

United States Court of Appeals  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Argued March 17, 2014

Decided June 10, 2014

No. 12-3082

UNITED STATES OF AMERICA,  
APPELLEE

v.

OLABIMPE M. OLEJIYA, ALSO KNOWN AS BIM,  
ALSO KNOWN AS BIMPE,  
APPELLANT

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No. 12-3090

UNITED STATES OF AMERICA,  
APPELLEE

v.

OLUYINKA AKINADEWO, ALSO KNOWN AS OLU BLACK,  
ALSO KNOWN AS OLU DUDU, ALSO KNOWN AS OLU,  
APPELLANT

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Appeals from the United States District Court  
for the District of Columbia  
(No. 1:11-cr-00150)

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*Lisa B. Wright*, Assistant Federal Public Defender, argued the cause for appellant Akinadewo. *Richard Seligman*, appointed by the court, argued the cause for appellant Olejiya. *A.J. Kramer*, Federal Public Defender was on brief. *Tony Axam Jr.*, Assistant Federal Public Defender, entered an appearance.

*Anne Y. Park*, Assistant United States Attorney, argued the cause for the appellee. *Ronald C. Machen Jr.*, United States Attorney, and *Elizabeth Trosman*, *Suzanne G. Curt* and *Bryan G. Seeley*, Assistant United States Attorneys were on brief.

Before: HENDERSON and MILLETT, *Circuit Judges*, and GINSBURG, *Senior Circuit Judge*.

Opinion for the Court filed by *Circuit Judge* HENDERSON.

KAREN LECRAFT HENDERSON, *Circuit Judge*: Olabimpe Olejiya and Oluyinka Akinadewo both pleaded guilty to one count of conspiracy to commit bank fraud based on their participation in a scheme that involved opening fraudulent bank accounts in the name of unwitting individuals, funding the accounts with fraudulent checks and wire transfers and withdrawing funds before the accounts' fraudulent nature was detected. They now raise parallel challenges to their sentences, claiming that the district court erred in calculating their respective United States Sentencing Guidelines offense levels by (1) improperly applying an aggravated role enhancement of three levels for Olejiya and four for Akinadewo, *see* U.S.S.G. § 3B1.1, and (2) failing to make the factual findings necessary to support a 12-level increase for both based on the amount of intended loss involved in the conspiracy, *see* U.S.S.G. § 2B1.1(b)(1). For the reasons that follow, we affirm the district court's judgments.

## I. Background

As admitted by Olejiya and Akinadewo in their plea proceedings, the conspiracy lasted from April 2007 to December 2007. The conspiracy's goal—enriching its members—was achieved by the following overt acts. On September 12, 2007, two checking accounts were opened at E\*Trade via the internet, using the name, birthdate and social security number of A.S. A.S., however, was unaware of the accounts and had given no one permission to use his personal information. In the following months, members of the conspiracy transferred \$109,200 from A.S.'s legitimate account at the Armed Forces Bank to the two fraudulent E\*Trade accounts set up in his name and withdrew over \$50,000 of that amount before the fraud was detected. Moreover, beginning as early as July 2007, numerous calls from a cell phone belonging to Akinadewo were made to both Armed Forces Bank and E\*Trade in an apparent effort to monitor accounts. Akinadewo did not have a legitimate account at either bank. On October 6 and 8, 2007, Akinadewo used a debit card associated with one of the fraudulent E\*Trade accounts to purchase twelve money orders, each worth \$500, from a Walmart in Landover Hills, Maryland. On October 7, 2007, Olejiya purchased four \$500 money orders from three Walmart stores in Laurel, Bowie and Landover Hills, Maryland.

Another fraudulent checking account in the name of A.S.—this one at Branch Banking and Trust (BB&T)—was opened via the internet on August 25, 2007. Although Akinadewo did not have an account at BB&T, six calls were made to the bank from his phone during the time of the conspiracy. On September 11, 2007, Akinadewo made an initial deposit of \$50 in the account at a BB&T branch in the District of Columbia. Three days later, he made another \$50

deposit at a Maryland branch. On October 3, 2007, using an ATM in Silver Spring, Maryland, Akinadewo deposited a \$20,000 check, drawn on one of the fraudulent E\*Trade accounts, into the fraudulent BB&T account. The next day, he attempted to repeat the maneuver with a \$30,000 check drawn on one of the E\*Trade accounts but it bounced. All told, members of the conspiracy successfully withdrew over \$30,000 from the BB&T account by cashing checks drawn on the account and making ATM withdrawals.

On November 3, 2007, the name, birthdate and social security number of another unwitting individual, U.J., were used to open another BB&T checking account via the internet. That account was funded with \$8,000 transferred from yet another fraudulent account, this one opened with Charles Schwab in the name of A.S. According to Olejiya, on November 30, 2007, he contacted Akinadewo and informed him that another conspirator, Samuel Akinleye, was willing to cash a check written on the fraudulent BB&T account in the name of U.J. Akinadewo then met up with Olejiya and Akinleye, wrote a \$4,000 check to Akinleye and signed U.J.'s name. Akinadewo instructed Akinleye to cash the check and return the money to Akinadewo, which Akinleye did in exchange for a portion of the proceeds. During his plea colloquy, Akinadewo denied any recollection of writing the check on November 30, 2007, instead stipulating more generally that "during the time period of the conspiracy, [he] had access to checks in others' names, and provided some of these checks to co-conspirators to either cash or deposit." 4/20/12 Tr. 30–31.

All told, the conspiracy resulted in actual losses of \$90,987.48 before the fraud was detected, which amount includes all of the funds withdrawn from the fraudulent accounts. When the funds that passed through the fraudulent

accounts are added, the intended loss of the conspiracy totals \$363,939.76.

On May 13, 2011, a grand jury returned a one-count indictment charging Olejiya and Akinadewo with conspiracy to commit bank fraud in violation of 18 U.S.C. §§ 1344 and 1349. On March 22, 2012, Olejiya entered a plea of guilty. Olejiya's presentence report (PSR) calculated his Guidelines range at 41-51 months, based on a criminal history category of II and an offense level of 21. The offense level included a 3-level enhancement, to which Olejiya objected, for his role as a "manager or supervisor." *See* U.S.S.G. § 3B1.1(b). It also included a 12-level increase for an intended loss from the offense greater than \$200,000, to which Olejiya objected solely on fairness grounds, asking the district court to grant a variance from the Guidelines. *See* U.S.S.G. § 2B1.1(b)(1)(G). At the sentencing hearing, the district court found that Olejiya qualified for the 3-level aggravated role enhancement and the 12-level increase and sentenced him to 35 months' imprisonment.<sup>1</sup> He timely appealed.

Akinadewo pleaded guilty on April 20, 2012. His PSR calculated the applicable Guidelines range at 41-51 months, based on a criminal history category of II and an offense level of 21. Akinadewo's offense level included a 4-level enhancement for his role as an "organizer or leader," *see* U.S.S.G. § 3B1.1(a), and a 12-level increase for the loss amount, *see* U.S.S.G. § 2B1.1(b)(1)(G). Like Olejiya, Akinadewo objected to the aggravated role enhancement and made a similar "fairness" objection to the loss amount. At the

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<sup>1</sup> The district court sentenced Olejiya to a six-month concurrent term on one count of misuse of a passport in violation of 18 U.S.C. § 1544, which charge resulted from Olejiya's attempt to flee to Canada to avoid prosecution.

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