

No. 19-6229

**United States Court of Appeals
For the Sixth Circuit**

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

OLUFOLAJIMI ABEGUNDE,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE,
No. 2:17-cr-20238-7

**REPLY BRIEF OF
DEFENDANT-APPELLANT OLUFOLAJIMI ABEGUNDE**

ORAL ARGUMENT REQUESTED

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ADDENDUM TO STATEMENT IN SUPPORT OF ORAL ARGUMENT

Pursuant to Sixth Circuit Rule 34, Appellant Olufolajimi Abegunde respectfully reiterates his request for oral argument as it will aid the Court in its decisional process. The issue in this appeal involves the following: (1) whether Mr. Abegunde was prejudiced by the District Court's failure to sever the unrelated counts in the indictment; (2) whether the Government provided sufficient evidence at trial to prove consent for purposes of a conspiracy; and (3) whether there was a direct link between Mr. Abegunde to the Western District of Tennessee for the purpose of prosecution. Because this is a complex case with intricate details and evidence, the Appellant believes that oral argument is necessary if the Court has questions and to ensure sufficient discussion of the applicable law and guidelines. The weight of the court's resentencing rested on the type of factors that were stricken from Sentencing Guidelines. Therefore, this case deserves face time since this is a special case of particular importance.

ARGUMENT

In the Government's June 4, 2020 reply brief, they attempt, just as they did at trial, to make arguments wherein the outcome seemingly justifies flaws in the test necessary for the Court to sustain the verdict against Mr. Abegunde. In short, the analysis applied by the Government miss the points as related to the following sections:

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

1. Taken in the light most favorable to the Government, if the transactions in the joint accounts of Mr. Abegunde and Mrs. Caffey were in fact illegal, there was absolutely no proof presented that substantiated that fact at trial. At trial, the assertion was that Mr. Abegunde's entry into the marriage was to:

- A) Stay in the United States; and
- B) receive medical benefits for his young child.

Any conversations between Caffey and Abegunde regarding the use of a joint account in absence of proof that the purpose of the marriage was for the use of the account(s) to further the "scheme" relevant to this cause is totally irrelevant to the charges for which Mr. Abegunde was tried in the Western District of Tennessee. There was not a single witness, including Mr. Abegunde's wife, Mrs. Caffey, that

established how the marriage was related to the wire fraud or money laundering allegation in this case.

It is absolutely clear that the marriage fraud count had no relation to Mr. Ramos-Alonzo, nor did it have any connection to the one transaction that could possibly have in any way been related to the Western District of Tennessee.

II. The Government stated:

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

Respectfully, Mr. Abegunde asks this Court to consider:

1. There was no proof offered at trial remotely suggesting that Mr. Abegunde knew the source of all funds (although he took a number of measure to make sure that the people investing with him were making sure that the funds were legal funds.

2. There was no proof of Mr. Abegunde being aware of any Business Email Compromise (“B.E.C.”) or where any “B.E.C.” took place.

3. There was no proof of any plan, scheme, agreement, interactions, or knowledge of Mr. Ramous-Alonzo prior to being arrested in this case.

It is inconceivable that a person can be complicit in a conspiracy without knowing or at least agreeing to commit an illegal act with a co-conspirator.

III. The Government asserts:

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

In reply, Mr. Abegunde tenders the following:

1. An alleged B.E.C. as committed in the Western District of Tennessee. Mr. Abegunde did not direct, participate in, or serve as a part of this B.E.C. (neither did Mr. Ramous-Alonzo according to trial proof).
2. Money was wired by Mr. Ramous-Alonzo pursuant to a person that he believed to be a romantic interest to a bank account in Georgia.
3. The bank account in Georgia was opened by a friend and business associate of Mr. Abegunde, Ayodeji Ojo, who opened the account while he and his wife were in the United States to give birth to their child.

When a bank called about a questionable transaction, he instructed that the money be reversed to its rightful owner.

To this date, neither Mr. Abegunde or his counsel are aware of any action remotely related to the Western District of Tennessee that would clearly establish proper venue in this case.

III. The Government offers:

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

In reply, Mr. Abegunde believes and asserts that the record is abundantly clear that the jury was not properly instructed, and the district court refused to follow the law in regard to instructing the jury regarding testimony of the Government's chief witness. Simply put, in a very thin case built on assumptions and innuendos, the court did not explain the weight that the jury should give at the appropriate time.

The Government chooses to ask this Court to ignore that fact and simply focus on the resulting outcome.

IV. The Government offers:

“The record supports the district court's loss calculations at sentencing.”

Mr. Abegunde prays that this Court read the entirety of the sentencing hearings. The trial court was persuaded by the use of totally legal transactions and deposits in the determination of irrelevant conduct. As the Government continued to emphasize the size of deposits, there were not of the following:

- 1) Evidence that the deposits used were procured through criminal activity;
- 2) Evidence supporting the determination that the funds deposited, whether properly procured or not, were in any way connected to the indictment or any of the co-conspirators named therein.

In short, the calculations used to sentence a person with no prior criminal conduct and who has never had any suspicion of using his computer to defraud anyone through a romance scam, is absolutely unfathomable and patently unfair.

CONCLUSION

For the foregoing reasons, Appellant Olufolajimi Abegunde respectfully reiterates that this Court should reverse and remand to the District Court for a new trial. Mr. Abegunde further prays for such other relief to which he may be entitled in either law or equity.

Respectfully submitted,

/s/ John Keith Perry, Jr.

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CERTIFICATE OF COMPLIANCE

I, John Keith Perry, Jr. this 26th day of August, 2020, do hereby certify, as the undersigned counsel of record for the Defendant-Appellant, Olufolajimi Abegunde, certify pursuant to Fed. R. App. P. 32(g) that the Brief of Defendant-Appellant complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this Brief contains 1,437 words and 245 lines including the parts of the Brief exempted by Fed. R. App. P. 32(f). In addition, this Brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this Brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010, Times New Roman font in 14 point size, with footnotes in Times New Roman font 14 point size.

/s/ John Keith Perry, Jr.
Signature

08/26/2020
Date

CERTIFICATE OF SERVICE

The undersigned does hereby certify that he has electronically filed the foregoing Reply Brief of Defendant-Appellant, Olufolajimi Abegunde, with the Clerk of Court using the CM/ECF system, which will send notification of the filing to the following attorney of record,

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This the 26th day of August, 2020.

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