

No. 14-2183

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ABIDEMI AJAYI,
Defendant-Appellant.

On Appeal from the United States District Court
For the Northern District of Illinois, Eastern Division
The Honorable Rebecca R. Pallmeyer
Case No. 12-CR-190

BRIEF OF APPELLANT

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DISCLOSURE STATEMENT

I, the undersigned counsel for the Defendant-Appellant, Abidemi Ajayi, furnish the following list in compliance with FED. R. APP. P. 26.1 and CIR. R. 26.1:

1. The full name of every party or amicus the attorney represents in the case:
ABIDEMI AJAYI.
2. Said party is not a corporation.
3. The names of all law firms whose partners or associates are expected to appear for the party before this Court: Sarah O'Rourke Schrup (attorney of record) and Jonathon M. Studer (senior law student) of the Bluhm Legal Clinic at the Northwestern University School of Law. The names of all law firms whose partners or associates have appeared for the party in the district court and are not expected to appear: Damon Cheronis and Ian Barney of the Law Offices of Damon M. Cheronis, 53 W. Jackson Blvd., Ste. 1750, Chicago, IL 60604.

/s/ Sarah O'Rourke Schrup

Date: January 21, 2015

Pursuant to Circuit Rule 3(d), I am the Counsel of Record for the above-listed parties.

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JURISDICTIONAL STATEMENT

The government charged Abidemi Ajayi in a seven-count indictment with violations of 18 U.S.C. §§ 513(a), 1344, and 1957(a). (A.11–19.)¹ The United States District Court for the Northern District of Illinois properly exercised jurisdiction over Ajayi’s prosecution pursuant to 18 U.S.C. § 3231 (2012), which grants district courts original jurisdiction of “all offenses against the laws of the United States.”

The government tried Ajayi before a jury, which found him guilty of five counts of bank fraud (§ 1344) and one count of money laundering (§ 1957(a)). It found that he was not guilty of possessing an altered security with intent to deceive another person or organization (§ 513(a)). (A.7.) Ajayi filed a motion for acquittal and new trial, which the district court denied. (A.8–9.)

The district court entered judgment on May 19, 2014, and sentenced Ajayi to forty-four months in prison followed by three years of supervised release. (A.1–6.) Ajayi timely filed a notice of appeal on May 28, 2014. (A.10.) This Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 1291 (2012), which grants courts of appeals jurisdiction over “all final decisions of the district courts of the United States,” and 18 U.S.C. § 3742 (2012), which provides for review of the sentence imposed.

¹ Citations to the attached and separate appendix are designated as (A.___). The consecutively paginated trial transcripts are cited as (Trial Tr.___), and the Sentencing Transcript as (Sent. Tr.___).

STATEMENT OF THE ISSUES

1. Whether the government's evidence was insufficient to prove the defendant guilty beyond a reasonable doubt of bank fraud and money laundering when, among other things, it failed to prove that the defendant knew of a check's forgery before he deposited it.

2. Does a district court abuse its discretion by excluding, on relevance grounds, emails regarding the defendant's nascent business when the government argued that the business did not exist and relied on that fact to prove elements of the charged crimes.

3. Whether the district court plainly erred in failing to give a pattern jury instruction required when the government charges bank fraud under 18 U.S.C. § 1344(2).

4. Whether the government's five bank fraud charges were multiplicitous when they were based on five separate withdrawals of funds rather than the single deposit of the check on which the funds were drawn.

5. Whether the indictment was impermissibly amended and suffered a fatal variance when the government's evidence tried to establish a broader and categorically different scheme than the one alleged in the indictment and where that scheme was not linked to the defendant.

STATEMENT OF THE CASE

Abidemi Ajayi, a U.S. citizen of Nigerian descent (Trial Tr. 279), is the married father of four children ranging from elementary school to college age (Trial Tr. 229). His college-aged twins suffer from autism. (Sent. Tr. 21.) One of his twins, Tayi, requires constant supervision and assistance with bathing, getting dressed, eating, and getting on the school bus where an educational program teaches him how to do everyday adult tasks. (Sent. Tr. 21.) Ajayi's wife, Martha, anticipates that Tayi will require help forever. (Sent. Tr. 22.)

Ajayi, a 2002 graduate of DeVry University, is an electrical engineer by training with a specific background in electromagnetic propagation. (Trial Tr. 230, 237.) To support his family, Ajayi has worked for various technology companies. (Trial Tr. 230–31.) Most recently, Ajayi designed control systems on high-end appliances for Sub-Zero Wolf Appliances. (Trial Tr. 230.) Before Sub-Zero, Ajayi worked for General Electric Healthcare and was trained on MRI machines. (Trial Tr. 237.)

Ajayi wanted to start a business selling MRI products in Africa. (Trial Tr. 236.) Ultimately, he aimed to build imaging centers for African governments. (Trial Tr. 236.) To this end, he started two corporate entities; he incorporated the first—GR Icon—in the United States in late 2005. (Trial Tr. 117–18, 236.) He incorporated the second—First Point Energy—in Africa. (Trial Tr. 237–38.) To fund the MRI business, Ajayi wrote proposals to African governments and sought private investors. (Trial Tr. 238.)

On November 27, 2009, Ajayi deposited a check made out to GR Icon for \$344,000 into his business bank account with Chase, which he had opened three years earlier, in 2006. (Trial Tr. 77, 123, 248–51; A.49.) Chase initially held the check because it determined the deposit amount was out of character for the account. (Trial Tr. 62–65.) Although the GR Icon account had maintained five-figure balances at points during 2006, 2007, and 2008, (Trial Tr. 125–26), its average deposit was \$760.64 (Trial Tr. 63), and throughout 2009 the account balance floated below \$1,000 until Ajayi deposited the check at issue in this case (Trial Tr. 126). More than a week after initiating the hold, however, Chase released the funds into the GR Icon account, (Trial Tr. 65), presumably without contacting the issuing company. Thus as of December 8, Ajayi had free access to all of the deposited funds; he could have withdrawn all \$344,000 immediately had he chosen to. (Trial Tr. 78–79.) Yet Ajayi did not, though he did make a number of withdrawals over the next several days.

On December 15, 2009, Chase froze the GR Icon account after learning from the check's issuer—a cleaning supply company called American Building Maintenance (ABM)—its belief that the check's payee had been changed. (Trial Tr. 75.) ABM reported that it had written the check to one of its suppliers, Pollock Paper (Pollock). (Trial Tr. 25.) When Pollock notified ABM sometime in December that it had not received ABM's payment, ABM investigated, found a voided copy of the check, and concluded that the check's payee name had been altered to GR Icon. (Trial Tr. 26–32.) ABM could not determine who altered the check. (Trial Tr. 36.)

The government's involvement in this case began around April 2010, when a bank fraud investigator at Chase reached out to the Office of the Postal Inspector General for help with the investigation. (Trial Tr. 114; A.20.) The special agent assigned to the case, Brett Erickson, learned that the check's ultimate destination was a Comerica Bank P.O. Box in Dallas. (Trial Tr. 148–49.) The check was supposed to have been hand-delivered to the post office by one of the 100 employees at ABM's Houston office (Trial Tr. 35), and the postal service was then to deliver the check to the Comerica P.O. Box (Trial Tr. 148–49). The agent, like ABM, concluded that the check's payee name had been altered. (Trial Tr. 128.) But neither the agent nor ABM could identify which employee was tasked with delivering the check to the post office. (Trial Tr. 35, 148.) Nor could the agent say whether the check had ever made it to the post office. (Trial Tr. 158.) In fact, he never determined whether the check went missing at ABM, at the post office, in transit, or at the P.O. Box at Comerica Bank. (Trial Tr. 157.) Besides Ajayi, the agent never interviewed anyone who handled the check. (Trial Tr. 158.) He never went to ABM to speak with its employees, nor did he get a list of its employees. (Trial Tr. 148.) He never went to the Comerica Bank to interview people there, nor did he review surveillance video at that bank. (Trial Tr. 149.) In short, he had no idea how the check got from Texas to Chicago. (Trial Tr. 149.)

The agent turned instead to what happened to the check once Ajayi deposited it. He studied the activity in the GR Icon account and learned that before Chase froze the account on December 15, about \$172,000 was withdrawn from the account via a

combination of checks (totaling about \$110,000), one wire transfer (for \$53,000), and various debit card transactions (totaling \$4,630.59). (Trial Tr. 74–75, 129–46.) As for the wire transfer, the agent traced it from Ajayi’s account to a bank account in Florida that belonged to a corporation called ALG International. (Trial Tr. 150.) Agent Erickson then found the name and address of its registered agent, a woman named Amelia Granados, whose address was in Florida, but he never tried to contact her, and never asked agents in Florida to do so either. (Trial Tr. 151–52.) The agent never discovered what had happened to the \$53,000, (A.21) (identifying Chase’s total loss as including the \$53,000), and never established any connection between Ajayi and the recipient of the wire transfer (Trial Tr. 156) (agreeing that the only time he saw Amelia Granados’s name was on the wire transfer).

Nevertheless, the government ultimately charged Ajayi in a seven-count indictment. (A.11–19.) Five of those counts charged Ajayi with bank fraud, alleging that he “devised, intended to devise, and participated in a scheme to defraud and to obtain money and funds owned by and under the custody or control of JP Morgan Chase and Bank of America by means of materially false and fraudulent pretenses, representations, and promises . . .” (A.12–15, 17–18.) Each of the five bank fraud counts was premised on a withdrawal from the \$344,000 deposit. (A.13–15, 17–18.) In addition to these charges, the government charged Ajayi with one count of money laundering under 18 U.S.C. § 1957 based on the wire transfer to the Florida corporation (Count Four) (A.16), and one count of making or possessing an altered security with intent to deceive under 18 U.S.C. § 513(a) (Count Seven) (A.19).

With respect to the bank fraud counts, although the government charged Ajayi with being instrumental in the planning and initiation of the scheme, specifically alleging that Ajayi “devised” and “intended to devise” the scheme (A.12), the government at trial anonymized the scheme and the forgery, never attempting to establish a link between Ajayi and the check’s journey from ABM. The government acknowledged that the “check could have gone missing at American Building, at the post office, at the lockbox, at Pollock Paper. No one knows.” (Trial Tr. 341.) It also anonymized the scheme while alleging facts in later portions of the indictment:

It was part of the scheme that AJAYI obtained a check numbered xxxx8762 issued by Company A, and drawn on Company A’s account at Bank of America, and originally made payable to Company B in the amount of \$344,657.84.

(A.12.) Similarly, the government’s investigation had not revealed who had altered the check’s payee. The indictment charged only that:

It was further part of the scheme that Company A’s check numbered xxxx8762 was altered to change the name of the payee on the check’s face from Company B to GR Icon International. On or about November 27, 2009, AJAYI, knowing that the check had been altered, deposited and caused the altered check to be deposited into the GR Icon International bank account at JP Morgan Chase

(A.12.)

Ajayi’s two-day trial began on December 5, 2013. (Trial Tr. 1.) No witnesses offered testimony that: (1) Ajayi altered the check; (2) Ajayi knew the check was altered; (3) Ajayi received or controlled the check before it was altered; (4) Ajayi had seen or was even aware of the check before it was altered; (5) Ajayi was involved in

the front-end creation or planning of the scheme; or (6) Ajayi was aware of a bank fraud scheme before he received the check. Finally, the government never established how Ajayi got the check. The government relied on just four of Ajayi's actions, which it repeatedly invoked in various combinations to argue that it had proved Ajayi's guilt beyond a reasonable doubt:

- **That Ajayi deposited this check.** *See* (Trial Tr. 313) (“And you know that this check was deposited . . . [s]o all of that evidence shows that the money from the check didn’t go to where it was supposed to . . . [and] that there was a scheme to defraud the bank. Element one has been proven.”); (Trial Tr. 314) (“Now you know the defendant’s intent by looking at his actions. His actions tell you that he knew that \$344,000 check that he deposited was fraudulent. Let’s take a look at what the defendant did. . . . He deposits the check into his company’s account.”)
- **That Ajayi made subsequent withdrawals from the account after the check cleared.** *See* (Trial Tr. 313) (“And you know . . . that withdrawals were made after [the deposit] . . . [s]o all of that evidence shows that the money from the check didn’t go to where it was supposed to . . . [and] that there was a scheme to defraud the bank. Element one has been proven.”); (Trial Tr. 315) (“Now, immediately after the check clears, the defendant starts to empty out the account.”); (Trial Tr. 319) (“[C]ommon sense here tells you that the manner and the frequency and the locations of the defendant’s withdrawals show you that he knew that the initial check that he deposited was fraudulent and that he had no right to the money that he subsequently took out.”); (Trial Tr. 320) (“[T]here are safer and better ways to withdraw large amounts of cash . . . Now does that tell you that the defendant thought that the initial check that he deposited was legitimate? Of course not. . . . [Y]ou know that [knowledge and intent to defraud] . . . have been proven.”); (Trial Tr. 336) (“Look at the transactions you have seen over the last few days. Your common sense shows you that someone who gets a check for \$344,000, and then sees that it clears, tries to take out that money as quickly as possible.”); (Trial Tr. 336–37) (referencing piecemeal withdrawals: “[D]efendant knew he didn’t have very long before someone caught on to this fraud. And so he goes to the bank . . .”); (Trial Tr. 343) (“You don’t get manna from heaven. . . . Look at [the withdrawals].”)
- **That his receipt of a \$344,000 would have been unusual given the low balance that the account had maintained throughout that year.** *See* (Trial Tr. 319) (“[W]hat else could the defendant have believed in this case . . .

his company had \$90 in its account You know that this company was dissolved twice for failing to file records and taxes. There is no history of this business operating as a functional, normal business.”); (Trial Tr. 320) (“[S]uddenly the defendant gets this check for a large sum of money from a company all the way in Texas that has no connection to him, no connection to GR Icon.”); (Trial Tr. 339) (He has \$90 in his bank account . . . He is underwater. He has a negative balance for months on end.”).

- **That his business was not legitimate because he had not complied with corporate filing formalities or tax laws relating to the business.** (Trial Tr. 337) (“The defendant doesn’t have this legitimate business. He doesn’t have any reason to believe that anyone would invest \$45,000, much less \$344,000, into his business.”).

Each of these facts related to events and or inferences that arose after Ajayi had received the check. (Trial Tr. 310–11.)

After the government rested, defense counsel moved for a judgment of acquittal under Rule 29. (Trial Tr. 221.) The district court commented on his motion, but did not formally rule, preferring to “proceed with further evidence.” (A.48.) Ajayi mounted an affirmative case in his defense, choosing to admit evidence and to testify on his own behalf. In order to challenge the government’s suggestion that his business was not legitimate, Ajayi offered emails (A.29–35), in which he requested price quotes on MRI machines, to prove he was attempting to enter the MRI business; the district court, however, excluded the emails as irrelevant. (A.36–47.) The emails showed that he had been inquiring about MRI equipment for at least four months before the deposit of the check, (A.29), and that he reached out about MRI pricing the day after the bank made the funds available to him:

Ajayi, Thank you for the call. Attached is the quotation for the mobile MRI. The unit is in fantastic operating and cosmetic condition. I’ve attached a few pictures as well. We look forward to helping your imaging in Nigeria.

(A.31) (December 9, 2009 email).

During his trial testimony, Ajayi was the first to explain how he came to possess the check. (Trial Tr. 233.) While traveling to Cameroon in November 2009, Ajayi struck up a conversation with a man on the plane. (Trial Tr. 238–39.) The man was reading a *Scientific American* magazine with an MRI machine on its cover, and Ajayi mentioned that he was an electrical engineer and had worked on that machine for a few years. (Trial Tr. 240–41.) The man introduced himself as Charles Brown. (Trial Tr. 239–40.) Ajayi told Brown his idea to build imaging centers for African governments, and showed him PowerPoint presentations and proposals he had written to pitch his ideas to these governments. (Trial Tr. 241–45); *see also* (A.51–77) (same PowerPoint slides admitted as an exhibit at trial). In total, Ajayi and Brown spoke for six hours on the flight (Trial Tr. 245), and when Ajayi mentioned he had not yet found investors, Brown volunteered that he was a venture capitalist of sorts and that he would be interested in investing in Ajayi’s fledgling MRI business (Trial Tr. 241, 246). Ajayi told him it would cost \$45,000 to purchase a used mobile MRI, and Brown said he could take care of that. (Trial Tr. 247.) Brown said he would put together a promissory note and mail it to Ajayi, after which they exchanged contact information and went their separate ways. (Trial Tr. 247.) Ajayi continued on his Africa trip and returned home on or about November 26, 2009. (Trial Tr. 248.)

Shortly after arriving home, Ajayi received an express envelope from Brown. (Trial Tr. 248; A.50.) The envelope, which was admitted at trial (A.50), showed that

Ajayi received it on November 27, 2009 at 11:05 A.M. and that it was from “Charles Brown, 1948 Manchester Avenue, Los Angeles, California 91247” (Tr. 234–35).

When Ajayi opened the envelope he did not find the promissory note he was expecting, but instead a check for \$344,000. (Trial Tr. 248–49.) The check was made out to GR Icon, one of Ajayi’s companies. (Trial Tr. 248–49; A.49.) Ajayi immediately called Brown to ask him about the check amount, and Brown explained that his accounting department had made an error. (Trial Tr. 249–50.) He told Ajayi to deposit it and that they would work out a way for Ajayi to refund the difference. (Trial Tr. 249–50.)

Ajayi deposited the check through an ATM into his GR Icon account that same day (Trial Tr. 250–51), and remained in contact with Brown (Trial Tr. 252). Once Ajayi informed Brown that the check had cleared, Brown flew unannounced to Chicago, where he instructed Ajayi to meet him downtown. (Trial Tr. 254–55.) When Ajayi met Brown by the Marriott in River North, Brown demanded the difference between the check and \$45,000. (Trial Tr. 255.) Pursuant to Brown’s instructions, Ajayi made various withdrawals of the funds from the GR Icon account and gave cash to Brown. (Trial Tr. 268–69.) In addition, Ajayi followed Brown’s instruction to wire \$53,000 to the bank account of JLG International, a company that Brown purported to own. (Trial Tr. 256.)

In their last telephone conversation, Brown told Ajayi to withdraw the rest of the money in cash (Trial Tr. 272), but Ajayi told him that he had instead written a personal check for the remaining difference and mailed it to the address listed on

the envelope in which the check had arrived (Trial Tr. 274–75). Ajayi testified that at that point, Brown became suspicious, asking him, “Who’s there with you?” (Trial Tr. 274.) As the conversation continued, Brown became upset and rude, insinuating that Ajayi was incompetent and could not follow simple directions to withdraw cash for Brown. (Trial Tr. 275.) Brown never again answered Ajayi’s phone calls after that conversation (Trial Tr. 274), and he presumably did not cash the check Ajayi sent him. At some point, Ajayi called the bank and told them to put a hold on the check, at which time the bank told Ajayi the account was frozen anyway. (Trial Tr. 276.) Ajayi had withdrawn about \$172,000 of the deposited funds when the bank froze the account. (Trial Tr. 146.)

After the close of evidence, the parties and the court held the jury instruction conference. (Trial Tr. 161–84.) Tracking its indictment, the government offered the pattern jury instruction for bank fraud, and included all of the elements for charges under § 1344(1) and § 1344(2). Its proposed instruction defining a bank fraud scheme, however, did not follow the pattern or the committee comments accompanying it because it omitted the suggested bracketed language to be used when the government charges both subsections of § 1344. *Compare* (A.23) *with Seventh Circuit Pattern Instructions* at 413 (2012).

Ultimately, the jury found Ajayi guilty of one count of money laundering and five counts of bank fraud (A.7), but acquitted him of making, passing or possessing a counterfeit or forged security with intent to deceive (A.7; A.27). The district court sentenced Ajayi to five eight-month sentences on each of the five bank fraud

convictions, and to four months' imprisonment for the money laundering conviction, all to run consecutively for a total of forty-four months' imprisonment. (A.2.)

SUMMARY OF THE ARGUMENT

The government alleged a scheme it did not prove, and what the government did prove was insufficient as a matter of law to hold Abidemi Ajayi guilty beyond a reasonable doubt. Specifically, the government failed to prove an essential fact of both the bank-fraud and money laundering counts: that Ajayi knew the check he deposited was altered. Additionally, the government structured its indictment based on Ajayi's subsequent withdrawals from his account—not the initial deposit—an approach that was incorrect as a matter of law and led to further insufficiency and multiplicity problems. Finally, by proving a categorically different scheme at trial than the one charged in the indictment, the government broadened the basis on which Ajayi could be convicted, removed the decision-making from the grand jury as to the correct charges, and prevented Ajayi from mounting his defense.

That the jury nonetheless returned a verdict on six of the seven charged counts was the result of the district court's exclusion of critically important evidence to Ajayi's defense, and the failure to give one of the required pattern jury instructions. This Court should either vacate Ajayi's convictions and remand for a judgment of acquittal or reverse and remand for a new trial. At a minimum, this Court should vacate and remand for resentencing in order to cure the multiplicity on the bank fraud counts.

ARGUMENT

I. This Court should vacate the bank fraud and money laundering convictions because the government failed to prove that Ajayi knew the check was altered, a fact essential to each and every count.

The government could not link Ajayi to the scheme or show that Ajayi knew the check was altered when he deposited it. Instead, the government obtained its convictions by presenting back-end conduct (withdrawal patterns) and by encouraging speculation, not reasonable inferences. It failed to meet its burden of proving Ajayi guilty beyond a reasonable doubt. More specifically, the government's failure to establish Ajayi's knowledge or involvement in the scheme undermines its burden of proof on four bank fraud elements, and one element of money laundering. In addition and as a matter of law, the government improperly relied on Ajayi's withdrawals as executions of a bank fraud scheme when they occurred after a scheme, if any, ended.

In assessing an insufficiency claim, this Court views the evidence in the light most favorable to the government. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). And though this Court has repeatedly recognized that appellants mounting insufficiency challenges face a nearly insurmountable hurdle, *United States v. Tucker*, 737 F.3d 1090, 1092 (7th Cir. 2013), this case satisfies that standard.

A. Bank Fraud Convictions

Ajayi stipulated that the funds at issue were FDIC insured (Trial Tr. 82), but the government's proof on the other four elements of bank fraud fell far short of its

reasonable-doubt burden.² The first, third, and fourth elements—that there was a scheme as alleged in the indictment; that Ajayi intended to defraud; and that Ajayi made a materially false representation—could be proven only upon a showing that Ajayi knew the check was altered. As for the second element, the government based each execution on a later withdrawal of the deposited funds, which is incorrect as a matter of law.

1. Element One: Scheme as Charged in Indictment

The government was required to prove that “[t]here was a scheme . . . as charged in the indictment.” (A.22.) According to the indictment:

On or about November 27, 2009, AJAYI, *knowing the check had been altered*, deposited and caused the check to be deposited into the GR Icon International bank account at JP Morgan Chase.

(A.12) (emphasis added).

The government initially argued that the forgery was so obvious that Ajayi must have known the check was altered. (Trial Tr. 166.) As a threshold matter, linking Ajayi to the scheme under a theory that he must have later deduced the check was altered is wholly inconsistent with the allegation that he “devised” the scheme. Because the government alleged that Ajayi devised the scheme, it should not have needed to resort to inferences to prove his knowledge of the alteration. (A.12.)

² The bank fraud statute provides two subsections with two separate bases for prosecution. *See United States v. Higgins*, 270 F.3d 1070, 1073 (7th Cir. 2001); *see also* 18 U.S.C. § 1344 (providing that the government must prove in section (1) that the defendant knowingly executed a scheme to defraud a bank, but in section (2) that the defendant knowingly executed a scheme to obtain bank property by means of false pretenses, representations, or promises). The government indicted Ajayi conjunctively under § 1344(1) and (2). (A.12.)

Putting that aside, however, even Chase, who held onto to the check for over a week in order to review the transaction, ultimately released the funds to Ajayi. (Trial Tr. 62–65.) As the district court recognized, “if it was an obvious forgery, one would expect that a bank official, a bank -- even a bank teller would be more likely to detect that than a bank customer.” (Trial Tr. 167.) Put another way, where trained professionals inspect and do not detect a forgery, there must be reasonable doubt as to whether a layman detected it.

Perhaps because the district court expressed skepticism over the alteration’s “obviousness,” the government only briefly argued to the jury that Ajayi must have determined the check was altered from its appearance. (Trial Tr. 340.) Instead, it focused most of its efforts to establish Ajayi’s knowledge by referring to Ajayi’s conduct—specifically, the manner and frequency of the withdrawals and the facts that this check was unusually large relative to GR Icon’s prior deposits and issued by an out-of-state company. (Trial Tr. 313–20, 336–337, 343.)

This back-end conduct,³ however, cannot link Ajayi to the scheme beyond a reasonable doubt. Although circumstantial evidence may generally be used to link a defendant to a scheme, this Court requires more than “a strong suspicion that someone is involved in criminal activity” to sustain a conviction. *Piaskowski v. Bett*, 256 F.3d 687, 692–93 (7th Cir. 2001) (stating that a conviction may not be obtained by resort to “conjecture camouflaged as evidence”).

³ “Back-end conduct” refers to actions taking place after the scheme has ended. For an explanation why withdrawal of the funds occurred after the scheme ended, see *United States v. Anderson*, 188 F.3d 886, 891 (7th Cir. 1999), discussed in Sections I.A.2 and IV.

This Court has never upheld a bank fraud conviction based solely on back-end conduct. It requires evidence of a front-end link. *See, e.g., United States v. Parker*, 716 F.3d 999, 1008 (7th Cir. 2013) (co-schemer testified that defendant designed and carried out the scheme); *see also United States v. Jackson*, 540 F.3d 578, 594 (7th Cir. 2008) (government established an “inside” fraud at a bank and showed that defendant—who was wired \$194,000 without doing business with the bank—was the sister of an insider, and had increased phone communications with her sister around the time of the wire transfer).⁴

⁴ *See also United States v. Peugh*, 675 F.3d 736, 739 (7th Cir. 2012) (co-schemer testified as to defendant’s involvement in the scheme) *rev’d on other grounds*, 133 S. Ct. 2072 (2013); *United States v. Severson*, 569 F.3d 683, 688 (7th Cir. 2009) (defendant “knew he was insolvent” and “conceded that he wrote, and had others write, NSF checks to cover his insolvency”); *Higgins*, 270 F.3d at 1074 (defendant admitted the knowing deposit of bad checks, including presenting a bank manager with a \$420,000 check with intent to use the funds to purchase Lexus automobiles); *United States v. Todosijevic*, 161 F.3d 479, 483 (7th Cir. 1998) (evidence showed defendant knew—contrary to her representation on a loan refinancing application—that her husband was a defendant in a lawsuit because she was an essential part of the family business enterprises, had seen a letter in which the opposing party indicated it “would be seeking appropriate damages,” and had submitted falsified tax returns in the initial loan application); *United States v. Yoon*, 128 F.3d 515, 524 (7th Cir. 1997) (defendant and partner’s writing of 697 insufficient funds checks for over \$20 million tied them to a scheme where their employees testified about giving the defendant account balance information on a regular basis); *United States v. Pribble*, 127 F.3d 583, 585 (7th Cir. 1997) (after bank regulators informed the bank president his personal use and benefit of loan proceeds without revealing conflicts of interest was against the banking laws, he continued to issue loans with false statements for his personal benefit and without reporting his personal interest); *United States v. Norton*, 108 F.3d 133, 134 (7th Cir. 1997) (certified public accountant wrote seventy-nine insufficient funds checks totaling over \$1.3 million with knowledge of insufficient balance and argued NSF checks were only overdraft loans); *United States v. Allender*, 62 F.3d 909, 915 (7th Cir. 1995) (defendant admitted to forging signatures and pledging non-existent capital in a loan fraud scheme); *United States v. Moede*, 48 F.3d 238, 240 (7th Cir. 1995) (defendant created a trust account with a falsified trust agreement, forged signatures, and fraudulently used a social security number); *United States v. LeDonne*, 21 F.3d 1418, 1425 (7th Cir. 1994) (defendant admitted full knowledge of check-kiting scheme); *United States v. Hammen*, 977 F.2d 379, 384 (7th Cir. 1992) (defendant’s approval of loans without meeting applicants, approval of loans based on information he knew to be false, and approval of one loan that had not even been applied for by the nominee tied him to loan fraud scheme); *United States v. Doherty*, 969

In the context of forged or altered check cases, the front-end link requirement has been satisfied with either: (1) testimony from someone with advance knowledge of the scheme incriminating the defendant; or (2) evidence showing the defendant possessed or was at least aware of the check prior to its alteration. *See United States v. George*, 363 F.3d 666, 675 (7th Cir. 2004) (testimony from four individuals who the defendant solicited to deposit forged checks supported bank fraud conviction).⁵ No such evidence was presented in this case.

Simply put, the government’s reliance on back-end conduct does not satisfy this Court’s standard, and at the end of the day, the government’s theory still requires a leap of faith—far more than reasonable inferences—to conclude that Ajayi knew the check was altered from his withdrawal patterns and prior (legal) bank account history. This Court should not now bless such a leap of faith, which it did not need to do in the twenty cases cited above where the government marshalled sufficient evidence to link the defendant to the scheme. Had the government employed any of the following investigatory avenues at its disposal here, it too may have found the

F.2d 425, 427 (7th Cir. 1992) (defendant’s writing of “about 40 bad checks” with knowledge of insufficient balance tied him to the check-kiting scheme); *United States v. Sims*, 895 F.2d 326, 329 (7th Cir. 1990) (government informant testified that defendant told him they could make some money off the scheme and that the defendant’s explanations were lies); *United States v. Taggatz*, 831 F.2d 1355, 1357 (7th Cir. 1987) (defendant tied to check-kiting scheme through evidence that four days after an employee of his first bank put him on notice that his check writing pattern was illegal, he opened an account with a different bank and repeated the pattern).

⁵ *See also United States v. Kacak*, 299 F. App’x 588, 589 (7th Cir. 2008) (defendant admitted he knew the checks were fraudulent); *United States v. Howard*, 30 F.3d 871, 874 (7th Cir. 1994) (“uncontroverted” evidence that defendant possessed the check before it was forged and defendant’s conflicting stories as to how he obtained the signatures supported inference of knowledge); *United States v. Johnson-Wilder*, 29 F.3d 1100, 1104 (7th Cir. 1994) (co-conspirator’s testimony that defendant instigated and planned the scheme supported bank fraud conviction).

kind of evidence required to sustain a bank fraud conviction: (1) interviewed any party who “may have handled” the check (Trial Tr. 158); (2) spoken with any of the issuing company’s employees other than Mr. Corcoran (Trial Tr. 148); (3) interviewed anyone at the bank where the receiving P.O. Box was located (Trial Tr. 149); (4) reviewed surveillance tapes at the bank where the P.O. Box was located (Trial Tr. 149); or (5) visited or interviewed people at the (known) address of the wire transfer recipient (Trial Tr. 151). Yet it did none of these things and opted instead to “lapse into speculation” of which this Court has previously warned. *Piaskowski*, 256 F.3d at 693. Accordingly, this Court should find that the government failed to prove that there was a scheme as alleged in the indictment and vacate Ajayi’s bank fraud convictions for lack of sufficient evidence.

2. Element Two: Knowing Execution

The government needed to prove that the “defendant knowingly executed the scheme.” (A.22.) For the reasons discussed above, the government failed to prove that Ajayi *knowingly* executed a scheme. *See* Section I.A.1. But the government failed to prove even *unknowing* executions because it based each bank fraud charge on conduct occurring after the scheme’s end.

A bank fraud scheme ends once the defendant controls the targeted funds in a bank account. *United States v. Anderson*, 188 F.3d 886, 891 (7th Cir. 1999). Subsequent transfers of targeted funds cannot be executions of a bank fraud scheme. *Id.* (“Spending the proceeds of a criminal venture is not part of a scheme to defraud.”). In *Anderson*, the defendant fraudulently obtained funds and deposited

them into her business's bank account. *Id.* at 887. She later transferred those funds to another account over three transactions. *Id.* The government charged her with three counts of bank fraud, each premised on one of the subsequent transfers. *Id.* at 888. This Court held that those subsequent transfers were not punishable executions because the scheme ended once she controlled the money; the transfers “created no more of a risk than if she kept the money in the [original] account or used the money to buy groceries.” *Id.* at 891.

The government acknowledged that Ajayi had full control of the funds on December 8, 2009. (Trial Tr. 78–79.) Yet, like the counts in *Anderson*, all five bank fraud counts were premised on Ajayi's subsequent withdrawal of the targeted funds. *See, e.g.*, (A.14) (Count Two alleging that “[o]n or about December 10, 2009 . . . [Ajayi], for the purpose of executing the above-described scheme . . . knowingly cashed and caused to be cashed check number 1089, in the amount of \$16,500 drawn on the GR Icon International bank account”); *see also* (A.13, 15, 17–18) (Counts One, Three, Five, and Six raising substantially similar allegations with other withdrawals at other bank locations). Under *Anderson* these withdrawals occurred after the scheme ended and cannot constitute executions. The government thus failed to prove executions, let alone knowing executions, of bank fraud in all five counts. The convictions should be vacated.

3. Element Three: Intent to Defraud

The government was also required to prove that Ajayi “acted with the intent to defraud.” (A.22.) Circumstantial evidence may establish a defendant's intent to

defraud, but only where the government has first adequately proven the defendant's knowledge. *United States v. Howard*, 30 F.3d 871, 874 (7th Cir. 1994) (holding that where a rational jury may find that the defendant knowingly deposited a forged check, the jury may also find that the defendant acted with intent to defraud); *see also United States v. Moede*, 48 F.3d 238, 241–42 (7th Cir. 1995) (“Circumstantial evidence of intent to defraud includes such conduct as knowingly depositing a forged check, knowingly depositing an NSF check,” and other such conduct.).

Under *Howard*, then, intent to defraud is inextricably linked to the “scheme” element. The government implicitly acknowledged this fact when it combined its discussion of knowledge and intent during closing arguments. (Trial Tr. 314–15.) Where, as here, the government has failed to prove that the defendant knew that the check was altered, *see supra* Section I.A.1, it has also failed to prove intent because knowledge is the circumstantial evidence from which intent may be inferred. For these reasons, this Court should find that the government failed to prove Ajayi acted with intent to defraud and vacate the bank fraud convictions.

4. Element Four: Misrepresentation

The government needed to prove in its fourth element that the “scheme involved a materially false or fraudulent pretense, representation, or promise.” (A.22); *see also Loughrin v. United States*, 134 S. Ct. 2384, 2393 (2014) (stating that the bank fraud statute, § 1344(2), requires that the defendant “acquire (or attempt to acquire) bank property ‘by means of’ the misrepresentation.”). As *Loughrin* makes clear, the misrepresentation must be the defendant's. *Id.* (“Section 1344(2)'s ‘by

means of language is satisfied when . . . the defendant’s false statement is the mechanism naturally inducing a bank . . . to part with money in its control.”).

The government identified the “line on the altered check that says to GR Icon International” as the materially false representation. (Trial Tr. 314.) The government, however, failed to prove the misrepresentation was Ajayi’s. It offered no evidence that Ajayi made the alteration, or that he adopted another’s misrepresentation through knowledge of the alteration. *See supra* Section I.A.1. Accordingly, the government’s failure of proof on the fourth element likewise merits reversal.

B. The money laundering conviction also fails because it requires proof beyond a reasonable doubt of Ajayi’s advance knowledge that the check was altered.

To convict for money laundering, the instructions required the government to prove that Ajayi “knew the [wire] transaction involved criminally derived property” and that the “property was derived from bank fraud.” (A.25.) Just like the bank fraud convictions, the money laundering conviction depended on a crucial fact that the government failed to prove: that Ajayi knew the check was altered.

Although reversal is not automatically required simply by virtue of an insufficiency of proof on the predicate crime, *United States v. Mankarious*, 151 F.3d 694, 703 (7th Cir. 1998) (money laundering charges allowed to stand without convictions on mail fraud predicates), when the predicate crime and the money laundering count rise and fall on the same essential fact—here, the defendant’s knowledge—then reversal of the money laundering count is also warranted. *See* 18

U.S.C. § 1957(a) (emphasis added) (“Whoever . . . *knowingly* engages . . . in a monetary transaction in criminally derived property . . .”). The government’s cursory treatment of the elements of money laundering in its closing argument demonstrates the inseparable link between knowledge that the check was altered and knowing the funds were criminally derived:

Several of these elements we have already covered for the bank fraud count, such as elements two and four, that he knew the transaction involved criminally derived property and the property was derived from bank fraud. We have already talked about the defendant’s knowledge of the false nature of the check and how the evidence supports that. You know the elements have been satisfied.

(Trial Tr. 322–23.) Thus, if this Court finds the government failed to prove Ajayi’s knowledge of the scheme, the money laundering conviction must also fail.

II. The district court abused its discretion by excluding, as irrelevant, emails in which Ajayi sought MRI price quotes.

Ajayi told the jury he believed the check was a legitimate investment in his prospective MRI business, a claim that would defeat the knowledge requirement of bank fraud. In evaluating his claim and deciding the knowledge element, the jury would care whether he actually had such a business. The emails in which he sought MRI price quotes increased the likelihood of this consequential fact and were therefore relevant. The district court, however, excluded them on relevance grounds. (A.36–47.)

This Court reviews the district court’s exclusion of the emails for an abuse of discretion. *United States v. Holt*, 460 F.3d 934, 936 (7th Cir. 2006). If this Court finds error, it should reverse unless it finds the error harmless. *Id.* This Court may

consider the error harmless only if it can be confident that, without the exclusion, the jury would have reached the same verdict. *United States v. Leonard-Allen*, 739 F.3d 948, 955 (7th Cir. 2013). Where the evidence would have been primary evidence in support of a defense, the Court cannot be confident and the error cannot be harmless. *United States v. Peak*, 856 F.2d 825, 834 (7th Cir. 1988); *see also Leonard-Allen*, 739 F.3d at 955 (erroneously excluded evidence that was central to the defense required reversal).

Evidence is relevant if it has any tendency, however slight, to alter the likelihood of a consequential fact. *Leonard-Allen*, 739 F.3d at 956; FED. R. EVID. 401. “To be relevant, evidence need not conclusively decide the ultimate issue in a case, nor make the proposition appear more probable, but it must in some degree advance the inquiry.” *E.E.O.C. v. Ind. Bell Tel. Co.*, 256 F.3d 516, 533 (7th Cir. 2001) (internal quotations omitted).

The central issue at trial was whether Ajayi *knowingly* executed the bank fraud scheme, *i.e.*, whether he knew the check was altered. Ajayi told the jury he believed the check was a legitimate investment in his prospective MRI business (Trial Tr. 233–250), a belief that would negate bank fraud’s knowledge requirement. By contrast, the government told the jury that there was no reason for Ajayi to believe the check had any legitimate purpose because he had no legitimate business:

[H]e knew that the initial check that he deposited was fraudulent and that he had no right to the money that he subsequently took out.

And you don't need a witness to tell you that because you can draw that conclusion on your own based on what you know of the defendant's conduct.

Because what else could the defendant have believed in this case? Before he deposited that huge check, GR Icon, his company, had \$90 in its account. . . . Nothing in the bank statements indicates that there was an expense associated with running a normal business. . . . There is no history of this business operating as a functional, normal business.

(Trial Tr. 319–20.) And the government cut straight to the chase in its rebuttal:

The defendant doesn't have this legitimate business. He doesn't have any reason to believe that anyone would invest \$45,000, much less \$344,000, into his business.

(Trial Tr. 337.)

As the government's argument makes clear, the legitimacy or illegitimacy of Ajayi's MRI business was important in evaluating whether Ajayi committed these crimes. Ajayi's emails unequivocally establish his attempts to get this business off the ground, as this message—sent in July 2009—demonstrates:

MR. Ajayi, Arnold Bates the President of our company would like to discuss your needs with you. Are you looking for older or newer imaging equipment? Do you have a brand preference that is GE, Siemens', or other? Are you interested in MRI, CT or both? We have both in stock but we also have equipment that is available to us if we have customer that needs that particular type of equipment. We can certainly supply you with a list of what we have in stock but we would really like to talk to you about your needs now and in the future.

(A.29) (errors in original). And his defense certainly would have been strengthened by the email he received from the same MRI retailer on December 9, 2009—the day after the funds were released to him:

Ajayi, Thank you for the call. Attached is the quotation for the mobile MRI. The unit is in fantastic operating and cosmetic condition. I've attached a few pictures as well. We look forward to helping your imaging in Nigeria.

(A.31.)

The jury could have reasonably inferred from the text and timing of these emails that Ajayi had been contemplating the purchase of MRI machines since at least four months before he even received the check at issue in this case. More importantly, the jury could have reasonably inferred from the December 2009 email that once he had access to the deposited funds, he increased the seriousness of his inquiries about MRI machines.

The emails and the inferences that could be drawn from them would have had a profound effect on the jury's decision whether Ajayi knew the check was altered, and on Ajayi's credibility in general. In light of this impact, this Court cannot be confident that the jury would have issued the same verdict had the emails been admitted. Accordingly, it should reverse all six convictions and remand for a new trial.

III. The district court's failure to include in the jury instructions bracketed language that should be included in prosecutions under § 1344(2) constituted plain error and prejudiced Ajayi.

As discussed above, *see supra* Section I, the bank fraud statute provides two bases for conviction. The first basis, § 1344(1), does not require the government to prove the defendant made a specific misrepresentation, *United States v. Higgins*, 270 F.3d 1070, 1073 (7th Cir. 2001), but the second basis, § 1344(2), requires the

government to prove that the defendant knowingly made a specific misrepresentation. *Loughrin v. United States*, 134 S. Ct. 2384, 2393 (2014).

The pattern instructions reflect these differences. For example, the Committee was explicit that the pattern instruction for the element requiring a “materially false or fraudulent pretense, representation or promise” should not be given in a prosecution under § 1344(1). *See Seventh Circuit Pattern Instructions* at 411 (2012) (see bracketed fourth element and committee comment that “[i]n a check-kiting scheme, the Seventh Circuit has held that the scheme need not involve a false statement or misrepresentation of fact because Section 1344(1) encompasses such a scheme”). Similarly, the pattern instructions require specific instructional language when the government pursues a § 1344(2) charge. *See Seventh Circuit Pattern Instructions* at 413 (2012) (“[T]he government must prove at least one of the [false, pretenses, representations, promises, or] acts charged in the portion of the indictment describing the scheme.”).

In Ajayi’s case, the government pursued both § 1344(1) and § 1344(2) charges all the way through the case. (A.12) (indictment charging both sections); (A.22) (jury instruction listing five elements that encompass both §§ 1344(1) and (2)); (Trial Tr. 314) (government closing affirming the five elements it needed to prove). Therefore, the district court should have included the bracketed language in the pattern instruction clarifying what constitutes a scheme. It did not. Instead, the truncated instruction proffered by the government was given, including only the first part of the scheme instruction:

A scheme to defraud a bank means a plan or course of action intended to deceive or cheat that bank or to obtain property or to cause the potential loss of money or property by the bank.

(A.23.) The omission of this additional, required language is not a mere technicality, particularly given how the evidence unfolded in Ajayi’s case. In the statute, the word “knowingly” modifies the misrepresentation. The elements instruction for bank fraud given at trial required the government to prove “misrepresentations as charged in the indictment.” (A.22.) The only misrepresentation explicitly charged in the indictment alleged that Ajayi presented the check to Chase *knowing* that it was forged. (A.12.) The bracketed language, had it been given, would have told the jury that it could not convict Ajayi absent proof of the sole misrepresentation alleged in the indictment. But the incomplete instruction given here eliminated the statutory requirement that the defendant know of the misrepresentation as well as the sole allegation in the indictment that established that misrepresentation. If the jury followed the instructions as given, it would not have believed that it needed to find that Ajayi knew the check was altered, and it would have found him guilty without the evidence necessary for conviction.

This Court reviews only for plain error because the defendant did not challenge the absence of this instruction at trial. *United States v. Holmes*, 93 F.3d 289, 292 (7th Cir. 1996). But this omission—which may have led the jury to believe it did not need to find the essential element of knowledge—meets the plain error standard. *Id.* at 294 (indicating that plain error is satisfied where “there exists a clear possibility that the defendant might have been found not guilty of the charge had the jury been

instructed properly”). Accordingly, the Court should reverse Ajayi’s convictions and remand for a new trial. *Id.* at 296.

IV. Four of the bank fraud convictions should be vacated because they are multiplicitous of the fifth.

The government erroneously charged, and obtained convictions on, five counts of bank fraud even though Ajayi could have executed the charged scheme only once: when he deposited the check. This Court reviews a multiplicity challenge for plain error because Ajayi did not object before trial. *United States v. Peugh*, 675 F.3d 736, 740 (7th Cir. 2012) *rev’d on other grounds*, 133 S. Ct. 2072 (2013); *United States v. Conley*, 291 F.3d 464, 469–70 (7th Cir. 2002).

The government may not charge a single offense in separate counts. *United States v. Allender*, 62 F.3d 909, 912 (7th Cir. 1995). In the bank fraud context, defendants may be charged in separate counts only with independent executions of a scheme. *United States v. Longfellow*, 43 F.3d 318, 323 (7th Cir. 1994). Conduct qualifies as an execution when it is chronologically and substantively distinct from other executions and subjects the victim to additional risk of loss. *Peugh*, 675 F.3d at 740 (citing *Longfellow*, 43 F.3d at 323–24). A bank fraud scheme ends once the defendant controls the targeted funds in a bank account. *United States v. Anderson*, 188 F.3d 886, 891 (7th Cir. 1999). Thus subsequent uses or transfers of a single set of funds cannot be executions of a bank fraud scheme. *Id.* (“Spending the proceeds of a criminal venture is not part of a scheme to defraud.”).

More specifically, where a defendant deposits forged or altered checks and withdraws the funds, the deposits may be executions of the scheme, but the

withdrawals—which depend on the deposits—cannot. *United States v. Hord*, 6 F.3d 276, 281 (5th Cir. 1993) (“It is the deposits, not [the defendant’s] withdrawal attempts, that constitute executions of the scheme.”); cf. *United States v. Adeyale*, No. 13-4210, 2014 WL 3720007, at *7–8 (4th Cir. July 29, 2014) (approving of district court’s finding that “one deposit and all of the withdrawals pertaining to that deposit constituted an execution of the scheme”). In *Hord*, the government charged the defendant with nine counts of bank fraud: one for opening a bank account, five for depositing forged or counterfeit checks, and three for attempting to withdraw funds. 6 F.3d at 280. The Court vacated the three withdrawal-based convictions as being multiplicitous to the five convictions premised on the deposits, reasoning that the withdrawal attempts were not punishable executions because they could not have succeeded without the deposits, which were what created the bank’s risk of loss. *Id.* at 282.

Here, the government acknowledged that Ajayi had full control of the deposited funds in the GR Icon account as of December 8, 2009. (Trial Tr. 78–79.) Any scheme to defraud ended at that point. *Anderson*, 188 F.3d at 891. Like the defendant in *Hord*, Ajayi’s subsequent withdrawals necessarily depended on the deposit and cannot constitute separate executions of the scheme. *Hord*, 6 F.3d at 281–82.

This Court reverses only if the error is “clear, prejudicial, and affects substantial rights,” *Conley*, 291 F.3d at 470, and when it affects the fairness, integrity or public reputation of judicial proceedings, *United States v. Olano*, 507 U.S. 725, 736 (1993). A multiplicitous conviction is prejudicial because it exposes a defendant to the

hazards of carrying additional, unwarranted convictions. *Ball v. United States*, 470 U.S. 856, 864–65 (1985). Multiplicitous punishments—even an additional \$50 special assessment—satisfy plain error review. *Rutledge v. United States*, 517 U.S. 292, 307 (1996).⁶ Therefore, this Court should find plain error, and remand with instructions to the district court to vacate four of Ajayi’s convictions, sentences, and special assessments, and to resentence him on only one count. *Rutledge*, 517 U.S. at 307 (remanding on equivalent of plain-error review for the defendant’s multiplicitous conviction and sentence to be vacated and \$50 assessment to be refunded); *see also McFarland v. Pickett*, 469 F.2d 1277, 1279 (7th Cir. 1972) (remanding for resentencing because it was “possible . . . that the trial judge was influenced in his sentence by his belief that two offenses rather than one had been committed”).

V. The indictment suffered from a fatal variance and constructive amendment.

This Court should reverse Ajayi’s conviction because the government proved a categorically different and broader scheme than the one it alleged in its indictment. *Cf. United States v. Miller*, 471 U.S. 130, 138 (1985) (rejecting variance and amendment arguments where the altered proof *narrowed* the charge to a subset of that which was alleged in indictment, but noting that where the trial evidence “broaden[s] the possible bases for conviction from that which appeared in the indictment,” an amendment occurs (citing *Stirone v. United States*, 361 U.S. 212

⁶ Although *Rutledge* does not state that it applied plain-error review, this Court interpreted it as doing essentially that. *See United States v. Parker*, 508 F.3d 434, 441 (7th Cir. 2007).

(1960))). If the indictment specifies facts that are material to the offense, those facts—not different ones—must be proven. *United States v. Baker*, 227 F.3d 955, 961 (7th Cir. 2000); *see also United States v. Leichtnam*, 948 F.2d 370, 374–75, 379–81 (7th Cir. 1991); *but cf. Miller*, 471 U.S. at 137 (“useless averment[s] that may be ignored” do not cause a variance between the indictment and proof to be deemed fatal) (internal citations and quotations omitted). In *Stirone*, for example, the prosecution’s proof of a required element went beyond the specific allegation contained in the indictment, and the Court found the indictment impermissibly broadened. 361 U.S. at 219 (“[W]e cannot know whether the grand jury would have included in its indictment a charge that commerce in steel from a nonexistent steel mill had been interfered with. Yet because of the court’s admission of evidence . . . this might have been the basis upon which the trial jury convicted the [defendant]. If so, he was convicted on a charge the grand jury never made against him. This was fatal error.”). Because Ajayi did not raise these claims below, this Court reviews for plain error. *United States v. Duran*, 407 F.3d 828, 843 (7th Cir. 2005) (reviewing for plain error a claim that nonspecific jury instructions broadened the indictment).

The scheme alleged in the indictment was not the scheme presented at trial. It was not only categorically different, but also broader. Whereas the indictment alleged that Ajayi himself was instrumental in initiating and devising the scheme—obtaining the check and effecting its forgery—the government relied on the existence of some amorphous and anonymous scheme within which Ajayi played no role in the forgery—the key fact constituting the scheme—and argued that Ajayi

knew the check was altered from looking at it. *Compare* (A.12–13) (indictment) (alleging that Ajayi “devised, intended to devise, and participated in a scheme to defraud” through various actions) *with* (Trial Tr. 312–13) (prosecutor stating in closing argument “there really is no question here that there was a scheme to defraud Chase Bank” and identifying as sole evidence of the scheme “that the original \$344,000 check issued by ABM was forged,” and “was deposited into GR Icon’s Chase account and that withdrawals were made from that account after that. [A scheme] has been proven.”). Indeed, the proof and argument of his front-end involvement in a scheme were best summarized as: “The defendant looked at that check, and he knew it was altered. He deposited it anyway.” (Trial Tr. 340.) In closing, the government never once mentioned Ajayi’s name when referencing what it described as the scheme—an essential element of the case—probably because it presented no evidence that Ajayi had devised and initiated the scheme (diverting the check from ABM and effecting the forgery).

Therefore, the government simply, and impermissibly, changed its approach from the scheme it had alleged to one where unknown others devised and initiated the scheme and Ajayi only played an after-the-fact role in executing it. This alteration broadened the charges because it allowed the government to obtain a conviction based not on the narrow set of facts that placed Ajayi front and center from the first moment, but rather on a whole series of other potential participants whose actions Ajayi could not know, predict, or defend against. The variance was material and prejudicial because Ajayi knew only that the government was tasked

with linking him to the check in some way before its forgery, either in Texas near ABM or somewhere along the way to Chicago. Ajayi could not have anticipated that the government would present to the jury this pre-packaged scheme where the essential elements and facts—the diverting of the check and its forgery—were no longer committed by Ajayi personally. Its varied proof that an unknown network whose actions could simply be attributed to him through the obviousness of alteration left him unprepared to adequately defend himself, *e.g.*, by presenting expert testimony to combat the government’s contention that he must have deduced the check was altered. Certainly, the grand jury might not have approved such an amorphous allegation had the government presented the case ultimately offered at trial. *Stirone*, 361 U.S. at 218–19.

CONCLUSION

For the foregoing reasons, Ajayi first respectfully requests that this Court vacate his six convictions which are not supported by sufficient evidence. Second, and in the alternative, Ajayi requests that this Court grant him a new trial on his six convictions because the district court erroneously excluded emails central to his defense. Third, and in the alternative, Ajayi asks this Court to grant him a new trial on the five bank fraud counts because the jury instructions’ omission of pattern language may have misled the jury as to whether the government must prove that Ajayi knew the check was altered. Fourth, and in the alternative, Ajayi requests that this Court reverse with instructions for the district court to vacate four of his bank fraud convictions, refund \$400 of special assessment fees, and resentence him

on a single count of bank fraud because the convictions were multiplicitous. Fifth, and in the alternative, Ajayi asks this Court to vacate his convictions because the indictment suffered from a fatal variance or constructive amendment.

Respectfully submitted,

Abidemi Ajayi
Defendant-Appellant

/s/ Sarah O'Rourke Schrup
SARAH O'ROURKE SCHRUP
Counsel of Record

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Counsel for Defendant-Appellant
ABIDEMI AJAYI

**CERTIFICATE OF COMPLIANCE WITH FEDERAL RULE OF
APPELLATE PROCEDURE 32(a)(7)**

1. This brief complies with the type-volume limitation of FED. R. APP. P. 32(a)(7)(b) because this brief contains 10,046 words, excluding the parts of the brief exempted by FED. R. APP. P. 32(a)(7)(b)(iii).

2. This brief complies with the typeface requirements of Circuit Rule 32 and FED. R. APP. P. 32(a)(5) and the type style requirements of FED. R. APP. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2011 with a 12-point Century Schoolbook font.

/s/ Sarah O'Rourke Schrup

SARAH O'ROURKE SCHRUP

Counsel of Record

JONATHON STUDER

Senior Law Student

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Northwestern University School of Law

375 East Chicago Avenue

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(312) 503-0063

Dated: January 21, 2015

CERTIFICATE OF SERVICE

I, the undersigned, counsel for the Defendant-Appellant, Abidemi Ajayi, hereby certify that I electronically filed this brief, required appendix, and separate appendix with the clerk of the Seventh Circuit Court of Appeals on January 21, 2015, which will send the filing to counsel of record in the case.

/s/ Sarah O'Rourke Schrup

SARAH O'ROURKE SCHRUP

Counsel of Record

JONATHON STUDER

Senior Law Student

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375 East Chicago Avenue

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(312) 503-0063

Dated: January 21, 2015

CIRCUIT RULE 30(d) STATEMENT

I, the undersigned, counsel for the Defendant-Appellant, Abidemi Ajayi, hereby state that all of the materials required by Circuit Rules 30(a), 30(b), and 30(d) are included in the proper appendices to this brief.

/s/ Sarah O'Rourke Schrup _____

SARAH O'ROURKE SCHRUP

Counsel of Record

JONATHON STUDER

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Dated: January 21, 2015

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UM

UNITED STATES DISTRICT COURT

Northern District of Illinois, Eastern Division

UNITED STATES OF AMERICA

v.
Abidemi Ajayi

JUDGMENT IN A CRIMINAL CASE

Case Number: 12 CR 190-1

USM Number: 43269-424

Damon M. Cheronis

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) _____

pleaded nolo contendere to count(s) _____
which was accepted by the court.

was found guilty on count(s) 1, 2, 3, 4, 5, 6
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 1344	Bank Fraud	12/12/2009	1, 2, 3, 5, 6
18 U.S.C. § 1957(a)	Money Laundering	12/12/2009	4

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) _____

Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

April 29, 2014
Date of Imposition of Judgment


Signature of Judge

Rebecca R. Pallmeyer, U. S. District Judge
Name and Title of Judge

May 14, 2014
Date

2014 MAY 16 PM 12:25

DEFENDANT: Abidemi Ajayi
CASE NUMBER: 12 CR 190-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

8 Months on Count 1, 8 Months on Count 2, 8 Months on Count 3, 8 Months on Count 5 and 8 Months on Count 6, 4 Months on Count 4; all counts to run consecutively for a total of 44 Months.

The court makes the following recommendations to the Bureau of Prisons:
That the defendant be placed as close to Chicago, IL as possible.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on June 30, 2014

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Abidemi Ajayi
CASE NUMBER: 12 CR 190-1

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :
3 Years on each of Count 1, 2, 3, 4, 5, 6. All counts to run concurrently.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Abidemi Ajayi
CASE NUMBER: 12 CR 190-1

ADDITIONAL SUPERVISED RELEASE TERMS

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and random drug tests thereafter, conducted by the U.S. Probation Office, not to exceed 104 test per year.

The defendant shall pay any financial penalty that is imposed by this judgment that remains unpaid at the commencement of the term of supervised release. The defendant's monthly payment schedule shall be an amount that is at least ten percent of his net monthly income.

The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer unless the defendant is in compliance with the installment payment schedule.

The defendant shall provide the probation officer with access to any requested financial information.

DEFENDANT: Abidemi Ajayi
CASE NUMBER: 12 CR 190-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

TOTALS Assessment Fine Restitution
\$ 600.00 \$ Waived \$ 172,160.52

The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(l), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
JP Morgan Chase Bank Attn: Fraud Recovery Investigations PO Box 710988 Columbus, Ohio 43271		17216052	100%

TOTALS \$ _____ \$ _____

Restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

- the interest requirement is waived for the fine restitution.
- the interest requirement for the fine restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Abidemi Ajayi
CASE NUMBER: 12 CR 190-1

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A Lump sum payment of \$ _____ due immediately, balance due
 not later than _____, or
 in accordance C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal monthly (e.g., weekly, monthly, quarterly) installments of \$ 10%-net income over a period of 3 years (e.g., months or years), to commence 60 days (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

4m

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS


United States of America,)	
)	
Plaintiff),)	
)	
v.)	No. 12 CR 190-1
)	
Abidemi Ajayi,)	Judge Rebecca R. Pallmeyer
)	
)	
Defendant.)	

ORDER

Jury trial held on 12/6/2013. Jury deliberations held and concluded. The jurors return a verdict of guilty as to Counts 1, 2, 3, 4, 5 and 6; not guilty as to Count 7. Defendant's oral motion for an additional 30 days to file post-trial motions granted. Cause referred to the probation office for a presentence investigation. Sentencing set for 4/4/2014 at 11:30 PM. Trial Ends - Jury.

ENTER:

Dated: December 6, 2013



 REBECCA R. PALLMEYER
 United States District Judge

(T:04:28)

U.S. DISTRICT COURT
CLERK

2013 DEC -9 PM 3: 07

FILED FOR DOCKETING
ED-6

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 12 CR 190
)	
ABIDEMI AJAYI,)	Judge Rebecca R. Pallmeyer
)	
Defendant.)	

ORDER

Defendant Abidemi Ajayi was found guilty of five counts of bank fraud and one count of money laundering, all arising from a November 2009 incident in which he deposited a stole and altered check into a bank account he controlled, and then rapidly withdrew much of the money. Ajayi has moved for a judgment of acquittal or for a new trial. The motion is denied.

The jury heard testimony from Daniel Corcoran, an official at the American Building Maintenance Company, the company whose check was altered. Corcoran testified about his discovery that an altered check had been deposited into the JP Morgan Chase bank account of GR Icon International, a company that had no relationship to the victim. GR Icon, an apparently inactive business, had been dissolved by the Illinois Secretary of State on several occasions, and had a balance of \$90.00 at the beginning of November 2009. As the government established through the testimony of James O'Shea, an investigator at the JP Morgan Chase Bank, it was Defendant who controlled the GR Icon account. Through O'Shea, the government introduced photographs of Defendant conducting transactions involved in this case, documents reflecting ATM activity on the GR Icon account, copies of checks drawn on that account and payable to Defendant, and the GR Icon bank statements. Dawn Hardwick, another investigator, testified that immediately after cashing one of the checks written to himself in one Chase branch, Defendant conducted a \$53,000 wire transfer, and then traveled to another Chase branch bank to cash another check. Evidence showed that in just a few days after the altered

check cleared, Defendant traveled from bank to bank, personally conducting multiple withdrawals between the time the check cleared and the fraud was detected, and made several debit card purchases.

The jury acquitted Defendant of the charge of possessing and using an altered check. His conduct after the check cleared was nevertheless sufficient to support the jury's determination that he knew he was not entitled to that money, and that he knowingly engaged in a scheme to defraud the Chase bank. Defendant testified in his own defense that he received the check from a man named Brown after a chance encounter on an airplane, deposited the check at an ATM, and then after the check had cleared, made frantic efforts to return a large portion of the funds to Brown. The jury was entitled to disbelieve that testimony and to conclude that Defendant was a participant in wrongdoing, not a victim of it.

Defendant urges that the court erred in excluding copies of certain e-mail communications, but the court stands by that ruling. The communications appeared to be from a company unconnected with GR Icon and had nothing to do with Brown. Thus, they do not in fact support the contention that Defendant was acting in good faith when he deposited the check and rapidly withdrew the money, and had no other apparent relevance.

Defendant's motion for a judgment of acquittal or a new trial [58] is denied.

ENTER:



REBECCA R. PALLMEYER
United States District Judge

Dated: April 29, 2014

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	
)	
V.)	Case No. 12-CR-190
)	Hon. Rebecca R. Pallmeyer
ABIDEMI AJAYI,)	
)	
Defendant.)	

NOTICE OF APPEAL

Notice is hereby given that the Defendant, ABIDEMI AJAYI, appeals to the United States Court of Appeals for the Seventh Circuit from the conviction, judgment, and order of the district court contained in the final judgment entered on May 19, 2014, sentencing the Defendant to a total term of imprisonment of 44 months in the United States Bureau of Prisons for the offenses of Bank Fraud (18 U.S.C. 1344) (counts 1, 2, 3, 5, and 6), and Money Laundering (18 U.S.C. 1957(a)) (count 4).

Respectfully Submitted,

s/ Damon M. Cheronis
DAMON M. CHERONIS
Law Office of Damon M. Cheronis
53 West Jackson, Suite 1750
Chicago, Illinois 60604
T: 312-663-4644

PH

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)

v.)

ABIDEMI AJAYI)

12CR0190

JUDGE PALLMEYER

Violations: Title 18, United States
Code, Sections 513(a), 1241, 1242,
1957

MAGISTRATE JUDGE NOLAN

FILED

COUNT ONE

The SPECIAL FEBRUARY 2011-1 GRAND JURY charges:

JUN 05 2012
6-5-12
MICHAEL T. MASON
UNITED STATES MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT

1. At times material to this indictment:

a. Defendant ABIDEMI AJAYI ("AJAYI") was a resident of Calumet City, Illinois. AJAYI incorporated a corporation named GR Icon International in the State. AJAYI was the president and registered agent for GR Icon International;

b. AJAYI maintained a bank account in the name of GR Icon International at JP Morgan Chase over which he had signatory authority (hereinafter, the "GR Icon International bank account");

c. JP Morgan Chase was a financial institution, which operated in and the activities of which affected interstate commerce, with branch offices in Chicago, Illinois and elsewhere, the deposits of which were insured by the Federal Deposit Insurance Corporation ("FDIC");

d. Bank of America was a financial institution, which operated in and the activities of which affected interstate commerce, with branch offices in Chicago, Illinois and elsewhere, the deposits of which were insured by the FDIC;

e. Company A was a corporation with offices located in Houston, Texas and

elsewhere;

f. Company A maintained a business checking account at the Bank of America;

and

g. Company B was a corporation with an office in Dallas, Texas;

2. Beginning no later than November 27, 2009, and continuing to on or about December 12, 2009, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

ABIDEMI AJAYI,

defendant herein, and others known and unknown to the Grand Jury, devised, intended to devise, and participated in a scheme to defraud and to obtain money and funds owned by and under the custody or control of JP Morgan Chase and Bank of America by means of materially false and fraudulent pretenses, representations, and promises, as described below.

3. It was part of the scheme that AJAYI obtained a check numbered xxxx8762 issued by Company A, and drawn on Company A's account at Bank of America, and originally made payable to Company B in the amount of \$344,657.84.

4. It was further part of the scheme that Company A's check numbered xxxx8762 was altered to change the name of the payee on the check's face from Company B to GR Icon International. On or about November 27, 2009, AJAYI, knowing that the check had been altered, deposited and caused the altered check to be deposited into the GR Icon International bank account at JP Morgan Chase for the purpose of creating a falsely inflated balance designed to deceive JP Morgan Chase into honoring and paying checks and other debits drawn on the GR Icon International bank account.

5. It was further part of the scheme that once the altered Company A check numbered

xxxx8762 cleared Bank of America on or about December 8, 2009, AJAYI converted the proceeds of check to his own use and benefit in the following ways:

a. AJAYI cashed and caused to be cashed several checks drawn on the GR Icon International bank account at JP Morgan Chase that were made payable to himself;

b. AJAYI wrote and caused to be written checks drawn on the GR Icon International bank account at JP Morgan Chase and made payable to third parties, which were then deposited or cashed at other financial institutions; and,

c. AJAYI caused funds to be wire transferred from the GR Icon International bank account at JP Morgan Chase to another bank account.

6. It was further part of the scheme that, by the above means, AJAYI caused JP Morgan Chase to suffer a loss of approximately \$171,160.52.

7. It was further part of the scheme that AJAYI did misrepresent, conceal and hide and caused to be misrepresented, concealed and hidden acts done in furtherance of the scheme.

8. On or about December 9, 2009, at Evanston, in the Northern District of Illinois, Eastern Division, and elsewhere,

ABIDEMI AJAYI,

defendant herein, for the purpose of executing the above-described scheme and attempting to do so, knowingly cashed and caused to be cashed check numbered 1086, in the amount of \$9,600 drawn on the GR Icon International bank account, at a JP Morgan Chase branch located at 1603 Orrington Avenue, Evanston, Illinois;

In violation of Title 18, United States Code, Section 1344.

COUNT TWO

The SPECIAL FEBRUARY 2011-1 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs One through Eight of Count One of this indictment as though fully set forth herein.
2. On or about December 10, 2009, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

ABIDEMI AJAYI,

defendant herein, for the purpose of executing the above-described scheme and attempting to do so, knowingly cashed and caused to be cashed check numbered 1089, in the amount of \$16,500 drawn on the GR Icon International bank account, at a JP Morgan Chase branch located at 10 South Dearborn Street, Chicago, Illinois;

In violation of Title 18, United States Code, Section 1344.

COUNT THREE

The SPECIAL FEBRUARY 2011-1 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs One through Eight of Count One of this indictment as though fully set forth herein.
2. On or about December 11, 2009, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

ABIDEMI AJAYI,

defendant herein, for the purpose of executing the above-described scheme and attempting to do so, knowingly cashed and caused to be cashed check numbered 1093 in the amount of \$17,000 drawn on the GR Icon International bank account, at a JP Morgan Chase branch located at 1122 North Clark Street, Chicago, Illinois;

In violation of Title 18, United States Code, Section 1344.

COUNT FOUR

The SPECIAL FEBRUARY 2011-1 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraph One of Count One of this indictment as though fully set forth herein.
2. On or about December 11, 2009, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

ABIDEMI AJAYI,

defendant herein, did knowingly engage in a monetary transaction affecting interstate commerce and involving criminally derived property of a value of greater than \$10,000, in that defendant caused \$53,000 to be wire transferred from the GR Icon International bank account at JP Morgan Chase to the bank account of Company C in Hollywood, Florida, which funds were derived from a specified unlawful activity, namely the possession of a forged security of an organization with the intent to deceive another person or organization, in violation of Title 18, United States Code, Section 513(a), and bank fraud, in violation of Title 18, United States Code, Section 1344;

In violation of Title 18, United States Code, Section 1957(a).

COUNT FIVE

The SPECIAL FEBRUARY 2011-1 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs One through Eight of Count One of this indictment as though fully set forth herein.

2. On or about December 12, 2009, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

ABIDEMI AJAYI,

defendant herein, for the purpose of executing the above-described scheme and attempting to do so, knowingly cashed and caused to be cashed check numbered 1097, in the amount of \$9,650 drawn on the GR Icon International bank account, at a JP Morgan Chase branch located at 3714 North Broadway, Chicago, Illinois;

In violation of Title 18, United States Code, Section 1344.

COUNT SIX

The SPECIAL FEBRUARY 2011-1 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs One through Eight of Count One of this indictment as though fully set forth herein.
2. On or about December 12, 2009, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

ABIDEMI AJAYI,

defendant herein, for the purpose of executing the above-described scheme and attempting to do so, knowingly cashed and caused to be cashed check numbered 1098, in the amount of \$9,800 drawn on the GR Icon International bank account, at a JP Morgan Chase branch located at 1101 West Lawrence Avenue, Chicago, Illinois;

In violation of Title 18, United States Code, Section 1344.

COUNT SEVEN

The SPECIAL FEBRUARY 2011-1 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraph One of Count One of this indictment as though fully set forth herein.
2. Beginning no later than November 27, 2009, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

ABIDEMI AJAYI,

defendant herein, knowingly made and possessed an altered security of an organization, namely, a check numbered xxxx8762 issued by Company A and originally made payable to Company B in the amount of \$344,657.84, with intent to deceive another person or organization, namely JP Morgan Chase;

In violation of Title 18, United States Code, Section 513(a).

FACTS SUPPORTING PROBABLE CAUSE

Background of the investigation

4. In or about April 2010, a bank fraud investigator from JP Morgan Chase (“Chase”) contacted me regarding suspected bank fraud, which led to a loss for Chase of approximately \$172,160.52.

5. Specifically, the investigator stated that on or about November 12, 2009, Company A¹ cut Check #43138762 on its Bank of America account to Company B² in the amount of \$344,657.84. According to the bank fraud investigator, the check was made payable to Company B at a post office box in Dallas.³

6. According to the bank fraud investigator, on or about December 11, 2009, Company B informed Company A that its account was past due. Additionally, my review of documents provided by Chase showed that on or about December 15, 2009, Company B provided Company A with a written confirmation notice that Company B never received Check #43138762.

7. According to the bank fraud investigator, Company A then conducted an internal investigation that revealed that Check #43138762 had already been endorsed and

¹As stated by the bank fraud investigator, and as I have learned during the course of my investigation, Company A provides cleaning services and security for high rise buildings and has more than two dozen offices nationwide.

²As stated by the bank fraud investigator, and as I have learned during the course of my investigation, Company B provides paper products and cleaning supplies to Company A and other customers.

³During an August 2010 interview by USPIS inspectors of Company B representatives, Company B’s post office box in Dallas is a lock box controlled by Comerica Bank, and Comerica Bank receives and processes all account receivable payments for Pollock.

25. According to the bank fraud investigator, on or about Friday, December 11, 2009, Company B notified Company A that Company A's payment was past due, and no later than the following Monday (December 14), Company A was able to check its bank software and discover that the payee name on the check had been altered. According to the bank fraud investigator, the funds in the GR Icon account were subsequently frozen and not accessible for withdrawal.

26. With various fees for wire transfers and other purchases, as well as additional checks from the GR Icon account that were made payable to third parties and cashed in December 2009, Chase suffered a total loss of \$172,160.52. The \$172,497.32 remaining the GR Icon account at the time the fraud was detected was debited by Chase's Risk Operations and placed into its general ledger. Chase returned the entire \$344,657.84 from the altered check to Bank of America.

27. In November and December 2009, JP Morgan Chase was a financial institution, the deposits of which were insured by the Federal Deposit Insurance Corporation ("FDIC"). Additionally, Bank of America was a financial institution, the deposits of which were insured by the FDIC.

Conclusion

28. Based on the foregoing, I submit that the aforementioned evidence establishes that beginning no later than November 27, 2009, AJAYI knowingly possessed a forged security of an organization, namely, a check numbered 43138762 in the amount of

Counts One, Two, Three, Five, and Six of the indictment charge the defendant with bank fraud. In order for you to find the defendant guilty of this charge, the government must prove each of the following elements beyond a reasonable doubt:

1. There was a scheme to defraud a bank or to obtain moneys, funds, credits, assets, securities, or other property owned by, or in the custody or control of, a bank by means of false or fraudulent pretenses, representations or promises as charged in the indictment; and
2. The defendant knowingly executed the scheme; and
3. The defendant acted with the intent to defraud; and
4. The scheme involved a materially false or fraudulent pretense, representation, or promise; and
5. At the time of the charged offense, the deposits of the bank were insured by the Federal Deposit Insurance Corporation.

If you find from your consideration of all the evidence that the government has proved each of these elements beyond a reasonable doubt as to the charge you are considering, then you should find the defendant guilty of that charge.

If, on the other hand, you find from your consideration of all the evidence that the government has failed to prove any of these elements beyond a reasonable doubt as to the charge you are considering,, then you should find the defendant not guilty of that charge.

A scheme is a plan or course of action formed with the intent to accomplish some purpose.

A scheme to defraud a bank means a plan or course of action intended to deceive or cheat that bank or to obtain money or property or to cause the potential loss of money or property by the bank.

A person acts knowingly if he realizes what he is doing and is aware of the nature of his conduct, and does not act through ignorance, mistake, or accident. In deciding whether the defendant acted knowingly, you may consider all of the evidence, including what the defendant did or said.

You may not find that the defendant acted knowingly if he was merely mistaken or careless in not discovering the truth, or if he failed to make an effort to discover the truth.

Count Four of the indictment charge the defendant with money laundering. In order for you to find the defendant guilty of this charge, the government must prove each of the following elements beyond a reasonable doubt:

1. The defendant engaged or attempted to engage in a monetary transaction; and
2. That defendant knew the transaction involved criminally derived property; and
3. The property had a value greater than \$10,000; and
4. The property was derived from bank fraud; and
5. The transaction occurred in the United States.

If you find from your consideration of all the evidence that the government has proved each of these elements beyond a reasonable doubt as to Count Four, then you should find the defendant guilty of Count Four.

If, on the other hand, you find from your consideration of all the evidence that the government has failed to prove any one of these elements beyond a reasonable doubt as to Count Four, then you should find the defendant not guilty of Count Four.

The term “monetary transaction” means the deposit, withdrawal, transfer or exchange, in or affecting interstate commerce, of funds or a monetary instrument, by, through, or to a financial institution.

The alleged monetary transaction need not involve “all” criminally derived property, only over \$10,000 in criminally derived property.

“Interstate commerce” means trade, transactions, transportation or communication between any point in a state and any place outside that state or between two points within a state through a place outside the state.

The term “financial institution” includes commercial banks.

The term “criminally derived property” means any property constituting, or derived from, proceeds obtained from a criminal offense.

Count Seven of the indictment charges the defendant with knowingly making and possessing an altered security of an organization.

In order for you to find the defendant guilty of this charge, the government must prove each of the following elements beyond a reasonable doubt:

1. That defendant made, passed or attempted to pass, or possessed a counterfeit or forged security;
2. That the counterfeit or forged security was of an organization; and
3. That defendant possessed the counterfeit or forged security with intent to deceive another person or organization.

The term "counterfeit" means a document that has been falsely made or manufactured so as to appear to be a genuine security. To be counterfeit, the fraudulent security does not have appear to be a genuine security of an organization that in fact exists, but rather, it must look so much like a genuine security that it is calculated to deceive an honest, unsuspecting person who uses ordinary observation and care.

The term "forged" means a document that purports to be genuine but has been fraudulently altered, completed, signed, or endorsed.

An "organization" is a nongovernmental legal entity. It includes, but is not limited to, a corporation, company, association, firm, partnership, joint-stock company, foundation, institution, society, union, or any other association of persons that operates in or the activities of which affect interstate or foreign commerce.

The term "security" includes checks.

With respect to the charges of bank fraud and of possession of an altered check, if the defendant acted in good faith, then he lacked the intent to defraud required to prove those charges. The defendant acted in good faith if, at the time, he honestly believed the validity of that which the government has charged as being fraudulent.

The defendant does not have to prove his good faith. Rather, the government must prove beyond a reasonable doubt that the defendant acted with intent to defraud.



Abidemi Ajayi < abidemi.ajayi@gmail.com >

FW: Quotes

1 message

Abidemi Ajayi < bidaj@msn.com >
To: Abidemi Ajayi < abidemi.ajayi@gmail.com >

Tue, Jul 21, 2009 at 6:53 PM

Subject: FW: Quotes
Date: Tue, 21 Jul 2009 14:36:25 -0400
From: jbates@medicalimaginggroup.com
To: bidaj@msn.com

MR. Ajayi, Arnold Bates the President of our company would like to discuss your needs with you. Are you looking for older or newer imaging equipment? Do you have a brand preference that is GE, Siemens, or other? Are you interested in MRI, CT or both? We have both in stock but we also have equipment that is available to us if we have a customer that needs that particular type of equipment. We can certainly supply you with a list of what we have in stock but we would really like to talk to you about your needs now and in the future. Please e-mail me with a phone number where you can be reached or call me at 678-717-7595. You can reach Arnold at 678-725-7989. Thank you very much.

From: Jim Bates
Sent: Monday, July 20, 2009 12:40 PM
To: Arnold Bates; Trent Howell
Cc: Vivian Bates
Subject: FW: Quotes

From: Abidemi Ajayi [mailto:bidaj@msn.com]
Sent: Monday, July 20, 2009 9:40 AM
To: Angela Stephens; Jim Bates; Gerald Eheduru
Subject: Quotes

Hi Angela,

My name is Abidemi Ajayi and I am making an inquiry regarding pricing for used imaging devices that we might use for imaging centers that we are to be building starting from September of this year in Africa. I had mentioned this to Jim Bates sometime ago. If you can

have someone send to me listings of imaging equipments in your possession at the moment, I will appreciate it.

Bing™ brings you maps, menus, and reviews organized in one place. Try it now.

Windows Live™ SkyDrive™: Store, access, and share your photos. See how.



Abidemi Ajayi < abidemi.ajayi@gmail.com >

email address

8 messages

Abidemi Ajayi < abidemi.ajayi@gmail.com >
To: thowell@medicalimaginggroup.com

Wed, Dec 9, 2009 at 9:42 AM

Here it is, will look forward.

Thanks,

Trent Howell < thowell@medicalimaginggroup.com >
To: Abidemi Ajayi < abidemi.ajayi@gmail.com >

Wed, Dec 9, 2009 at 9:58 AM

Ajayi,

Thank you for the call. Attached is the quotation for the mobile MRI. The unit is in fantastic operating and cosmetic condition. I've attached a few pictures as well.

We look forward to helping your imaging in Nigeria.

Please call asap with any questions.

Thanks again,

Trent Howell

Medical Imaging Solutions Group, Inc.

(256) 214-0064

thowell@medicalimaginggroup.com

From: Abidemi Ajayi [mailto:abidemi.ajayi@gmail.com]
Sent: Wednesday, December 09, 2009 9:43 AM
To: Trent Howell
Subject: email address

Here it is, will look forward.

Thanks,

 **Mobile Impact Basic - Abidemi Ajayi.doc**
357K

Abidemi Ajayi <abidemi.ajayi@gmail.com>
To: Gerald Eheduru <geheduru@gmail.com>

Wed, Dec 9, 2009 at 11:24 AM

[Quoted text hidden]

 **Mobile Impact Basic - Abidemi Ajayi.doc**
357K

Gerald Eheduru <geheduru@gmail.com>
To: Abidemi Ajayi <abidemi.ajayi@gmail.com>

Wed, Dec 9, 2009 at 12:27 PM

Abidemi,
I was able to remove the logos. We need to build our order from thier website below. They seem to focus more on mobile units.

<http://www.medicalimaginggroup.com/systems.php>

Gerald

[Quoted text hidden]

Gerald Eheduru <geheduru@gmail.com>
To: Abidemi Ajayi <abidemi.ajayi@gmail.com>

Wed, Dec 9, 2009 at 1:06 PM

I just went over their website and It appears they can help us design a state of the art imaging center. We are on the right track. Let's send Trent a list of what we need in this center and see what he comes back with.

Gerald

On Wed, Dec 9, 2009 at 11:24 AM, Abidemi Ajayi <abidemi.ajayi@gmail.com> wrote:


[Quoted text hidden]

Gerald Eheduru <geheduru@gmail.com>
To: Abidemi Ajayi <abidemi.ajayi@gmail.com>

Thu, Dec 10, 2009 at 7:32 PM

On Wed, Dec 9, 2009 at 11:24 AM, Abidemi Ajayi <abidemi.ajayi@gmail.com> wrote:

[Quoted text hidden]


 **Imaging_Center_Proposal2.ppt**
528K

Gerald Eheduru <geheduru@gmail.com>
To: Abidemi Ajayi <abidemi.ajayi@gmail.com>

Sat, Dec 12, 2009 at 2:52 PM

[Quoted text hidden]

2 attachments

 **Medical_Updated.pdf**
158K

 **Medical_Updated.doc**
545K

Abidemi Ajayi <abidemi.ajayi@gmail.com>
To: Trent Howell <thowell@medicalimaginggroup.com>
Cc: Gerald Eheduru <geheduru@gmail.com>

Wed, Dec 30, 2009 at 2:38 AM

Hi Trent,

Copliments of the season to you. I am on a business trip to Nigeria. I am still meeting with some government officials regarding our MR/CT contract then something else came up along side Medical devices. I am to provide brochures for Medical equipments that can be used at a teaching hospital (Laotech Teaching Hospital and Medical Center) being built in Ogbomoso in Oyo state Nigeria. I need you to send me a brochure for the devices present on the Siemens Impact 1.0T mobile MRI. I know this sounds very vague, the contractor is about to sub contract the supply of a bunch of medical equipments to us. They just want to see a brochure. I will appreciate if you can send me one via FedEx mailed to me at:

Abidemi Ajayi
No. 21 Onilegogoro Street,
Mokola, Ibadan,
Oyo State, Nigeria

I will look forward to your reply regarding this request and thanks so much for your continued support.

Yours faithfully,

Abidemi Ajayi
[Quoted text hidden]

--
Abidemi Ajayi
CEO
First Point Energy World Ltd.(RC 829651)
Mobile- 773-318-0774
eFax - 773-355-4361
Phone - 773-355-4304



Abidemi Ajayi < abidemi.ajayi@gmail.com >

College Of Medicine

1 message

Abidemi Ajayi < abidemi.ajayi@gmail.com >
To: Gerald Eheduru < geheduru@gmail.com >

Sat, Jan 16, 2010 at 7:44 AM

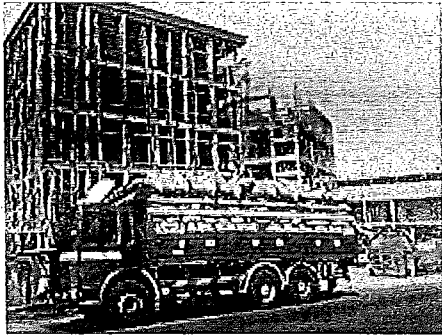
Hi Gerald,

These are photographs taken at the college of medicine. We should be doing the MRI/CT equipment installations. I will keep you posted as soon as there is any progress, regarding the shipping and dues, were you able to find anything? Please let me know.

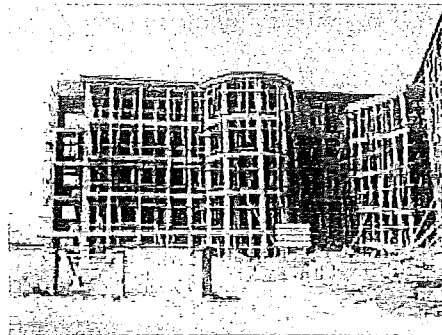
--

Abidemi Ajayi
CEO
First Point Energy World Ltd.(RC 829651)
Mobile- 773-318-0774
eFax - 773-355-4361
Phone - 773-355-4304

6 attachments



Sony 2010 051.JPG
1549K

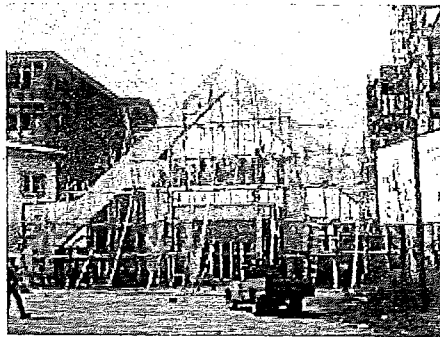


Sony 2010 052.JPG
1547K

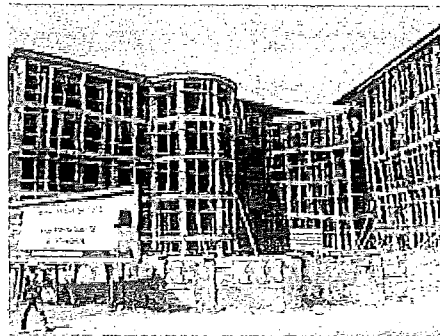
Sony 2010 053.JPG
1527K



Sony 2010 054.JPG
1534K



Sony 2010 055.JPG
1484K



Sony 2010 056.JPG
1659K

Trial Transcript

[196–207, 227]

1 position is that it's cumulative, it's really -- I mean,
2 these things all need to be taken sort of -- I mean, the
3 evidence has to come in, sort of, together to show that this
4 was the defendant's intent and this was his knowledge at the
5 time that he committed these acts.

6 THE COURT: But that would only -- that would only
7 establish a basis for introducing the failure to file a tax
8 return in '09.

9 MS. BEST: I mean, well, the reality is the way
10 that the certifications come in sort of deal with the entire
11 time period. So it's hard to introduce the fact that it's --
12 short of redacting the document, there is a failure to file
13 because it states 2007, 2008, 2009, 2010.

14 THE COURT: You know what? Here is what I am going
15 to do. I think I will wait until after I hear from
16 Mr. Ajayi's testimony.

17 If he makes statements that suggest that -- that
18 his failure to file a tax return in '09 is meaningful, I
19 think we could put that evidence in the record without
20 including all of these other records in years in which,
21 according to the government itself, there was no obligation
22 to file tax returns.

23 MR. CHERONIS: The last issue, your Honor, is last
24 week, I tendered some e-mails to the government between
25 Mr. Ajayi and individuals that he was attempting to procure

1 MRI equipment from, a Trent Howell and another individual
2 named Mr. Jim Bates.

3 I may attempt to introduce those e-mails into
4 evidence. I would not be introducing them as hearsay. I am
5 not offering them as an out-of-court statement offered for
6 the truth of the matter asserted.

7 I think the issue in this case goes to Mr. Ajayi's
8 intent; it goes to his state of mind.

9 That being said, the government is going through
10 leaps and bounds to try to infer or have the jury infer that
11 Mr. Ajayi just had no legitimate business and wasn't, maybe,
12 trying to do anything legitimate.

13 It's our position that if we can establish he was,
14 in fact, attempting to procure MRI machines -- and you will
15 learn more about this. I mean, that's the reason he got the
16 check.

17 THE COURT: Right.

18 MR. CHERONIS: But if he was making legitimate
19 efforts to procure MRI machines around the relevant time
20 period of these charges and leading up to them, it's our
21 position that goes to his intent to defraud and whether he
22 had an intent to defraud.

23 Without that evidence, it's our position that the
24 government would be left with the argument that there is
25 simply no evidence that he was trying to do these things,

1 and, therefore, he must have been doing this just to commit
2 fraud and make easy money and get out of town or whatever.

3 So we think that that evidence being offered for a
4 nonhearsay purpose, not being offered for its truth, but
5 offered for Mr. Ajayi's state of mind would be relevant and
6 admissible.

7 THE COURT: What are the dates of the e-mails?

8 MR. CHERONIS: There is one that is in July of
9 2009, and then there is one in December of 2009.

10 THE COURT: And what's the government's position?

11 MS. BEST: Your Honor, the government does object
12 to these.

13 One, I do believe it's hearsay. The purpose of
14 introducing these is to show that the defendant had contacts
15 with these -- these third parties to discuss whether he could
16 procure used MRI equipment.

17 I anticipate what his testimony in his defense will
18 be is that he was trying to get a used-MRI-equipment business
19 off the ground.

20 So as Mr. Cheronis just stated, those first e-mails
21 are about four months before the fraudulent check in
22 question, and then the e-mails seemed to be around
23 December 2009 into early 2010.

24 The purpose of introducing them is to show that he
25 was having these conversations regarding MRI equipment.

1 The fact that the defendant -- his state of mind
2 and the impact that these other statements had on him is not
3 relevant here.

4 One, the defendant is going to be on the stand and
5 can testify as to what he was doing at the time.

6 But to use it to bolster, with these e-mails, these
7 out-of-court statements just isn't appropriate under -- and I
8 can't -- I mean, I don't think it falls within any of the
9 hearsay exceptions. I don't see how the defendant can
10 introduce these to show how it impacts his state of mind at
11 the time.

12 Further, and just so your Honor knows, we got these
13 e-mails last week from defense counsel. We have been trying
14 to track down the people who have been involved on the other
15 sides of these e-mails. The case agent received this morning
16 a return phone call from one of the people on the e-mail
17 stating that he doesn't recall Mr. Ajayi and doesn't have any
18 records related to him.

19 So the government is now in the process of trying
20 to figure out whether this is someone we need to secure for
21 our rebuttal case. I just wanted to put that out there.
22 This person lives in Atlanta, Georgia. We just found out
23 about this, this morning. And it's something that,
24 particularly if this is introduced, that we are going to have
25 to deal with in rebuttal.

1 But that said, I don't think these are properly
2 admitted. I do think they are hearsay and should be
3 excluded. And I don't think it falls within any of the
4 hearsay exceptions.

5 MR. CHERONIS: Well, there is a state-of-mind
6 exception and, you know, the issue of whether it's even
7 hearsay. For it to be hearsay, it has to be offered for its
8 truth; in other words, that the words in the e-mails were --
9 you need to believe the words.

10 The key to this evidence is not necessarily that he
11 was doing this to prove that it's true, but to prove that his
12 state of mind when he was going into this situation was that
13 he legitimately wanted to get MRI equipment and he was trying
14 to do that. So that's his state of mind at the time.

15 THE COURT: I think the e-mails might -- I haven't
16 looked at them, but they might serve to establish that he was
17 attempting to be engaged in a legitimate business.

18 I guess what I need is some kind of a link between
19 those e-mails and the charges which relate to this check.

20 In other words, is there anything about the e-mails
21 that might have led Mr. Ajayi to conclude that getting a
22 \$344,000 check was something he could expect based on the
23 business -- the MRI business he was doing?

24 MS. BEST: Absolutely not, your Honor.

25 There is nothing here that relates -- there's

1 nothing in these e-mails with regard to how the defendant got
2 this check and what he was doing with the check.

3 The idea that somehow -- I mean, we haven't seen
4 anything, and I doubt the defense will proffer that the
5 people who were involved in these e-mails were somehow
6 involved in securing this check for the defendant and that
7 they had any knowledge of this primary -- you know, this
8 investment that the defendant purports he had, and that's why
9 he was going forward with this business.

10 So there isn't any link between his conversations
11 with these people and these e-mails, how this check came into
12 his possession, and what he did with it thereafter.

13 MR. CHERONIS: In response to that, by way of
14 proffer your Honor, first of all, I will agree that there is
15 no connection between Mr. Ajayi and the individuals that he
16 was e-mailing regarding the check.

17 But what you are going to hear, by way of offer of
18 proof, is that Mr. Ajayi met an individual on an airplane,
19 and he showed this individual some documents. They got into
20 a discussion regarding Mr. Ajayi's intentions to buy MRI
21 equipment, and that this individual was, then, going to give
22 Mr. Ajayi a loan for that reason. That's what the testimony
23 is going to be.

24 In other words, Mr. Ajayi is looking for money from
25 investors to fund his MRI business in order to export those.

1 THE COURT: Understood.

2 Will there be testimony that when he -- that he
3 understood or believed or had a reason to believe that a
4 \$344,000 check was somehow connected to these negotiations
5 about a loan involving his MRI business?

6 MR. CHERONIS: Well, he certainly would testify
7 that he -- the loan that he procured was going to be for the
8 purchase of MRI equipment.

9 THE COURT: Did he -- will he testify that he
10 understood the loan was going forward and that was, in his
11 mind, why suddenly \$344,000 fell into his lap?

12 MR. CHERONIS: Well, I think -- I think the way the
13 evidence is going to come in is that he would testify that he
14 was going to procure a loan for this MRI equipment. He
15 received a check. The purpose of getting that check -- at
16 least part of the money -- was for MRI equipment. Okay?
17 During that period of time, he is making --

18 THE COURT: He wanted to use the money for MRI
19 equipment. I am fine with that.

20 I'm just saying, is there anything that links the
21 e-mails to the check? In other words --

22 MR. CHERONIS: No.

23 THE COURT: In that case, I am likely to sustain
24 the government's objection. I want to hear Mr. Ajayi's
25 testimony. I assume he is going to testify that he was

1 involved in a legitimate business. But the fact that he
2 spoke to people about possibly getting a loan for an MRI
3 business would be relevant only if the people to whom he
4 spoke could reasonably have been linked, in his mind, with
5 the source of the check.

6 In other words, "Oh, this must be the people I
7 spoke to on the airplane. Here is the check."

8 MR. CHERONIS: No. Judge -- and I know you are
9 just hearing this now.

10 THE COURT: Right.

11 MR. CHERONIS: So I just want to make sure that I
12 properly make a record for this.

13 The evidence would be that Mr. Ajayi was attempting
14 to procure money to fund an MRI business, and then he could
15 export MRI machines to Africa. That was his goal. That was
16 his intention around that period of time.

17 THE COURT: Understood. Okay.

18 MR. CHERONIS: He meets an individual on a plane in
19 November of 2009.

20 THE COURT: And he shares this plan with the
21 individual?

22 MR. CHERONIS: He shares his plan with this
23 individual.

24 This individual offers to be a financier or to back
25 Mr. Ajayi's potential investment. Okay?

1 Mr. Ajayi, then, gets a check. We are going to
2 have that come out through the course of the evidence.

3 When he gets the check, Mr. Ajayi's intention is to
4 use the funds in order to fund his MRI business. All right?

5 So, now, the reason that we think that these
6 statements are admissible, these e-mails, is because they
7 establish Mr. Ajayi's state of mind around this time that, in
8 fact, he was trying to do this, that he is not just making
9 this up.

10 MS. BEST: Your Honor, these e-mails are, then -- I
11 mean, they are absolutely being introduced for the truth of
12 the matter asserted, which is that the defendant was engaging
13 in these negotiations --

14 THE COURT: Well, then --

15 MS. BEST: -- that he was trying to meet with other
16 people to actually get this MRI equipment off the ground --
17 this MRI-equipment business off the ground. That's the
18 purpose of introducing these e-mails, is to bolster this idea
19 that he somehow had a legitimate business and that he was
20 reaching out to people.

21 THE COURT: I don't have a hearsay problem. I have
22 a potential relevance problem because the -- I understand he
23 is trying to get involved in an MRI business. He wants, you
24 know, investor financing. He is hoping to meet people and
25 that they will be interested in funding his business.

1 He is hoping that it will be
2 hundreds-of-thousands-dollar business. He is, you know,
3 taking steps to make that happen.

4 There still has to be some connection so that he
5 could say -- so that it would be reasonable for the jury or
6 somebody to infer that when he got that check, he understood
7 that it related in some fashion to those contacts that he had
8 made.

9 Remember, it's the government's position that he
10 knew or should have known -- that he knew this check was
11 issued in error. It was improper and a forgery. He had no
12 right to this money. He shouldn't have been depositing it,
13 and he shouldn't have withdrawn against it.

14 So to rebut that, he would have to show, "Well, no.
15 I understood this check was part of my business. In fact, I
16 even had communications with the source of the check."

17 But you are telling me that the e-mails that you
18 want to offer don't link -- don't link in any fashion to the
19 check itself.

20 MR. CHERONIS: I don't think that's actually
21 accurate. And i don't think -- just because I didn't say it
22 to you. It's not because you are missing something, your
23 Honor.

24 The e-mails, essentially, are him getting in
25 contact with these individuals who run an MRI company

1 regarding pricing for how much MRI machines cost. Okay? For
2 how much -- you know, he is asking for estimates on how much
3 it would cost for him to buy an MRI machine.

4 THE COURT: But the source of the check wasn't an
5 MRI company.

6 MR. CHERONIS: No. Absolutely not. I agree with
7 you. Absolutely.

8 The source of the check has absolutely nothing to
9 do with an MRI company. But the funds were meant, in
10 Mr. Ajayi's mind, to fund the exporting of MRI machines.

11 MS. BEST: I think your Honor is correct in that
12 these aren't relevant. There isn't a link. These e-mails
13 aren't from people who were involved in the check at all.

14 One predates it by four months, and it's just him
15 reaching out to someone about whether they have MRI equipment
16 for sale.

17 The other one comes after the check has already
18 been deposited. The money has already been withdrawn. And
19 then he starts talking about --

20 MR. CHERONIS: Oh, no, no.

21 MS. BEST: And so, there is no -- there is no
22 discussion with the check. There is no discussion about
23 American Building Maintenance Company, about where the check
24 was coming from. There is no discussion of the check at all.
25 It's really just asking for quotes on MRI equipment and

1 discussing the fact that he might be interested in buying
2 some of it.

3 THE COURT: I think Mr. Ajayi is welcome to tell us
4 that he was hoping to, you know, run a legitimate business.
5 And if that gets challenged on cross-examination, the e-mails
6 might rebut -- the e-mails might rebut any such challenge.

7 I don't see how they relate to the check.

8 MR. CHERONIS: All right. Certainly, I understand
9 the Court's ruling.

10 Would it be, just as far as an offer of proof,
11 understanding your ruling, so it's at least part of the
12 record, if I tendered a copy of the e-mails?

13 THE COURT: I think that's a good idea.

14 And, you know, depending on Mr. Ajayi's testimony
15 and the cross, I might revisit this. From what I am hearing,
16 it doesn't, again, make any fact more likely -- the fact at
17 issue more likely to be true than not true.

18 While you are doing that, I know we have got a jury
19 here, but I've got a very fast status, and I am going to call
20 those cases. It looks as though Mr. Hurl is here at least,
21 right? So we can call those cases.

22 (A brief recess was taken at 9:34 a.m.)

23 THE COURT: All right. Anything further before I
24 call in the jurors?

25 MR. CHERONIS: I am going to tender a copy of the

1 Mr. Ajayi was not conducting a profitable or legitimate
2 moneymaking, money-expecting-to-make business at that point;
3 and therefore, the arrival of a check in the amount of
4 \$344,000 should have been an indication to him that some
5 mistake of some kind had been made.

6 And the fact that he did so swiftly act to withdraw
7 funds against that check -- not all of the funds but a
8 substantial amount of those funds in smaller amounts --
9 suggests that he recognized the money wasn't his and that it
10 was important to get his hands on it as quickly as possible.

11 That's the reason -- I am not prepared to rule
12 definitively on this motion at this time, but I am, at this
13 point, going to proceed with further evidence.

14 MR. CHERONIS: Thank you.

15 MS. BEST: Thank you, your Honor.

16 MR. CHERONIS: If I could have one moment before
17 you bring the jury back in?

18 THE COURT: Of course. Of course.

19 (Brief pause.)

20 MR. CHERONIS: All right. That's all I need, your
21 Honor. Thank you.


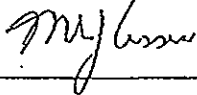
22 THE COURT: And Mr. Ajayi, you understand your
23 rights regarding testimony?

24 THE DEFENDANT: Yes.

25 THE COURT: All right. And it's your decision to

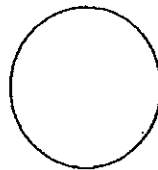
Posting Date: 2009-11-27
 Sequence #: 2284
 Account #: 9688
 Routing Transit: [REDACTED]
 Amount #: \$344657.84
 Check/Serial #: 000043138762
 Bank #: 111
 Tran Code: 000000
 IRD: 0
 ItemType: P
 BOFD: 074909962
 Cost Center: N/A
 Teller Number: N/A
 Teller Seq Number: N/A
 Processing Date: N/A

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713 928-5344 Vendor Number 902792	DRAWN ON Bank of America Customer Connection Bank of America, N.A. Atlanta, DeKalb County, Georgia		VOID AFTER 180 DAYS Check Amount \$\$\$344,657.84	
PAY Three hundred forty four thousand six hundred fifty seven and 84/100 Dollars				
TO GRICON INTERNATIONAL 535 INGRAHAM AVENUE CALUMET CITY, IL 60409			 COUNTER SIGNATURE REQUIRED IF AMOUNT IN EXCESS OF \$50,000.00 	

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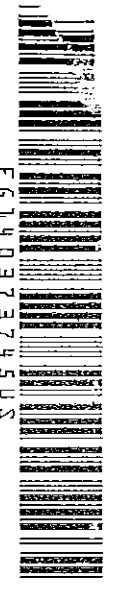
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Delivery Attempt: _____

Time: AM PM

Employee Signature: _____

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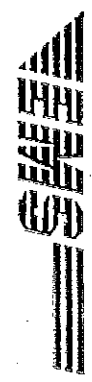
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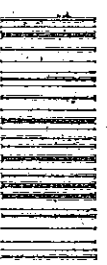


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No. 14-2183

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ABIDEMI AJAYI,
Defendant-Appellant.

On Appeal from the United States District Court
For the Northern District of Illinois
The Honorable Rebecca R. Pallmeyer
Case No. 12-CR-190

**REQUIRED RULE 30(B) SHORT APPENDIX OF
DEFENDANT-APPELLANT ABIDEMI AJAYI**

BLUHM LEGAL CLINIC
Northwestern University School of Law
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Chicago, Illinois 60611
(312) 503-0063

SARAH O'ROURKE SCHRUP
Attorney of Record
JONATHON M. STUDER
Senior Law Student

Counsel for Defendant-Appellant
ABIDEMI AJAYI

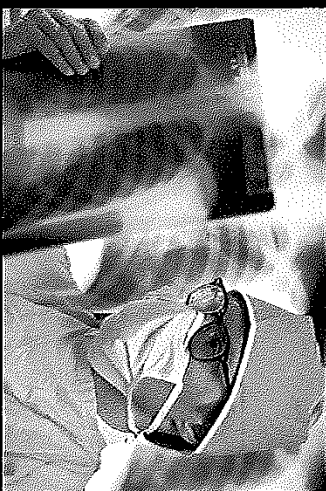
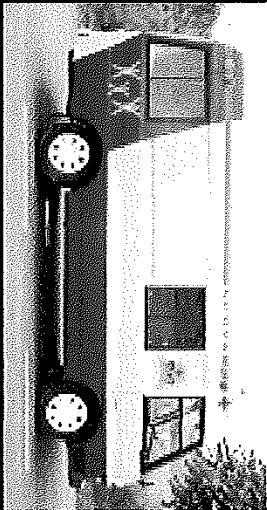
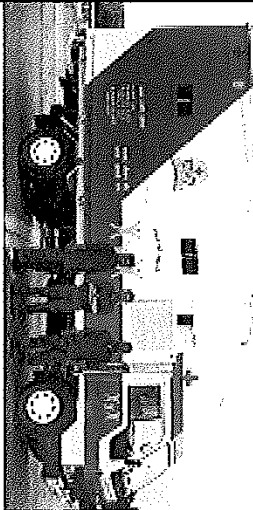
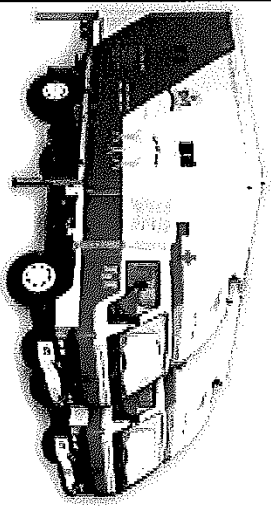
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Defense Exhibit: PowerPoint Slides.....	A.51
Defense Exhibit: Proposal.....	A.60

STRUCTURE OF THE EACH MODULES

THE WILL BE COVERED BY FULLY EQUIPPED MOBILE CENTRES
LIKE :
- DIAGNOSTIC FACILITIES
(X-RAY)
& COLOUR DOPPLER

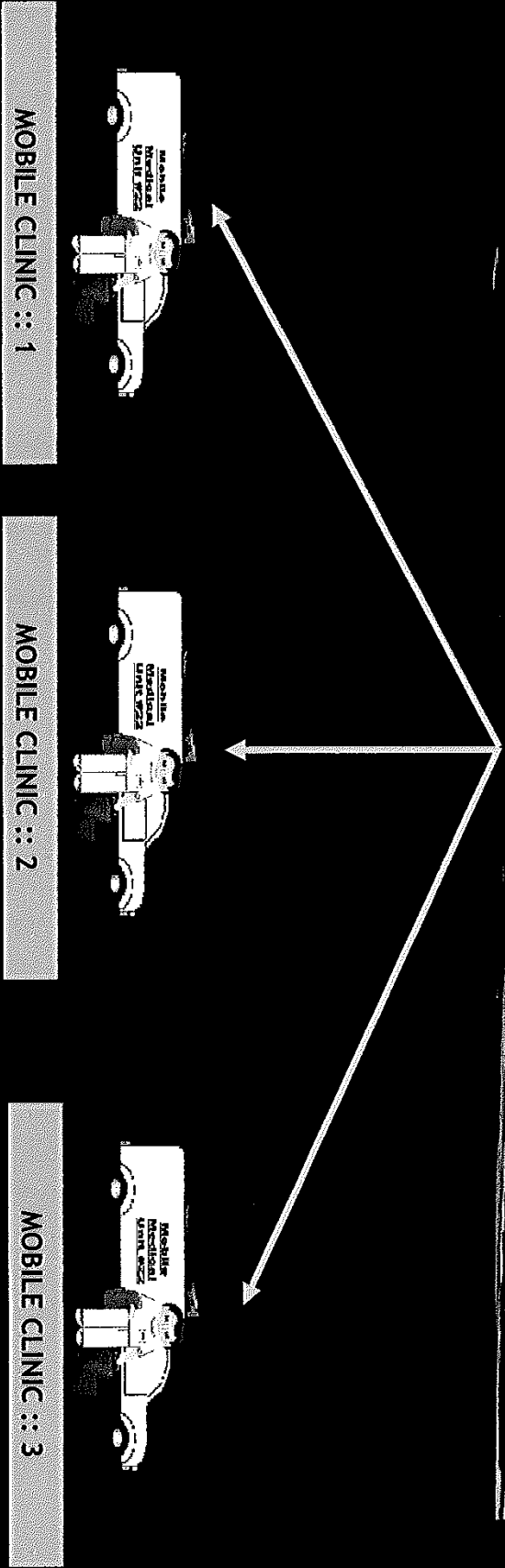
FACILITIES
- THEATRE
- ADDITIONAL AIDS ON PREVENTIVE
- ALL LANGUAGES



PHASE 1 :: MOBILE OUTREACH CENTERS



CENTRAL INSTITUTE



**EACH CLINIC WILL COVER ONE PLACE FOR 2 DAYS IN A WEEK
CLINICS WILL BE WITHIN A DISTANCE OF 100-150 KMS FROM THE CENTRAL INSTITUTE**

- REPORTS OF THE DIAGNOSTIC TESTS TO BE DELIVERED TO THE OUTREACH CENTERS NEXT DAY.
- PATIENTS REQUIRING FURTHER WORK-UP / HOSPITALIZATION TO BE REFERRED AND GUIDED TO THE MAIN HOSPITAL
- ❖ AFTER 1 YEAR OF OPERATIONS, SET UP A TELEMEDICINE FACILITY IN THESE LOCATIONS CONNECTED TO MAIN HOSPITAL WHICH WILL OPERATE 7 DAYS/WEEK
- ❖ MOBILE CLINICS TO CONTINUE 2 DAYS/WEEK
- ❖ EXPAND THE SCOPE OF THESE CLINICS TO COVER A RADIUS OF 300 KMS IN NEXT 1 YEAR & GRADUALLY CONVERT THESE TO PERMANENT PERIPHERAL OUTREACH CLINICS EQUIPPED WITH BASIC FACILITIES AND HAVE AT LEAST 2 DOCTORS POSTED IN EACH CLINIC ON A ROTATION BASIS

IN PHASE II

IDENTIFY 2-3 OUTREACH CENTERS WHICH CAN BE EXPANDED TO SMALL 20-30 BEDDED HOSPITALS MANNED BY DOCTORS TRAINED IN THE MAIN INSTITUTE AND EQUIPPED WITH ALL BASIC FACILITIES LIKE :

- OPD FACILITIES
- BASIC LABORATORY SERVICES
- BASIC RADIOLOGY TESTS
- 1 MAJOR OPERATION THEATRE
- 1 MINOR OPERATION THEATRE
- TELEMEDICINE FACILITIES
- 2 - 4 BEDDED INTENSIVE CARE UNIT

- ❖ **** Will explore the possibility of a tie-up with “the NGOs working in the rural level” to make the rural model more effective and at the same time involve them in a new field of social initiative**

ALSO IN PHASE II

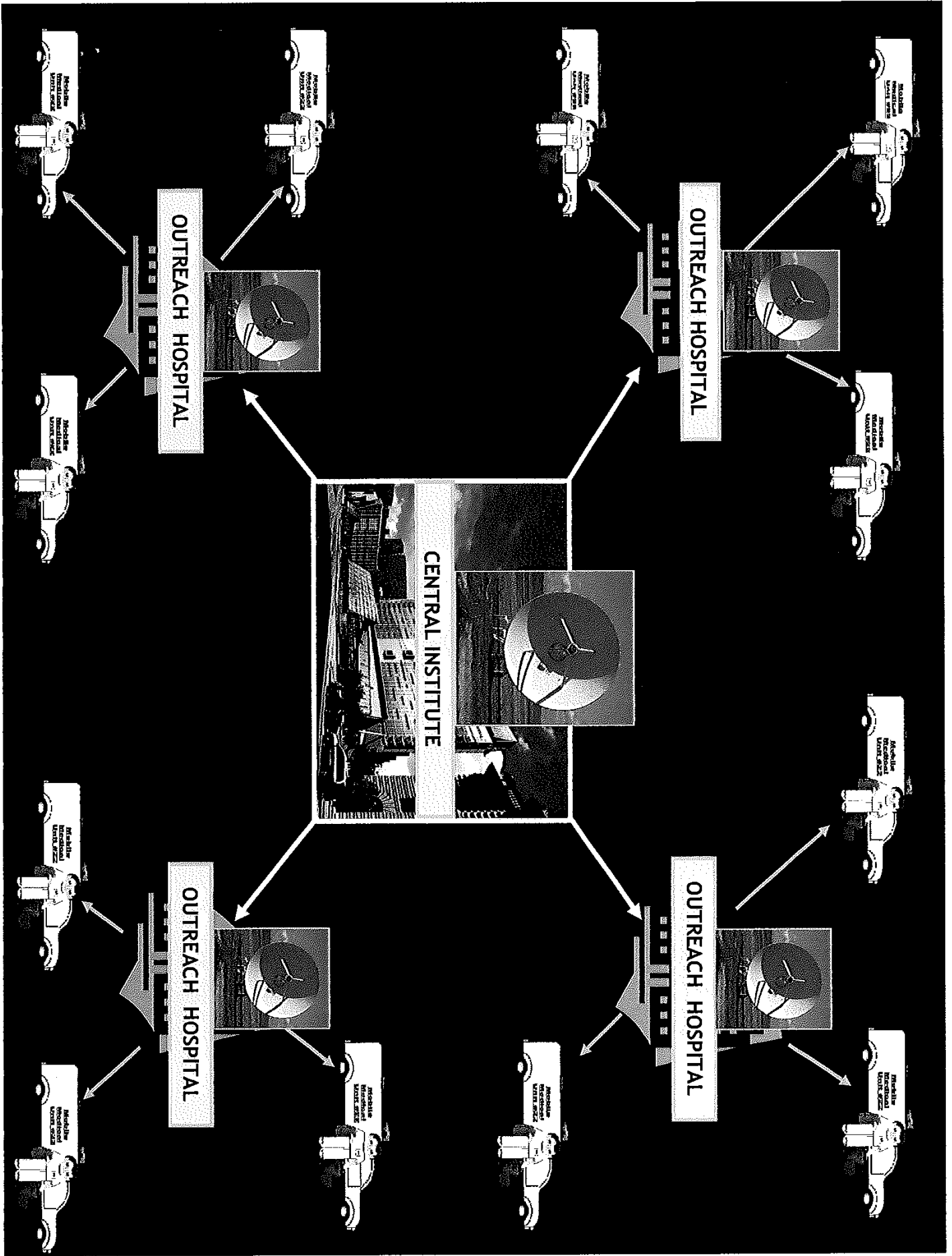
- **EXPANSION & ADDING OF NEW FACILITIES IN THE MAIN HOSPITAL AS PLANNED (EXPAND CAPACITY BY ANOTHER 150 - 200 BEDS WITH PROPORTIONATE INCREASE IN INTENSIVE CARE BEDS)**
- **START AN INSTITUTE FOR PARA-MEDICAL, NURSES TRAINING & HOSPITAL ADMINISTRATION IN TIE-UP WITH A REPUTED UNIVERSITY**
- **START 2-3 CLINICS WITH DIAGNOSTIC CENTRES IN / AROUND GUWAHATI CITY OFFERING FACILITIES WITH CROSS-SUBSIDIZATION**
- **ADD 1-2 MORE MOBILE CLINICS TO EXPAND THE SCOPE OF OUTREACH CLINICS TO INCLUDE AT LEAST 3-4 MORE PLACES**

PHASE III

- **EXPANSION & ADDING OF NEW FACILITIES IN THE MAIN HOSPITAL AS PLANNED (EXPAND CAPACITY BY ANOTHER 150 - 200 BEDS WITH PROPORTIONATE INCREASE IN INTENSIVE CARE BEDS)**
- **INTRODUCTION OF DNB, PDCC, FELLOWSHIP COURSES**
- **IDENTIFY 2-3 MORE OUTREACH CENTERS WHICH CAN BE EXPANDED TO IDENTICAL SMALL HOSPITALS AS IN PHASE II**

PHASE IV

- EXPANSION & ADDING OF NEW FACILITIES IN THE MAIN HOSPITAL AS PLANNED (EXPAND CAPACITY BY ANOTHER 150 BEDS WITH PROPORTIONATE INCREASE IN INTENSIVE CARE BEDS)
- CONTINUE THE PROCESS TILL WE CAN HAVE AT LEAST ONE 20-30 BED HOSPITAL UNIT IN DIFFERENT DISTRICTS OF ASSAM WITH 3 - 4 OUTREACH CENTERS MONITORED BY IT AND MAYBE 1 TELEMEDICINE CENTER IN EACH STATE OF NORTH EAST



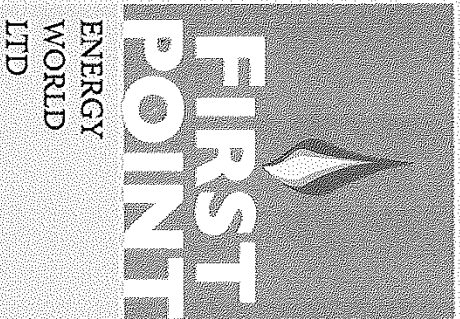
IN SUMMARY

TO CREATE A MODULAR HEALTHCARE
DELIVERY SYSTEM WHICH WILL BE SELF
SUSTAINABLE, EFFECTIVE & CAN TRULY
INTEGRATE & DELIVER PRIMARY,
SECONDARY & TERTIARY HEALTHCARE TO
ALL SECTIONS OF THE SOCIETY

AND TO CREATE A HEALTHCARE INSTITUTE WHICH IN THE NEXT
5-10 YEARS WILL BE COUNTED UPON AS AMONGST THE BEST
MULTI-SPECIALTY INSTITUTES IN THE COUNTRY AND CAN
ATTRACT PATIENTS FROM ALL OVER THE REGION
AND CAN ALSO PLAY A PIVOTAL ROLE IN DEVELOPING
MEDICAL TOURISM

(take into consideration the New "Look East Policy")

Proposal to Build State Of The Art Imaging Centers in Lagos State



Unmet Need

- Healthcare system is underserved in Lagos State, Nigeria
- Diseases are rampant in Lagos state
- Life expectancy can be improved
- Getting Healthcare Services Overseas is expensive and unaffordable

Solution

- State of the art imaging center(s)
 - Permanent installations – Installed at a stand alone location, images can be sent to hospitals via internet network or by physical delivery.
 - Mobile installations – This type of imaging center is a movable device can be moved from one location to the other and is as effective as a permanent installation.

Scope of Services

- Procedures
 - Design and build imaging center
 - Supply Stand Alone and Mobile Units
 - Install peripherals per design
 - Setup image conversion specifications
 - Store image as part of patient medical history for future use by medical practitioners

Scope of Services

- **Training and Testing**
 - General understanding of healthcare Imaging Procedure
 - Image acquisition and transfer using current technology trends
 - Design Validation and Verification per Healthcare Regulations
 - Verify equipment produces accurate images based on medical requirements

Scope of Services

- **Conversion & Post-Conversion Support**
 - Planning and assembling data for conversion to proposed system
 - Provide free telephone and technical support through First Point and Medical Imaging Solutions for 90 days after installation.

Benefits

- State of the art MRI and CT System(s) located in Lagos State
 - Tourism Advantage
 - Healthcare system pioneer in Nigeria
- Timely & accurate medical data transfer to hospitals
 - Accurate diagnosis
 - Quicker response for disease intervention

Benefits

- 1st of its kind mobile healthcare unit
 - Access to multiple hospitals
 - Not dependent on local source of electricity
- Magnetic Resonance Imaging helps medical practitioners catch diseases in a timely manner and respond with a quick applicable remedy to correct the ailment- this reduces trial and errors in surgical procedures
- Reduces cost and risk of expensive medical procedure
- This technology helps increase the lifespan of the general public hence allows the government to realize a sizeable revenue from the working public.

How Can You Help?

- Identify central locations at existing government hospitals
- Meetings with medical professionals to identify needs
- Establish transportation system to access medical centers


How Can You Help?

- Installation cost to be addressed on a needs basis
- The cost of providing imaging centers can be expensive but the results can be very rewarding and life saving.
- The environment needs to be chosen wisely to reduce cost of installation and effectiveness of the equipments involved in the design.

Conclusion

The use of CT and MRI technology have been proven to save lives. The use of these technology help diagnose serious diseases, identify affected parts of the body and organs hence reduces time spent on medical diagnosis.

Contact Us



**FIRST
POINT**

**ENERGY
WORLD
LTD**

FIRST POINT ENERGY WORLD LTD

**Engr. Abidemi Ajayi
CEO**

Tel +234-706-858-5018

Tel +234-805-433-7842

mobile: +234-803-284-4658

email: abidemi.ajayi@gmail.com

Lagos Address

NO 1, Femi Ajayi Close

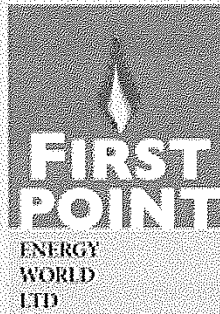
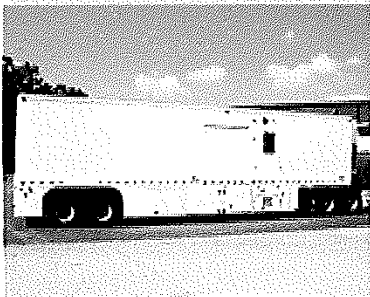
Gbagada, Lagos, Nigeria

Oyo State Address

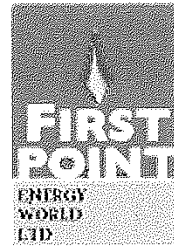
No 21 Onilegogoro Street

Mokola, Ibadan, Oyo State, Nigeria

Proposal to Build State Of The Art Imaging Centers in Lagos State



Lagos Address
No 1, Femi Ajayi Close
Gbagabo, Lagos, Nigeria
Oyo State Address
No 21 Oulegogoro Street
Mokola, Ibadan, Oyo State, Nigeria
Tel - 234-706-858-5018
Tel - 234-805-433-7842



November 30th 2009

The Honorable Commissioner
Ministry Of Health
Alausa, Lagos State
Nigeria.

Dear Sir/Madam,

We at First Point propose building eight state of the art Medical Imaging centers for the Lagos state metropolitan area. These state of the art Medical Imaging centers will be equipped with Mobile Imaging units that can be moved from point to point. As you may know medical imaging helps monitor and identify gray areas that need or require surgical procedures for corrections.

First Point Energy World Limited was founded by engineers who have extensive work experience with GE Healthcare in the Midwestern USA. First Point Energy World Limited is partnered with Medical Imaging Solutions Inc. in this proposed project. Medical Imaging Solutions have executed the construction of imaging centers around the world and have equipped imaging centers in a number of countries. We believe this project is poised to be a success because of the importance of imaging to healthcare delivery.

As mentioned earlier, we intend to provide four Mobile Imaging centers which can be moved from point to point to service the Lagos state area hospitals. One advantage of the mobile units is that medical practitioners can easily respond to an emergency situation, with the right tools readily available in remote areas. Another advantage is medical practitioners can request Magnetic Resonance Imaging (MRI) or Computed Tomography (CT) images of a patient they will be attending on at the hospital. Detailed information on these technologies will be provided during our presentation explaining additional benefits of this type of service available to the state.

An MRI or CT can be a life saving tool when life is threatened by range of illnesses or injuries the common eye or laboratory tests cannot detect and having these services will help Lagos State save money and create revenue from the working class by increasing the life span of the general public. This trend in modern medicine can be very expensive when sought overseas. We are positive that providing the services stated in this proposal will improve the lives of the Lagos State people. The services can also be utilized by indigenes of the surrounding states and other countries in Africa and beyond. We believe Lagos State is a model state and should set a higher standard in Healthcare to improve the livelihood of its inhabitants.

We hope that this idea will be taken seriously as we are ready and able to deliver our proposed project in a timely manner. If you have questions, we can be reached at the following telephone numbers 07068585018 and 08054337842 or email us at info@firstpointenergyworld.com.

We thank you for your time and consideration and hope to hear from you in the nearest future.

Yours truly,

Abidemi Ajayi

CEO
First Point Energy World Limited

First Point Energy World Limited



OBJECTIVE

Implement eight state of the art Medical Imaging centers for the Lagos state metropolitan area, serving multiple hospitals within a certain radius to allow easy accessibility by patients. Install required magnets to allow efficient scanning of patients to yield results to be viewed and analyzed by respective hospitals on a desktop or laptop computer. This project will also include implementation and setup, training, conversion assistance, and post-conversion support for radiology experts. Provide professional assistance related to this new system and coordinate continuous training for the employees of each imaging center. The equipments that will be used are designed and manufactured by reputable companies like GE, Siemens and Hitachi Medical systems. These companies are well known for manufacturing top of the line Medical Imaging products. The Success of this project is dependent not only on the installation and building of the sites, but also on your support and willingness to see the opportunities this will bring to medical intervention. Patients will no longer have a need to travel abroad to have MRI images taken. This solution eliminates that need considering the fact that airline tickets and accommodation are sometimes unaffordable to the vast majority. This project is poised to generate additional revenue for Lagos State when implemented.

SCOPE OF SERVICES

1. Procedure
 - a. Build or utilize existing government hospital locations for use as Magnetic Resonance Imaging centers. Some level of assistance is needed in planning and identifying usable spaces.
 - b. Recommend sites required to successfully install the new system and assist in assembling setup information used in the implementation process.
 - c. Establish specifications for conversion of images acquired from the imaging systems into the existing system(s).
 - d. Establish manner in which image(s) will be stored for future retrieval.
2. Training and Testing
 - a. Work with medical staff during installation and implementation to acquire a general understanding of the system.
 - b. Train in the areas of imaging, posting or transferring images using current technology trends (online via the Internet or offline) and periodic back-up procedures.
 - c. Upon completion, the performance of a system test on all installed equipment to assure intended functionality and ensure image accuracy based on medical requirements.
3. Conversion and Post-Conversion Support
 - a. Assist in planning and assembling data for the conversion to the proposed system, as required. (Note: Image acquisition assistance is \$30 per hour. This cost is not included in our estimate.)
 - b. Provide free telephone support for 30 days after installation. Subsequent charges for support calls are billed in 10-minute units at \$12.50 per unit.

Support calls will be invoiced weekly. Fees are subject to change annually, effective January 1 of each calendar year, based upon 30-day notification.

STATE RESPONSIBILITIES

This project demands significant involvement by state health department personnel. Ultimate success is highly dependent on their effort. To help achieve a smooth and successful implementation, it will be the state's responsibility to perform the following:

First Point Energy World Limited



1. Identify usable spaces at either an existing government hospital or government owned property. The medical imaging centers are intended to be assessable to major hospitals measuring a 15 mile radius throughout Lagos State.
2. Assistance is needed to set up meetings with Surgeons and Medical Doctors to identify specific needs.
3. An effective transportation system will be beneficial to enable easy access to these imaging centers.

BENEFITS

On project completion, our neighborhood group will have successfully installed state of the art Medical Imaging centers. Benefits include timely, accurate medical data transfer to hospitals. This will allow for timely intervention of hospital professionals in identifying medical problems.

HARDWARE COSTS AND PROFESSIONAL FEES

Hardware costs and fee estimates will be provided upon request. These fees are effective provided (a) decision is made about implement this project within 30 days of receiving this proposal. (b) A staff member of the ministry of Health can devote full time to the implementation process. Fees will be adjusted to actual accordingly. We will not incur additional hours without written prior approval. Our fee does not include creating transportation system for the imaging centers.

Our terms are 80% deposit on hardware and software costs before we begin. The balance for the project is due upon installation (actual installation of the systems). Our professional fees are billed weekly.

CLOSING

We appreciate the opportunity to service your healthcare imaging needs. If you want to accept this proposal, please sign one copy and return it with 80% deposit of the costs.

Sincerely,

Abidemi Ajayi
CEO



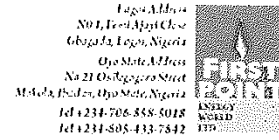
Enclosure

RESPONSE

This letter correctly sets forth the understanding of the Lagos State Government.

Accepted by	Title	Date
-------------	-------	------

First Point Energy World Limited



Lagos Alausa
 No 1, Femi Ajayi Close
 Gbagada, Lagos, Nigeria
 Oyo State Alausa
 No 21, Oshagboye Street
 Moleba, Ikole, Oyo State, Nigeria
 Tel: +234-706-888-5018
 Tel: +234-805-433-7842

FIRST POINT ENERGY WORLD LIMITED
NO 1, FEMI AJAYI CLOSE
GBAGADA, LAGOS

PROPOSAL

DATE: November 30th 2009

TO: **THE HONORABLE COMMISSIONER**
MINISTRY OF HEALTH
ALAUZA, LAGOS STATE

HARDWARE & SOFTWARE COSTS:

MAGNET	\$350,000
COILS	\$500,000
COMPUTERS	\$40,000
NETWORKING	\$20,000
GENERATORS	\$54,000
SOLAR POWER SOLUTIONS	\$150,000
FURNISHINGS	\$200,000
CONSTRUCTION	\$1,000,000

PROFESSIONAL FEE ESTIMATE: The construction of each of the Medical Imaging centers will cost about \$2,314,000. Eight Medical Imaging centers will cost about \$18,512,000. This figure does not include manpower for the proposed project.

CERTIFICATE OF SERVICE

I, the undersigned, counsel for the Defendant-Appellant, Abidemi Ajayi, hereby certify that I electronically filed this brief, required appendix, and separate appendix with the clerk of the Seventh Circuit Court of Appeals on January 21, 2015, which will send the filing to counsel of record in the case.

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