UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 25-3300

UNITED STATES OF AMERICA

v.

OLADAPO SUNDAY OGUNBIYI,
Appellant

On Appeal from the U.S. District Court, D.N.J.
Judge Michael A. Shipp, No. 3:22-cr-00375-001

Before: HARDIMAN, MCKEE, and AMBRO, *Circuit Judges*
Submitted: Nov. 16, 2026; Filed: Nov. 19, 2026

NONPRECEDENTIAL OPINION*

HARDIMAN, *Circuit Judge*.

Oladapo Sunday Ogunbiyi appeals his judgment of sentence. We will affirm.

I

In July 2018, Ogunbiyi and several co-conspirators drained $305,070 from the victim's retirement account and transferred the funds into the account of Ogunbiyi's wife, Nosimot Buhari. Buhari then transferred a portion of the funds to Ogunbiyi through various financial instruments, which Ogunbiyi deposited into bank accounts maintained by a shell company called Dap Davis Global Resources, LLC, and a fictitious entity called DAP

* This disposition is not an opinion of the full Court and pursuant to Third Circuit I.O.P. 5.7 does not constitute binding precedent.

Ogunbiyi.[1] After several account transfers, Ogunbiyi withdrew the funds and used them for personal expenses. A jury convicted him of: (1) one count of conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956(h); (2) two counts of money laundering, in violation of 18 U.S.C. § 1956(a)(1)(B)(i); and (3) two counts of engaging in monetary transactions involving criminally derived property, in violation of 18 U.S.C. § 1957(a).

The Probation Office calculated a Guidelines range of 41 to 51 months' imprisonment based on a total offense level of 22 and a criminal history category of I. The total offense level included a two-level enhancement for "sophisticated laundering" under United States Sentencing Guidelines (USSG) § 2S1.1(b)(3). At sentencing, Ogunbiyi argued that the enhancement should not apply because the activity was easily trackable and not sophisticated. The District Court rejected this argument, adopted the Presentence Investigation Report's calculation of his Guidelines range, and sentenced Ogunbiyi at the bottom of it (41 months' imprisonment on each of Counts 1 through 5, to be served concurrently, followed by three years of supervised release). The Court also ordered that Ogunbiyi pay $90,513.68 in restitution. Ogunbiyi timely appealed.

[1] Due to withholding taxes, not all of the $305,070 was available for Buhari to transfer to Ogunbiyi. In addition, JPMorgan Chase successfully reversed all but $90,513.68 of the transfers to Buhari.

II[2]

Ogunbiyi's sole argument on appeal—that the two-level enhancement for sophisticated money laundering under USSG § 2S1.1(b)(3) does not apply—is foreclosed by our decision in *United States v. Fish*, 731 F.3d 277, 279 (3d Cir. 2013). Ogunbiyi argues that considering the factors in Application Note 5(A) to USSG § 2S1.1(b)(3), which outlines conduct typically involved, there was nothing "sophisticated" about his money laundering transactions. But as the District Court found, at least three of the four disjunctive factors apply because the scheme involved "bank accounts held in the name of either a fictitious entity or shell corporation, multiple means of transferring the fraudulent funds, and inter-account transfers." Supp. App. 497. While Ogunbiyi contends there was no attempt to conceal the flow of funds, that is belied by his use of a fictitious entity, shell corporation, and layered transactions to hide the fraud and avoid detection. We therefore hold that the District Court's decision to apply the sophisticated laundering enhancement was consistent with Application Note 5(A) and was not clear error. *See Fish*, 731 F.3d at 281 (affirming enhancement for sophisticated laundering though none of the typically involved factors were present).

Ogunbiyi's reliance on Application Note 5(B) is also unavailing. Subsection (B) precludes the two-level enhancement when "the conduct that forms the basis for an enhancement under the guideline applicable to the underlying offense is the only conduct

[2] The District Court had jurisdiction under 18 U.S.C. § 3231. We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a). We review for clear error the District Court's application of the undisputed facts to the requirements of USSG § 2S1.1(b)(3). *See United States v. Fish*, 731 F.3d 277, 279 (3d Cir. 2013).

that forms the basis for appl[ying] [ ] subsection (b)(3).” USSG § 2S1.1(b)(3), cmt. n.5(B). The purpose of Application Note 5(B) is to prevent double counting the conduct from an underlying offense to apply multiple enhancements. It does not apply when the Government does not charge the defendant with an offense underlying the money laundering offense. *See United States v. Otunyo*, 63 F.4th 948, 957 (D.C. Cir. 2023) (expressing concern about double-counting for both “sophisticated laundering” and “sophisticated means” under a different enhancement involving bank fraud); *cf. United States v. Hagen*, 60 F.4th 932, 952–53 (5th Cir. 2023) (analyzing enhancement when defendant was convicted of both conspiracy to commit fraud and conspiracy to commit money laundering). Because Ogunbiyi was not convicted of any offense underlying the money laundering charge, there was no risk of double counting the conduct to support multiple enhancements.

* * *

We will affirm the District Court’s judgment of sentence.