

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

**UNITED STATES OF AMERICA,
PLAINTIFF,**

vs.

CAUSE # 2:17cr20238-SHL

**OLUFOLAJIMI ABEGUNDE,
DEFENDANT.**

DEFENDANT’S SUPPLEMENTAL SENTENCING MEMORANDUM

During the months of August and September, this Court began the process of sentencing Olufolajimi Abegunde. During those hearings strenuous objections have been made to the Government’s assertion that numbers presented on a demonstrative chart should be considered as “loss” connected to the conspiracy counts for which Mr. Abegunde was committed. In short, the Government has admitted to this point that most of the transactions listed on their demonstrative have no readily ascertainable “victim.”

More troubling, from the Defendant’s perspective is the fact that there is no way for the Government to assert that the majority of the numbers in their chart is a direct or by-product of any illegal activity whatsoever. It is the Defendant’s contention that *inter alia* the numbers can not be shown to have come from any foreseeable results of a “conspiracy” for which Mr. Abegunde has been found guilty.

If this Court simply follow the factors that the Sixth Circuit adopted in the U.S. v. Donadeo, 910 F.3d886(2018), as originally expressed in U.S. v. Salem, 657 F.3d 560 (7th Circuit 2011), it is

abundantly clear, that the Government's chart of "loss" should not be considered in the calculations of "relevant conduct" regarding Mr. Abegunde.

In an attempt to illustrate this point, the writer will take the cases currently before the Court and compare with cases cited by the Government in their "Response to Defendant's Memorandum" when measures in the calculus of the six (6) Donadeo factors:

1. The existence of a single scheme;
2. Similarities of modus operandi;
3. Coordination of activities among schemers;
4. Pooling of resources or profits;
5. Knowledge of the scope of the scheme;
6. Length and degree of defendant's participation in the scheme.

The comparison cases are as follows:

1. U.S. vs. Donadeo, 910 F.3d 886 (2018)

This case involved a scheme to defraud the Cuyahoga Heights School District ("the District") in Ohio. Joseph Palazzo recruited individuals including David Donadeo to submit billing as individual contractors for work that they were supposed to have done but did not do on behalf of the school district. This resulted in the submission of and subsequent payment of bogus bills totaling over \$3.3 million dollars.

2. U.S. v. Carmichael, 676 Fed. Appx. 402 (6th Cir. 2007)

From August 2010 to September 2012, co-conspirators, including Carmichael, created fictitious businesses to list automobiles for sale on the internet. People would deposit funds in bogus accounts via wire transfer. America co-conspirators sent money to

European co-conspirators and, of course, the purchasers would not receive their vehicles after spending thousands of dollars.

3. U.S. v. Abegunde (Before this Court)

As this Court is aware, Mr. Abegunde has been convicted of Conspiracy to Commit Wire Fraud, Conspiracy to Commit Money-Laundering, Conspiracy to Commit Marriage Fraud, and Witness Tampering.

During trial, the Court received proof that there was a business email compromise (“BEC”) on July 25, 2016. Money from this BEC was traced to a “Tammy” who was apparently complicit in romantically luring Javier Ramos-Alonzo into receiving monies and sending portions back to “Tammy.” Money from this transaction was alleged to have gone into the account of Ayodegi Ojo, who opened an account with a bank in Atlanta, Georgia area while visiting Mr. Abegunde. The Government showed proof at trial that Mr. Abegunde answered a call from a bank official related to the deposit (\$9,000.00) that was made by Mr. Ojo. Mr. Abegunde acted like Mr. Ojo for convenience of the parties and told bank officials that if money was in the account that should not be, he absolutely approved reversal of the transaction and that the money should be withdrawn and paid to the rightful owner. This Nine Thousand Dollars and 00/100 (\$9,000.00) amount is the only amount that the government has provided any proof that was deposited into an account that was remotely related to Mr. Abegunde.¹

U.S. v. Donadeo

1. Single Scheme

¹ The Government presented proof at trial that Mr. Ojo was in fact in the Atlanta, Georgia area of the United States when this account was opened.

To defraud the Cuyahoga Heights School District of Northern (“the District”) in Northern Ohio. Pg. 889.

2. Modus Operandi Similarity with Other Co-Defendants

The Defendant set up a sham company purporting to provide independent contract work. The independent contractor would submit a bogus invoice and subsequently receive pay. Co-Defendant Palazzo worked for the District. After paying the fraudulent independent contractors, Mr. Palazzo would then be paid from the independent contractor. Pg. 889-892.

3. Coordination of Activity

- a. Co-Defendant Palazzo recruited Defendant Donadeo to set up the sham company. Pg. 890.
- b. Co-Defendant Palazzo explained how the companies could bill the District through him. Pg 890.
- c. Defendant Donadeo was told how to work the scheme and efforts to avoid law enforcement. Pg 891.

4. Pooling of Resources and Profits

Co-Defendant Palazzo instructed other Co-Defendants including Defendant Donadeo on how to construct accounts and used \$100.00 of his funds to set up the sham business account.

5. Knowledge of the Scope of the Scheme

It was clear that the Defendant knew at the outset that the scheme to defraud the District was in place and that his activities were in furtherance of said

scheme. Pg. 898.

6. Length and Degree of the Defendant's Participation

The Defendant was "middle of the tier" in scheme, but was a participant for nearly a third of the loss from the conspiracy due to his two (2) year involvement.

U.S. vs. Carmichael

1. Single Scheme

Setting up phony automobile vendor businesses to defraud people thinking that they were purchasing a car.

2. Modus Operandi

The individuals would set up accounts connected to sham businesses, advertise vehicles, when people wired funds, the money was elighted from the account by the various co-defendants. The victims are easily identifiable.

3. The Defendant set up at least five (5) accounts using false identification. The money was then wire transferred to overseas accounts. The Co-Defendants worked together producing false identification cards, and in manipulating the funds in overseas accounts.

4. Pooling Resources and Profits

Resources were combined to create false identifications and accounts.

5. Knowledge of Scope of Scheme

The Defendant knows that she was setting up accounts to receive funds from individuals that were purported to be in the automobile business. She also knew that

when money was sent, there were no automobiles being transferred. Defendant clearly knew that she and Co-Defendants were engaging in this scheme.

6. Length and Degree of Behavior

Carmichael engaged in this behavior for a period of over two (2) years (from August 2010 – September 2012). The Defendant clearly knew that she was receiving money for automobiles when she did not attempt to fulfill the expected sale.

U.S. vs. Abegunde

1. Single Scheme

Mr. Abegunde has been convicted of Conspiracy to Commit Wire Fraud, Conspiracy to Commit Money-Laundering, Conspiracy to Commit Marriage Fraud, and Witness Tampering.

While the Government was successful in securing a conviction, the proof at trial supported the following:

1. That the Co-Defendants that were on trial did not know each other, nor did they have a readily ascertainable “scheme” in place;
2. That unlike any other “money laundering” scheme the Government has never explained how the money that was procured by the “BEC” or from the “romance scam” was in any way cleaned or “laundered” by Mr. Abegunde and returned “clean” to the parties responsible for the BEC;
3. Unlike either of the previously described cases, there is not a clearly defined target or victim. One identifiable transaction is presented that indicates that the defendant allegedly victimized someone and therefore said person or entity was

allegedly victimized.

In short, the Government can not in anyway show that any “single scheme” was in place wherein the Defendant acted in concert with anyone to produce a desired result.

2. Modus Operandi

Again, the Defendant points to the inconsistent theories of modus operandi suggested by the Government. While the Government has written two memorandums that are filled with conclusory assumptions, they have continuously overlooked the one glowing fact that exists.²

Reviewing the conversations between Mr. Abegunde and other individuals (whether indicted or unindicted) clearly shows the desire of Mr. Abegunde to buy and sell Naira.³

What is missing and what has been consistently missing is any of the proceedings is any indication that clearly shows and explains where the funds were coming from. Furthermore, although the Government uses language suggesting a presumptive approach towards what they are claiming as loss, there was one identifiable source of money presented at trial that can substantiate the claims of a clear modus operandi.

3. Coordination of Activity

The first assertion that any of the funds used to purchase Naira by Mr. Abegunde was from any other illegal source is raised the “Supplemental Position of Defendant’s Loss.” At trial the following theory was asserted:

² As entry in Exhibit B0001 is clear as Baja Fresh Autos requests “I need Naira.” “at 440.”

³ Naira is the Nigerian unit of money.

1. A BEC that took place in Memphis;
2. This breach affected a mortgage company in Washington State,;
3. This resulted in money being received by another party;
4. A party that held themselves out to be a female named “Tammy”;
5. “Tammy” would send money to a fake boyfriend in California, ask him to wire the money back to “Tammy” and that a portion of said funds would then be taken to the United States and deposited in the account of Ayodeji Ojo;
6. The money that was deposited by Mr. Ojo was found to, in part, be related to the BEC and romance scheme;
7. That Mr. Abegunde, whose telephone number was on the account would be called regarding the money which was purported to be Nine Thousand Dollars and 00/100 (\$9,000.00); and
8. That Mr. Abegunde acted as if Mr. Ojo and told the bank to simply reverse the funds to the proper owner.

In the Government’s supplement, they indicate that an “A.M.” was allegedly defrauded by a man named Baja Fresh, and that her \$15,000 was spent by Baja Fresh to buy Naira through Mr. Abegunde. According to the Government’s supplemental brief, this \$15,000.00 was believed by “A.M.” to be a deposit for sweepstakes that she had purportedly won. Supplemental Memorandum, pg. 4.

After the hours of studying the inter-workings of this case, this is the first claim that sweepstake earnings deposits were a form of fraud in the conspiracy. Somehow related to Mr. Abegunde.

Likewise, the Government says that \$700.00 related to a rental deal between “KGR and OJR” should be calculated. This is the first time it has been asserted that a dispute regarding rent should be calculated as relevant loss.

From pretrial meetings, intense and complete reviews of discovery, a ten (10) day trial, and two sentencing hearings, I believe it is crystal-clear that there was never any coordination of activity between any of the co-conspirators.

4. Pooling Resources and Profits

The only common denominator between Defendant Abegunde and any of the parties highlighted by the Government’s original position paper and subsequent supplement is that Baja Fresh, Money Guy Dejobo, and Goboyeaj Ajayi expressed a desire to buy Naira. They seemingly knew Mr. Abegunde knew how to purchase Naira, so they asked him to do so.

5. Knowledge of Scope of Scheme

The Government has not provided proof that Mr. Abegunde knew or should have known that any of the transactions were from funds illegally gained. On the one hand, if Mr. Abegunde poses questions regarding the course of funds, he is exhibiting signs that he believes that funds to have been procured illegally. On the other hand, if he fails to pose a question, then he is acting deliberately indifferent. The Government does not seem to grasp the scope of any scheme. How can Mr. Abegunde be expected to.

6. Duration of Participation in the Conspiracy by Defendant

While the Government shows that Defendant purchased Naira over a period of two years, they only show that one deposit that clearly was somehow related to a fraudulent scheme. It is absolutely impossible to determine the duration of a conspiracy where the object of

said conspiracy is not clearly defined.

In Defendant's Memorandum, the Court was asked to consider the loss calculation in U.S. v. Moody. Likewise, Mr. Abegunde asked this Court to fully review said case.

United States v. Moody, No. 18-3620 (6th Cir. 2019).

Moody did the following:

1. Invested \$50,000.00 to start a company called Bridges that was set up to conduct job training in Toledo, Ohio. (Moody, pg.2)
2. The company entered into 17 contracts with Lucas County, Ohio worth \$15.7 miller dollars. (Moody pg. 2)
3. Bridges would do work and submit bills to a program called TANF (a recipient of federal block grants through the Department of Human Services). The TANF Program would then pay the bills based on the submissions. (Moody, pg. 3)
4. Moody was not an employee, but was put on payroll.
 - a. Making \$70,00.00 for "no-show" work. Over the life of the scheme, this totaled \$396,198.79.
 - b. Moody received "dividend checks of additional \$17,000.00.
 - c. Moody received another \$14,600 to support his actual business "Flex Reality." (Moody pg. 4)

Moody's money was directly traceable to the named scheme and thus traceable to the "victim" TANF and Department of Human Services. At sentencing, the Court

considered that \$3,500.00 directly related to the entire scheme participated in by Moody.
(pg. 14-15)

If the Moody approach is followed, this Court has already ascertained the proper amount related to the alleged conduct of Mr. Abegunde. There has never been any adaptation in any Court similar to the approach that the Government asks this Court to take. This request is not only misguided, but offensive to any notion of fairness in sentencing.

I respectfully ask that Court to review the exerts from the communications between Mr. Abegunde⁴ and Money Guy Dejo. These communications should make abundantly clear that it is not the intent of Abegunde to engage in any conspiracy.
(Attachment samples shown as Bates 2472-2521).

If reviewed, the Court will fin discussions of the exchange rate for Naira versus the U.S. Dollar. *(see Bates Stamped documents numbers 2475, 2476, 2477, and 2478)*

The Court will also find Mr. Abegunde continuously probing whether Money Guy Dejobo can validate the source of funds, and that he should not engage or desire in engaging in the “structuring” of deposits to avoid attention from authorities. *(Please see Bates stamped documents numbers 2481 and 2507)*

In short, while the Government asserts that the document establishes a conspiracy, the writings clearly establish the exact opposite.

⁴ During the communications the What’s App name for Mr. Abegunde is Efejay.

Respectfully submitted,

/s/ John Keith Perry, Jr.

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Certificate of Service

I hereby certify that a copy of the foregoing *Defendant's Supplemental Sentencing Memorandum* has been filed and sent via this Court's ECF system on this the 18th day of October 2019.

/s/ John Keith Perry, Jr.

John Keith Perry, Jr.