

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

UNITED STATES OF AMERICA,

Plaintiff,

VS.

No. 17-20238-SHL-7

OLUFOLAJIMI ABEGUNDE,

Defendant.

TRANSCRIPT OF PROCEEDINGS

BEFORE THE

HONORABLE SHERYL H. LIPMAN

JUNE 25, 2018

MARK S. DODSON
OFFICIAL COURT REPORTER
167 N. MAIN STREET - SUITE 422
MEMPHIS, TENNESSEE 38103

UNREDACTED TRANSCRIPT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- A-P-P-E-A-R-A-N-C-E-S -

For the Plaintiff:

DEBRA LYNN IRELAND
ASSISTANT U.S. ATTORNEY
SUITE 800
167 N. MAIN ST.
MEMPHIS, TN 38103

TIMOTHY C. FLOWERS
U.S. DEPARTMENT OF JUSTICE
1301 NEW YORK AVE. NW
SUITE 600
WASHINGTON, DC

For the Defendant:

WILLIAM D. MASSEY
3074 EAST STREET
MEMPHIS, TN 38128

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

W I T N E S S I N D E X

| WITNESS | PAGE | LINE |
|--------------------------------------|------|------|
| ----- | | |
| DAVID PALMER | 20 | 1 |
| DIRECT EXAMINATION BY MS. IRELAND: | 20 | 5 |
| CROSS-EXAMINATION BY MR. MASSEY: | 33 | 14 |
| REDIRECT EXAMINATION BY MS. IRELAND: | 51 | 2 |

1 JUNE 25, 2018

2

3 **THE COURT:** Looking at the case before we get
4 to the bond issue, Mr. Abegunde has certainly several
5 times expressed a desire for a trial, and Mr. Massey has
6 reiterated that today.

7 Where is the government on that? Because I'm
8 getting impatient, too.

9 **MS. IRELAND:** Understood, Your Honor.

10 As far as the extradition goes, there are some
11 things that are simply out of our control. We are doing
12 our very best to stay on top of it. It's a process.

13 As far as a trial for Mr. Abegunde, if Your
14 Honor doesn't mind hearing aspects of the case more than
15 once, we should be able to proceed with Mr. Abegunde
16 separate from some of the others even though they are
17 related in an overall sense.

18 **THE COURT:** Well, in reading the various
19 things, some submitted directly by Mr. Abegunde, which is
20 really not appropriate, but still reading them, it sounds
21 as if -- and even from what Mr. Massey and what you all
22 have said, that there may not be as much repetition as
23 there would be perhaps with another defendant.

24 Does the government take a different position?

25 **MR. FLOWERS:** I think that's accurate, Your

1 Honor.

2 **MR. MASSEY:** (Nods head affirmatively.)

3 **THE COURT:** So how long would a trial last
4 with just Mr. Abegunde?

5 **MR. FLOWERS:** My guess would be three to four
6 days.

7 **MS. IRELAND:** Three to four days.

8 There would be out-of-town witnesses.

9 **THE COURT:** For the whole trial you were
10 saying three to four weeks.

11 **MS. IRELAND:** Yes, Your Honor.

12 **THE COURT:** So, you know, given the issues
13 with, you know, Canada puts off an extradition hearing
14 for two months and, you know, who knows where some of
15 these other folks are, I'm inclined to go ahead and set a
16 trial date for Mr. Abegunde unless the government is
17 strenuously objecting, and then I would look at the issue
18 on paper more.

19 **MS. IRELAND:** No, Your Honor.

20 No objection.

21 **THE COURT:** All right. When can we be ready
22 for trial, Mr. Massey?

23 **MR. MASSEY:** I'm sorry, Your Honor?

24 **THE COURT:** When can we be ready for trial?

25 **MR. MASSEY:** I assume there is no other

1 discovery that will be forthcoming; is that a good
2 assumption?

3 **MS. IRELAND:** There is no other discovery
4 regarding this issue.

5 **MR. MASSEY:** Okay.

6 **MS. IRELAND:** At this time.

7 **MR. MASSEY:** Your Honor, how far out is the
8 Court looking?

9 **THE COURT:** Ms. Ireland, that was an
10 interesting response. Is there anything you would like
11 to explain or is that all you have to say?

12 **MS. IRELAND:** The investigation is ongoing.

13 **THE COURT:** All right.

14 **MR. MASSEY:** I believe I've probably had that
15 discussion with my client as well.

16 **MS. IRELAND:** In fact, some of that has been
17 provided to Mr. Massey.

18 **THE COURT:** Well, I mean -- and you may not
19 know the answer to this, and I understand, but are we
20 looking at a superseding indictment? Because I certainly
21 don't want to go down a path, particularly if you have
22 out-of-town witnesses coming in that's too aggressive if
23 you are looking at a superseding indictment.

24 **MS. IRELAND:** To be frank, Your Honor, I don't
25 anticipate a superseding. There may be an additional.

1 Insofar as superseding goes, it would certainly impact
2 the extradition proceedings, and if we're superseding as
3 to one party and not the others, we don't want to throw a
4 wrench into something that's already complicated.
5 However, for things that are not part of that initial
6 conspiratorial action, there could be a subsequent
7 indictment.

8 **THE COURT:** That implicates Mr. Abegunde as
9 well?

10 **MR. FLOWERS:** Yes, Your Honor.

11 **MS. IRELAND:** Yes.

12 **MR. MASSEY:** May I inquire if that would be
13 here in this jurisdiction?

14 **MR. FLOWERS:** Yes.

15 **MS. IRELAND:** Yes, it would.

16 **THE COURT:** But these are things that could be
17 potentially tried separately?

18 **MR. FLOWERS:** May I have a moment, Your Honor?

19 **THE COURT:** Yes.

20 (Pause) .

21 **MS. IRELAND:** We believe, Your Honor, that
22 they should be together. Keeping that in mind, we can
23 certainly do our best to get something on record as
24 quickly as possible within the next month or so.

25 **MR. FLOWERS:** Yes, I would say that's a

1 reasonable time.

2 **THE COURT:** Next month or so, is that what you
3 said?

4 **MR. FLOWERS:** Yes, Your Honor.

5 **THE COURT:** Well, practically trying to find a
6 trial date, because we've got a lot of trials going, and
7 so it is going to be possibly for September.

8 **MS. IRELAND:** Mr. Flowers is in trial the week
9 of September 17th.

10 **MR. FLOWERS:** Yes, Your Honor. It has not yet
11 been moved, but I anticipate -- I had discussions with
12 the defense counsel two or three days ago. We anticipate
13 the week of September 17th for that trial.

14 **THE COURT:** The problem with the 17th is I
15 will not be here on the 19th. I'm guessing it's one of
16 the Jewish holidays because that's the right time frame,
17 so I hate to start a trial and then.

18 **MR. MASSEY:** I'm starting a trial that Monday
19 as well, Judge.

20 **THE COURT:** On the 17th.

21 **MR. FLOWERS:** I'm sorry, Your Honor, I was
22 unclear. I will be having a trial scheduled in another
23 jurisdiction for that week, Your Honor.

24 **THE COURT:** Right, but I thought you were
25 saying you may -- it sounded like it may not go.

1 **MR. FLOWERS:** It's going to be moved to that
2 date.

3 **THE COURT:** To that date.

4 **MR. FLOWERS:** I'm sorry for being unclear.

5 **THE COURT:** That's all right. It is a bad
6 week anyway.

7 **MR. MASSEY:** Your Honor, is the week of
8 October 1st too far out?

9 **THE COURT:** No, I was just looking at that
10 because it looks like there is another trial scheduled
11 that day, but this would -- you know, this is the older
12 one, so it would bump the other if it is going.

13 **MS. IRELAND:** I have an obligation, Your
14 Honor, through the 2nd of October. After that I'm in the
15 clear.

16 **MR. FLOWERS:** And that week is clear for me,
17 Your Honor.

18 **THE COURT:** You have an obligation through the
19 2nd?

20 **MS. IRELAND:** Yes, Your Honor.

21 **THE COURT:** So either start trial on the 3rd
22 or bump it to the -- the next week is open, October 9th.

23 **MR. FLOWERS:** For me as well, Your Honor.

24 **MR. MASSEY:** I'm open there, too.

25 **MS. IRELAND:** That would be fine.

1 **THE COURT:** Let's set October 9 for trial,
2 9:30. Hopefully -- the 8th is a holiday, but hopefully
3 we can get it in that week still, the 9th through the
4 12th.

5 Set a final report date and change of plea
6 deadline. How about September 26th at 9 o'clock? That's
7 a Wednesday. Is that enough in advance for the
8 government given out-of-town witnesses?

9 **MS. IRELAND:** Yes, Your Honor.

10 **THE COURT:** Mr. Massey, are you available
11 September 26th, 9 o'clock?

12 **MR. MASSEY:** Yes, Your Honor.

13 **THE COURT:** So that's final report date and
14 change of plea deadline.

15 Mr. Massey, exclude time through October 12th
16 to prepare the case. That's the end of that trial week.

17 **MR. MASSEY:** Yes, Your Honor.

18 **THE COURT:** And I'm assuming that, at least as
19 of where we are now, discovery is complete?

20 **MS. IRELAND:** Yes, Your Honor.

21 **THE COURT:** Is that correct? Okay. I suspect
22 any deadline for motions has passed.

23 **MR. MASSEY:** I thought we declared the case
24 complex which would --

25 **THE COURT:** We did.

1 **MR. FLOWERS:** That's my understanding as well.

2 **THE COURT:** So let me give you a motion
3 deadline. August 3rd.

4 **MR. MASSEY:** Yes, Your Honor. That's fine.

5 **THE COURT:** Because that should give me -- if
6 there is a motion, you know, anything that would require
7 an evidentiary hearing, that should give me enough time
8 to get a response, set a hearing and get it done.

9 Anything else we need to address in terms of
10 the schedule for Mr. Abegunde?

11 **MS. IRELAND:** I don't believe so, Your Honor.

12 **THE COURT:** Anything else, Mr. Massey?

13 **MR. MASSEY:** No, Your Honor.

14 **THE COURT:** In terms of the bond, are we
15 hearing testimony today?

16 **MS. IRELAND:** Your Honor, we would essentially
17 offer an attorney proffer, however, the case agent, one
18 of two cases agents is here if Your Honor believes that
19 testimony is necessary.

20 **THE COURT:** What is your position that
21 testimony isn't necessary?

22 **MS. IRELAND:** Well, he already had a hearing.

23 **THE COURT:** He did.

24 **MR. MASSEY:** Well, there wasn't much of a
25 hearing, if I may interject. There was no report done.

1 I don't believe there was any evidence taken at it.

2 **MS. IRELAND:** Actually there was to be a
3 report, but Mr. Abegunde refused to be interviewed.

4 **THE COURT:** That's my understanding is that he
5 didn't want to participate in a pretrial services
6 interview at the time. So, you know, technically I think
7 we are on appeal. A prior court has heard this matter,
8 and so this is an appeal.

9 **MR. MASSEY:** Okay.

10 **THE COURT:** Mr. Massey, what's your position?

11 **MR. MASSEY:** Regarding the witnesses?

12 **THE COURT:** Or the standard I should use here.

13 **MR. MASSEY:** The standard used?

14 **THE COURT:** Yes.

15 **MR. MASSEY:** Your Honor, I think given the
16 unique status of this case, Your Honor should hear it
17 just de novo. I think that would be the appropriate
18 thing because he really did not have a meaningful hearing
19 in Atlanta.

20 **THE COURT:** When you say not a meaningful
21 hearing, I mean based on what?

22 **MR. MASSEY:** There was no -- there was nothing
23 there to put up for him. If I had to use that record, I
24 wouldn't even have anything to argue. Your Honor has
25 nothing really from that record that I know of to review

1 other than there is no report. And it's my understanding
2 that -- it's my understanding that that is due to maybe a
3 misunderstanding --

4 **THE DEFENDANT:** Yes --

5 **MR. MASSEY:** No, just let me do it.

6 **THE COURT:** Well -- and I saw this somewhere,
7 and I can't remember now which document I saw it in, that
8 Mr. Abegunde got advice from a lawyer not to participate.
9 It's still his decision. I mean I have a problem with a
10 true de novo hearing when we're here because of a
11 decision that the defendant made at the time.

12 **MS. IRELAND:** I believe the proceedings, as in
13 all magistrate courts, are recorded. I don't have a copy
14 of that recording or a transcript, but I know that they
15 can be made available.

16 **THE COURT:** Mr. Massey, are you aware of the
17 status of that?

18 **MR. MASSEY:** Your Honor, I am not. I didn't
19 think that -- I thought it was just done on the report
20 alone, and there was nothing in the report, I mean
21 nothing that the Court would need to consider a bond.

22 **THE COURT:** Let me hear from -- Ms. Ireland,
23 let me hear your proffer first, and we will go from there
24 as to what else I might want to hear.

25 **MS. IRELAND:** The information in the

1 indictment met the standard for probable cause. Your
2 Honor is to consider the strength of the case, and we
3 could certainly put on, I suppose, if put to the test,
4 additional facts, but much of it would be a reiteration
5 of the indictment.

6 The next matter is an argument regarding the
7 risk to the community and/or the flight risk. We can
8 proffer information that there is currently an
9 immigration detainer against Mr. Abegunde, who is not
10 here on a visa. He is on a visa overstay and had applied
11 for citizenship through a U.S. military member. He was
12 arrested while leaving the country. We can give
13 additional information about that if Your Honor so
14 requires.

15 And even based in the report that was provided
16 here to pretrial services, there is a spotty record of
17 employment and, furthermore, no ties whatsoever to this
18 district. And Your Honor has to decide whether there is
19 a reasonable set of circumstances that can ensure that
20 Mr. Abegunde appear as directed for things going on in
21 this district for hearings, trials and what have you.

22 Based on that and the findings made in the
23 Rule 5 documents by the magistrate judge who heard this
24 initially, we would submit it to Your Honor and say that
25 that is sufficient. However, if Your Honor says that you

1 would like to hear testimony, then we will provide it.

2 **THE COURT:** Okay.

3 Mr. Massey, any response?

4 **MR. MASSEY:** Your Honor, it appears to me in
5 the indictment that there are conclusory allegations, and
6 there may be circumstantial, a circumstantial nexus to
7 Mr. Abegunde. And it appears to me from reading the
8 indictment and the various discovery and pleadings that
9 the main connection with him is through Mr. Ojo. And
10 Mr. Ojo evidently came and stayed a few days with him,
11 with Mr. Abegunde because they were old college
12 roommates, and he's known him for a long time. His
13 account was closed down, Mr. Ojo's account was closed
14 down at Bank of America. And he had a check that was
15 given to him from Bank of America, and he couldn't cash
16 it because they closed his account. And it was due to
17 fraud, due to suspicion of fraud. So he asked
18 Mr. Abegunde if he could, if he could use his address to
19 open an account. He was with him no more than probably
20 what, two weeks, 10 days, a short while. And I don't
21 know and haven't been able to see any direct connection
22 of Mr. Abegunde to these charges, the indicted charges.
23 The fact that he gave Mr. Ojo permission to use his
24 address is where all this stems from is what I gather.

25 **MS. IRELAND:** Arguably Mr. Abegunde would have

1 to testify to that.

2 **MR. MASSEY:** Your Honor, I would also say, if
3 I may, and then I think it's probably all I have to say
4 regarding the indictment, it appears that there is a
5 \$20,000 transfer from Mr. Alonso, who was here just a
6 moment ago, to Mr. Ojo's account, one that was opened,
7 and I think it's the account that was opened using
8 Mr. Abegunde's address, but it was through Mr. Ojo. It's
9 my understanding that that \$20,000 was inadvertent and it
10 was backed out, it was never used. That's the
11 information I have. I've not been able to confirm that,
12 which is one of the reasons I wanted to ask the agent if
13 that's consistent with their investigation.

14 In addition, I don't see anything that shows
15 Mr. Abegunde's connected with this.

16 **MS. IRELAND:** Your Honor, that's a matter for
17 trial. That's a factual assertion for defense to -- it
18 has nothing to do with whether Mr. Abegunde is a danger
19 to the community if released or if he will show as
20 ordered by the Court.

21 **THE COURT:** There were two points mentioned by
22 Ms. Ireland that I didn't hear from you on, Mr. Massey;
23 one, that he was in the country on a visa overstay and
24 which would mean he was not legally in the country, and
25 the second was that he was arrested while fleeing the

1 country.

2 Weren't those two things you said, Ms.

3 Ireland?

4 **MS. IRELAND:** Yes, Your Honor.

5 **THE COURT:** Any response there, Mr. Massey?

6 **MR. MASSEY:** He was arrested at the airport.
7 And he had a companion with him. It is my understanding
8 that there was not -- they were not leaving. They were
9 changing flights.

10 **THE COURT:** On the way where?

11 **MR. MASSEY:** I think they were going to the
12 Dominican Republic, but they were rescheduling that
13 flight instead of leaving that day. And I don't know,
14 but I don't think there was a lot of like clothes with
15 them for any travel, which may well indicate that they
16 were there just to change the flight.

17 **THE COURT:** Ms. Ireland?

18 **MS. IRELAND:** If you've ever been to the
19 airport in Atlanta, one doesn't go there unless one is
20 leaving or departing when flights can be changed online.

21 **THE COURT:** I guess, Mr. Massey, your focus on
22 the facts of the case is the reason for not -- for
23 arguing against detention.

24 **MR. MASSEY:** That's correct.

25 **THE COURT:** Because of your contention that

1 the case is not a strong one against Mr. Abegunde?

2 **MR. MASSEY:** Well, that's correct, Your Honor.
3 It's circumstantial at best, and I'm having trouble
4 connecting the circumstances. But if you would -- I
5 could direct Your Honor to page 9 where -- and in
6 paragraph 41 about setting up bank accounts for the
7 purpose of receiving fraudulently obtained funds and
8 sending them, Mr. Abegunde is not included in that. And
9 if this is a matter of Mr. Ojo and he conspiring to set
10 up some accounts for a fraudulent purpose, then it looks
11 like he would be in that one. That's why I say it seems
12 to be so circumstantial. Particularly then I would
13 direct you, if I may, to page 13 in P and Q.

14 **THE COURT:** Are there other allegations
15 involving Mr. Abegunde specifically, Ms. Ireland?

16 **MS. IRELAND:** Your Honor, it is a matter of
17 law that each conspirator need not know of all overt acts
18 and all overt acts need not be placed in the indictment.

19 **THE COURT:** Correct. At the same time, there
20 needs to be a certain measure of evidence against
21 Mr. Abegunde.

22 What do you contend that measure should be at
23 this stage?

24 **MS. IRELAND:** Your Honor's discretion.

25 **THE COURT:** All right. I think I need to hear

1 from the case agent.

2 **MS. IRELAND:** All right.

3 **THE COURT:** Why don't y'all have a seat at
4 counsel table. We'll hear from the case agent.

5 **MS. IRELAND:** When Your Honor is ready?

6 **THE COURT:** Yes, please.

7 **MS. IRELAND:** United States calls David
8 Palmer.

9 **THE CLERK:** Please raise your right hand and
10 be sworn.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

DIRECT - DAVID PALMER

20

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DAVID PALMER,

having been first duly sworn, took the witness stand and testified as follows:

DIRECT EXAMINATION

BY MS. IRELAND:

Q. Would you please introduce yourself and spell your first and last names for the record.

A. Good afternoon. My name is Special Agent David Palmer. I'm with the FBI. It's D-A-V-I-D, P-A-L-M-E-R.

Q. What is your assignment, Agent Palmer?

A. I work cybersecurity investigations and criminal intrusion matters.

Q. Are you one of two co-case agents on the matter of United States versus Babatunde Martins, et al?

A. I am.

Q. Is Mr. Abegunde one of the subjects of that investigation?

A. He is.

Q. Can you explain the genesis of this investigation? What happened to kick off this investigation here in the Western District of Tennessee?

A. The FBI's investigation centered around a series of business e-mail compromises against a local real estate company whose servers are in the Western District of Tennessee. The intrusions occurred causing wire

DIRECT - DAVID PALMER

21

1 transfers for individuals' down-payments or home payments
2 to be diverted to accounts controlled by the subjects who
3 were behind the business e-mail compromises.

4 Q. Have you directly traced any diverted funds through
5 varying techniques of investigation and found where they
6 went?

7 A. I have.

8 Q. Did any of them go through California?

9 A. They did.

10 Q. Can you please describe that?

11 A. There was a business e-mail compromise against the
12 real estate company and a closing attorney where a large
13 down-payment was diverted from the intended recipient to
14 an account controlled by an individual in California.

15 Q. Do you know the name of the person in California?

16 A. It's Mr. Ramos who's on this indictment.

17 Q. So he is a co-defendant in this case?

18 A. Correct.

19 Q. And what happened after the amount of money hit
20 Mr. Ramos' bank account?

21 A. After the money went into his bank account,
22 Mr. Ramos chopped it, which is to say he took sections of
23 the money and either wired it or deposited it into other
24 individual, other co-conspirator's accounts as directed.

25 Q. When you say as directed, how do you know that it

DIRECT - DAVID PALMER

22

1 was directed?

2 A. I reviewed a series of e-mails between Mr. Ramos
3 and a co-conspirator where he was instructed to whom and
4 how to move that money.

5 Q. Did any of that money move through Atlanta?

6 A. It did.

7 Q. Can you describe what happened?

8 A. Mr. Ramos was instructed to make a deposit into the
9 bank account of Mr. Ojo.

10 Q. Did you look at the banking records for Mr. Ojo?

11 A. I did.

12 Q. And was there a residence address on that account?

13 A. Yes.

14 Q. What was the address?

15 A. It was Mr. Abegunde's address in Atlanta.

16 Q. Did anyone speak with Mr. Abegunde during this
17 investigation?

18 A. They did.

19 Q. And were they FBI agents in the Atlanta area?

20 A. Correct.

21 Q. Can you summarize what they learned when they spoke
22 with him?

23 A. They interviewed Mr. Abegunde at his residence,
24 same residence that was on the bank record and during the
25 interview discussed that transaction and Mr. Ojo's

DIRECT - DAVID PALMER

23

1 involvement.

2 Q. Okay. What did Mr. Abegunde have to say about
3 Mr. Ojo and the bank account and his residence?

4 A. He stated Mr. Ojo had left the country. The bank
5 account was set up using his address because Mr. Ojo's
6 account was shut down and he needed a place to receive
7 the funds, and so he did use his address.

8 Q. Now, there are ties between these two individuals,
9 is that right?

10 A. That is correct.

11 Q. Can you describe them?

12 A. Mr. Ojo and Mr. Abegunde were business partners in
13 a company called FJ Williams. We have information
14 showing Mr. Ojo made a \$150,000 investment and was also
15 one of the directors of the company along with
16 Mr. Abegunde.

17 Q. And that was based on records from the Georgia
18 Department of State where businesses are registered; is
19 that right?

20 A. That's how the business is registered, correct.

21 Q. Were there also admissions on the part of
22 Mr. Abegunde and Mr. Ojo regarding the structure of that
23 company?

24 A. Yes.

25 Q. What were they?

DIRECT - DAVID PALMER

24

1 A. Mr. Abegunde during his interview described FJ
2 Williams as a financial exchange company similar to a
3 Western Union but during the interview did not state
4 Mr. Ojo had any involvement with that company.

5 Q. Was it a licensed financial exchange?

6 A. We found some records to indicate it had some
7 business licenses in the U.S, but not sure exactly how
8 it's licensed as far as financial exchanges go.

9 Q. And financial exchanges do have to be licensed, is
10 that right?

11 A. Correct.

12 Q. It's against the law to run one that is not
13 registered as such, correct?

14 A. Correct.

15 Q. Insofar as FJ Williams goes, did you look at any
16 bank accounts associated with it, Mr. Ojo or
17 Mr. Abegunde?

18 A. I have.

19 Q. Can you summarize what you learned?

20 A. Many different bank accounts between Mr. Abegunde
21 and FJ Williams and Mr. Ojo, a majority of which have
22 been closed for fraud, the bank accounts show multiple
23 financial transactions of wires coming in, wires going
24 out, cash deposits into the account from individuals who
25 also have been identified as part of this investigation.

DIRECT - DAVID PALMER

25

1 Q. Did you see anything that indicates the ordinary
2 expenses associated with a business like rent or
3 salaries?

4 A. Like I said, there was a lot of bank accounts in
5 his name and also in the name of his wife who lived with
6 him in Atlanta and also his fake wife who was in the
7 military in Korea. On some of those accounts, there were
8 normal transactions, but the vast majority of his
9 accounts were only wire transfers and financial exchange.

10 Q. Did Mr. Abegunde when he spoke to FBI agents offer
11 any explanation regarding this money transfer business?

12 A. He did. When questioned, he explained how Nigerian
13 fraud worked and how in his mind only the person who
14 committed the fraud was responsible, not the people later
15 down the line who may benefit from it.

16 Q. When you say benefit, does that include those who
17 received the money and pass it on?

18 A. Correct.

19 Q. Did those who receive the money customarily take a
20 cut?

21 A. They do.

22 Q. Did you see that in this case?

23 A. Yes.

24 Q. On the part of many or one individual?

25 A. Many of the money mules like Mr. Ramos would take a

DIRECT - DAVID PALMER

26

1 cut prior to sending it on to the next beneficiary.

2 Mr. Abegunde, through his financial exchange business,
3 also had a cut in those exchanges he made.

4 Q. Do you know if Mr. Abegunde has had accounts shut
5 down?

6 A. Yes.

7 Q. Do you know the reasons for those account
8 shutdowns?

9 A. For fraud.

10 Q. And do you have an estimate of how many times you
11 were able to find that that happened?

12 A. Almost every account we looked at.

13 Q. Did Mr. Ojo speak with agents in Atlanta as well?

14 A. Mr. Ojo had left for Nigeria by the time the agents
15 got to the residence, but he did speak to them via phone.

16 Q. Do you know the summary of that conversation?

17 A. There was not much information passed during that
18 telephone call other than to identify himself over the
19 phone to the agents.

20 Q. Do you know how Mr. Ojo came to be in the United
21 States?

22 A. Yes.

23 Q. How did you learn that?

24 A. Through reading -- we did a search warrant on
25 Mr. Ojo's e-mail account, and through reading his e-mail

DIRECT - DAVID PALMER

27

1 exchanges with Mr. Abegunde we learned that Mr. Abegunde
2 set up Mr. Ojo's travel to the United States including
3 airfare and travel arrangements for Mr. Ojo, his wife and
4 his child.

5 Q. Where did the finances come from to pay for that,
6 if you know?

7 A. I'm not sure.

8 Q. Okay. Now, you mentioned that a wife of Abegunde,
9 Mr. Abegunde, spoke with law enforcement in Atlanta. Can
10 you elaborate on that?

11 A. Correct, she did. She was interviewed by FBI
12 agents while they were performing a search warrant on
13 Mr. Abegunde's residence. She did speak with agents, and
14 she told agents that it was, in her words, Ojo was the
15 bastard who got Abegunde into this mess.

16 Q. Okay. Did she reside at that address?

17 A. She did.

18 Q. Was anybody else there with her?

19 A. Her child and her mother.

20 Q. Are you familiar with the circumstances under which
21 Mr. Abegunde was taken into custody?

22 A. I am.

23 Q. Can you share those, please?

24 A. We had information prior to his travel that he
25 would be leaving the country on the date he was arrested.

DIRECT - DAVID PALMER

28

1 We had contacted Homeland Security which operates Customs
2 and Border Protection. Their agents were waiting for him
3 to come to the airport. At some point, the agents felt
4 like they were made, and Mr. Abegunde and his business
5 partner attempted to leave the airport at which point
6 they were detained and arrested.

7 Q. Did Mr. Abegunde have a computer with him?

8 A. He did.

9 Q. What did he do with that computer?

10 A. At the point he was arrested, the customs agents
11 said that he tried to pass the computer to his traveling
12 companion.

13 Q. Was his companion under arrest?

14 A. No.

15 Q. Was his companion under indictment?

16 A. No.

17 Q. Did the agents make it clear that they were there
18 for Mr. Abegunde?

19 A. Yes.

20 Q. What else was in Mr. Abegunde's possession at that
21 time?

22 A. There were two cell phones and various other papers
23 and electronic devices.

24 Q. Were those cell phones reviewed?

25 A. They were.

DIRECT - DAVID PALMER

29

1 Q. Were they reviewed pursuant to a search warrant?

2 A. Correct.

3 Q. Can you summarize the contents if there was
4 anything relevant?

5 A. Most of the contents on the cell phones, discussion
6 of business transactions, mainly the financial exchanges
7 that he operated. We reviewed the context. There was
8 also conversations with a contact he called Wifey, which
9 was his wife in Atlanta, and 'Chae in Korea, which was
10 the person he was legally married to.

11 Q. Now you say that's a legal marriage. Was it legal
12 in the sense of being documented?

13 A. Yes.

14 Q. Was it genuine?

15 A. No.

16 Q. How do you know this?

17 A. Based on various interviews we've done as well as a
18 review of their conversations, there was an exchange of
19 money in return for her doing several immigration
20 interviews and sponsoring him for citizenship.

21 Q. This young lady, 'Chae, as she's referred to in
22 text messages, was she expecting to be paid?

23 A. She was.

24 Q. That's according to the context. Had she been
25 paid?

DIRECT - DAVID PALMER

30

1 A. Some but not all.

2 Q. Was she threatening to withdraw her support and
3 report to immigration that this was not a legitimate
4 marriage?

5 A. Correct. She said it was a business transaction
6 and she would withdraw if she was not paid.

7 Q. Was there anyone in the contact list from the
8 phones who has been investigated?

9 A. Yes.

10 Q. Can you elaborate, please?

11 A. There were multiple contacts in there who have been
12 under FBI and Homeland Security investigation. The FBI
13 agents in New Jersey and Baltimore have interviewed
14 several of the top contacts that Mr. Abegunde had in
15 there. One of them was interviewed recently regarding
16 several financial exchanges he had with Mr. Abegunde that
17 we've seen on the bank records and provided information
18 regarding that business.

19 Q. Okay. So he had information regarding FJ Williams?

20 A. Yes.

21 Q. What did he have to say?

22 A. He said his understanding was FJ Williams was a
23 shell alcohol importer company that was used to cover the
24 financial exchange business. This individual was known
25 to the FBI for fraud, had been interviewed multiple times

DIRECT - DAVID PALMER

31

1 prior and was cooperating at this point. He explained he
2 received fraudulent proceeds such as those from romance
3 scams and other Nigerian fraud. He would then pass the
4 money to Mr. Abegunde who would convert it into a
5 Nigerian currency, which was then sent to receivers in
6 Nigeria.

7 **MS. IRELAND:** If I could have just a moment,
8 please.

9 **THE COURT:** Yes.

10 **BY MS. IRELAND:**

11 Q. Do you know if Mr. Abegunde and Mr. Ojo exchanged
12 any messages regarding their interviews with the FBI
13 agents?

14 A. They did.

15 Q. And can you summarize those, please?

16 A. After the FBI interview in Atlanta, Mr. Abegunde
17 and Mr. Ojo exchanged messages regarding the structure of
18 FJ Williams where Mr. Ojo inquired as to what
19 Mr. Abegunde said to the agents, and there was the
20 inference that Mr. Abegunde told Mr. Ojo, don't worry
21 about FJ Williams, I lied, I told them you weren't on as
22 part of the company.

23 Q. Post those interviews, after those interviews, did
24 you notice any activity on any of the bank accounts
25 associated with Mr. Abegunde?

DIRECT - DAVID PALMER

32

1 A. You would have to be more specific. They are very
2 active.

3 Q. The one with Mr. Abegunde and the person you are
4 referring to as 'Chae?

5 A. Yes, they held a joint bank account with USAA.

6 Q. Was there any activity on that account after the
7 interviews with law enforcement?

8 A. There was constant movement of money among his
9 accounts. I can't specifically recall.

10 Q. Did the woman who was living in Mr. Abegunde's
11 apartment, did she speak with law enforcement when they
12 were serving the search warrant on his apartment?

13 A. She did.

14 Q. What did she say?

15 A. During that interview, she knew who Mr. Ojo was and
16 blamed him for getting Mr. Abegunde into the mess he's
17 in.

18 **MS. IRELAND:** And you did already testify to
19 that.

20 Just a moment, Your Honor.

21 **THE COURT:** Yes.

22 **BY MS. IRELAND:**

23 Q. After Mr. Abegunde was taken into custody, were
24 there any notable activities on his bank accounts?

25 A. Yes, after he was taken into custody, the FBI

CROSS - DAVID PALMER

33

1 attempted to seize several of his accounts. When we
2 contacted USAA in attempt to seize that bank account, we
3 were told that the money had been cleared out, and it was
4 done from an IP address that was known to be associated
5 with Mr. Abegunde's residence. At this point we knew he
6 was in custody and it would not have been him doing that.

7 **MS. IRELAND:** I think that is all I have for
8 you at this time, Agent Palmer.

9 Pass the witness, Your Honor.

10 **THE COURT:** Thank you, Ms. Ireland.

11 Mr. Massey?

12 **MR. MASSEY:** Thank you, Your Honor.

13 CROSS-EXAMINATION

14 **BY MR. MASSEY:**

15 Q. Good afternoon, Agent Palmer.

16 A. Good afternoon, sir.

17 Q. Am I correct in saying that the \$154,000 wire from
18 one of the buyer's accounts to what was diverted, is that
19 what started your investigation here?

20 A. There were several business e-mail compromises into
21 the local real estate company and their closing
22 attorney's account, one of which was the compromise that
23 you are referring to.

24 Q. Okay. And that \$154,000, I believe you were able
25 to trace that to being received by Javier Luis Ramos

CROSS - DAVID PALMER

34

1 Alonso?

2 A. Correct.

3 Q. Do you have a connection between Mr. Alonso and
4 Mr. Abegunde?

5 A. Mr. Ojo.

6 Q. Okay. Then the \$154,000 was sent to California to
7 Mr. Alonso, and then you investigated where those funds
8 were then sent to other locations?

9 A. Correct.

10 Q. None were sent to Mr. Abegunde. The funds were
11 sent to Mr. Ojo who was exchanging funds with
12 Mr. Abegunde.

13 Who was doing what?

14 A. He was exchanging funds. As I testified, he's a
15 financial exchanger. He was exchanging funds through his
16 company and his personal accounts with Mr. Ojo.

17 Q. And that was the Wells Fargo account that
18 Mr. Alonso used to send money to Mr. Ojo?

19 A. I can't remember which account it was.

20 Q. But it was the same account that Mr. Ojo opened
21 using the address of Mr. Abegunde, wasn't it?

22 A. I believe so.

23 Q. Was there anything illegal about that?

24 Is there anything illegal about using an address,
25 you know, as a point of reference to a bank to open an

CROSS - DAVID PALMER

35

1 account?

2 A. No.

3 Q. I want to ask you now about Mr. Ojo and
4 Mr. Abegunde. Did your investigation reveal that they've
5 known each other since college?

6 A. Correct.

7 Q. And --

8 **MR. MASSEY:** Having trouble reading my own
9 writing, Your Honor.

10 **BY MR. MASSEY:**

11 Q. Mr. Ojo, I believe, was a Nigerian banker?

12 A. Yes.

13 Q. And Mr. Abegunde had come to the states, right?

14 A. Yes.

15 Q. And I believe he got his masters degree here at
16 Texas A and M in business?

17 A. Yes.

18 Q. And when Mr. Ojo opened his account -- and I'm
19 referencing the Wells Fargo Account Number 0845 -- you
20 talked about there being multiple transfers from Ojo's
21 account to Mr. Abegunde's Bank of America account. I saw
22 one that was \$8,000 on 2-4-16; do you recall that?

23 A. Without the records in front of me, there is --
24 there is so many financial transactions, I can't
25 specifically remember one.

CROSS - DAVID PALMER

36

1 Q. Okay. But I'm talking about ones that involve
2 Mr. Abegunde, not other people.

3 A. Are you talking about the transaction for Mr. Ramos
4 to Mr. Ojo?

5 Q. I'm just talking about the transfers that were used
6 to establish probable cause regarding Mr. Ojo's account
7 to Mr. Abegunde's Bank of America account.

8 A. I know there were transfers between them, yes.

9 Q. And do you know if they were illegal?

10 Do you know if they were illegal?

11 A. I know that some of the funds that we've traced
12 between the accounts have been linked to fraud.

13 Q. Into Mr. Ojo's account?

14 A. Both.

15 Q. And so do you know that Mr. Abegunde knew these
16 were fraudulently obtained funds?

17 A. We have information from people we've interviewed
18 who say that they have sent him funds that were obtained
19 by means of fraud, and his explanation to the agents from
20 the FBI Atlanta, he explained that the funds used in a
21 lot of the financial exchanges were money obtained by
22 fraud.

23 Q. Now you've read over that interview, right, or --

24 A. Yes.

25 Q. -- or what was stated? Mr. Abegunde told those --

CROSS - DAVID PALMER

37

1 he cooperated and talked with the agents there in Atlanta
2 when they came in, didn't they?

3 A. Yes, sir.

4 Q. And he told them about the scenario that was going
5 on with the financial crisis in Nigeria?

6 A. I'm not familiar with --

7 Q. Where the U.S. dollar was worth a lot more than the
8 naira?

9 A. Right, he did explain the theory behind the
10 financial exchange and the rate of the dollar.

11 Q. And he explained to you that there were
12 legitimate -- by legitimate, I mean the Central Bank of
13 Nigeria could exchange funds, but also --

14 A. Correct.

15 Q. -- there was an illegal market, too?

16 A. Yes.

17 Q. And he told you about that?

18 A. Correct.

19 Q. That was the business he was studying, not the
20 illegal market, but that money exchange business?

21 A. Correct.

22 Q. Would it be unusual do you think for someone to be
23 aware of an illegal alternative business way to convert
24 the funds when they themselves were in the business of
25 money exchanging?

CROSS - DAVID PALMER

38

1 A. I'm not quite sure what you are asking.

2 Q. Well, if he's in the business of money exchanging
3 and he's licensed to exchange funds, would it be unusual
4 for somebody in that capacity to have a knowledge of
5 means that other people could use to illegally exchange
6 funds?

7 A. If you are --

8 Q. That's his business is what I'm saying. That's
9 his -- his business is exchanging funds, right? Isn't
10 that what your investigation revealed?

11 A. Financial exchanger, yes.

12 Q. That's not illegal, is it?

13 A. Under certain circumstances, it is, yes.

14 Q. Okay. What circumstances would that be?

15 A. There are licensing requirements to be a financial
16 exchanger. Also there are tax repercussions.

17 Q. And also requires an FBI background check?

18 A. I'm not sure of all the details. I know there are
19 licensing requirements.

20 Q. And it is pretty stringent, is it not?

21 A. To be licensed, yes.

22 Q. The licensing requirements. And, Mr. Abegunde, his
23 company, he was licensed to be able to exchange funds?

24 A. I haven't found the documents supporting that.

25 Q. You found a license for the business?

CROSS - DAVID PALMER

39

1 A. Right.

2 Q. And FBI went to Department of Revenue in Georgia,
3 and they confirmed the establishment of the business?

4 A. There is a business under that name in Georgia,
5 correct.

6 Q. And you didn't find anything about a license that
7 Mr. Abegunde has?

8 A. We found several, one of which was listed as an
9 alcohol importer as well.

10 Q. And that's I think what he told the agents in
11 Atlanta, that he was initially using this for money
12 exchange and alcohol importing; isn't that right?

13 A. I can't remember.

14 Q. There is nothing illegal about alcohol importing,
15 is there?

16 A. No, as long as you are licensed.

17 Q. Okay. Are you saying that -- are you telling the
18 Court today that he wasn't licensed?

19 A. I'm saying we found a business license in the name
20 of the company he operates. I haven't found details
21 specifically to licensing for alcohol or licensing for a
22 money service business.

23 Q. Do you recall any particular transfers from
24 Mr. Ojo's account with Wells Fargo to Mr. Abegunde's
25 account at Bank of America that involved fraudulent

CROSS - DAVID PALMER

40

1 funds, that you know those transfers involved fraudulent
2 funds?

3 A. I can't say specifically, but we have shown that
4 there are several fraudulent transfers involving both
5 individuals.

6 Q. And regarding Mr. Abegunde's account, I believe it
7 was discussed in the probable cause estimate that moneys
8 would come in by either ATM or online transfers?

9 A. Correct.

10 Q. And then that was the business account, right?

11 A. He had a lot of accounts that were receiving a lot
12 of money.

13 Q. Okay. And then the moneys would be disbursed? And
14 here's what I'm talking about; March 29th, 2016, a
15 \$10,500 online transfer to Mr. Abegunde's business
16 account, is that consistent with a man in -- just by
17 itself, is that consistent with somebody being in the
18 money exchange business?

19 It's not inconsistent, is it?

20 A. People in the money exchange business use various
21 ways of sending and receiving money.

22 Q. And \$10,500 received on the same day, \$10,000 is
23 disbursed to an individual in Lagos, Nigeria?

24 A. Yes, typically what we see is money and a cut
25 taking and then the money sent overseas.

CROSS - DAVID PALMER

41

1 Q. And you don't have direct information that that is
2 an illegal transfer, do you?

3 A. We have information that a lot of illegal transfers
4 have occurred, and I'm not sure the specific transaction
5 you are referring to as there are hundreds if not
6 thousands of transactions of very similar means.

7 Q. And he took in ten five and he disbursed ten, so he
8 made 500 bucks? That's a business?

9 A. That's what it would appear.

10 Q. And that's what the legitimate businesses for money
11 exchanges do, isn't it?

12 A. Well, it depends on -- if you are talking about
13 Western Union where you go into a store and file
14 paperwork or if you do it --

15 Q. They all charge you to handle their funds, don't
16 they?

17 A. I believe so.

18 Q. And Mr. Abegunde's business sent the funds to
19 Nigeria or to Canada, that's what your investigation
20 revealed?

21 A. We saw a lot of money coming in and then money
22 going overseas, correct.

23 Q. The \$20,000 that came in on Mr. Alonso to Mr. Ojo's
24 account, I can't recall if I asked you this, did you see
25 where that was backed out and not disbursed?

CROSS - DAVID PALMER

42

1 A. I'm not familiar with the \$20,000. I know at least
2 one, I believe it was an \$8,000 wire or deposit came in
3 and stayed in and then was used. And I believe
4 Mr. Abegunde explained it was used for hospital expenses
5 for Mr. Ojo while he was here to have a child in the U.S.

6 Q. Okay. There is a February 4, 2016 transfer of
7 8,000 from Mr. Ojo's account to Mr. Abegunde's. Is that
8 what you are thinking of?

9 A. I was thinking of the Ramos to Ojo transaction. If
10 you are talking about a transaction between Mr. Abegunde
11 and Mr. Ojo, there were several, yes.

12 Q. I want to go back now, please, to Mr. Abegunde's
13 business account. It shows from the FBI's records,
14 pleadings for probable cause, that on April the 11th,
15 2016, there were two deposits into Mr. Abegunde's
16 account. Do you know where those deposits came from?

17 A. I can't specifically recall those deposits.

18 Q. The reason I say that is because they were used to
19 establish probable cause, so I would assume that they
20 would be connected to some illegal activity.

21 Is there any specific illegal activity you can
22 inform the judge about?

23 A. I can't specifically recall those transactions. As
24 I said there were hundreds if not thousands of
25 transactions on his accounts.

CROSS - DAVID PALMER

43

1 Q. Then on April the 20th, 2016, a \$15,000 wire
2 transfer came in. Do you know where that wire transfer
3 came from?

4 A. These transfers on specific dates without more
5 context, I'm not sure, as I said, there were hundreds if
6 not thousands, and specific ones on specific dates
7 without context are difficult to recall.

8 Q. Well, tell me specific ones that you know of that
9 landed in Mr. Abegunde's account that you know to be
10 fraudulently obtained?

11 A. I can give you a couple examples. We've
12 interviewed some of his most frequent contacts from his
13 cell phone, one of which, Mr. Akande, explained that the
14 way the financial exchange system Mr. Abegunde operated
15 was that Mr. Akande would arrange for money that was
16 obtained by fraud in Nigeria to be transferred to a U.S.
17 bank account. That account would then go to Mr. Abegunde
18 who would take a cut and then wire money in Nigerian
19 currency to the original recipient's account in Nigeria,
20 therefore, the individual perpetrating the fraud in
21 Nigeria would receive funds in the Nigerian currency
22 rather than U.S. currency, and Mr. Abegunde would take a
23 cut in U.S. currency for exchanging that.

24 In short, someone who was in Nigeria causing
25 fraud, a U.S. dollar is of little to no value for them.

CROSS - DAVID PALMER

44

1 So they need people in the U.S. like Mr. Abegunde to
2 exchange that from U.S. dollars to Nigerian naira.
3 Mr. Abegunde in the specific situation I'm referring to
4 where we interviewed his associate, the associate
5 explained that fraudulent money would be passed through
6 Mr. Abegunde who would then send Nigerian currency to the
7 original individual, whom in many cases Mr. Abegunde did
8 not know, and then that original fraud person in Nigeria
9 would obtain payment through the scheme. It is a fairly
10 complex system. Basically the fraudsters in Nigeria need
11 payment in naira, and U.S. dollars, which is what they
12 obtained by fraud in the U.S, are of no value to them
13 without the exchange.

14 Q. Well, all I have to go on here is this document
15 that I believe is filed with the Court, an affidavit that
16 you filed for -- in this matter. And I'm not seeing any
17 of that information in the affidavit. Was that obtained
18 after the arrest?

19 A. As Ms. Ireland stated, this is an ongoing
20 investigation, and we have been obtaining information
21 from that date, yes.

22 Q. The information that I'm showing in this document,
23 showed three transfers -- called it multiple transfers,
24 but there were three, and only one was dated, and that
25 was with the \$8,000. Is there more that you knew about

CROSS - DAVID PALMER

45

1 and just didn't put in there?

2 You are saying there is all these thousands of --

3 A. We have turned over bank records that show multiple
4 transactions. Only a sample was provided in the document
5 that you are referring to.

6 Q. What proof do you have to show Mr. Abegunde knew
7 that those funds were obtained illegally?

8 A. We traced the source of the funds, in many
9 instances interviewed the individuals who sent him the
10 money.

11 Q. And they said they told him it was fraud, that it
12 was obtained by fraud?

13 A. In many instances -- well, in some instances, yes,
14 in some instances, no. In the conspiracy, each person
15 does not have to know the other.

16 Q. So Mr. Abegunde may not have been told that those
17 funds were obtained by fraud?

18 A. As he explained in his interview with the FBI
19 agents, he explained that the money was usually obtained
20 by fraud.

21 Q. You were talking about the criminal enterprise.
22 Mr. Abegunde explained to the agents about two
23 enterprises, one that was through the Bank of Nigeria,
24 right?

25 A. The exchange --

CROSS - DAVID PALMER

46

1 Q. Uh-huh.

2 A. Yeah, the legitimate currency exchange.

3 Q. And then one through, what does he call it, a
4 parallel market or black market, does that jog your
5 memory?

6 A. Yes.

7 Q. And so he was telling them things that he knew or
8 had heard from his business experience, that was what he
9 was telling the FBI; do you see anything more in his
10 statement than that?

11 A. My understanding of the context is he was
12 explaining the scheme.

13 Q. He was actually explaining this scheme?

14 A. Correct.

15 Q. Where did you get that information?

16 A. That's how I understood the context of the
17 interview.

18 Q. Okay. Where did you get that information from?

19 A. By reading the agent's summary of the interview.

20 Q. When is the last time you looked at that statement
21 that Mr. Abegunde made to the agents?

22 A. Maybe a couple weeks ago.

23 Q. Did you see in there anywhere where he said, let me
24 tell you what we're doing here, we're running this
25 illegal scheme?

CROSS - DAVID PALMER

47

1 A. He was asked about the transactions specific to him
2 and Mr. Ojo, and that was the explanation he provided.

3 Q. Okay. You remember that? You do remember that?

4 A. Yes.

5 Q. That it was asked in the context of Mr. Ojo?

6 A. The reason they went to interview him was in the
7 context of him and Mr. Ojo's business and the specific
8 transaction that occurred from his address.

9 Q. Okay. Let me come at this just a little bit
10 different angle. Would you agree with me that as far as
11 reading the what's written in the agent's report, it
12 doesn't say in there specifically that Mr. Abegunde was
13 telling them about this enterprise? He was talking to
14 them instead about the black market in relation to the
15 Central Bank?

16 A. My understanding is --

17 Q. I mean from your -- I'm talking about reading the
18 words in the report.

19 A. Yes, he was asked specifically about those
20 transactions, and that was the explanation he provided
21 was both about the Central Bank, the legitimate, and also
22 how the fraud is perpetrated.

23 Q. I know I've got that statement right here. I'm
24 just fumbling around to find it.

25 **THE COURT:** I guess Mr. Massey asked the

CROSS - DAVID PALMER

48

1 question, but I think the agent's testified as to how he
2 read the statement. I'm not sure if you want to argue it
3 should be read in a different way, I mean that's
4 another -- I don't want to cut you off, but I am a little
5 lost as to how much more you can get from the agent
6 regarding this statement.

7 **MR. MASSEY:** I understand. I understand.
8 I'll move on.

9 **THE COURT:** Okay.

10 **MR. MASSEY:** Bear with me, please, one minute,
11 Your Honor.

12 **THE COURT:** Certainly.

13 **BY MR. MASSEY:**

14 Q. Regarding the closures of Mr. Abegunde's
15 accounts --

16 A. Yes.

17 Q. -- of the banks, did they do that after speaking
18 with agents of the FBI?

19 A. In some instances, yes. In many instances, no.

20 Q. Which ones were yes and which ones were no?

21 A. He's had so many accounts, I can't specifically
22 recall which ones.

23 Q. The USAA account?

24 A. I believe it was closed post subpoena.

25 Q. Do you know?

CROSS - DAVID PALMER

49

1 A. I don't know for sure.

2 Q. What about the Wells Fargo?

3 A. I'm not sure.

4 Q. Bank of America?

5 A. I don't know the dates they were closed and the
6 dates I issued the subpoena.

7 Q. Are you familiar with the conversation that agents
8 had with Mr. Ojo?

9 A. The telephonic interview?

10 Q. Yeah.

11 A. Yes.

12 Q. So he was cooperative and talked with them as well?

13 A. He did call them back, yes.

14 Q. Where did you get Mr. Ojo's telephone number?

15 A. I believe the agents in Atlanta got it from
16 Mr. Abegunde.

17 Q. Mr. Ojo advised you or advised agents he was an
18 investment banker, right?

19 A. I believe so.

20 Q. And he explained why he needed funds to come to the
21 United States regarding the birth of a child, or he
22 explained to the agents?

23 A. Yes, that was the explanation.

24 Q. And this was the same, in substance, explanation
25 that Mr. Abegunde gave before Mr. Ojo?

CROSS - DAVID PALMER

50

1 A. Correct.

2 Q. When did Mr. Abegunde's visa expire?

3 A. He was on a student visa, and I believe it is
4 expired -- I know it's expired, but I don't know the
5 exact date. I just checked the status this morning and
6 it was expired.

7 Q. Did it expire while he's been in custody?

8 A. Possibly so. I just checked the current status,
9 and it was expired.

10 **MR. MASSEY:** One minute, please, Your Honor.

11 **THE COURT:** Yes.

12 **MR. MASSEY:** Your Honor, would the Court
13 entertain a brief recess, five minutes?

14 **THE COURT:** We need to finish with this.
15 Before we finish with the witness?

16 **MR. MASSEY:** Yes, please.

17 **THE COURT:** Why do we need a recess in the
18 middle of a witness?

19 **MR. MASSEY:** I understand.

20 No other questions, Your Honor. Thank you.

21 **THE COURT:** Thank you, Mr. Massey.

22 Any redirect, Ms. Ireland?

23 **MS. IRELAND:** Couple of brief questions, Your
24 Honor.

25 **THE COURT:** Okay.

REDIRECT - DAVID PALMER

51

1 REDIRECT EXAMINATION

2 **BY MS. IRELAND:**

3 Q. Agent Palmer, you are here today, do you have your
4 case file with you?

5 A. I do not.

6 Q. So you don't have anything to refer to in front of
7 you?

8 A. I have nothing in front of me.

9 Q. And the answers regarding specific transactions,
10 are those off the top of your head from recollection?

11 A. That's the best I could recall.

12 Q. Thank you. There were lots of innocuous,
13 noncriminal looking acts in this investigation; is that
14 right?

15 A. That is correct.

16 Q. How long has the investigation been going on?

17 A. At least a year and a half, maybe more.

18 Q. In putting this case together, do you look at all
19 of those together in context?

20 A. We do look at them as a whole.

21 Q. You mentioned this morning or mentioned just
22 earlier that you checked Mr. Abegunde's immigration
23 status today or recently; is that right?

24 A. I checked it this morning.

25 Q. And if you can recall, what was the status?

UNREDACTED TRANSCRIPT

REDIRECT – DAVID PALMER

52

1 A. The student Visa he was on had expired.

2 Q. Do you know if there is an immigration hold on him
3 as we speak?

4 A. The information I got from immigration was that he
5 was on an expired visa and therefore no longer had legal
6 status in the U.S. at this point.

7 **MS. IRELAND:** Thank you.

8 **THE COURT:** Thank you. You may step down,
9 agent.

10 (Witness excused).

11 **THE COURT:** Any -- what's that?

12 **MR. MASSEY:** Can I have five minutes? I don't
13 think she has anymore witnesses.

14 **THE COURT:** Anymore proof?

15 **MS. IRELAND:** No more proof, Your Honor.

16 **THE COURT:** Do you have any proof, Mr. Massey?

17 **MR. MASSEY:** That's why I am asking for the
18 five minutes, Judge.

19 **THE COURT:** Okay. Let's take a five-minute
20 recess.

21 **MR. MASSEY:** Thank you.

22 (Recess).

23 **THE COURT:** Mr. Massey, any proof?

24 **MR. MASSEY:** No, Your Honor.

25 **THE COURT:** Pardon?

1 **MR. MASSEY:** No, Your Honor. I would defer
2 you, if I may, from the testimony and the report that was
3 prepared.

4 **THE COURT:** Ms. Ireland, let's -- well, I
5 guess I should hear from Mr. Massey first since this is
6 his appeal and he bears the burden here.

7 **MR. MASSEY:** Your Honor, this is a nonviolent
8 offense that, from everything that appears in the
9 indictment, the connection to Mr. Abegunde is
10 circumstantial. He's educated, masters degree, has a
11 family. It looks like he's worked pretty steadily. I
12 don't know why there would be scanty. It looks very
13 fairly steady to me, looking at page 3 of the report.

14 I respectfully submit that there are a set of
15 conditions that would minimize any risk of flight and
16 minimize any risk to the community, of danger to the
17 community. And that would be that he surrenders his
18 passports and with the order that he not get any new
19 ones. Restrict his travel. If the Court saw fit to let
20 him go back to his apartment in Atlanta, that apartment
21 is still available. That would be at 1014 Brookwood
22 Valley Circle in Atlanta. He could even -- you could
23 take the extraordinary step of putting an ankle monitor
24 on him and having him monitored, if the Court allows him
25 to go back to Atlanta, have him monitored there. And so

1 if he went anywhere out of a restricted area, then they
2 would pick him up.

3 Even they reported, Judge, I don't think there
4 is anything in this man's history that shows he's a
5 danger to the community. He has no record. And probably
6 the more pressing concern would be his lack of ties to
7 the community because he's from Nigeria, and I understand
8 that, but I do think that those conditions would minimize
9 any risk of flight and would ask the Court to consider
10 setting a reasonable bond in this matter.

11 A secured bond would be fine as well. And,
12 Your Honor, that way he can help with his defense and he
13 can help by coming to the office, and it is so much more
14 convenient to work and for a working relationship between
15 attorney and client if he's not in custody. Thank you.

16 **THE COURT:** Thank you, Mr. Massey.
17 Mr. Flowers?

18 **MR. FLOWERS:** Your Honor, the circumstances
19 under which Mr. Abegunde was arrested were largely
20 uncontroverted here today. We elicited testimony from
21 Agent Palmer about the circumstances under which he was
22 apprehended at the airport, and those were suggestive of
23 someone who was attempting to flee and to flee
24 prosecution and was attempting to pass off electronics,
25 trying to flee justice. So Mr. Massey -- and I do

1 respect his argument in this regard, and it's well taken
2 so far as making the best effort with the facts he has,
3 but the facts that we do know is that he was attempting
4 to flee. That's what they suggest. And for that reason,
5 with that regard, there are no combinations, there is no
6 combination that can be put together to reasonably
7 guarantee his appearance at further proceedings.

8 And with regard to the danger to the
9 community, fraud is not a violent crime, but it is a
10 danger. And if you look at the nature of the crimes in
11 the indictment, they are based in fraud. They are based
12 in deceit. And from other testimony we elicited at this
13 hearing, including from Agent Palmer, about the
14 circumstances of what based upon information and belief
15 is a fraudulent sham marriage, the sham marriage that Mr.
16 Abegunde was using as a basis to try and get legal
17 immigration status here, but of course that immigration
18 status went away upon his arrest and hence the ICE
19 detainer in this case.

20 His known contacts in Nigeria are the very
21 reason why it is a danger to release him, one of the
22 reasons it is a danger to release him without steady
23 employment. And throughout the report, his most recent
24 employment was FJ Williams, which as Agent Palmer had
25 testified, appears to have been set up and established

1 for the purposes of receiving fraudulent proceeds. He
2 has no legitimate business here in the United States.

3 And consequently without legitimate business,
4 with known contacts overseas, with instances of trying to
5 flee prosecution, there are no reasonable conditions that
6 could be fashioned for him to appear at future
7 proceedings.

8 If I may just have one more moment, Your
9 Honor?

10 **THE COURT:** Yeah.

11 **MR. FLOWERS:** For those reasons, Your Honor,
12 the government would rest.

13 **THE COURT:** Let me ask you about the student
14 visa.

15 **MR. FLOWERS:** Yes, Your Honor.

16 **THE COURT:** I believe he graduated from Texas
17 A&M in maybe 2016, and so that would be an overstay of
18 the student visa, but it appeared, again, I read
19 somewhere in one of these documents that he had applied
20 for legal status, so is the overstay the result of this
21 case, or was there an overstay before this case was
22 indicted or do you know?

23 **MR. FLOWERS:** I do not know for sure, but my
24 understanding, again, this is just my understanding from
25 looking at the facts that we have, is that his student

1 visa had expired and the extent he was here was on
2 overstay. He had applied for -- and I'm not sure of the
3 exact terminology, but it's a parole, he was paroled in
4 on the understanding that it was a petition based on the
5 Ms. Chaffey, who is the soldier in Washington. Now that
6 parole essentially, as I understand it, would be revoked
7 upon his arrest on the instant charges.

8 **THE COURT:** So, in other words, before he was
9 arrested on these charges, he was in this country legally
10 to the extent that his application to remain was pending.

11 **MR. FLOWERS:** To the extent that his
12 application, yes, Your Honor, and we will go into the
13 other circumstances under which that parole had been
14 granted with that marriage.

15 **THE COURT:** I understand your position on
16 that, but I'm just trying to understand.

17 **MR. FLOWERS:** Yes, Your Honor. If I was being
18 unclear, I apologize.

19 **THE COURT:** You weren't being unclear, but I
20 think I understand now.

21 **MR. MASSEY:** I think that's --

22 **THE COURT:** What he just concluded. Okay.
23 Any response, Mr. Massey?

24 **THE DEFENDANT:** Your Honor, Your Honor, may I
25 speak?

1 **THE COURT:** You need to talk to your lawyer.

2 **THE DEFENDANT:** Yes, Your Honor, please.

3 **THE COURT:** Mr. Massey, do you want to talk --
4 I'm happy to hear from him, but I want you to make sure
5 you are okay with him --

6 **MR. MASSEY:** My advice to him was not to
7 testify. He's not listening very well. His mother's
8 advice to him is not to testify. But he wishes evidently
9 to say something. I don't think it's in his best
10 interest, however, it's his choice --

11 **MR. FLOWERS:** Your Honor, in this limited
12 situation --

13 **THE COURT:** One at a time. Hang on. You were
14 going to say something else?

15 **MR. MASSEY:** I'm sorry?

16 **THE COURT:** You were in the middle of a
17 sentence.

18 **MR. MASSEY:** Yes, I've gone over with him the
19 pros and cons and the advantages and certainly the
20 disadvantages of making statements in court or letters to
21 the Court. So I think that choice -- I can advise him,
22 but the choice would be his.

23 **THE COURT:** Okay. Mr. Flowers, what were you
24 going to say?

25 **MR. FLOWERS:** I apologize for interrupting,

1 Mr. Massey. I do apologize.

2 Perhaps with regards to this, I assume, the
3 limited issue, perhaps Mr. Massey would be able to
4 proffer based on information and belief with what
5 Mr. Abegunde wanted to convey.

6 **THE COURT:** I'm not sure if it's related to
7 this issue or not. Is it related to this issue --

8 **MR. MASSEY:** Yes.

9 **THE COURT:** -- Mr. Abegunde?

10 **MR. MASSEY:** At least what I was talking about
11 was.

12 **THE DEFENDANT:** Yes, Your Honor, a lot of
13 things have been said in the course of these proceedings
14 that concern me, Your Honor, and a lot of things need
15 clarification. And --

16 **THE COURT:** Mr. Abegunde, let me make it clear
17 that your lawyer has given you advice and so --

18 **THE DEFENDANT:** Yes, ma'am.

19 **THE COURT:** So if you wish to continue to
20 speak, I will, I'll hear you, but understand that you are
21 speaking against your lawyers' advice.

22 **THE DEFENDANT:** Yes, ma'am, it's clear, ma'am.

23 **THE COURT:** Okay.

24 **THE DEFENDANT:** Your Honor, I'm from Nigeria,
25 Your Honor, and in Nigeria, Your Honor, as well as United

1 States, a man's name is more precious than gold or
2 silver, Your Honor. And it's obvious that there has been
3 a -- like I said, there are some things that are not --
4 that need clarification regarding all the things that
5 have been said in court here today, Your Honor.

6 I want to have an opportunity to prepare the
7 most robust, affirmative defense against my case by
8 working more closely with my attorney so we can rebut
9 most of the things that have been said here today. For
10 example, Your Honor, FJ Williams, Incorporated is
11 licensed by the Georgia Department of Banking and
12 Finance. FJ Williams, Incorporated is registered with
13 the United States Department of Treasury under the
14 Financial Crimes Enforcement Network. Your Honor, we
15 spent the better part of last developing a robust fraud
16 detection software and the software is limited to the
17 barest minimum.

18 When I was having discussions with the FBI
19 agents, it was based on years and years of research on
20 how people conduct fraud. It was things that I recall
21 from this research that I was trying to share with the
22 FBI regarding how fraud is perpetrated. I was trying to
23 aid the investigation. I in short, within 30 minutes of
24 the time they departed my home, I contacted them
25 instantly.

1 Your Honor, I, I worked with Cox Automotive as
2 a marketing manager, right. I saw an opportunity in my
3 belief in the American dream. That's why I found RJ
4 Williams, Inc., to help my people.

5 The speculation or the suggestion that I'm
6 somehow involved in fraud, Your Honor, it goes against
7 everything I believe in. It goes against the values I
8 stand for. My mother is here today. I wasn't raised
9 that way, Your Honor. The things that have been used
10 against me here today are things I used to aid the FBI's
11 investigation to help all these things, to make sure that
12 anybody that is caught or perpetrates any form of fraud
13 is brought to book.

14 Unfortunately, it may be because of my accent
15 or may be because of poor communication methods, I've not
16 been able to convey these things to my lawyer and he
17 really did not articulate properly to the Court.

18 Secondly, Your Honor, I'm not here in the United States
19 illegally. I'm licensed and authorized to work and live
20 in the United States. I filed an adjustment of status in
21 June of 2016 to register as a United States permanent
22 resident. As we speak, Your Honor, I have an employment
23 residential card that expires in April of 2019. It gives
24 me full authority to work and live in the United States.
25 My student visa expired in 2016. I renewed my student

1 visa to ensure that I was not out of status. I renewed
2 my student visa to 2018. I think it just expired a
3 couple of days ago in June, or it probably hasn't even
4 expired. It will probably expire in June 2018. But once
5 you register -- immigration is a complex -- people are
6 not very clear on immigration, Your Honor, but
7 immigration is a complex thing. Now once you adjust your
8 status, once you change --

9 **THE COURT:** Mr. Abegunde, we've covered your
10 status. And it has been made clear that, as far as the
11 government is concerned, that you only got out of status
12 with your arrest in this case. So you don't need to
13 address that. I got that, that you, that at the time you
14 were arrested, as far as the record is before me, you
15 were in legal status, so we don't need to deal with that.

16 **THE DEFENDANT:** Finally, Your Honor, finally,
17 Your Honor, the person in question that they said I had
18 ties to is -- I'm a victim of fraud by this person. This
19 Otaobayomi Akande, he defrauded me and I had a pending
20 case against him in the State of New Jersey in the Union
21 City District Court. It can be verified. I'm saying it
22 on the record, I have a case against him. He defrauded
23 me. I'm a victim of fraud. He gave me a bad check of
24 \$15,000. It can be easily verified.

25 Your Honor, I just wanted to make sure this

1 was clear, Your Honor. And I want you -- I'll be
2 eternally grateful if you give me the opportunity to work
3 more closely with my attorney so we can prepare the most
4 robust defense against this case.

5 And finally, Your Honor, I never intended to
6 flee the United States. As my attorney stated here
7 earlier, there was no luggage in my possession. I never
8 intended to pass my laptop to anyone, Your Honor. I only
9 explored the most cost effective means of alternate
10 flights. And this is something most people are not aware
11 of: If you intend to change your flight and you go to
12 the airport on the particular day of travel, you will not
13 have to pay any flight change fees. The only thing you
14 pay for is the cost of the flight differential. That's
15 all you pay for, and that's what I was trying to explore.
16 I handed over -- the FBI just arrest me at the airport.
17 I handed over the confirmation of my change, my flight
18 change. They have access to it. You can check it.
19 Spirit Airlines. My flight was changed from February 7,
20 the day I was arrested, to August 29th, confirmed.
21 Before I was arrested, I was not invited to appear before
22 a grand jury. I had no idea, I had no clue that I was
23 the subject of an investigation. I had no clue that an
24 arrest warrant had been issued in my name. There was no
25 way for me to know. I've lived my life in a stellar --

1 with full integrity.

2 In the money transfer business, Your Honor,
3 there is no means of knowing the sources of the funds. I
4 had no idea of the sources of the funds that people gave
5 me. And this particular afternoon in question, it can be
6 verified, there is a \$15,000 bad check he wrote me. He
7 still owes me money to this very moment. I'm a victim of
8 fraud by this particular individual. I had gone ahead to
9 pay the naira equivalent of the money he was supposed to
10 pay me, but he never paid me, Your Honor.

11 **THE COURT:** Thank you, Mr. Abegunde.

12 **MR. MASSEY:** This is the document that you've
13 already -- you were clear on about the arrest is what
14 violated it.

15 **THE COURT:** The immigration status, yeah.
16 Thank you.

17 All right. I'm looking back at the order of
18 the magistrate that was ordering detention, and the
19 magistrate's rulings were -- the magistrate's ruling was
20 based on -- well, the following boxes were checked to
21 base the ruling of detention: Lack of stable employment.
22 Lack of significant community or family ties to this
23 district. Significant family or other ties outside the
24 United States. And lack of legal status in the United
25 States. Now, at the time -- so I think we've sort of

1 cleared that issue and the lack of legal status. I guess
2 the lack of legal status happened at the time of the
3 arrest, so that would have been a basis for the -- or
4 could have been a basis for the detention.

5 Then written in the document is, defendant has
6 substantial ties to a foreign country, is not a lawful
7 resident of the United States, he has -- he has minimal
8 ties to this district, his wife is presently deployed in
9 Korea, and his daughter resides with the daughter's
10 mother. The underlying charges against defendants are by
11 their nature ones of deceit and fraud. He also reported
12 no verifiable income except that he is self-employed.

13 So that appears to be the basis for the
14 initial detention. And I'll note that, you know, there
15 are other options on the form that they use in this
16 district, and the box for weight of the evidence against
17 the defendant is strong was not checked. That doesn't
18 frankly appear to be the government's argument. As Ms.
19 Ireland started out, there is obviously probable cause to
20 support the indictment itself, but they are not arguing
21 the weight of the evidence as the business for the
22 detention. They are arguing, I guess, safety to the
23 extent of potential fraud, not violence, and concerns
24 that the defendant will flee. Looking at the evidence
25 that's been offered today, it strikes me that the

1 defense's main position has been the weight of the
2 evidence, that the evidence is circumstantial and only
3 involves this one situation where Mr. Abegunde allowed
4 Mr. Ojo to use his address to set up an account that the
5 allegations are that it involved fraudulent money.
6 Again, that's not really what the -- that's not what the
7 detention is based on, was based on from the beginning.
8 The detention was based on the concerns that Mr. Abegunde
9 would flee, and potentially I guess the other argument by
10 the government was that Mr. Abegunde would adversely
11 affect evidence or witnesses that were out there.

12 Nothing I've heard today frankly convinces me
13 otherwise. The agent testified as to the basics of the
14 investigation. Some of it goes to the defense's
15 argument, but again, that's not the argument that
16 detention was based on. Parts of it, the allegations
17 regarding the fake marriage do to some extent play into
18 the idea of a concern about fleeing. If Mr. Abegunde is
19 willing to engage in a sham marriage, it's unclear what
20 else he would be willing to engage in to leave the
21 country. And then the point that the magistrate made in
22 this writing, that these allegations are about fraud and
23 deceit offer more concern about Mr. Abegunde's
24 willingness to adversely affect witnesses and other
25 evidence if he were to be let out and willingness to take

1 measures to leave the country.

2 The description of the agent, I heard
3 Mr. Abegunde's statement that the description of the
4 agent at the time of arrest is of great concern, that he
5 was at the airport and appeared to be fleeing the country
6 and trying to hand over the computer to someone else. I
7 wanted to ask about the immigration status because that
8 would have added something to the detention, but I
9 understand that now, and I understand that at the time of
10 the arrest he was, his status was legal, but the arrest
11 does make him in an illegal status. Honestly, that's
12 ICE's concern. That's not my concern, so I don't -- that
13 doesn't play into my decision.

14 I should ask -- I just noticed pretrial is
15 here. I should have asked whether you have anything else
16 to add here.

17 **PRETRIAL SERVICES OFFICER:** No. We did submit
18 a new bail report with the interview of Mr. Abegunde.

19 **THE COURT:** Thank you for saying that because
20 I did review that, and it does -- the issue of
21 employment, I heard what Mr. Massey said, but with all
22 due respect, if you look at the employment record, it is
23 spotty in recent years in the sense that it's all
24 self-employment and self-employment is hard to verify,
25 and of course in this particular case the self-employment

1 is all tied to the allegations of fraud.

2 So, in essence, I don't find evidence that the
3 detention order should be reversed, so I will leave that
4 in place.

5 Let me say -- excuse me -- as to the other
6 point made by the defense, made by Mr. Massey and by
7 Mr. Abegunde of the need to meet to prepare for the
8 defense. Mr. Massey, I have full confidence in you and
9 Ms. McClusky, if she's on this case, too, to visit
10 Mr. Abegunde at Mason and to prepare that defense. We do
11 now have a trial date. I know that was one of the other
12 issues Mr. Abegunde was really pushing for, and we have
13 that now. So, you know, we are ready and headed toward a
14 full hearing on the case. In the meantime, Mr. Abegunde
15 will remain in custody.

16 Anything else we need to address here?

17 **MR. FLOWERS:** No, Your Honor, not from the
18 government.

19 **MS. IRELAND:** No, Your Honor.

20 **MR. MASSEY:** No, Your Honor.

21 **THE COURT:** So I guess I'm denying the motion
22 that -- I think it's ECF 100, and we will see you at the
23 next court setting. Thank you.

24 (Adjournment).
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, Mark S. Dodson, do hereby certify that the foregoing 68 pages are, to the best of my knowledge, skill and ability, a true and accurate transcript from my stenotype notes in the matter of:

UNITED STATES

vs.

OLUFOLAJIMI ABEGUNDE

Dated this 15th day of July, 2018.

S/*MARK S. DODSON*
Official Court Reporter
United States District Court
Western District of Tennessee