect of the cocaine being present. We have these
22 conversations that are happening. We have the third party
23 accounts being used. I mean, he's not using his own account.
24 It is the same. I'm afraid I see -- it seems to me that
25 that's the effect of showing the cocaine is present.

1 MR. PERRY: My point is this though. Let me take
2 that back. I'll give another example.

3 THE COURT: Okay.

4 MR. PERRY: I don't drink. I just don't like the
5 effects of it. Don't drink. My granddaddy didn't drink.
6 Daddy didn't drink. Other people in my family drink and have
7 had issues. I'm going down Poplar and somebody says man, I
8 got stuck for 30 minutes on Poplar at this -- they've got a
9 DUI check site or whatever. Check stop at eleven o'clock. I
10 don't want to sit out there 30 minutes. So I can do whatever
11 I want along the way and pull off the road or what have you.
12 If I haven't had a sip to drink, et cetera, that's the
13 analysis.

14 Now, let's say that they say well, at some point,
15 he had some alcohol in his system. He's found guilty of
16 that. Every time I make a turn off of Poplar for -- if it's
17 81 times I turn off Poplar to avoid traffic, et cetera, it's
18 not indicative that I have something in my system. The same
19 way with this. You had a person who went to school, and if
20 you'll give me just about three minutes to try to --

21 THE COURT: I will. I will.

22 MR. PERRY: -- develop. You've got a person that
23 went to school. Got an MBA in financing and finance
24 structures. And he's from a country that has a dire need for
25 U.S. cash dollars. You look down the list of these

1 individuals. You got physicians. Not one but three
2 physicians. You've got a person that trades cars, et cetera.
3 You've got other people that are involved in real estate.
4 You talk about Ojo and it didn't come out at trial, but Ojo
5 is an international banker in Nigeria. Well-respected banker
6 in Nigeria. That's what he does for a living. And so one
7 transaction that resulted in a problem led him into this
8 case.

9 But the overwhelming issue that I have with it --
10 and going back to these numbers, when they went through this
11 man's computer, not a single conversation regarding business
12 e-mail compromises, nothing regarding money coming off of
13 facebook or any sort of romance scheme. Nothing involved any
14 -- involving any direct conversations or suggested
15 conversations with anybody who was procuring these funds from
16 romance schemes, et cetera.

17 And that's the issue that I have with all of
18 these dollars that are named. The presumption is that this
19 person would not have \$2550 or would not have a way of
20 getting \$15,000 or \$10,000, but there's nothing that goes
21 beyond the presumption that he's asking the Court to adopt.
22 There's nothing that says that we have proof that this
23 \$15,000 was directly related to X, Y, Z. Not even any
24 tangible proof that, look, we really couldn't put the hammer
25 to the nail on this one, but we do know that five or six

1 things were going on wrong with Mr. Makinwa and that there
2 was money taken from another account that was related to this
3 Wells Fargo account.

4 You asked about some specific dates. Let's look
5 at April 6th, 2016. That's on the first page, third
6 transaction. Wells Fargo 0762 Ms. Makinwa. \$10,000.
7 There's nothing that suggests that there's any way around
8 that that we know that \$8,200 was compromised from a sale
9 that she had some -- I mean from somebody's account in
10 Memphis that she had something to do with.

11 There's nothing along those lines that's even
12 close that you can say that even for the purpose of a
13 sentencing hearing, you say well, the standard should be
14 reduced a little bit. I'm going to take, you know, some
15 hearsay regarding it. His hearsay in this particular
16 instance is nothing. I don't have any proof that any one of
17 these transactions was the product of an illegal business
18 e-mail compromise. Romance scheme. Anything illegal. I
19 don't have any proof that -- for this Court to consider that
20 any of these items were taken from illegal means. And that
21 this money came to him for an illegal mean. I can give you a
22 thousand ways. Let me get some water. My mouth is...

23 THE COURT: Yes. Well, while you're doing
24 that --

25 MR. PERRY: Yes, ma'am.

1 THE COURT: -- I mean, you say no proof. I think
2 the proof is we saw during the trial the way the various
3 paths money was transferred that was connected to this --
4 these -- the business e-mail compromises. Okay. So we saw
5 that proof. And in addition to that, we have Mr. Abegunde's
6 statements. First, his interview with the agents outlining
7 what happens in these types of schemes. And his position
8 that he thinks if you're not the one that got the fraudulent
9 money, if you're just passing it along, that's not illegal.
10 So -- and he didn't -- I don't think he in that -- I don't
11 recall from the description of that conversation that he
12 admitted that he was doing that. But that he at least stated
13 he didn't think anything was wrong if he did do it.

14 Then we have the various sort of what I am going
15 to put into the stray remark category that Mr. Flowers was
16 mentioning his statements during -- and I guess Special Agent
17 Vance testified to this -- his statements during these
18 communications regarding, you know, I don't want the money
19 traced. I want to clean the money. Those statements. So
20 help me with that. Walk me through why I shouldn't think
21 that that equals preponderance.

22 MR. PERRY: I want to start with the bottom of
23 it. When he said the conversations were simple. And they're
24 conversations that I would have the same way if I'm talking
25 to somebody, and it wasn't I want to try -- I think it's a

1 matter of interpretation. What I -- as well as when going
2 through the information with Mr. Abegunde in preparation for
3 trial, it made perfectly good sense when he's saying -- he's
4 asking questions about the sources of the funds. I don't
5 want illegal funds coming through here. Do you know where
6 these funds are coming from, et cetera? He's asking that
7 type of question.

8 And what you don't get at trial is the fact that
9 there were times that he said no. We'll walk away from this.
10 If I don't know who you're dealing with, I don't want to deal
11 with them. And I think that that's exactly what you're
12 supposed to do. Now, as it relates to telling Mr. Ojo, you
13 know that -- and I think that this is the point that he --
14 that Mr. Flowers is drawing and when we had conversations
15 prior to trial, he drew, and I went back to Mr. Abegunde and
16 we talked about this. Him telling his friend that look, in
17 America if it's 9,900 some odd dollars, it might not, you
18 know, get the -- an issue with the IRS. It doesn't jam up
19 the money. Versus it being \$10,000.

20 Well, I'm here to tell you that, you know, there
21 are clients that come in. This is John Perry talking that if
22 I was in a money pinch and had to deposit money and they tell
23 you at Regions if you go in with \$15,000 and say look, you
24 realize that there's going to be a 21-day hold. They'll give
25 this money in increments, et cetera. That's the type of

1 conversation he's having with his friend in Nigeria about the
2 money. There's never a -- you know, "we got this money from
3 this guy; we know he gets it illegal" type of conversation.
4 It's to the opposite.

5 I don't know who -- and I forget the exact
6 conversation, but I thought I tried to harp on it in closing.
7 Obviously my closing wasn't bought or what have you, but the
8 point to it was he's asking questions that you would want a
9 person to normally ask. It's not the traditional person
10 who's standing here on a money laundering case that is just
11 willful ignorance type of deal where I'm turning a blind eye
12 to this or what have you. I didn't know what they were
13 coming to my detail shop for, you know, every day and paying
14 me \$20,000 to wash cars. I didn't understand why.

15 To the opposite, you have the actual
16 conversations, most of them through text messaging, et
17 cetera, where he's saying, who is this guy. I don't really
18 know him. He had that conversation with a physician that I
19 think is in Seattle that was -- that had brought somebody to
20 the table says he wants to buy naira or what have you. And
21 he says well, I don't know him. If I don't know him, I'm not
22 going to deal with him because he doesn't know where those
23 funds are coming from.

24 Seemingly to me, Your Honor, just take a step
25 back, look at it. What person goes through trying to get a

1 banking license, trying to set up, as the Court asked the
2 question well, are you saying that F.J. Williams is a
3 legitimate company or what have you possibly. What person
4 goes through those steps, giving specific information about
5 themselves? There's never been any testimony that he's ever
6 lied about his identity. That he's tried to change his name.
7 That he tried to do something other than -- and you have the
8 count and he was found guilty of the marriage fraud, you
9 know. Wants to be an American, and I'll talk about that in a
10 moment.

11 But not a single person from a banking
12 institution said that Mr. Abegunde did anything but come into
13 the bank, talk to the bank. When Ojo is away in Nigeria, he
14 didn't say, that's Ojo, he's in Nigeria, I can't do it. He
15 said I can -- you know, I had something to do with it. He
16 gave the instruction to pay the money back, and that's the
17 \$9,000.

18 Now, if the Court -- he's been found guilty, and
19 I understand that. That money is traceable. These other
20 accounts, it's just -- it's purely speculation about where
21 the money came from. And I'm saying speculation in most
22 criminal defense settings normally go on behalf of the
23 criminal defendant in the United States. I don't see how the
24 Court can consider this as loss when there's no -- there's no
25 victim. There's no specific institution that is before the

1 Court saying this money costs me X, Y, Z. There's just a
2 number that they came up with, saying we looked at his
3 transactions. There are a lot of transactions here.

4 And one of the questions that the Court pointed
5 out, you know, I was going -- you know, I had a question
6 about. You got this joint account, May 2016 to June 2016.
7 \$24,840 in an account that's held jointly over a month
8 period. So every transaction becomes a part of the possible
9 pot that is considered for loss. And so the Court is
10 supposed to dissect what amount came from illegal funds, what
11 amount came from legitimate funds, what amount came from a
12 spouse, be it a fixed marriage or what have you that's in
13 Korea that says I need X, Y, Z. And this person who has a
14 legitimate job while all of this stuff is going on. He has a
15 regular job, regular employment, puts money in that account.
16 And there's no testimony whatsoever to establish that that
17 money is direct loss.

18 And I'm just saying that, you know, I'm in a
19 position that I lost my trial. So I understand that. But
20 you can't pile on and say well, I mean, this loss is no
21 different than establishing everything that anything that the
22 Court could think of has something to do with Mr. Abegunde
23 because there's no way that this amount should be calculated
24 in the damages. With all due respect -- and I'm going to
25 wind up -- separates him from the consideration from

1 Mr. Ramos-Alonso's case. You've got a specific loss amount
2 that seemingly was great. Whether or not, you know, I don't
3 know there's an appeal in that case. I'm not making no
4 argument against his case.

5 But what I am saying is, based on the proof, you
6 have a person receiving specific funds from a person who is
7 involved in a romance scheme with -- as the victim initially.
8 And then all of a sudden that role changes, but you have
9 specific amounts directly related to Ramos-Alonso. And the
10 only specific amount that's directly related to Mr. Abegunde
11 is the \$9,000 amount. There has been no proof.

12 Even from the special agent on cross examination
13 on the record, he's establishing, I can't tell you where any
14 funds comes from. And that's just -- that's problematic when
15 you're saying that it should be considered for relevant
16 conduct. Because there's no way to say what is a legitimate
17 transaction and what's not if any of them are not legitimate
18 transactions. But the fact that, you know -- and I
19 respectfully disagree with Mr. Flowers regarding the common
20 scheme or plan. This case lacks any sort of common scheme or
21 plan.

22 And I mean, he's convicted of the conspiracy, et
23 cetera. I understand that. But as far as how you use these
24 amounts to say that an amount that was deposited, supposedly
25 erroneously by Mr. Ojo and then given back to the person or

1 the complaining bank at the instruction of Mr. Abegunde, can
2 be related to \$10,000 that's in -- on September 2nd, 2017.
3 There's no correlation whatsoever that the special agents can
4 draw. There's nothing that joins it. And if they could, it
5 would have been articulated.

6 And in this particular case, not only did he not
7 articulate it, he put a lot of work into this case. I think
8 it was professionally done. But based on his testimony,
9 there's no connection with how this can be established to
10 show that it in any way, based on the fact that there's no
11 loss determined. You just -- how can you get an amount of
12 money and say that, you know, well, where's the victim here?
13 We don't know. You know, we don't know who was victimized.
14 We don't know if there is a victim.

15 And all of a sudden establish that to say well,
16 for sentencing purposes, we believe that every transaction
17 had to be a part of this common scheme when there's no nexus
18 that the Government has to draw. We don't have any burden on
19 that. But there's nothing that they from their witness could
20 draw to establish that this \$571,083 was in any way connected
21 with Mr. Abegunde. And I jump paragraphs.

22 Now, on the \$7,000 financial loss related to his
23 daughter, I think that that's a burden that they could meet.
24 You know, he says that based on the information -- and I'm
25 assuming that he's telling the truth regarding the fact that

1 that information was calculated by the Army. I don't have
2 any, you know -- there's no real way to dispute that
3 necessarily. And if you take that as the normal testimony
4 that the Court would consider at a sentencing hearing and
5 say, you know, I'm going to find that credible. I don't
6 think that I would have a big bone to pick with that. I
7 think that that is credible testimony from him. If it's a
8 part of his investigation he receives this information they
9 were married and the child received benefits based on the
10 marriage to Ms. Caffey, then you know, for the sake of this
11 hearing or what have you, I think that that might meet
12 whatever the burden of proof would be necessary.

13 As far as these other numbers, I'm just floored
14 because I've never seen that happen before in any case.
15 Where you simply say I don't have a victim. I can't tell you
16 anybody who's victimized by any of these transactions. I
17 can't tell you that one cent of any of these transactions
18 came from anybody's account that I can dial up or get a
19 letter from and say hey, I was victimized and just say well,
20 you know, that number is applicable in this case because
21 there's no proof of it. There's just no proof. At all.

22 THE COURT: Mr. Flowers?

23 MR. FLOWERS: There is a lot there to respond to,
24 Your Honor, so I'll try to go point by point. Numerous
25 factually inaccurate statements that were made by Mr. Perry.

1 I do not want to belabor them because the Court heard the
2 proof at trial, but I'll mention a few. With regards to one
3 of the Whatcom transactions, it wasn't that Mr. Abegunde
4 returned the funds because it was an accident, Bryan Ancona
5 from Wells Fargo testified that actually the funds were
6 recalled, and we have the documentation of that on the bank
7 records, which said funds were subject to recall.

8 We know surrounding the transactions both
9 Mr. Ramos -- and Mr. Ramos said that he had been paid \$2,000
10 in accordance with the work-from-home scam. We had
11 information that Mr. Ancona called a phone number associated
12 with the account. The phone number associated with
13 Mr. Abegunde who answered and pretended to be -- I believe
14 the proof at trial showed that it was Mr. Ojo.

15 With regards to the chat messages, Your Honor,
16 instances where Mr. Abegunde would say, oh, I can't do
17 business with you. I don't know the source of the funds.
18 There were a few where he did say -- inquired about the
19 source of the funds but then continued to do business. So he
20 had -- knew enough to ask but also then continued.

21 Just the point about the backgrounds of the
22 individual and Mr. Perry vouching for the backgrounds of
23 those individuals. People who are educated and otherwise
24 successful commit crimes every day. Just because someone has
25 a particular degree does not mean that they're immune from

1 criminal conduct.

2 With regards to the numbers in question, again in
3 trying to make a reasonable estimate of the loss, evaluating
4 everything that we can, including the modus operandi and the
5 data points we have from the investigation, including using
6 third party accounts, including the chats surrounding why he
7 used those, the weight of the evidence in that regard shows
8 that the transactions that went through there were likely
9 illegitimate. Were likely in the furtherance of some type of
10 common scheme or plan in this case.

11 These cases are difficult. The Government is not
12 going to shy away from saying that. These cases are
13 difficult when the evidence supported this, a downstream
14 money launderer who was not -- he himself defrauding the
15 individuals. But he, as shown by his testimony with Special
16 Agent Kevin Hall was moving the money. And as long as he did
17 not do the fraud, according to Mr. Abegunde, then he in
18 effect would be blameless. Unfortunately that turned out not
19 to be the case.

20 There were instances in the chats where he would
21 out and out say he did not know the source of the funds but
22 continued to do the transactions in question. There -- and I
23 do not want to belabor the facts of this case, Your Honor,
24 because you heard them. And you heard the evidence that came
25 in at trial. But given that we need make a reasonable

1 estimate -- and the Government has tried to be very
2 conservative how we present this. In recognition of that
3 these cases are very difficult, we feel that the evidence at
4 trial supported enough that it was found beyond a reasonable
5 doubt that he was involved in money laundering activities.
6 That the -- now for purposes of sentencing, his use of the
7 third party account network was in the furtherance of the
8 schemes in question. And as a result, that amount should be
9 included in that overall calculation.

10 But in closing, I will say that, I mean, having
11 to pinpoint a direct victim for each individual transaction
12 would sort of turn white collar prosecutions on their head.
13 And in large telemarketing schemes, for example, you might
14 know what the scheme is, but you can't reach all possible
15 victims. But you can look at things like the modus operandi
16 of the actors, individuals that you know have been defrauded,
17 and you can extrapolate based on numerous factors, about
18 numerous other piece of evidence you have and arrive at a
19 reasonable calculation of loss. And that is what we have
20 attempted to do here, Your Honor. Arrive at a reasonable
21 calculation of loss. So we'll submit on that unless the
22 Court has any additional questions.

23 THE COURT: Anything else, Mr. Perry?

24 MR. PERRY: Not at this time, Your Honor. I'm
25 assuming that I might make another -- have you entertained

1 all the argument that you're going to? Because there is one
2 point that I failed to mention a few moments ago that the
3 Court had asked about. The conversation with the FBI,
4 Mr. Abegunde described to the -- I think it was Special Agent
5 Hall, to his questions regarding what was going on, et
6 cetera, I think the testimony -- I thought was rather
7 favorable in the fact that he indicated both on direct and
8 cross examination that Mr. Abegunde was candid with him about
9 how he felt that certain schemes go and that he made
10 inquiries regarding where his funds were from.

11 And one point that was brought up just a few
12 moments ago from Mr. Flowers was the fact that yeah, he asked
13 these questions and seems to have gone on or continued in the
14 business, that was from his evidentiary presentation at
15 trial. That's not to mention -- that's not to say that after
16 there were text messages because there were text messages and
17 there were also a number of phone calls directly to the
18 individuals at different points during the conversations.
19 The benefit of those we don't necessarily have because you
20 don't have the other side of that conversation, but during --
21 those -- if he had a comfort level that the person is another
22 physician, the person is another professional that has cash
23 that can be used to invest in that, he was fine with. But
24 to -- if he did not have a comfort level -- and there was a
25 particular person that I thought that the Government might

1 have called as a witness that he went and filed a lawsuit
2 against in New Jersey regarding the fact that he had bilked
3 him out of money and bounced a check.

4 And the other thing is -- and out of an abundance
5 of clarity, there are not cash structured transactions here.
6 You have a person that wants a paper trail to substantiate
7 what's going on. What kind of money laundering scheme is
8 that as it relates to these dollars? I'm not going into what
9 he, you know, what he was found guilty on at trial or what
10 have you.

11 But as it relates to these transactions, you've
12 got all check transactions that -- and I disagree somewhat
13 with the agents in that that money is easily traceable. That
14 type of transaction is traceable. And here you don't have it
15 tracing to illegal activity. You got it traceable to a
16 person who might have money over here in one state. A person
17 having money in another state for different reasons. A
18 network of individuals that know another Nigerian person in
19 the United States because they do communicate in those ways
20 when they come to this country about this person is here and
21 he's -- and when I spoke about the education, it's not to
22 give him some lofty position with the Court. It's to
23 establish the fact that this is what the person learned in
24 school. No more, no less.

25 And if I think that I'm at least entitled to draw

1 that distinction if a codefendant at trial says that well,
2 you know, my person didn't know or should be held to a
3 different standard because he wouldn't have known, he's not,
4 you know, as savvy as the person who's on the other side of
5 this WhatsApp communication or -- I mean, not WhatsApp -- the
6 facebook communications or what have you they were going
7 through. Well, in this particular instance, for what he is
8 charged with, the ability to look at when the dollar is
9 fluctuating, when the naira is fluctuating or defluctuating,
10 if that's a word or reducing, those are the types of things
11 that he was able to do. But that does not in and of itself
12 make these funds illegally procured funds. And I...

13 THE COURT: I guess, Mr. Perry, sort of for me
14 the sort of proverbial elephant in the room is if these were
15 all meant to be legitimate transactions, if they were all
16 dealing with legitimate funds, why use an account in someone
17 else's name? A person who has absolutely nothing to do with
18 this transaction.

19 MR. PERRY: Because banks close Nigerian
20 accounts. When you're from another country, the hardest
21 thing to do is to make any sort of substantial -- if he's
22 making 4- or \$500 transactions, et cetera, they're going to
23 be open. But there are all kind of accounts. I can march, I
24 guess, a litany of individuals that deal legitimately in the
25 United States and not just Nigerian. Multinational. If

1 you're from certain countries and they feel that the money is
2 going to certain countries, they don't take that risk without
3 a lot of questions, and they close those accounts. So it is
4 a small window of time that he can do this. And I'll give
5 you the other elephant in the room. I worked out on the
6 treadmill -- sorry. The other elephant in the room is this.

7 That there is a big benefit in going through
8 Mr. Abegunde who knows how to do it as opposed to different
9 brokerage houses because of the savings that you're giving.
10 And that's the -- when I say the elephant in the room or what
11 have you, that's what's there. And so people who want to
12 invest in a person that knows what's going on. How to do it.
13 The benefit of getting a 300-to-one product basically when
14 you've got the dollar can buy 300 naira. And you know that
15 that naira at any given point in time might go up to 350
16 naira versus the dollar or might go down to 280 naira versus
17 the dollar.

18 And so he knows how to read the computer and see
19 when that's beneficial. And that's it. And there's, like I
20 said, there's one transaction that was problematic, but none
21 of these can you definitively say, even by a preponderance,
22 that they are taken from anybody's account and that they're
23 resulting in any loss to an individual. The Court is asked
24 to do what the agent can't do. And that's not -- and I don't
25 think that it's fair.

1 And you know, with all due respect with
2 Mr. Flowers, he says, well, you know, it's a difficult thing
3 to prove, yada, yada. I understand that. But he proved his
4 case at trial regarding that transaction. But as it relates
5 to these, there was not a guilty verdict saying that these
6 amounts of money or different transactions were the product
7 of any illegal --

8 MR. FLOWERS: I firmly disagree with that point,
9 Your Honor. The evidence that we elicited surrounding other
10 transactions was directly probative of Mr. Abegunde's intent.
11 And the execution of a common scheme or plan. And for
12 Mr. Perry to say otherwise, I think, is an unfair
13 characterization of the evidence at trial. According to him,
14 he said there are many legitimate --

15 THE COURT: Hang on.

16 MR. FLOWERS: Sorry, Your Honor.

17 THE COURT: All right. Go ahead. Hang on,
18 Mr. Perry, for a second.

19 MR. PERRY: Yes, Your Honor.

20 MR. FLOWERS: Also his characterization of saying
21 a lot of Nigerian accounts were being shut down. The
22 Court -- the Government is not in a position to say with any
23 definitiveness sort of whether there's this -- that is
24 actually true whether you have more Nigerian accounts being
25 shut down. I don't have any data points to support that.

1 What I do have is a data point is Mr. Abegunde's own word
2 saying that he cannot afford to have money paid into account
3 that is tracked from a purportedly legitimate businessman who
4 is doing lots of transactions on a message with individuals
5 who do these financial transactions.

6 If you -- and as Mr. Perry says, wants to have a
7 paper trail, has created this paper trail, he is using an end
8 to end encrypted messaging platform talking with individuals
9 around the United States and maybe even throughout the world
10 saying he wants to make these transactions that cannot be
11 tracked. It would be hard pressed to find the individual who
12 went to an MBA school that they taught that in any MBA
13 program in the United States. I would be hard pressed to
14 believe that that actually exists.

15 THE COURT: I'm caught on if yes, financial
16 transactions have money trails, as we can see. But it's all
17 in someone else's name. And I understand what you're saying,
18 Mr. Perry, but doesn't that make it wire fraud on its own? I
19 mean, this is someone who's transacting business in someone
20 else's name.

21 MR. PERRY: No.

22 THE COURT: Where the source of the funds is --
23 well, I guess we don't know, and that's your point.

24 Here's where I am. Because this makes, as you
25 all know, a significant difference in the guidelines. On its

1 face, based on what I have and what I had at trial as
2 Mr. Flowers is right. The proof at trial was not just here's
3 the Whatcom, and therefore we've got fraud. It was -- or
4 here's the Crye-Leike. It was there are all these individual
5 transactions, which are the same as these types of
6 transactions that are listed on the chart.

7 So if I look at the things to consider for same
8 course of conduct, the similarity of the offenses frankly is
9 high. I've got testimony, although it was in general, not as
10 to any specific item on the 81 or however many it is. I've
11 got testimony that the conversations around these
12 transactions were similar in nature to what I had at trial
13 that did have the presence of fraud in those transactions.
14 I've got repetition. I've got regularity. I mean, this is
15 -- the time and frequency of these is in the chart. And the
16 time interval between the offenses, it's all a fairly short
17 time period. So you know, as I have it, the indication of
18 same course of conduct is significant. I mean, if we're
19 talking about a preponderance of, you know, over 50 percent,
20 it's significant.

21 As I said though, this -- it makes a difference.
22 And I'm a little -- what makes me a little uncomfortable,
23 although I understand why the Government did what it did, and
24 I understand why the chart is presented like this, Mr. Perry,
25 if you want the opportunity to go back through these and put

1 together any evidence about any of these transactions, I want
2 to give you that opportunity to do so.

3 MR. PERRY: I can do it if the Court would --

4 THE COURT: I mean, it makes a significant
5 difference. And I'm a little uncomfortable with not giving
6 you that opportunity.

7 MR. PERRY: I would like to -- I'll take that
8 opportunity, Your Honor.

9 THE COURT: Okay.

10 MR. PERRY: And I'm sure that he can help me
11 trace what was done if that's what the Court wants to -- I
12 can rebrief it.

13 THE COURT: Okay. Mr. Flowers, your two cents on
14 this?

15 MR. FLOWERS: I understand the Court's concern.
16 -- may I have a moment just to consider my thoughts here?

17 THE COURT: Yes.

18 MR. FLOWERS: Your Honor, just out of curiosity,
19 what sort of time horizon would you be looking at for
20 something like this?

21 THE COURT: Oh, I don't know. I guess it would
22 take -- I'm assuming it would take a little bit of time.
23 Hang on. Let me think through another sort of question here.
24 Mr. -- let's come back to this in just a second. Mr. Perry,
25 what's your position on we've got the 60,000 that is the

1 Whatcom land title transaction. Your argument is just 9,000,
2 but in terms of how loss is calculated, doesn't that whole
3 60,000 figure go into that?

4 MR. PERRY: I know what the comments say. And
5 I -- but I have seen it, and I've made the argument and
6 thought I made it successfully in this court before where it
7 should be prorated versus -- I mean, how do you attribute
8 that whole \$69,000 directly to him unless you have him taking
9 that entire \$69,000? How is that entire loss attributable to
10 him?

11 For relevant conduct purposes, the only -- the
12 issue that I have with it is that it -- if it relates
13 directly to the counts that he has something to do with,
14 there needs to be some nexus between the remaining \$60,000
15 and what happened to it and how it was, you know, laundered
16 or whatever term the Court wants to use in that regards. But
17 my argument is somewhat different related to that than it is
18 from the other numbers.

19 So whatever the Court's position on that, I
20 don't -- I'll leave it up to the Court's discretion. You
21 know, I've made my objection to it. I just don't think it's
22 related to the amount that should be considered for relevant
23 conduct because you've got a specific accusation that he was
24 found guilty of that dealt with laundering. There's nothing
25 that says that he actually, you know, went into -- committed

1 the business e-mail compromises or gave anything to
2 contribute to the business e-mail compromise, was related to
3 any romance scheme, et cetera, so...

4 THE COURT: Well, that's always been, you know,
5 his position and frankly the Government's position in this
6 case. That he wasn't connected to the business e-mail
7 compromise itself or certainly the romance scheme, but that
8 he was part of the overall conspiracy involved in laundering
9 those funds.

10 Mr. Flowers, so I want to talk about Crye-Leike
11 money. I want to talk about the Whatcom money, and then see
12 where you are. First I was asking about Whatcom first.

13 MR. FLOWERS: So Whatcom in terms of restitution
14 or for loss, Your Honor?

15 THE COURT: Loss.

16 MR. FLOWERS: For loss, the Government believes
17 that the full 60 should be attributable to Mr. Abegunde. In
18 addition to when you have a common scheme or plan and one
19 person defrauds someone out of 20 and another person defrauds
20 someone out of 30. And in accordance with that entire plan,
21 you're both on the hook for that 50, by way of example. In
22 addition, here in that case, numerous examples in the chats
23 of people coming to Mr. Abegunde with larger amounts, and he
24 laundered -- laundering smaller amounts of that. That's
25 exactly what we saw here. And it's thus reasonably

1 foreseeable that some of those larger amounts were
2 constituted of the proceeds of fraud, and Mr. Abegunde should
3 consequently be held accountable for that. Would you also
4 like me to address --

5 THE COURT: Yes, I would.

6 MR. FLOWERS: -- the Crye-Leike? The Crye-Leike,
7 it's -- under relevant conduct you're looking at -- one of
8 the factors you look at are common accomplices, and Mr. Ramos
9 here as well was a common accomplice as well as his romance
10 scheme handler Tammy, who was -- they were both across the
11 separate business e-mail compromises. And given the modus
12 operandi of how these schemes were committed and the overlap
13 of those between those individual incidents, the Government
14 submits it will be reasonably foreseeable that the Crye-Leike
15 event should also be tied to Mr. Abegunde as well.

16 Mr. Perry, I'm afraid that your dry throat is
17 contagious over here.

18 THE COURT: All right. Any Crye-Leike?

19 MR. PERRY: Once again, I don't see any nexus. I
20 don't see a common scheme or plan related to the Crye-Leike
21 money. I don't see any common purpose related to the
22 Crye-Leike money directly related to Mr. Abegunde. I just --
23 I don't think that that nexus is there.

24 And that's, you know, I think to concede that
25 here, even from what I plan on appealing and feel strongly

1 about appealing this particular case, I just don't want, you
2 know, whatever -- and of course I know the Court has to make
3 the ultimate decision on whether or not it applies, but I
4 think if you read that paragraph carefully regarding the
5 loss, I don't see how that -- the paragraph is indicative
6 that there's not a true nexus. It said the victim impact and
7 declaration received from Crye-Leike reporting the loss of
8 \$68,998.43, result of two events that Mr. Abegunde had
9 nothing to do with.

10 The -- an affiliated company paid 69,000, et
11 cetera, to cover the loss of funds to purchase real estate.
12 And then it talks about the e-mails. The total loss to the
13 company after a lawsuit involving the title company was
14 \$55,497.43. That's based on information that they've
15 provided post trial regarding loss that they're saying was a
16 result of a lawsuit. We don't have information regarding
17 insurance proceeds or what was contributed. What was paid
18 back to it. Nothing along those lines. And without those
19 full considerations, I don't think that it's fair to -- and
20 that's --

21 MR. FLOWERS: Your Honor, if I may. I'm sorry to
22 interrupt. I believe that that paragraph is for restitution,
23 Your Honor.

24 THE COURT: It is. It is for restitution.

25 MR. FLOWERS: The proof at trial is \$154,000

1 loss.

2 THE COURT: Right. In paragraph 15.

3 MR. FLOWERS: I'm sorry to interrupt, Mr. Perry.

4 I apologize.

5 MR. PERRY: No, no, no. You're all right.

6 MS. IRELAND: And if I could --

7 MR. PERRY: I skipped ahead as I was arguing. Go
8 ahead.

9 MS. IRELAND: If I could add just one thing.

10 Nature of a conspiracy is an ongoing course of conduct. And
11 relevant conduct is somewhat broader in that sort of a
12 nature. I can compare it very briefly to child exploitation
13 cases. The offense of producing a sexually explicit image of
14 a child has very narrow relevant conduct. Trading,
15 receiving, exchanging, bartering, ongoing trading of images
16 of those children has wider relevant conduct because it is
17 something that continues, is repeated, has similar patterns,
18 has similar participants, and I think that this is -- there's
19 a fundamental difference here between how Mr. Perry sees the
20 relevant conduct for this case, which is centered on \$9,000
21 and the case that the Government brought and proved at trial,
22 which is far broader. And everyone plays a part in it and is
23 playing their part and is responsible for what the conspiracy
24 accomplishes.

25 THE COURT: So first, and I'll come back to you

1 on the Crye-Leike, Mr. Perry. But as to the Whatcom, I'm not
2 sure what case Mr. Perry is referring to that I may have gone
3 his way on this in the past, but I think that the concept of,
4 you know, as we all know, the concept of restitution and the
5 concept of relevant conduct, loss under relevant conduct, two
6 different things. And you get two very different results
7 from those two different things, or you can get two very
8 different results.

9 In this case, in term of loss as relevant
10 conduct, it is the full 60,000, you know, and change from
11 Whatcom that is attributable as a loss for Mr. Abegunde. Or
12 loss he's responsible for. He participated, as the jury
13 found, he participated in that overall scheme. And even
14 though we can -- the proof directly shows only that 9,000,
15 putting aside even any indirect proof, that puts him as part
16 of it. And he's responsible for the whole loss in terms of
17 relevant conduct. So I'm going to count the 60,000. I'm
18 going to count the TRICARE loss. As to Crye-Leike,
19 Mr. Perry?

20 MR. PERRY: And I think I got them switched as I
21 was arguing. On Whatcom, I understand the Court's position.
22 There's been no testimony that I've heard that any proceeds
23 from the Crye-Leike breach of e-mail compromise ended up
24 being attributable to any activity that I could see from
25 Mr. Abegunde. And I just don't see how the Court -- I would

1 respectfully ask that the Court not consider that loss.

2 THE COURT: All right. So I think I need two
3 things. One is a little bit more briefing on the Crye-Leike
4 loss. And I think the Government's argument on that is
5 different than their argument on the chart, as I understand
6 it. It has more to do with a common accomplice/common
7 scheme, correct?

8 MR. FLOWERS: Yes, Your Honor, subject to the
9 supplementation in the briefing.

10 THE COURT: Okay. And then Mr. Perry, so we're
11 back to the question you originally asked which was how much
12 time. I mean, one of the reasons I wanted to deal with the
13 other figures is I frankly think they're easier to deal with
14 from my determination. I do find by a preponderance of the
15 evidence Mr. Abegunde is responsible for the Whatcom loss. I
16 find by a preponderance of the evidence he's responsible for
17 the TRICARE loss. So in terms of timing, I realize this
18 could be kind of time consuming, Mr. Perry. But what do
19 you -- how much time do you want to kind of look back at some
20 of the -- at that chart?

21 MR. PERRY: May I speak to Mr. Abegunde just for
22 a second?

23 THE COURT: Yes.

24 MR. FLOWERS: And may I get my calendar, Your
25 Honor?

1 THE COURT: Yes.

2 MR. PERRY: If we could have 40 days...

3 THE COURT: Is that going to -- 40 days means
4 you'll get something filed before then, right?

5 MR. PERRY: Yes, Your Honor. 30 days -- well, I
6 was thinking I needed 30 days to probably file a brief maybe
7 or 21 and whatever time it would take to argue it after I get
8 whatever the Government is going to -- it was how I came up
9 with that arbitrary number, so...

10 THE COURT: Okay. Mr. Flowers, you asked the
11 question. So your position on that?

12 MR. FLOWERS: 21 days, if I'm understanding
13 Mr. Perry correctly would be for Mr. Perry to file something
14 would be the expected to file simultaneously?

15 THE COURT: No. I think he was anticipating a
16 response from you.

17 MR. FLOWERS: Okay.

18 THE COURT: That's why he picked the 40. So 21
19 would be around August 14.

20 MR. FLOWERS: Okay. And then, Your Honor, what,
21 seven or ten days to respond after that?

22 THE COURT: Am I remembering right that you may
23 not?

24 PROBATION OFFICER: No, I'll be here.

25 THE COURT: All right. Okay. That's good. So

1 what we could do if we say -- 21 days for Mr. Perry would be
2 August 14. I think he's got a lot to do, so let's push that
3 to August 16.

4 MR. FLOWERS: Okay.

5 THE COURT: Then Government respond by 26th,
6 27th?

7 MR. FLOWERS: Either works for me. I am on
8 vacation the previous week, but I should be able to...

9 THE COURT: Let's just make it the 27th.

10 MR. FLOWERS: Thank you, Your Honor.

11 THE COURT: Then I think what we're headed toward
12 is a resetting the first week of September.

13 MR. FLOWERS: Okay.

14 THE COURT: What does that look like?

15 MR. FLOWERS: I appear to be open. I'm clicking
16 through every day, Your Honor.

17 THE COURT: Mr. Perry?

18 MR. PERRY: As long as every day but Monday of
19 that week I should be able to...

20 MS. IRELAND: I may be out that week, but I
21 haven't firmed anything up. I can I imagine move it around.

22 MR. FLOWERS: The following week I'm also clear,
23 Your Honor.

24 THE COURT: We could reset this for Thursday,
25 September 12th at 2:30. If that works for everyone --

1 MR. FLOWERS: Yes, Your Honor.

2 THE COURT: -- I may back up and give you all a
3 little bit more time. Does that work for everyone?

4 MR. PERRY: Is there any way that we could do
5 that Wednesday? I just have a -- I know that Thursday I
6 won't.

7 MR. FLOWERS: I'm open on Wednesday, Your Honor.

8 MS. IRELAND: Likewise, Your Honor.

9 THE COURT: We've got a trial that week. And I
10 don't want to get in a position -- it's a two to three-day.
11 I mean, generally we would be to the jury by Wednesday
12 afternoon, but I can't be sure. And this isn't one I really
13 want to move again. Let's look at Friday. Friday the 13th,
14 assuming no one is terribly superstitious. The afternoon is
15 wide open.

16 MS. IRELAND: That's fine.

17 MR. PERRY: The afternoon works for me.

18 THE COURT: Okay. So Friday the 13th at 1:00.

19 MR. FLOWERS: We've just been told, Your Honor,
20 that Agent Vance will be unavailable. We don't know if
21 additional testimony would be...

22 THE COURT: I've got his testimony. I don't want
23 to put you all in the position that, you know, if you figure
24 out that you need his testimony, you wouldn't be able to get
25 it. All right. Let's redo this again.

1 MR. FLOWERS: Sorry, Your Honor.

2 THE COURT: That's all right. We'll blame him.

3 Ms. Ireland, are you out Friday September 6th?

4 MS. IRELAND: I had planned to take the week,
5 Your Honor, but I can adjust.

6 THE COURT: Well, you know, taking a whole week
7 is a lot anyway.

8 MS. IRELAND: Everyone loves to come to work on
9 Friday, only Friday.

10 THE COURT: It's not a bad schedule.

11 MR. PERRY: I'm open that Friday the 6th. I'm
12 open.

13 THE COURT: Yeah. I do -- I mean, I'm full right
14 now, but I anticipate a couple things not going. Not
15 happening. So what about eleven o'clock on Friday the 6th?

16 MR. FLOWERS: That works for me, Your Honor.

17 THE COURT: Does that work, Mr. Perry?

18 MR. PERRY: Yes, Your Honor.

19 MR. FLOWERS: And Your Honor, just to clarify
20 mechanics of this, my understanding is this is related to two
21 things. One, the Crye-Leike attribution of that loss to
22 Mr. Abegunde as well as, if I'm understanding things
23 correctly, the extent to which the loss calculation within
24 the table would be appropriately applied to Mr. Abegunde as
25 well.

1 THE COURT: Right. And just so I can sort of
2 explain for the record my thought. Honestly in reading the
3 presentence report, I mean, I didn't understand all of how
4 that was calculated until Special Agent Vance's testimony
5 today. I understand now how it's calculated. I kind of feel
6 like, I do feel like the Defendant, now that he understands
7 how it was calculated, is entitled to go back, and if he
8 wants to present other evidence that presumably he has gotten
9 via the discovery in this case, he should have the time to do
10 that. I mean, that's my thought process. Does that make
11 sense?

12 MR. PERRY: Yes, Your Honor.

13 THE COURT: And I assume that whatever Agent
14 Vance has relied on would have been provided to Mr. Perry in
15 discovery.

16 MR. FLOWERS: That's correct. It would be part
17 of the phone dump that was provided.

18 MR. PERRY: I got it.

19 THE COURT: Now that we know we're not coming
20 back until September 6, do you all want me to adjust the
21 time? I mean, I can only do it a day or two because I need
22 to give Probation time to deal with whatever you all file.
23 Do you want another day or two, or do you think the time
24 period we've given you is fine?

25 MR. PERRY: That's fine with me.

1 MR. FLOWERS: Yeah. I think we can do research.

2 THE COURT: All right. Anything else we can deal
3 with today?

4 MS. IRELAND: Does Your Honor want to take up the
5 motion for judgment of acquittal today, or would you prefer
6 to do that as the conclusion of review of the presentence
7 report?

8 THE COURT: Yeah. I'm going to take that up
9 separate from this. Anything else?

10 MR. PERRY: Not from us, Your Honor.

11 THE COURT: Mr. Abegunde, do you have any
12 questions for me about anything at this point?

13 THE DEFENDANT: No, Your Honor.

14 THE COURT: Okay. All right. I'll look forward
15 to your filings and see you all on September 6th.

16 (Adjournment.)

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C E R T I F I C A T E

I, CANDACE S. COVEY, do hereby certify that the foregoing 71 pages are, to the best of my knowledge, skill and abilities, a true and accurate transcript from my stenotype notes of the Sentencing hearing on the 24th day of July, 2019, in the matter of:

United States of America

vs.

Olufolajimi Abegunde

Dated this 3rd day of December, 2019.

S/Candace S. Covey

CANDACE S. COVEY, LCR, RDR, CRR
Official Court Reporter
United States District Court
Western District of Tennessee