

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 Friday

18 6th day of September, 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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1 Friday

2 September 6, 2019

3 The continuation of the Sentencing hearing in this
4 case began on this date, Friday, 6th day of September, 2019,
5 at 2:00 p.m., when and where evidence was introduced and
6 proceedings were had as follows:

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10 THE COURT: Good afternoon.

11 MS. IRELAND: Good afternoon, Your Honor.

12 MR. PERRY: Good afternoon.

13 THE COURT: All right. First, Mr. Perry, how are
14 you?

15 MR. PERRY: I'm okay, Your Honor. Thank you.

16 THE COURT: Yeah?

17 MR. PERRY: Yes, Your Honor.

18 THE COURT: You're sure?

19 MR. PERRY: I'm good.

20 THE COURT: Okay.

21 MR. PERRY: Ready to go.

22 THE COURT: It was just your knee that was?

23 MR. PERRY: Just when I broke kind of hard and
24 just kind of, you know, aggravated it a little, but I'm fine.

25 THE COURT: Okay. Very good.

1 And you are ready to go forward?

2 MR. PERRY: Yes, Your Honor.

3 THE COURT: Okay. All right. So we're here,
4 back here on a continuance for Mr. -- or a continuation of
5 Mr. Abegunde's sentencing. I'm going to start at the
6 beginning because I don't think we got that far, and I'd
7 rather just have the record be sort of a complete record. So
8 I've got a presentence report with two addenda. I've got the
9 Government's position paper and the Government's response to
10 the Defendant's memorandum asking the Court to exclude
11 demonstrative conduct that's not evidence of an offense.
12 I've got the Defendant's position paper/answer and then that
13 memo that the Defendant filed. Any other documents that I
14 should have?

15 MR. PERRY: Not from the Defense, Your Honor.

16 THE COURT: Okay.

17 MR. FLOWERS: I believe that's it, Your Honor.

18 THE COURT: Okay. Mr. Perry, did you and
19 Mr. Abegunde read and discuss the presentence report?

20 MR. PERRY: We did, Your Honor.

21 THE COURT: Are you going to be more comfortable
22 if you don't keep standing up?

23 MR. PERRY: Either way, I'll be okay.

24 THE COURT: Okay. I don't want to make you
25 uncomfortable.

1 MR. PERRY: I'm fine.

2 THE COURT: So the Defense offered what I
3 characterized as three objections. I think before I said
4 two, when we started before. But we didn't get that far, so
5 it didn't matter. So the first objection is to the amount of
6 the loss and specifically as it relates to relevant conduct.
7 Second objection is to any participation in money laundering.
8 The third objection was to the obstruction for witness
9 tampering and perjury. Does that cover all of the -- I know
10 there are individual factual objections because of
11 Mr. Abegunde's position as to his innocence. But does that
12 sort of capture the legal objections?

13 MR. PERRY: It does, Your Honor.

14 THE COURT: Okay. Let's start with the amount of
15 the loss. So I've -- I appreciate y'all's filings, and I've
16 gone through those. I guess first, does anyone have anything
17 to add to what you filed?

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

19 THE COURT: Okay.

20 MR. FLOWERS: Not at this time, Your Honor,
21 unless Your Honor has any questions perhaps to be clarified.

22 THE COURT: Okay. I read through it, and I do
23 have an ultimate question for the Government related to this,
24 but let me first talk about my conclusions from reading what
25 you all filed. And again, sort of by way of recap, when we

1 were here July 24th, I found by a preponderance of the
2 evidence that the loss amount includes the Whatcom BEC from
3 October 3rd, and that was the \$60,563.51, as well as the
4 TRICARE amounts that had been paid out on behalf of
5 Mr. Abegunde and, I believe, his daughter. And that equalled
6 \$7,429.59. So the total of where we were was \$67,993.10.

7 The two questions on the table were the
8 Crye-Leike BEC and what the Government refers to as third
9 party claims. Looking through what has been filed, I guess I
10 want to start -- the issue is whether the Crye-Leike BEC to
11 some extent and the third party claims, even to a larger
12 extent, whether they constitute relevant conduct, just for
13 the sort of purposes of the record, this is -- Mr. Abegunde
14 has been convicted of a jointly undertaken criminal act,
15 making him responsible for all reasonably foreseeable acts of
16 others in furtherance of the criminal activity. Relevant
17 conduct includes all criminal conduct committed, aided,
18 abetted, counselled, commanded, induced, procured or
19 willfully caused by the Defendant.

20 And the Government is right when it says that the
21 Court is to make a reasonable estimate of the loss. I think,
22 oddly enough, there was just a case from the Sixth Circuit
23 that came down today that reiterated that reasonable estimate
24 of the loss standard.

25 In terms of how to assess whether the conduct of

1 others should be attributable to the Defendant, there are a
2 number of factors that come out of the Donadeo case from the
3 Sixth Circuit, including whether it's a single scheme.

4 Similar modus operandi coordination. Pooling of resources or
5 profits. Knowledge of scope. And then length and degree of
6 the Defendant's conduct. In this case, the evidence that was
7 presented by the Government that the jury found the Defendant
8 guilty of, I think the Government's description of
9 Mr. Abegunde's role in the scheme is accurate. He was --
10 this is from the Government's filing -- a downstream
11 middleman money launderer.

12 So his role in the scheme, again, I'm talking
13 about what the jury convicted him of was he received funds
14 that were illegally obtained. His role was to help pass them
15 along to, quote, clean the funds. What's somewhat
16 interesting about this is we have a lot of evidence of the
17 funds, and when I say this, I'm talking about particularly
18 what the Government filed on this issue for the purposes of
19 this hearing. We have a lot of evidence of the funds coming
20 into Mr. Abegunde's accounts from all these various sources
21 that I'll talk about in a minute. I frankly don't know, and
22 I don't know if the Government knows whether his role was to
23 just pass them along as dollars because there's a lot of
24 quotes of converting it to nairas; nairas, is that right?
25 Yeah.

1 MR. FLOWERS: That's naira, Your Honor.

2 THE COURT: Naira. Thank you. I don't have in
3 front of me as much evidence of the conversion and whether he
4 was the one who was converting it or he was the one who was
5 just passing it along. But the Government's primarily
6 relying on the way in which the money gets to Abegunde.
7 Would that be fair, Mr. Flowers?

8 MR. FLOWERS: Yes, Your Honor, I believe that is
9 fair.

10 THE COURT: So applying that scheme, what the
11 jury found him guilty of, to the material I have in front of
12 me, the question is, is this the same modus operandi. Is
13 there coordination in terms of knowledge of the scope? I'm
14 not sure the -- I don't know that I have -- well, I don't
15 have any evidence of exactly what Mr. Abegunde's knowledge of
16 the entire scope of the operation was. What I have is, over
17 a fairly considerable period of time, a number of actions on
18 Mr. Abegunde's part that indicate a modus operandi that's
19 frankly repeated.

20 The issues that I pulled out from the material
21 that to me describe the modus operandi is money comes --
22 money is discussed between Mr. Abegunde and various other
23 people. It's unclear what the origin or the source of the
24 money is. Mr. Abegunde in his own words often asked that
25 question but never gets a definitive answer. And even -- and

1 I think I'm going to talk about each of these things
2 specifically just for the record. But even in one instance
3 where it looks like he walks away from the transaction
4 because the -- he doesn't get an answer that he's satisfied
5 with, he goes back and engages in transactions with that
6 person anyway.

7 So he's discussing with people who have dollars
8 that they want to transfer to him. He's discussing the terms
9 of the deal. He doesn't discuss where the money comes from,
10 what the origin is. Other than to sometimes ask and frankly
11 not get good answers.

12 There's even one example -- again, I'm trying to
13 keep this organized in my head, but there's even one example
14 where he asked if it's legitimate, and the answer is no. He
15 structures these transactions in ways that will -- that he
16 appears to be attempting to allude anyone from looking into
17 the transactions, whether they be banks or law enforcement.
18 So he structures them in amounts of money to make them or to
19 hope to make them not stand out.

20 He's moving the money through the accounts of
21 people other than himself who were unrelated to the financial
22 transaction. So he's getting -- having money sent to
23 accounts that not only don't have his name on them, but they
24 don't have the name of anyone who's connected to the actual
25 transaction. And all of this is being set up on an encrypted

1 messaging platform. That I have every reason to believe to
2 conclude reasonably that that's intended to avoid others from
3 understanding what the transaction is.

4 And then finally -- well, let me say that to
5 me -- I think I've hit all the points I wanted to make. That
6 to me summarizes sort of the modus operandi and the
7 description of not only what was found by the jury to have
8 been fraudulent but also what happened in many of these
9 transactions that I'm going to talk about in a minute.

10 So sort of to summarize, my key indicators are of
11 the modus operandi of the scheme. He didn't know the people
12 whose money he was moving. He used strangers and
13 acquaintances to move the money into accounts in other
14 peoples' names who were not connected to the transactions.
15 He manipulated amounts so that not too much was moved at one
16 time.

17 And actually in terms of the manipulation, I
18 think there's also an attempt at manipulating the timing of
19 everything. So there's discussions about leaving money in an
20 account for a little bit longer. Again, the conclusion being
21 that it's trying -- he's trying to avoid it being -- standing
22 out to banks and investigators. Sets up the deals on
23 encrypted messaging app. And then the other thing -- well,
24 let me say, that's the modus operandi.

25 The other two things that stand out to me are

1 first, his own words. What the Government filed is extensive
2 and not very well labeled, let me say. If you're going to
3 use exhibit numbers, use the ones that come out in the system
4 so it would be 1, 2, 3. I had to go through and figure out
5 where each exhibit was, but anyway...

6 MR. FLOWERS: Sorry about that.

7 THE COURT: But having gone through all the
8 documents the Government filed, there are many instances
9 where Mr. Abegunde's own words indicate participation in this
10 scheme. Things like he didn't want money traced to him. He
11 was concerned about the source and asked about the source.
12 But he never got a real answer and still engaged in the
13 transactions. And then the other piece of this that I think
14 is important to point out is that so many of these accounts
15 were closed. So it's an indication or it should have been an
16 indication to Mr. Abegunde that what he was doing was not
17 legitimate.

18 So that's sort of big picture. And then I went
19 through each of the individual amounts that the Government is
20 seeking to include in the total for an examination of whether
21 there's proof that each of those sort of buckets of
22 transactions fit under this modus operandi. The first is the
23 Crye-Leike amount or the Crye-Leike BEC. Here I think the
24 Government's first argument is these are -- there are
25 overlapping conspirators that both the person known as Tammy

1 and Mr. Ramos-Alonso, while Mr. Abegunde may not know those
2 people specifically, that doesn't matter.

3 There's money that went through Mr. Abegunde and
4 those people tied to the Whatcom BEC, which makes them
5 coconspirators. And then -- and I think this is the
6 Government's argument, one of the Government's arguments
7 because they're coconspirators, Mr. Abegunde is also
8 responsible for the -- from a relevant conduct standpoint,
9 the Crye-Leike BEC. Is that the first argument, Mr. Flowers?

10 MR. FLOWERS: Yes, Your Honor.

11 THE COURT: Okay. The other argument I was -- I
12 didn't -- I'll say I didn't follow as much. So at the bottom
13 of page 5 in the Government's filing, you say "The proof at
14 trial demonstrated that the Defendant engaged in financial
15 transactions indicative of money laundering at the time of
16 the July 25th cyber event. The Defendant, for example,
17 engaged in a third party transaction with another middleman
18 named Baja Fresh Autos after having been told the funds were
19 illegitimate." What is the financial transaction at the time
20 of the July 25th event?

21 MR. FLOWERS: I think I was unclear, and I
22 apologize. As early as at least May 2016, Mr. Abegunde was
23 engaged in these types of transactions. So he was part of
24 the conspiracy along with Mr. Ojo as early at least as
25 May 2016. And actually the transaction from Baja Fresh was

1 in April. And the idea being that it's not as if he suddenly
2 -- he had not joined the conspiracy yet, he had been doing
3 conspiratorial activities well in advance of even the
4 July 25th BEC.

5 THE COURT: Okay. Would you put a mic on?

6 MR. FLOWERS: Oh, I'm sorry.

7 THE COURT: That's all right. Usually the bar
8 mic picks you up, but it doesn't really pick you up that
9 well.

10 Okay. This isn't the same argument as around the
11 Whatcom transaction where we can see that money related to
12 that particular transaction went through Mr. Abegunde. I
13 understand your point now.

14 So it's really one argument that these are
15 coconspirators, and he's responsible for their acts.

16 MR. FLOWERS: Yes. With the understanding of
17 similar modus operandi because with the first BEC, like with
18 the second, a large amount of money came into Mr. Ramos's
19 account, and he disbursed it out. The challenge being with
20 the first BEC is it went immediately to cash and then was
21 disbursed, and it made it very difficult to track. And then
22 with the second BEC, it was also disbursed, but there were
23 mixtures of wires. And I believe there -- yeah. Wires and
24 bank-to-bank transactions as well.

25 THE COURT: Okay. Mr. Perry, anything on this

1 one, on this point?

2 MR. PERRY: Just a continuing objection. The
3 logic behind the fact that simultaneously with some event
4 with a guy who he's never met before, had a conversation
5 before, never had any sort of transactional history with,
6 never had any sort of communications with and the fact that
7 he's dealing with purely legal transactions, no matter what
8 leaps. I don't know how to parse different objections any
9 clearly.

10 And I don't know if this is the right time or
11 not, but I would like to at least -- some of the conclusions
12 that Your Honor is making regarding the similarities with
13 different cases, I would point out one major similarity or
14 one major difference rather. In each of the cases that the
15 Government cites, if you look back at the activity, be it
16 opening a clinic in Detroit and knowing that you have a high
17 school education, putting a doctor in and submitting the
18 bills, neither of these cases say that every single thing
19 that you've done while you're there, other than what the
20 Government proves and what they did not bring to trial, that
21 are similar.

22 In this instance, you say that -- I mean, if the
23 case centers around the transaction that took place that
24 ended up with the phone call being placed to Mr. Ojo and
25 Mr. Abegunde takes that call, acts like he's Mr. Ojo because

1 Mr. Ojo is in Nigeria and has given all of this information
2 to the Government. Takes this call and says reverse it. And
3 if based on that, the Government, they proved their case at
4 trial. He was found guilty of being involved in this
5 conspiracy that he's never met the coconspirators on, other
6 than Mr. Ojo. To say that these different transactions that
7 to this date nobody has indicated once how it's loss.
8 There's nothing showing that any of these transactions were
9 procured through anything illegal.

10 But the fact that he doesn't want -- or that he
11 puts money in certain accounts, certain ways at the time that
12 he's simultaneously setting up a banking business, does not
13 in and of itself mean that each and every one of those
14 transactions are from anything illegal. And the cases are
15 consistent with the fact that there has to be -- that if
16 you're saying we're adding up loss amounts, these loss
17 amounts are -- first have to be determined to be loss.

18 I can understand if one of the items, you say,
19 well, we talked to a lady in Florida, and she says that she
20 had dealt with Baja Fresh, dealt with some money or whatever
21 and thought that she was getting money back and forth or
22 given money and procuring a car or anything that was illegal.
23 And Baja Fresh then gives money to Mr. Abegunde knowing that
24 he can clean it, then I understand that. That's a case that
25 hasn't been brought to trial. But because it shows that he

1 is engaging in illegal activity, that can be added.

2 Similar, even with the Whatcom to say that well,
3 she lost \$60,000 in this. Not a prorated amount or anything
4 like that. But that loss has to add up to Mr. Abegunde is --
5 the logic just -- even if you look at the presentence report
6 when it was first written, even the writer in the presentence
7 report had doubt about it. He himself -- that's the first
8 time out of probably 50 different presentence reports that
9 I've added to. When you're talking about a specific area
10 where they're saying that this should add up to a this many
11 point increase that he says, almost a parenthetical, if this
12 is in fact considered to be somehow loss.

13 And if you read it, even Your Honor, in asking
14 these questions about well, how did these numbers come about.
15 The whole context of saying that every transaction, that just
16 because the Government says well, there's a conversation with
17 somebody where he's asking where the money is coming from,
18 that that's the whole context for which that we have to all
19 of a sudden make this big leap.

20 The other thing is when you take the context of
21 the phone calls or the -- I mean of the text messages of the
22 WhatsApp messages, you take totally out of the fact that for
23 each one of these individuals, Mr. Abegunde had the ability
24 to pick up the phone after texting them. There are a lot of
25 times, I'll have clients during the course of a day, hey,

1 what about so and so, so and so?

2 Well, I can't put that in a text message as I'm
3 sitting out in the hallway waiting on court to start. So I
4 pick up the phone and call them. And say, you know, this,
5 this and this is what the judge is going to do. This is why
6 I think that it's going to be X, Y, Z, and I don't think that
7 that argument is going to fly. But if you want me to say it,
8 I'll say it. Well, I haven't had that whole conversation.

9 So if you take a text that might be encrypted or
10 might be coded whatever way or might be the fact that it's
11 easier to talk in pidgin with somebody when you've grown up
12 and know that that's your dialectical tongue, that it's
13 somewhat easier. And to me, it seems like oh, well, or as a
14 reader that might not be familiar with somebody that has not
15 only a 7th language or what have you but have different sets
16 of different languages that they speak and different dialects
17 to say that well, those conversations seem to be like they're
18 trying to dodge something.

19 Here's a person who -- and I understand that he's
20 been found guilty of it. We've got different -- a plethora
21 of issues to take up. But the Government never addressed the
22 question on how it's loss. This whole context of what they
23 wrote in their reply or response never answers the question
24 what other than the Whatcom transaction. And if you look at
25 the Crye-Leike transaction that dealt with one person, none

1 of that Crye-Leike money had anything to do with him.

2 That will be the first time that I've seen that
3 in any court that that leap in relevant conduct says that
4 because of this coconspirator's action, that somehow all of
5 these transactions, none of which the Court can tell with any
6 close reckoning of what is an illegal -- what was from a
7 business e-mail compromise or from a romance scam or from the
8 sale of cocaine. Nobody can tell this criminal defendant
9 what any of these illegal transactions are. And that's just
10 problematic. That will be the last time I say anything else
11 about it. You asked me a general question about that
12 particular argument. That argument still goes back to my
13 main point in addressing this.

14 When they put on a witness on the Government --
15 on the witness stand as their witness, it doesn't matter
16 if the -- the modus operandi and all of those things have to
17 be in the context of knowing that the action that was taking
18 place had been illegal at some point. Every transaction in
19 that particular -- he doesn't have a burden to show the
20 Government that these transactions are not from illegal
21 sources of money. There's no -- there's no statute on book
22 that says that he can't open and close a bank account. If it
23 was, those would be accounts to this.

24 But there's nothing that the Court has other than
25 where you came up -- the numbers that you came up with before

1 with 67,000, you take away all the rest of the objections
2 that I've had, you know, there's no objection with the logic
3 behind that number. If he got benefits because he's married
4 fraudulently as the Court found him guilty of and there was
5 \$7,000 for military medical treatment, and the conversation
6 with him, I said hey, that's a home run. If it's \$60,000,
7 even though I say it should be nine, but the Court has the
8 fact that that was the loss suffered by this lady, I
9 understand that as well.

10 There's no way to just -- that you can pick every
11 single transaction and come up with any sort of formula to
12 divide and say that each time that there's a transaction that
13 goes in that is supposed to have been illegal, let alone to
14 say all of them were illegal because he made a transaction
15 that seemingly was from money from somebody's bank account
16 that it wasn't supposed to -- that he wasn't supposed to
17 have. And that's just a question that's so fundamental to
18 it, I don't know how to express it any differently. What
19 number or what transaction took place that's based on
20 something that the Court can say was illegal. Without saying
21 that --

22 THE COURT: Mr. Perry, I guess -- I think if I
23 try and get to kind of the heart of your position and I've
24 thought a lot about your position, you're really saying that
25 at this stage in this process that the Government has to show

1 by evidence all the elements of money laundering. Because I
2 mean, your main point is that there's no testimony that
3 the -- these moneys that are flowing through these accounts
4 are ill-gotten gains in some -- from a scheme, from a BEC or
5 romance scheme or something.

6 So to me, what I take that point to be is that
7 the Government has to prove that by a preponderance of the
8 evidence but has to prove in the first place that they are
9 themselves ill-gotten gains by showing where they came from.
10 And I guess, you know, my question for you is do you have
11 case law that says that? As opposed to what I think the
12 Government is doing is showing, look, these are all these
13 indicia that these are money laundering transactions.

14 Here's a list, and I went through it in the
15 beginning of a list of things that would indicate that these
16 are fraudulent transactions. You're right. Not on there was
17 here's where this money was gotten illegally, and here's
18 where that money was gotten illegally. You're right. That's
19 not on the list.

20 MR. PERRY: Yeah.

21 THE COURT: But it's the whole description of the
22 way in which these transactions take place that is the same
23 MO as what he was convicted of at trial. That's what I'm
24 basing it on. So I mean, is there case law you can point to
25 or?

1 MR. PERRY: If the Court will look at the first
2 case that I count as the first case that was quoted that went
3 to the heart of what the Government's position is. U.S.
4 versus Agbebiyi, and I might have butchered that name.
5 Agbebiyi, A-G-B-E-B-I-Y-I. 575 F at page 627. It's a 2014
6 case from the Sixth Circuit.

7 And in that particular case, the doctor is
8 OB/GYN. They're running a clinic up in Michigan. They get
9 this doctor in, and he's dealing fraudulently, basically for
10 three different procedures, three types of procedures. And
11 at the sentencing hearing, the Government's position was that
12 the loss should be calculated around the -- above the
13 \$2.5 million range. On appeal, they didn't raise any issues
14 or go through any of this during the sentencing hearing, but
15 on appeal, the issue was raised that the loss calculation was
16 not correct.

17 And if you go through the logic that the Court
18 lays out there where he talks about the fact that during the
19 billing -- the relevant billing periods, that they billed for
20 amounts of \$7 million or what have you, based on this
21 physician and based on the billing, but for the specific
22 procedures that are in place that they're talking about for
23 relevant conduct purposes, that they based the loss on those
24 procedures. Now, even with that, if the Court said that
25 there were -- that basically the Baja Fresh transaction was

1 illegal or one element of one of those transactions was
2 supposedly illegal and then you say well, there were also 20
3 other transactions that seems, you know, similar, the
4 Government tried to trace the money and couldn't. But if
5 you're basing it on one of those transactions being illegal
6 with the Baja Fresh person, then there at least is a
7 connection, and I probably would object even on that, but
8 there's a connection to saying that the transaction involving
9 this particular person giving money to Mr. Abegunde to
10 deposit and to try to buy naira with, that is illegal.

11 And these other transactions, you know, even if
12 you say that you want to use a -- I saw a formula in one of
13 the cases where they tried to figure out loss based on a
14 day-by-day basis. That if you want to divide and come up
15 with a formula to say that 40 percent of those were illegal
16 transactions. Why, because we were able to look at and focus
17 on one of the different people who are actual depositors with
18 Mr. Abegunde.

19 Here the Government's position is similar to
20 saying that those individuals are the only people who, based
21 on any kind of proof that they have, that could technically
22 be victims. The person who ran Baja Fresh. The doctor up in
23 Seattle. The other business person that was in Florida that
24 made up these different people who were depositing funds with
25 him.

1 If they had a claim or something against him or
2 were supposed victims, then yes, you could make that
3 connection. Here you don't have any indication that any of
4 the transactions that are present there are illegal. You
5 have one -- proof of one transaction. And there's nothing
6 that -- even when the FBI agent that went to the home of
7 Mr. Abegunde, they had a dialogue or back and forth about,
8 you know, what constitutes money laundering and why. And he
9 was candid with him on why he didn't think in this particular
10 instance yada, yada.

11 Well, even then, there never was an expansion of,
12 you know, everything that -- any transactions that you find
13 yourself engaged in are inherently illegal unless you know to
14 the penny what came out of this person who runs a legitimate
15 car business. What came out of you selling cars. What came
16 out of this person who's a physician in Washington state.
17 What came out of your legitimate clinic. What might have
18 happened or what might you have done that was illegal or
19 something along those lines.

20 And even if you focus on the transaction where
21 you say that he had a question about where the money came
22 from. And the Court is now going to make the leap that --
23 and keep in mind, none of this proof had anything to do with
24 the transaction that brings him in here. But the Court is
25 making the leap that well, when he had a question and asked

1 Baja Fresh regarding where the funds came from, based on the
2 text, he never got a confirmation that the funds were good
3 funds from a legitimate person or what have you. But that
4 question and answer, there never was that type of a situation
5 with Mr. Ojo.

6 The only transaction that we have proof of is
7 that it happened the same way that Mr. Abegunde said. That
8 Mr. Ojo was in the country, made the deposit, went back out
9 of the country. And this is proof that they had. I don't
10 have the ability to check everybody in the United States
11 flight records. But the Government does. And that at the
12 relevant time, he in fact was in the country. He -- and
13 there's no evidence to the contrary that he wouldn't have had
14 the ability to make the deposit. And that he went back to
15 his country.

16 Well, those are not similar situations with the
17 other individuals who were named throughout these documents.
18 The other individuals or through the information that was
19 gleaned, not from the case prior to going to Mr. Abegunde's
20 home, but in going to his home and getting -- based on the
21 warrant, search warrant, finding the computer and going
22 through his computer and finding these different
23 communications. But none of those communications, if you
24 take it even at the worst.

25 And they cherry picked the ones that seem like

1 well, this must be something here. This must be something
2 here. But even if you look at those, you have a person who
3 has a question about where funds comes from. And that's no
4 different than any other business that I'm aware of. You go
5 to Mercedes Benz with some cash and say I want to buy my car
6 cash. They can accept your money cash. They have to fill
7 out a form to turn in to the Federal Government, and they
8 have to take you at your word for where your money comes
9 from. But they're not required to turn that down.

10 And just because in one instance if they are
11 found to run afoul of the law, every other transaction
12 doesn't innately get considered to be relevant conduct of
13 criminal activity. To run up the numbers on what, you know,
14 his potential exposure is for sentencing purposes. Because
15 here you don't have anything that even when they had the
16 opportunity to present it, that was remote to being even
17 hearsay evidence or what otherwise would have been hearsay.
18 Any evidence at all. You don't have anything saying that
19 this is illegal conduct.

20 THE COURT: I have an individual who's having
21 money deposited in other peoples' accounts. Who's
22 continually manipulating the amounts and structures of those
23 deposits to get around regulations.

24 MR. PERRY: To be -- I'm going to be extremely
25 candid on that point. You go to any law office in this town.

1 And anybody who's been practicing for a period of time.
2 Where you'll have individuals that come in with cash. They
3 will tell you that they have deposited money in banks where
4 the bank people will tell you, look, there's going to be a
5 20-day hold for so-and-so, so-and-so. Your money can be
6 fractured, or they call it -- not fractured but you can
7 deposit it this way for this reason. X, Y, Z.

8 There's nothing illegal about having the
9 cognizance in place to say that I'm going to put money in a
10 certain way at a certain time so that I won't get, you know,
11 flagged for something or there be some sort of hold or that
12 there's -- I know that they're going to close accounts at
13 certain points because of ethnicity reasons or because a
14 nationality that this money is going to -- across
15 international, you know, international sources that there's a
16 likelihood that these accounts might be closed. There's
17 nothing illegal about it.

18 What the Court, I think, is doing -- and with all
19 due respect -- and I will tell you when having a conversation
20 with Mr. Abegunde, you, know, and this is not to in any way
21 endear myself with the Court, but I know how much you think
22 on these different things and that, you know, you've been
23 fair on things even when you didn't agree with me in the
24 past, so I'm not saying that. And I'm not saying it here.
25 And if what I'm arguing is wrong, then I'll take it for what

1 it's worth with the Court.

2 But I do think that the position seems to be
3 almost like a mirrored approach that if that because this
4 person who has gone through school to know how to do certain
5 things in the financial industry gives advice at certain
6 points, that if you do it this way, you know, there might be
7 tax consequences, or there's going to be holds placed. That
8 that in and of itself makes it illegal or makes it somehow
9 that it's -- that it becomes...

10 THE COURT: Indicia.

11 MR. PERRY: Is an indicia of engaging in the type
12 of laundering that they're saying. But if you sit back for a
13 moment, his steps, if it's an attempt to money launder, are
14 absolutely illogical at times. Why would you launder cash?
15 Why do you want cash to come to you? If the transactions are
16 what they're saying -- and there are a number of times that
17 Baja Fresh, that the reason that their conversations are what
18 they are -- because he's not making a check payment as
19 opposed to a cash payment. And if it's cash that's coming
20 in, there's no issue with trying to claim it the way that
21 they're saying it, that you're claiming it through running it
22 as a financial operation.

23 As opposed to, look, Baja Fresh, why don't you
24 set up a detail shop next to your -- next to the place that
25 you're doing your business, run your money through there, and

1 let the detail shop send me money. It's illogical to take
2 the money and deposit it legitimately in banks. And give
3 your information to the T to whomever it is that you're
4 talking to at the time or if you have a friend from another
5 country come over to make a deposit with a check and to give
6 them your information to a T as opposed to a PO box or some
7 burner phone or something along those lines.

8 It's clear to me at least that these -- that the
9 transactions, although they are something that is engaging in
10 a business that people don't do every day, there's nothing
11 that is illegal about what it is because he would have been
12 charged with whatever it is that would be illegal about
13 opening and closing an account. Opening an account with
14 another person. Opening an account with several other people
15 or depositing with several other people.

16 But giving all of your information to those
17 accounts, it just doesn't make sense. What it seems is what
18 he's describing as an attempt to try to run a banking
19 operation to exchange funds internationally. And to jump to
20 the conclusion that these funds were procured through
21 business e-mail compromise, which is what we're here about
22 and/or romance schemes, that these moneys were taken from
23 other peoples' accounts and placed through these individuals
24 into his account for some cleaning or money laundering
25 approach, doesn't make sense.

1 What makes sense is, you know, pretty much what
2 happened. You got one that happened. He got in trouble for
3 it. The jury found him guilty for it. But to say all these
4 other deposits were somehow illegal without any victims, not
5 one person to come forward out of 80-something accounts to
6 say this money came from X, Y, Z. That this money -- that my
7 money was stolen.

8 Or one of the cases, I think the Carmichael case
9 where you set up a business trying to get people to feel like
10 they're buying cars. And you set up a bogus business on the
11 Internet. And people look at the picture of a Mercedes that
12 normally would cost 60,000, and you tell them you can get it
13 for 25,000. And they buy into it and send that money there.
14 That is something that, you know, and if you can't find all
15 of the loss with it to come up with a formula to say these
16 are consistent transactions of people who have been
17 defrauded, that makes sense.

18 Here you're saying that on all of these accounts
19 that total up into the hundreds of five, six hundred,
20 \$700,000 that you don't have a single person that the
21 Government can trace as a victim, that because he has engaged
22 in transactions that this is supposed to be loss. And that's
23 just wrong. It doesn't add up.

24 And if you had a person that you could say it,
25 then I think Your Honor goes through the different analysis

1 to say, you know what, based off this lady who sent money to
2 Ms. Obanara and that money ended up the same way, then
3 whatever it is out of those transactions that were illegal,
4 then you know, hit him with that. I understand. But none of
5 these were transactions that anyone has said came from money
6 that was taken out of an illegal -- I mean, out of an account
7 illegally.

8 THE COURT: And I'm going to get to you,
9 Mr. Flowers, in a minute. So I guess, Mr. Perry, essentially
10 what you're arguing is Mr. Abegunde was engaging in financial
11 transactions that were -- involved legal money, money that
12 there's no connection and no reason to connect any of them to
13 anything illegal. He's doing it in a way that frankly mimics
14 the way in which illegal money is transferred. I mean, I
15 think you'd have to concede that, that these are the same
16 ways in which when someone does obtain money from whether
17 it's the business e-mail compromise or romance scheme or
18 whatever other illegal means, involving some of these
19 international matters, he's doing it in a way in which it's
20 very similar to that. But these are not those transactions.

21 These are the only way in which he thought he
22 could engage in this -- these types of financial transactions
23 that are legal, but they -- they're going through sort of a
24 -- I don't know. Almost like a under-the-board kind of way.
25 I don't mean that in a pejorative way. But they're not going

1 through the traditional institutions that money transactions
2 go through.

3 Because it's not, you know, these -- again, the
4 agent testified he didn't include any of the moneys that went
5 through the F.J. Williams account. If we can agree that most
6 businesses run their business through accounts in their own
7 names, in a more sort of up-front manner. So they were
8 happening a little bit undercover but not in any way in which
9 they were illegal.

10 MR. PERRY: What I think Your Honor is that to
11 give a 40-second answer to probably a yes or no. What I
12 think is I have a client that went to school, focused on
13 finance. He figured a plan in his head on how the situation
14 that he grew up in and was aware of and understood the
15 dynamics of exchanging money, had a network of individuals
16 that he knew specifically and the fact that they were equally
17 smart. They were young but getting out into the professional
18 world. Had access to some money and realized that investing
19 in this, you could have a good return and good, you know, and
20 you could cut out the fact that if you do it through some of
21 the traditional mechanisms, then you get into taking fees off
22 the potential money that you can make off of the different
23 transactions.

24 But when you do it through a banking system --
25 but you need a banking system in place in order to buy the

1 naira. You have -- it has to go through a banking system.
2 That I think United States banking systems because of various
3 risks, not necessarily picking on Nigerians, but it can be if
4 you're in certain Asian nations, certain European nations,
5 just depending on whatever it is that might be going on, they
6 are aware that there's certain risks in having money go
7 through these accounts for the big reason is that if the bank
8 that might be the Central Bank of Nigeria today, you know, a
9 week from now could get overthrown by the Government and
10 whatever paper is out there, they're stuck with for one
11 reason or another.

12 So there are a number of different reasons why if
13 I'm a banking institution, I look at certain situations with
14 a less than clear or less than rosy glasses. I think that
15 that situation is present in this case. And you know, and
16 the marriage fraud and those different things, you know,
17 that's there. I understand that. But as it relates to this
18 different -- these series of transactions, to say that all of
19 these transactions came from the same type of money that that
20 one transaction did, and that because they all have the same
21 type of him depositing in different banks or whatever and
22 needing accounts and that type of language or what have you,
23 that seemingly, well, it's not something that I would engage
24 in.

25 So you know, if I want to engage in some sort of

1 transactions, I would go to EF Hutton, or I would go to XYZ,
2 you know, place and say this is what I want to invest in or
3 some other traditional custom house. I think he knew how to
4 do it, which is why he's simultaneously running his stuff
5 through the secretary of state in Georgia and why he's
6 writing up a 200-page business plan and outline, laying out
7 what he wants to do, which is exactly what he's doing here
8 with little money. And hoping to be able to do it with
9 bigger money. And hoping to -- you know, because of the
10 information that he's gleaned. He's highly intelligent, and
11 I simply think that that is the situation.

12 But without victims to say that there's a -- that
13 that leap that these are victims, is less than, you know --
14 it's just not fair. It would be, you know -- this Court sees
15 everything all the time, all kind of cases. You might have a
16 guy with a traditional farming operation. Just, you know, he
17 has 500 acres in Tipton County. He's raising soybeans and
18 chickens on part of the farm. But he decides to have a
19 20-acre plot of marijuana. All of the other stuff, he gets
20 the money, he trades its, he goes down to his local bank.
21 And you know, stuff is weighed up. It's the same type of
22 concept with the marijuana, except it's illegal.

23 You can't, I don't think out of fairness, take
24 the leap that all of the funds that he made during that
25 particular year were illegal funds because he made -- you

1 know, he had this marijuana operation going. And so he had a
2 net of \$1,500,000 but 600,000 of it came from that marijuana
3 operation. Well, you can't -- to say that these other legal
4 transactions are somehow the same way, you know, they involve
5 agriculture. You know, it's the same type of deal. I just
6 don't think that that leap is right.

7 And particularly in this case where -- with all
8 of the resources that were available at the Government to not
9 be able to come up with one of those transactions being
10 related to illegal money going into the hands of either Baja
11 Fresh or the doctor or anybody else, is just, you know,
12 that's a leap that none of the other cases say. And the
13 comments that I have, it says that -- just this last phrase,
14 I'll leave you and I'll sit down. "In short, relevant
15 conduct under Section 1B1.3 must be criminal conduct." And
16 that's in U.S. versus Catchings 708 F 3d 710, and that's a
17 2013 case.

18 To say that these transactions look funny or
19 whatever, I understand. But they have to be illegal, or
20 you're jumping into an area that surely, you know, courts
21 won't want to get into in the future because it's just too
22 much. If their own witness can't say that any of these are
23 illegal. Just the fact that well, they did involve money
24 being placed in accounts, but not a single one being -- you
25 know, when the witness testified that you can actually say

1 this money came from a compromise or from a fraud or a scam,
2 not one cent. That's just -- that undermines the whole, you
3 know, everything that I've learned about criminal justice.
4 It just doesn't make sense.

5 It's not -- you know, to make the logic if you
6 have one that's one of the transactions illegal and to expand
7 it and say, you know, under relevant conduct principles, you
8 get into these different areas, and you should give this
9 analysis, then yes, that makes sense. But when you can't tie
10 one of the transactions to anything illegal, and to make that
11 jump, I don't think is right, Your Honor.

12 THE COURT: Mr. Flowers?

13 MR. FLOWERS: There's a lot there, and I'll try
14 to sum up. We're extrapolating here from known data points
15 and that are the modus operandi of two known frauds. We can
16 look at the conduct and information surrounding individuals
17 with whom the Defendant is engaging in conversations
18 surrounding these third party transactions. One of the first
19 ones of Baja Fresh in April 2016, defendant legitimate, Baja
20 Fresh, no.

21 Based on all the surrounding circumstances of
22 everything with that, illegitimate transactions means dirty.
23 Going back to Money Guy Dejobo, another person with whom he
24 was speaking. An individual introduced to him by Mr. Ayodeji
25 Ojo, his codefendant. Someone else who has been charged in

1 this case and is a fugitive from justice. And Your Honor, I
2 would ask that -- the Government would ask that you note the
3 timing of that introduction. It was almost directly after
4 the Defendant's interview with Special Agent Kevin Hall, when
5 the Defendant perhaps infamously had a conversation which he
6 said what -- he intimated that he was not guilty of fraud
7 because he did not do the underlying fraud. He was simply
8 moving the money. And that's paraphrasing. That's
9 paraphrasing.

10 Moreover, to what Your Honor mentioned earlier,
11 in that situation, there was some hesitancy for the Defendant
12 to transact. And for good reason. Because you had someone
13 like Money Guy Dejobo who said something to the effect of
14 either the money is dirty or they don't want to reveal their
15 trade secrets. And on that basis, the Defendant stopped
16 doing transactions, and then two months later came back and
17 did close to 80 grand in transactions.

18 Now, I would also note for the record, Your
19 Honor, one of the transactions that he did, he did a smaller
20 amount of an approximately \$50,000 larger transaction which
21 follows the same basic shape and modus operandi of the BECs
22 in question. Same thing with the Baja Fresh transaction when
23 there was the discussion of the legitimate versus
24 illegitimate, there was a larger amount for which the
25 Defendant did a smaller amount. Like with -- no, the

1 Government is not seeking to hold the Defendant for those
2 larger amounts in the case of Money Guy Dejobo 50 or in the
3 case of Baja Fresh, the 30. It's just the portion of which
4 he passed through.

5 Now, from those general shapes, we look at other
6 indicia of how they're doing the conversations, and they
7 support that they came from criminal wrongdoing. Now, the
8 Government does in some way, shape or form share his desire
9 to trace back to victims because we would love to for
10 restitution purposes, but the way these transactions were
11 structured, and there's an incident involved in -- I believe
12 it was Gboyega Ajayi that shows the structure and the
13 difficulty of tracing these seemingly legitimate, from
14 Mr. Perry's perspective, transactions.

15 Where you have an individual bringing money to
16 Mr. Ajayi. Mr. Ajayi is someone on the ground at the bank.
17 Mr. Abegunde also uses someone on the ground at the bank, in
18 this instance someone named Barry. So already you have
19 possibly four, maybe even five layers of transactions and
20 money from the original source. And that completely
21 undercuts Mr. Perry's argument that he might have reasons for
22 trying to do it to avoid fees. That's five different layers
23 of transactions if you're trying to do something legitimate.

24 That itself makes no sense. So we're relying on
25 the Defendant's own words, his interactions with

1 coconspirators. The shape of the transactions. The modus
2 operandi. All of those different factors. The Court is well
3 within its right to make its reasonable estimate by
4 extrapolating from those known data points and looking at
5 other factors before it that have been provided in the
6 Government's response.

7 Based on that, I would like to just rest mostly
8 on what is in my submission because it is a fair slice of the
9 Defendant's conduct in this regard. Is it comprehensive, no.
10 There were several more conversations. We could have
11 included many, many, many more attachments and exhibits if
12 necessary surrounding these things. But like with everything
13 else that was said in the transaction itself, the Government
14 is attempting to be restrained. Showing how the genesis of
15 those transactions, transactional relationships occurred.
16 And then from there -- and Your Honor, I just realized I
17 didn't have my microphone on. I apologize.

18 THE COURT: I didn't think it was on, but that's
19 all right. I didn't want to interrupt.

20 MR. FLOWERS: I also have a sore throat today, so
21 it's a little struggle to talk.

22 THE COURT: I understand.

23 MR. FLOWERS: Then using from those data points,
24 coming up with that reasonable estimate of loss. Mr. Perry's
25 point, I believe he said -- and again, I'm paraphrasing

1 that's it's unfair to hold him for the entire amount. We're
2 not attempting to hold him for the entire amount. And those
3 transactions where someone brings him a larger amount, which
4 would likely be indicative of some underlying fraudulent
5 activity, we're seeking to hold him for the amount that
6 passed through or he caused to pass through his third party
7 transactions.

8 We're also not attempting to hold him accountable
9 for the F.J. Williams. It said in the footnote in the
10 Government's submission. We're not conceding anything. Just
11 out of an abundance of caution to be conservative, we are not
12 attempting to hold him accountable for that. But for those
13 third party transactions where even the very genesis of those
14 relationships is indicative of a fraudulent, nefarious and
15 criminal nature, we are attempting to hold him accountable
16 for those, Your Honor. And I will do my best to attempt to
17 answer any questions you have in this regard should you have
18 them.

19 THE COURT: Okay. I'm going to -- I started with
20 the Crye-Leike transaction. I'm going to go through -- I'm
21 going to skip that one and come back to it. And I'm going to
22 go through each of the other sort of buckets that the
23 Government put this in and talk through where I am in light
24 of everyone's arguments.

25 Money Guy Dejobo is the first one. This happens

1 after the FBI interview. Government says Mr. Abegunde was
2 introduced to Money Guy Dejobo by Mr. Ojo. There's a demand
3 for cash. There's a statement by Mr. Abegunde -- and correct
4 me factually if I'm wrong on any of this. But I believe
5 there's a statement from Mr. Abegunde that he can't allow
6 money to be paid into account that can be traced. Then
7 there's a discussion of the risks involved. There's a
8 discussion of conspiracy. Defendant Mr. Abegunde says he's
9 walking away. He's not going to run the risk. This is March
10 of 2017.

11 But then after that conversation where
12 Mr. Abegunde rightly has his -- is concerned about this, he
13 goes back and does business with Money Guy Dejobo. I guess,
14 you know, for the record, I need to -- and this may be the
15 best context to make this point. In answering Mr. Perry's
16 argument, sort of as directly as I can, I don't think -- and
17 the Court of Appeals may disagree with me, but I don't think
18 that there's any one particular piece of evidence that I have
19 to have. And I think Mr. Perry's fundamental point is there
20 has to be evidence that the money at issue is illegal in
21 order to include it in relevant conduct.

22 I don't think I have to have that piece of
23 evidence. I think I can look at the whole transaction, the
24 whole interaction between the people. And if I conclude that
25 there's enough indicia of this being the same modus operandi

1 that is more likely than not to include criminal conduct,
2 that that's the finding I have to make.

3 Now, Mr. Perry, the Court of Appeals may disagree
4 with me. But that's where I end up. So in this instance,
5 again, going back to the particulars of Mr. Dejobo. There's
6 indications that Mr. Abegunde is taking a huge risk. He
7 talks about conspiracy to commit fraud, I think, or
8 conspiracy to commit money laundering. Let me see.

9 MR. FLOWERS: It's conspiracy to commit fraud,
10 Your Honor.

11 THE COURT: Conspiracy to commit fraud. Yet
12 despite the fact that there's -- there are all these red
13 flags as to where the money comes from that's involved in the
14 transactions, Mr. Abegunde goes forward with them anyway.
15 Now, this gets to my -- one of my fundamental issues I have
16 on all these different arguments by the Government.

17 So the Government then in their submission lays
18 out those factors that lead them to include certain Money Guy
19 Dejobo transactions, says ultimately there are 16 such
20 transactions that equal 74,500. But what you didn't do --
21 you did a lot. But what you didn't do is tie it back to the
22 table. So I don't know where that 74,5- -- I don't know
23 what's made up of that 74,5-.

24 MR. FLOWERS: If I'm understanding Your Honor
25 correctly, you mean which individual transactions like by

1 date?

2 THE COURT: So I've got the table that's included
3 in the presentence report. I've got your arguments as to,
4 you know, broken down by person on -- for each person, number
5 of transactions and the total amount. I don't have anything
6 that links those two things together.

7 MR. FLOWERS: I pulled the chart that has them
8 all added up, if that would be helpful. Broken down by
9 person.

10 THE COURT: That would be helpful.

11 MR. FLOWERS: May I approach then?

12 THE COURT: Yes.

13 MR. FLOWERS: I have one for you too, Mr. Perry,
14 if you would like it. I just thought this might be helpful.
15 Now, my clairvoyance has limits, Your Honor, so that might
16 not be quite what you're looking for.

17 THE COURT: Yeah. It's still -- so again, you've
18 got -- so you've got Money Guy Dejobo, 16 transactions equals
19 74,5-.

20 MR. FLOWERS: Yes.

21 THE COURT: I've got this chart in the
22 presentence report that has all these individual
23 transactions. On some of them, I could tell by the date. I
24 could tie them to the bucket that you've put them in in your
25 memo. But for example, I guess I wrote down for a June 21st,

1 2017 \$4,000 transaction through Ms. Osiberu's account that
2 that's probably Money Guy Dejobo. But I don't know what
3 else -- the 74,5- is somewhere on this chart?

4 MR. FLOWERS: It's on the chart, and we don't
5 have extra copies. And the font is very small, and I
6 apologize. But if it at all would be helpful, I'm happy to
7 get it to you.

8 THE COURT: Why don't you read --

9 MR. FLOWERS: Yes.

10 THE COURT: Like for Money Guy Dejobo.

11 MR. FLOWERS: Yes, Your Honor.

12 THE COURT: What are the 16 transactions that --

13 MR. FLOWERS: Yes, ma'am.

14 THE COURT: Does that make sense?

15 MR. FLOWERS: Yes. So on -- turn on my
16 microphone. On August 11th, 2017, Mr. Abegunde did a
17 transaction with Money Guy Dejobo for \$5,000 through the
18 account of Oluwabusola Odeyale.

19 THE COURT: Yeah.

20 MR. FLOWERS: And is that the information that
21 you would like, Your Honor?

22 THE COURT: Yes.

23 MR. FLOWERS: On August 13th, 2017, Mr. Abegunde
24 did a transaction for \$7,000 with the same third party
25 account.

1 THE COURT: Yes.

2 MR. FLOWERS: On August 16th, 2017, Mr. Abegunde
3 did a transaction with Money Guy Dejobo for 6,500 through the
4 same third party account.

5 THE COURT: Yes.

6 MR. FLOWERS: On October 23rd, 2017, Mr. Abegunde
7 did a transaction --

8 THE COURT: Hang on. Hang on. October.

9 MR. FLOWERS: 23rd, Your Honor.

10 THE COURT: 2017?

11 MR. FLOWERS: Yes, Your Honor.

12 THE COURT: That's not on the presentence report
13 chart. October 23rd or August 23rd?

14 MR. FLOWERS: August 23rd.

15 THE COURT: Okay. I'm sorry.

16 MR. FLOWERS: Oh, did I misspeak? I think I
17 might have misspoken, Your Honor.

18 THE COURT: I think you said October, but I've
19 got a cold here, so...

20 MR. FLOWERS: I understand.

21 So that was for 10,000 with the same third party
22 account.

23 THE COURT: Yes.

24 MR. FLOWERS: Two days later on August 25th,
25 there was a \$2,000 transaction with -- through the third

1 party account for Kayode Alhassan.

2 THE COURT: Yes.

3 MR. FLOWERS: On August 25th, 2017, Mr. Abegunde
4 did a transaction -- third party transaction -- August 25th,
5 2017.

6 THE COURT: Yes.

7 MR. FLOWERS: Mr. Abegunde did a transaction for
8 \$5,000 through the account of Olayinka Oremade.

9 THE COURT: Okay.

10 MR. FLOWERS: On August 31st, 2017, Mr. Abegunde
11 did a transaction for \$2,500 through a third party account of
12 Kayode Alhassan. On September 5th, 2017, Mr. Abegunde did a
13 third party transaction for \$2,500 through the account of
14 Oluwabusola Odeyale. On September 7th, 2017, Mr. Abegunde
15 did a third party transaction for \$7,000 through the third
16 party account of Igoche Mark. And that's I-G-O-C-H-E. On
17 September 7th, 2007 [sic], Mr. Abegunde did a third party
18 transaction for \$6,500 through the third party account of
19 Seniu Gbadamosi.

20 THE COURT: G-B-A-D-A-M-O-S-I?

21 MR. FLOWERS: Yes, Your Honor.

22 G-B-A-D-A-M-O-S-I.

23 THE COURT: Okay.

24 MR. FLOWERS: On September 20th, 2017,
25 Mr. Abegunde did a third party transaction for \$2,000 through

1 the third party account of Igoche Mark.

2 THE COURT: Mr. Flowers, move that mic up on your
3 tie so it gets closer to your mouth, and you stop hitting it.

4 MR. FLOWERS: Is that better?

5 THE COURT: Yeah. Thank you.

6 MR. FLOWERS: Your Honor, what was the last date?

7 THE COURT: September 20.

8 MR. FLOWERS: September 20. On October 2nd,
9 2017, Mr. Abegunde did a third party transaction for \$2,500
10 through the third party account of Oluwabusola Odeyale. And
11 these are all still with Money Guy Dejobo, Your Honor.

12 THE COURT: Right.

13 MR. FLOWERS: On October 10th, 2017, Mr. Abegunde
14 did a third party transaction for \$5,000 through the account
15 of Igoche Mark. On October 10th, 2017, Mr. Abegunde did a
16 third party transaction for \$2,500 through the third party
17 account of Olakayode Opasanya. O-P-A-S-A-N-Y-A. On
18 October 10th, 2017, Mr. Abegunde did a third party
19 transaction for \$1,500 through the third party account of
20 Obuwabusola Odeyale.

21 THE COURT: So three transactions on
22 October 10th?

23 MR. FLOWERS: Yes, Your Honor.

24 THE COURT: One for 5,000. One for 2500. And
25 one for 1500.

1 MR. FLOWERS: Yes, Your Honor.

2 THE COURT: There were three different accounts
3 but all with Money Guy Dejobo.

4 MR. FLOWERS: Yes, Your Honor.

5 THE COURT: Okay.

6 MR. FLOWERS: And that should make up the third
7 party transactions for Mr. Money Guy Dejobo. I'm making sure
8 that I have them all.

9 THE COURT: With the June 21, '17. Yeah. That's
10 what I've got.

11 MR. FLOWERS: Okay.

12 THE COURT: And that equals 74,5?

13 MR. FLOWERS: Yes, Your Honor.

14 THE COURT: Why did I get 67,5-?

15 MR. FLOWERS: I got 74,5-. But I'll just go
16 through to make sure I didn't forget a date to give you, Your
17 Honor.

18 THE COURT: No. I think I missed that first one.
19 Let me -- I'm checking it again. I got 71,5- that time.

20 MR. PERRY: On page 12 of the memorandum in the
21 PSR, are those -- are all three of those last transactions
22 Dejobo? Going from the bottom of the page where it has --

23 THE COURT: I don't have the last one as being
24 him.

25 MR. PERRY: Okay. But the two before that, are

1 both of the ones prior to that?

2 THE COURT: I keep getting 71,5-. That may be
3 where my mistake is though.

4 MR. FLOWERS: It's possible that when I read
5 through, I skipped over one. Really quickly, Your Honor, may
6 I just go down the dates and amounts of all of these to make
7 sure we're on the same page?

8 THE COURT: Well, tell me, is there one on
9 September 1 of 2017 for 2500?

10 MR. FLOWERS: September 1. There is, Your Honor,
11 but it's my -- that was my mistake. That was Gboyega Ajayi.
12 There's one on 8/31/2017 for 2500 for Kayode Alhassan through
13 Money Guy Dejobo.

14 THE COURT: Okay. So the one at the bottom of
15 the page is not Money Guy. The bottom of the page is the
16 9/1, 2500.

17 MR. FLOWERS: That's correct.

18 THE COURT: Then yeah. Go through, if you would
19 go through just the dates and the amount.

20 MR. FLOWERS: Yes, ma'am.

21 THE COURT: I think.

22 MR. FLOWERS: Okay. Starting on August 11th,
23 2017 for 5,000. August 13th, 2017 for 7,000.

24 THE COURT: Yeah.

25 MR. FLOWERS: August 16th for 6,500. August 23rd

1 for 10,000. August 25th for 2,000. Turning to my next page
2 here.

3 August 25th for 5,000. August 31st for 2,500.
4 September 5th, 2017 for 2,500. September 7th for 7,000.
5 September 7th for 6,500. September 14th for 7,000.

6 THE COURT: Oh, hang on.

7 MR. FLOWERS: So I must have missed that one,
8 Your Honor. I apologize.

9 THE COURT: Okay.

10 MR. FLOWERS: September 20th for 2,000.
11 October 2nd for 2,500. October 10th for 5,000. October 10th
12 for 2,500. October 10th for 1,500.

13 THE COURT: All right.

14 MR. FLOWERS: That should be it.

15 THE COURT: That adds up to 74,5-.

16 I would add one other sort of fact that I rely on
17 here. And it goes to some of the testimony in court that it
18 was that Mr. Abegunde and Mr. Perry referred to this.
19 Mr. Abegunde was developing or had developed material that he
20 was relying on or said he was relying on in his business.
21 And in that material, it talked about the importance of
22 knowing -- of avoiding money laundering and knowing the
23 source of your money and understanding the source of your
24 money.

25 Here again, in particular, he talks about the

1 fact that he doesn't know the source, walks away and then
2 roughly three months later turns back and does transactions
3 with this person without any indication that he somehow now
4 knows the source of the money.

5 MR. PERRY: And just for the sake of the record,
6 that's exactly what he did, why he did. And it took that
7 long to find out who and why he was dealing with him and what
8 kind of money the guy was making. That's exactly what he
9 did, which is what you're supposed to do. You're supposed to
10 say hey, if I don't know who you are, I'm not going to deal
11 with you. And he comes back once he knows and relies on him
12 and makes a series of transactions because he knew exactly
13 who he is at that point. And there's nothing that indicates
14 the opposite of that in the record and from the testimony.

15 THE COURT: Well, Mr. Perry, I appreciate that,
16 and that highlights what I'm missing. Where's the proof of
17 that?

18 MR. PERRY: He's a defendant. A, he talked about
19 who he knew at trial. But there's a burden that has
20 evidently shifted in a way that it's not supposed to towards
21 him.

22 THE COURT: No.

23 MR. PERRY: Because if the Government's position
24 is that he doesn't know this person and that he had no way of
25 knowing this person, then it's the Government's burden to

1 bring him in. To bring Dejobo in and say did he know you.
2 And if he's proffering because he's some codefendant or if
3 he's done something so wrong that they need to find him and
4 lock him up, then that's fine.

5 That's what happened as far as the wife and the
6 person who set up the marriage. They came in. They gave a
7 proffer. They testified or one pled guilty a few minutes
8 before they were going to testify. And they realized it.
9 And I had the opportunity to cross examine them about it, and
10 they said that, you know, it was a bad marriage, et cetera.
11 If Dejobo, after the premise -- if the premise is that he did
12 what you're supposed to do and because he did it, that it's
13 wrong, then he's damned if he does, damned if he doesn't.

14 If he had jumped into a business dealings with
15 the guy. The next day, somebody says hey, this guy says he
16 wants to invest in what we're doing or what have you. He
17 wants to buy naira, which in the conversations were clear.
18 That each time, that's what they always talked about. Naira
19 is going for this, it's 300 per one. So there's no doubt
20 about that.

21 And if somebody brings you this person and I
22 don't know who they are or what the source of their funds are
23 coming from and I just had the FBI come to my house or if
24 this was before then. Some of these were before then. And I
25 asked those questions, and that's what he's saying. That's

1 what he has said consistently. He talked about it with the
2 FBI agent. You're supposed to know.

3 And so -- and that flies against every principle
4 of money laundering that you ask questions and you walk away
5 because you don't know. That's not rational ignorance. It's
6 a gap in time until somebody clarifies who you are and what
7 kind of business. And we have a series of conversations
8 about it that aren't necessarily through that. Now, they're
9 texting stuff about money, yeah, because it's fast. He's
10 doing other things during that time.

11 And says hey, if you can put, you know, \$5,000 in
12 it, this is a good time. And if you notice, they're isolated
13 purchases. And if you also notice, they're under a \$10,000
14 threshold, these purchases, but they're not necessarily under
15 it to the point of \$10,000. At times when somebody says they
16 want to buy \$10,000 worth of naira because that person has
17 \$10,000 to invest, that's what he purchased at that
18 particular point in time. But he also had conversations with
19 you know you're going to have a tax burden or this, that or
20 the other.

21 But with this person, Dejobo, just this isolated
22 person, it drives the nail home on what I'm saying that when
23 he wasn't confident in him, he didn't lie. He didn't say,
24 you know, well, you know, yeah, we've been friends for years,
25 wink, wink. He said if I don't know you and you can't tell

1 me something about your business and how you're getting your
2 money, then I'm not interested in it, and I'm walking away.

3 That's exactly -- that's textbook what you want
4 to do as opposed to rational ignorance and saying hey, you
5 know, we're cool. You're cool with me if you've got money,
6 I've got naira. That's not what he did. He actually wanted
7 to investigate and find out. He's here and will tell you how
8 he found out. I don't have a problem at this point. He
9 testified at trial. And if the Court wants to hear from him
10 on how he knew the people who he was involved with.

11 Will you tell the Court that?

12 THE DEFENDANT: I would be very glad to, Your
13 Honor.

14 MR. PERRY: If that's what you want to hear. But
15 he will give detail about how he knew and at what point. So
16 much so that the person who he did have an issue with, he --
17 two weeks before he gets arrested in Atlanta for the first
18 time in his life, he's in New Jersey filing a suit about
19 money coming to him on accounts that bounced. That's not
20 something that you do if you're in the middle of a criminal
21 enterprise that you're involved in. Which guy was that?
22 Baja?

23 THE DEFENDANT: No. His name was Mudolfeli Ode.
24 The Government stated that, you know, he was my
25 co-accomplice. I was doing bad business with him. Meanwhile

1 he defrauded me. The first time, \$20,000 check. The second
2 time, \$15,000 check. The Government was supposed to bring
3 him to trial, you know, but he was nowhere to be found. And
4 I didn't get to confront him. He still owes me money, Your
5 Honor.

6 THE COURT: I guess, Mr. Perry, I really have
7 been very careful to make sure I don't shift the burden to
8 the Defendant because that's been kind of something on my
9 mind, to make sure I don't do that. But when you raise the
10 argument that no, these are legitimate transactions and in
11 this particular case, he walks away but he comes back after
12 he verifies it, if that's your position, then the question is
13 okay, where is the proof that validates that position?

14 MR. PERRY: And along those same lines because
15 the Government has consistently said he's engaged in this
16 person who's engaged in this and known coconspirators, et
17 cetera, the only place that any of the people who are named
18 down any of these lists exclude the person who pled guilty
19 to -- that threw away their military career and pled guilty
20 to being in a marriage fraud, excluding that person, not a
21 single person in this conspiracy that had something to do
22 with these structures is a criminal.

23 The guy who owned Baja Fresh does not have a
24 criminal record. The guy who -- the physician who was giving
25 money to buy this, he's still practicing medicine. He's not

1 -- these are not -- he's not engaging in activities with
2 people who are known coke dealers on the street or known for
3 bilking companies and things like that. That is not the
4 people who are in here. Not a single one of them.

5 If you go down this list, everybody in this
6 column, not a one, other than the accusations that might be
7 involved in this case, Mr. Ojo is vice president, two steps
8 down from the head of the president of the Bank of Nigeria.
9 He made a mistake. And you know, the Sixth Circuit, I hope,
10 does do something on it, to be frank, because this instance
11 is something there that's just not -- it's not right.

12 And particularly with when you're saying if he
13 doesn't know the person, why did he do business with him. If
14 you say that that transaction took place three hours later,
15 I'd be a hundred percent on board with what Judge Lipman
16 said. I would have told my client months ago, you know, that
17 doesn't make sense that you're going to try to vet the guy,
18 and it takes you three hours to vet him. Unless you show me
19 some other materials where he sends you some license or sends
20 you something. But you're talking about a three-month
21 period.

22 And then say well, if you had questions in month
23 March, why don't you still have those questions in June is
24 because they had those conversations. And he does have a --
25 he has a knowledge of the fact that this guy does have a

1 business dealing with cars. The Government will concede that
2 point. That Baja Fresh is somebody who's dealing with -- not
3 Baja.

4 THE COURT: We're talking about --

5 MR. PERRY: But Money Guy Dejobo, he knows him at
6 that particular point in time and felt a comfort level that
7 he wasn't pulling his leg on who he was or that this money is
8 coming from some business e-mail compromise. He had a
9 comfort with the guy and said that okay, we can do business.
10 That was what that three-month gap is.

11 THE COURT: Well, if Mr. Abegunde wants to offer
12 proof of everything that he did to assure himself of not just
13 who Money Guy Dejobo was and what business he did but what
14 the source of these funds are...

15 MR. PERRY: Would you take the stand?

16 MR. FLOWERS: Your Honor, that was exactly what
17 Mr. Perry was supposed to do his homework in his actual
18 filing, and he did not do that. I'm not saying this to try
19 to keep him from offering the proof now, but his very thin,
20 terse filing really went to nothing having to do with that.
21 And the Government is fine obviously with Mr. Abegunde
22 getting up there and putting on proof and explaining things.
23 I would ask for a brief recess to go down and get a few cross
24 materials.

25 MR. PERRY: My filings are what they are because

1 I don't have a burden here. I should not have to do it.

2 THE COURT: To me, Mr. Perry --

3 MR. PERRY: I, in trying to answer the Court's
4 question, look at a chart of activity when the Government
5 brings a witness a few weeks earlier. And I'm led with
6 saying what of any of these transactions are illegal. I go
7 out to Mason. I said in these transactions, how do I go
8 about finding out or disproving a negative with these
9 individuals. And there's no way to do it.

10 The Court wants to know how he knows the
11 individuals. I don't have a problem giving that testimony.
12 But I answered the -- I thought I answered the question the
13 way the Court wanted it at that particular point in time.
14 But as it relates to these individuals, I think that's a new
15 question, and I don't have a problem putting my client. I
16 wouldn't have had a problem putting him on the stand on that
17 particular day if I knew the Court wanted to hear from him
18 regarding that. But I definitely will do it in this
19 instance. He's already testified. He's been found guilty by
20 a jury. We're more than happy to -- for me to have a
21 question and answer with him.

22 MR. FLOWERS: Your Honor, while you're
23 formulating your response, to the extent I said anything that
24 Mr. Perry found offensive, I apologize. That certainly was
25 not my intention.

1 MR. PERRY: I'm not offended. May I let him take
2 the stand, Your Honor?

3 THE COURT: Well, I think -- we've got -- we're
4 working ourselves slowly through this question but very
5 slowly. And to me, I've got two issues. One is sort of what
6 we just went through with Money Guy Dejobo. And my not
7 looking forward to doing that with each of the other ones
8 individually in the way in which we did that.

9 And second, I do think, Mr. Perry, that, you
10 know, your position all along has been there's no proof that
11 these transactions were illegal and, in fact, they were
12 legal. But again, I've tried very carefully not to shift the
13 burden, but I think you've put that out there as your
14 position.

15 So to the extent that's your position, I need to
16 allow you whatever, whether it's Mr. Abegunde or anything
17 else, whatever you want to offer to show that no, in fact,
18 these transactions were legal. And I think in particular,
19 sort of now that you understand the context in which I'm
20 considering them as relevant conduct, that gives you the
21 opportunity to, I think, sort through whatever it is you want
22 to present to -- on that point.

23 I guess where I'm headed is maybe we need to
24 again reschedule this or continue this and pick it up once
25 the Government has had a chance to give me the rest of that

1 information that I want. And Mr. Perry and Mr. Abegunde have
2 a chance to think through whatever you want to do. I don't
3 want to -- I'm sensitive to not shifting the burden. But now
4 that you understand where I am with the preponderance burden,
5 you can make whatever decision you want to make.

6 Does that make sense?

7 MR. PERRY: Yes, Your Honor. It makes sense.

8 May I have just a moment?

9 THE COURT: Yeah.

10 MR. FLOWERS: And while he's speaking, Your
11 Honor. What is the best format for you to receive this
12 updated information, supplemental filing or?

13 THE COURT: Yeah. I think just a basic chart
14 that breaks down, you know, by person each of the
15 transactions you're considering under that person.

16 MR. FLOWERS: Yes, Your Honor. The Government
17 will do that.

18 THE COURT: Which it sounds like you have
19 already.

20 MR. FLOWERS: Yes. It's just I did not append it
21 as an exhibit. I had it more for work product. But I'll
22 file it on the record so you have a copy and Mr. Perry has a
23 copy and all relevant parties have a copy.

24 THE COURT: Okay.

25 MR. PERRY: First, I don't want the Court to

1 think I'm trying to belabor a point, but I do want the
2 opportunity to do that. And I apologize for how long it's
3 taken to chop through this.

4 THE COURT: It is what it is.

5 MR. PERRY: It's a unique -- it's unique.

6 THE COURT: It's a difficult issue to work
7 through. No need to apologize. And I guess, Mr. Perry --
8 and I mean, I'll take a look back at the case you cited. If
9 there's any other cases in the meantime you want to direct me
10 to, that works too.

11 MR. PERRY: Yes, Your Honor.

12 THE COURT: Okay. All right. When do we think
13 we can come back to this? Mr. Grandberry, given your
14 schedule, are you going to attend this probation office
15 retreat?

16 PROBATION OFFICER: Yes, Your Honor. That will
17 be my last days.

18 THE COURT: At retreat are your last days?

19 PROBATION OFFICER: (Nodded head affirmatively.)

20 THE COURT: Okay. I don't know that we're -- I'm
21 not sure how you all can cover this, but I don't know that
22 we're going to be able to get this back in before you leave.

23 PROBATION OFFICER: We'll cover and from what
24 I've heard today, I can prepare an addendum with the
25 charts --

1 THE COURT: Okay.

2 PROBATION OFFICER: -- to hopefully clarify what
3 we talked about.

4 THE COURT: Okay. As I'm looking at this, I
5 should ask you all what your constraints are. I've got two
6 trials scheduled to go on Tuesday, October 1, but I don't
7 think either one of them will go. I've kind of been assuming
8 that.

9 MR. FLOWERS: We have a trial, Your Honor,
10 together starting on September 30th. There's a chance it
11 gets moved, but we won't know until next Thursday.

12 THE COURT: Okay.

13 MR. PERRY: I have a trial that starts
14 September 30th, the day after my birthday. It's a murder
15 trial. It's the only case that's set that week. And it's
16 definitely going. It's in Tippah County, and it's scheduled
17 for probably -- it's expected to be ten days. It's kind of
18 complex or whatever, but it's a special setting, so I know
19 that that's going. But anything before or after, I can kind
20 of maneuver.

21 THE COURT: What about, could we be ready for
22 next Thursday, the 12th, at nine o'clock? I've got the
23 morning open that day.

24 MR. FLOWERS: I'm scheduled to be in Boise, Idaho
25 that day.

1 THE COURT: I hear it's a lovely place.

2 MR. FLOWERS: It actually is. It's a very lovely
3 place.

4 MS. IRELAND: At 9:00, Your Honor, we are
5 actually before Judge Fowlkes on the matter that's scheduled
6 for trial the last week of September. On the 12th. I will
7 be the first person to say that I do not have a grasp of
8 numbers as strong as Agent Vance and Mr. Flowers do. I don't
9 want to run the risk that something gets messed up, but if
10 Your Honor needs to hold it on the 12th, I'm very happy to
11 get prepared. It's just they've been working these together
12 and are very much in command of all the nuances.

13 MR. PERRY: On the 12th, it would have to be in
14 the afternoon if we can.

15 THE COURT: You've got morning stuff?

16 MR. PERRY: Morning stuff.

17 THE COURT: And the afternoon is pretty crammed.
18 I don't think that's going to work. I think it's going to
19 have to be after these trials you all are talking about
20 unfortunately.

21 MR. FLOWERS: Your Honor, I am currently free the
22 week of the 14th in October, the week of the 21st in October.

23 THE COURT: Let's look at the week of the 21st.
24 Mr. Perry, what about Tuesday, the 22nd at one o'clock?

25 MR. PERRY: Yes, Your Honor. I'll be here.

1 MR. FLOWERS: I'm free as well, Your honor.

2 THE COURT: I hate to put it off that long, but I
3 don't know -- I don't see another alternative.

4 MR. FLOWERS: Your Honor, is there any additional
5 homework in the meantime, other than filing the chart for
6 your and Probation's consideration?

7 THE COURT: You know, I guess the same comment
8 about case law that I made to Mr. Perry. If you see other --
9 find other case law that you think is particularly
10 persuasive, you're always free to file it.

11 MR. FLOWERS: Yes, Your Honor. Thank you.

12 THE COURT: I guess let me say in general that
13 what I went through -- what I outlined in terms of things I
14 pulled out that were persuasive for me on Money Guy Dejobo, I
15 pulled out similar things -- statements by the Defendant and
16 ways in which the transactions were structured as to the
17 other sort of general buckets that were in the Government's
18 filing. When I got to -- sort of toward the end, there's
19 this -- well, I guess I was looking mainly at the other
20 transactions kind of section of the memo, I guess the
21 Government's position is what it is in those descriptions.
22 There's not as much of a -- of conversation related to those
23 transactions, but the Government's position is what it is.

24 I do have, you know, remaining questions related
25 to the Crye-Leike transaction and, Mr. Flowers, just, I

1 guess, as something to think about, I mean, your position on
2 the rest of these transactions is this is money we can see
3 goes through Mr. Abegunde. And you know, the Crye-Leike kind
4 of flies in the face of that position that this is money we
5 can see that Mr. Abegunde touches. We don't with that
6 transaction. And so I've got, you know, remaining questions
7 about that.

8 MR. FLOWERS: To the extent that I uncover any
9 research in support, would you be opposed, Your Honor, for me
10 to be filing a supplemental memorandum?

11 THE COURT: Not at all. Anything you all,
12 Mr. Perry, anything you want to file that's going to help me
13 make the decision, I'm happy to read it.

14 I think the good news is when we make our way
15 through this issue, it's by far the one that's going to take
16 the longest. I think the rest of it will go a little
17 quicker. Anything else you all think we can deal with today?

18 MR. PERRY: Not from me, Your Honor.

19 MR. FLOWERS: Not from the Government, Your
20 Honor.

21 MS. IRELAND: Actually there was an outstanding
22 motion for judgment of acquittal or new trial. Has Your
23 Honor given any consideration to that? It's been briefed and
24 filed, and just it's out there, so I thought I would throw it
25 out to see if that's something that Your Honor was prepared

1 to deal with.

2 THE COURT: We are drafting something. I had
3 hoped to have an order out before today. I guess this
4 continuance gives me another opportunity to get the order out
5 before we finish the sentencing. It -- I should be done with
6 it by then.

7 MS. IRELAND: Thank you.

8 THE COURT: Anything else?

9 MR. PERRY: No, Your Honor.

10 THE COURT: All right. Mr. Abegunde, any
11 questions for me at this point?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: Okay. We'll see you on October 20 --
14 what did I say? 22nd.

15 MR. FLOWERS: Thank you, Your Honor.

16 THE COURT: All right. Thank you all.

17 MR. PERRY: Thank you, Your Honor.

18 (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 66 pages are, to the best of my knowledge, skill and abilities, a true and accurate transcript from my stenotype notes of the Continuation of the Sentencing hearing on the 6th of September, 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