

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-13419

D.C. Docket No. 1:15-cr-00338-MHC-CMS-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee

versus

TONY ARCHIE

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Georgia

(March 26, 2019)

Before TJOFLAT, JORDAN, and ANDERSON, Circuit Judges.

PER CURIAM:

We have had the benefit of oral argument in this case, and have carefully reviewed the briefs and relevant parts of the record. We conclude that the judgment of the district court must be affirmed.

Archie challenges the sufficiency of the evidence with respect to all of his convictions. For reasons fully explored at oral argument, we reject Archie's challenge, which focuses primarily on his asserted lack of knowledge that the cellphones at issue were fraudulently acquired. We conclude that there was very strong evidence both of actual knowledge on the part of Archie, and very strong evidence (primarily from the testimony of co-conspirator Floarea) that Archie and Floarea tried to minimize their knowledge of the origin of the fraudulently obtained cellphones in order to avoid criminal charges. Three of Archie's co-conspirators testified against him at trial, including Floarea who testified that he trained Archie with respect to the fraudulent operations. In addition, there was evidence from an undercover law enforcement agent, and extensive documentary evidence that the jury could find would clearly have alerted Archie to suspect that his co-conspirators, Capote, Tirtawijaya, and Patel, were supplying him with suspiciously large volumes of new cellphones which were fraudulently obtained. Thus, there was ample evidence to support the conspiracy charge and the substantive wire fraud and mail fraud counts.

Similarly, we reject Archie's sufficiency challenges to the money laundering counts. For the same reasons, there is no merit in Archie's assertions of lack of knowledge that the Westside bank account funds were derived from unlawful activities. And, with respect to Counts 18–21, there is no merit in Archie's argument that his payments to Capote for the fraudulent cellphones he supplied were not made to promote the fraud.

Archie's challenges to the jury instructions are also wholly without merit. The district court appropriately instructed the jury with respect to deliberate ignorance, because there was ample evidence that co-conspirator Floarea and Archie tried to minimize their knowledge of the origins of the fraudulently obtained cellphones in order to avoid criminal charges; and there was also ample evidence of actual knowledge on the part of Archie. See United States v. Arias, 984 F.2d 1139, 1143 (11th Cir. 1993) (“[W]here the evidence supports both actual knowledge and deliberate ignorance, the instruction is properly given.”) (citation and internal quotations omitted). The district court also properly declined to give Archie's request for an instruction on multiple conspiracies. The evidence at trial overwhelmingly supported a single overarching conspiracy, and did not support the hypothetical separate conspiracies about which Archie's brief speculates. The single overarching conspiracy began when Archie was managing Ace Wholesale and continued after Ace closed, and Archie and Capote, with advice and training

from Floarea, opened Westside Wireless. Westside was a mere continuation of the conspiracy that began using Ace as the storefront, with the continued major involvement of Floarea and major suppliers of fraudulently obtained cellphones including co-conspirators Capote, Tirtawijaya, and Patel. Finally, Archie's challenge to the instruction with respect to the 18 U.S.C. §1349 conspiracy is probably waived, and in any event is not reversible error, see United States v. Moran, 778 F.3d 942, 964 (11th Cir. 2015) (noting that § 1349 does not require proof of an overt act).

Accordingly, the judgment of the district court is

AFFIRMED.¹

¹ Any other arguments asserted on appeal by Archie are rejected without need for further discussion.