UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	**Case No. 4:22-CR-084**
	)	
BERNARD OKOJIE	)	

GOVERNMENT'S NOTICE OF SUPPLEMENTAL EVIDENCE PERTINENT TO DEFENDANT'S PENDING MOTION IN LIMINE REGARDING UNDECLARED CASH SEIZED AT AIRPORT

On February 28, 2023, the Court conducted an evidentiary hearing on the parties' filings addressing the admissibility of evidence relating to Defendant Bernard Okojie's attempt to take $39,700 in undeclared cash onboard a flight from Atlanta to Lagos, Nigeria on December 28, 2020. *See* ECF No. 24, 56, 60, 66. The Court has construed the filings as Defendant's motion in limine seeking to exclude the evidence at trial.

At the hearing, the Government entered four exhibits into evidence pertinent to the admissibility of the undeclared cash at the airport. These exhibits are filed under seal to protect the sensitivity of the information therein.

After the hearing concluded, the Government received additional evidence from Customs and Border Protection ("CBP") pertinent to the pending motion. Specifically, the Government received a Petition for Remission or Mitigation of Forfeiture of Property submitted by the Defendant to CBP on February 24, 2021.

See Exhibit 1 ("Petition"). In this petition, which is signed by the Defendant under penalty of perjury and notarized, the Defendant states the following:

> Claimant [Bernard Okojie] is the rightful owner of said property [seized currency in the amount of $39,401 USD and $282.75 EURO] which he obtained from his employment. ***(See Attached Checks.)*** Claimant has made the withdrawal from his bank account prior to his trip. Claimant had no cause to believe that the property was subject to forfeiture. Said property was acquired by Claimant with proceeds obtained through legitimate and lawful means.

Petition, ¶ 4 (emphasis and bold italics in original).

The Defendant goes on and attaches two checks to his Petition to support his sworn contention that the seized cash at the airport was sourced from lawful means. Most notably, the Defendant attaches a check sent from an individual with initials L.J. in the amount of $15,385 to "B&K Freight" on August 11, 2020. Petition, at 10. L.J. is specifically identified *in Count One of the Indictment* as Individual 7 in Paragraph 27g and Paragraph 28e (emphasis added). *See* ECF No. 3, Paragraph 27g and 28e.

Paragraph 27g alleges that Defendant "appl[ied] for an EIDL for Individual 7 of McComb, Mississippi, and falsely stat[ed] that Individual 7's business had $244,900 in gross revenue in the twelve months prior to January 31, 2020." Paragraph 28(e) alleges that, in return for filing a fraudulent EIDL application, Defendant received a kickback from Individual 7 through a deposit in his bank account on August 13, 2020 in the amount of $15,375", which includes a deduction for transaction fees. This kickback payment is the same exact check that Defendant submitted to CBP as sworn proof that the seized funds were purportedly gained through lawful employment. The Government also submitted a copy of this same check obtained from Defendant's bank account at the hearing on February 28. *See* Ex. 4, Paragraph G (showing check obtained from Defendant's B&K Freight account).[1]

In short, by filing his sworn Petition with CBP and attaching the check from Individual 7 (initials L.J.), the Defendant himself has specifically connected the undeclared cash seized at the airport to the charges in the indictment, specifically to the allegations in Count 1 (Paragraph 27g and Paragraph 28e). Accordingly, the Government submits that the seized cash at the airport is intrinsic or "inextricably intertwined" to the crime charged and admissible at trial. Given the Defendant's own linking of the seized cash to his kickback payment, the Government is clearly not offering the evidence solely to "prove the character of a person in order to show conformity therewith." Fed. R. Evid. 404(b). Evidence that constitutes the very crime being prosecuted is not that sort. The Government, therefore, respectfully requests that the Court deny Defendant's request to exclude this evidence and determine that it is in fact admissible in the trial of this matter.

[1] The other check the Defendant attached to his Petition was from A.L. in the amount of $18,435.00 to "B&K Freight LLC" on August 12, 2020. According to SBA records produced to Defendant in discovery, an EIDL application in the name of A.L. is related by IP address to the EIDL application submitted in the name of "Individual 8" identified in the Indictment. See ECF No. 3, Paragraph 27h. The Government does not focus on that check in this Notice because the EIDL application in A.L.'s name is not specifically identified by name in the Indictment. Nonetheless, the Government may enter the check into evidence at trial as part of the conspiracies alleged in Count 1 and Count 3.

Respectfully submitted this 1st day of March 2023.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

Respectfully submitted this 1st day of March 2023.

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