IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	CASE NUMBER: 4:22-CR-84
	)	
BERNARD OKOJIE,	)	
Defendant	)	
	)	

**DEFENDANT BERNARD OKOJIE'S
OBJECTION TO MAGISTRATE JUDGE'S
ORDER AND REPORT AND RECOMMENDATION**

COMES NOW, BERNARD OKOJIE, Defendant in the above-styled action, by and through his undersigned counsel of record, and files this his Objection to Magistrate Judge's Order and Report and Recommendation as follows:

Motion to Dismiss (Document 29):

Count One of the Indictment charges Mr. Okojie with conspiracy to commit wire and bank fraud in violation of 18 U.S.C. § 1349. Count Three of the Indictment charges him with money laundering conspiracy in violation of 18 U.S.C. § 1956(h), based upon the proceeds obtained as a consequence of the conspiracy as alleged in Count One.

Mr. Okojie has contended that the absence of any information as to what the unlawful agreement was or who it was with renders Counts One and Three of the Indictment deficient.

The Magistrate found in his Order

> "Additionally, the indictment does contain allegations that point to the potential agreements supporting the conspiracy charges. Count One alleges Defendant submitted EIDL applications to the SBA on behalf of businesses owned and operated by other individuals, and Defendant received a "kickback" from those individuals based on a percentage of the amount of the fraudulent EIDL received. Doc. 3 at 9-12. These allegations point to cooperation between the individuals identified in the indictment and Defendant in furtherance of the

conspiracy. 2 Likewise, Count Three alleges Defendant and others were engaged in various financial transactions designed to hide proceeds from the fraudulent activities described in Counts One and Two, and to avoid reporting requirements. *Id.* at 14-15. These allegations sufficiently describe the nature of the alleged conspiracy and the participants in the conspiracy. 3

2: Defendant argued at the November 2, 2022 hearing that the discovery materials produced by the Government suggested that the individuals were not knowing participants in any unlawful scheme, but were unwitting bystanders - potentially, even victims. Assuming that is true, it would still not support granting Defendant's Motion to Dismiss. At most, these circumstances would suggest the Government may be unable to prove these individuals were part of the conspiracy; it does not render the indictment facially insufficient.

3: At the November 2, 2022 hearing, the parties addressed portions of the Count One allegations that ostensibly only relate Defendant's fraudulent behavior with regards to his own business - i.e., allegations that Defendant fraudulently applied for EIDL and PPP loans for businesses he owned and controlled, without any apparent third-party involvement. The Government asserted these allegations described the fraudulent scheme generally, but conceded the allegations on their own would not support a conspiracy conviction. Regardless, the presence of these additional allegations does not undermine the other conspiracy allegations and does not support dismissal of Count One or Three. On this record, there is no basis to carve out these allegations from the indictment.

While the Indictment's allegations "point to the potential agreement supporting the conspiracy charges", Mr. Okojie contends that is not sufficient to adequately allow him to know what agreements or who are the parties to the agreements that must be defended at trial.

The allegations in the Indictment identify a group of transactions by Mr. Okojie with entities that are wholly owned and controlled by him. As a consequence, these transactions are not ones that would support a conspiracy charge. *United States v. Stevens*, 909 F.2d 431 (11th Cir. 1990) The other transactions contained in the Indictment are with individuals who have only been identified in the discovery materials. They are not named in the Indictment as defendants or unindicted co-conspirators. Further, since the discovery materials do not reflect that the grand jurors were made aware that a person cannot conspire with their wholly owned and controlled entities, and the Indictment does not allege that these other unidentified individuals are unindicted co-conspirators, these conspiracy counts are insufficient as you cannot determine on what appropriate theory of the crimes the grand jury indicted.

"It is generally sufficient that an indictment set forth the offense in the words of the statute itself, as long as 'those words of themselves fully, directly, and expressly, *without any uncertainty or ambiguity*, set forth all the elements necessary to constitute the offense intended to be punished.'" *Hamling v. United States*, 418 U.S. 87, 117 (1974) (citing, *United States v. Carll*, 105 U.S. 611, 612 (1882) (*emphasis added*). Merely reciting the elements of the applicable statutes is not sufficient if the indictment fails to put Mr. Okojie on fair notice of the charges

he faces. "Undoubtedly the language of the statute may be used in the general description of an offence, but it must be accompanied with such a statement of the facts and circumstances as will inform the accused of the specific offence, coming under the general description, with which he is charged." *Hamling* at 117-18 (quoting, *United States v. Hess*, 124 U.S. 483, 487 (1888))

The Supreme Court adopted the following test to determine whether an indictment is sufficient:

> [A]n indictment is sufficient if it, first, contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend, and, second, enables him to plead an acquittal or conviction in bar of future prosecutions of the same offense.
>
> *Hamling*, 418 U.S. 87, 117 (1974) (citing, *Hagner v. United States*, 285 U.S. 427 (1932)).

Consequently, an indictment that fails to apprise a defendant "with reasonable certainty, of the nature of the accusation against him is defective, . . . although it may follow the language of the statute." *United States v. Simmons*, 96 U.S. 360, 362 (1877).

WHEREFORE, for the reasons set forth herein, Mr. Okojie respectfully requests that this Honorable Court reject the Magistrate Judge's Order and Report and Recommendation and dismiss Counts One and Three of the Indictment, along with the corresponding portions of the Forfeiture Allegation that incorporate and rely on Count One and Count Three of the Indictment.

Respectfully submitted, this 5th day of January, 2023.

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CERTIFICATE OF SERVICE

This is to certify that I have this day served all parties in this case in accordance with the directives from the Court Notice of Electronic Filing ("NEF"), which was generated as a result of electronic filing.

This 5th day of January, 2023.

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