UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	**CR: 422-084**
	)	
BERNARD OKOJIE	)	

GOVERNMENT'S MOTION IN LIMINE

The United States moves *in limine* for three purposes: (1) for a pre-trial ruling that certain evidence is self-authenticating under Federal Rule of Evidence 902, requiring no extrinsic evidence of authenticity to be admitted; (2) for a pre-trial ruling that evidence of Defendant's statements made during a proffer interview with the Government are admissible; and (3) to preclude Defendant from presenting certain argument or evidence at trial. In support of this motion, the United States shows the Court as follows:

1. Certain Records in this Case Are Self-Authenticating.

Effective December 1, 2017, Federal Rule of Evidence 902 was amended to "set [] forth a procedure by which parties can authenticate certain electronic evidence other than through the testimony of a foundation witness," and with the recognition that "the expense and inconvenience of producing an authenticating witness" for certain types of records and data "is often unnecessary." Fed. R. Evid. 902 advisory committee's note (2017).

The United States has complied with Rule 902's requirements to authenticate financial records, loan records, and other records of regularly conducted activity.

More specifically, the United States has provided sufficient notice of its intent to use self-authenticating records from AT&T, Bank of America, Benworth Capital Partners ("Benworth"), Cadence Bank, Capri Holdings Limited, Cross River Bank, EFCU Financial Federal Credit Union, Georgia Department of Revenue, Google LLC, Harvest Small Business Finance, LLC ("Harvest"), Kabbage Inc. ("Kabbage"), Leith Inc., MidSouth Community Federal Credit Union, Navy Federal Credit Union, Pike National Bank, Prestamos CDFI, LLC ("Prestamos"), Regions Bank, Robinhood Financial, LLC, SunTrust Bank, Synovus Financial Corp., Wells Fargo Bank, N.A., Yahoo Inc. *(*Doc. 46). In addition to providing the requisite notice, the certificates and accompanying records meet the requirements of Federal Rule of Evidence 902(11) and 902(13), respectively. The United States thus requests a ruling that these records are self-authenticating and require no extrinsic evidence of authenticity to be admitted at trial.

2. Motion to Admit Certain Evidence at Trial.

The Government seeks a ruling that Defendant's statements made during a proffer interview with law enforcement are admissible in the Government's case-in-chief. On May 3, 2022, prior to the return of the indictment in this case, Defendant agreed to be interviewed by law enforcement in the presence of his retained counsel.[1] Defendant and his attorney signed a proffer agreement with the Government in

[1] Prior to the return of the indictment, Defendant retained private counsel, Mr. Jack Fishman, who accompanied him to the proffer interview. After the return of the indictment, Defendant received appointed counsel, Mr. John Ossick, who currently represents him in this matter.

which they agreed that: "If Mr. Okojie testifies under oath, or makes an averment either directly or through counsel in any pleading, materially different from this proffer, the Government shall be free to use the contents of this proffer and the fact of its making in impeachment, rebuttal, or response." (Ex. 1 at 1).

During his proffer session with the Government on May 3, 2022, Defendant made numerous admissions relevant to the crimes charged in the indictment. A copy of the report of interview, FBI 302, is attached hereto as Exhibit 2. Most pertinently, Defendant identified Brandon Richardson as the individual who told him about "free money" that could be made by completing SBA EIDL applications; that Richardson told him specific amounts to enter in the gross revenue field of these applications; that Richardson identified the personally identifiable information (PII) necessary to complete the applications; that Richardson submitted a loan application on behalf of the Defendant; that Richardson identified the number of employees to enter on applications to generate "free money" from the SBA; that Defendant provided Richardson with his own PII and the PII of his family members; that Defendant provided Richardson with his banking username and password; and that Richardson told Defendant the amount of money he would charge for completing SBA loan applications for other people. (Ex. 2, at 1–2). In short, Defendant specifically identified Richardson as an individual who advised him how to commit numerous aspects of the fraud scheme that eventually led to the return of the indictment in this case.

In addition to Defendant's statements regarding Brandon Richardson, Defendant admitted to filing SBA EIDL applications for companies that were completely made up and did not exist. Defendant also admitted to falsifying the amounts of gross revenue he entered in the EIDL applications. Defendant also admitted to submitting false applications for at least nine people, including many of the people listed in the indictment in this case. (Ex. 2 at 2).

After his proffer interview, Defendant ceased cooperating with law enforcement. He was indicted by the grand jury, elected to plead not guilty, and has indicated a desire to proceed to trial. Most recently, on March 3, 2023, Defendant filed a motion in limine and has sought to exclude at trial "any mention by the government of a criminal conspiracy between Mr. Okojie and Brandon Richardson or any acts alleged to be part of such other crime." (Doc. 75). In his motion, Defendant, through counsel, now denies his criminal association with Brandon Richardson and, in the alternative, seeks to argue that any crime would be "separate and distinct from the one alleged in the present Indictment and that was presented to the grand jury." (Doc. 75 at 5). Mr. Okojie's decision now to challenge his criminal association with Brandon Richardson and contend that his crimes are "separate and distinct" from those charged in the indictment are clearly "averment[s] either directly or through counsel in any pleading, materially different from" the statements he made during his proffer interview. As a result, the Government is now "free to use the contents of this proffer and the fact of its making in impeachment, rebuttal, or response" at the trial in this matter. Therefore, the Government asks the court for a ruling that all statements made during his proffer interview on May 3, 2022 are admissible in the government's case-in-chief. The Defendant is free to cross-examine any witness about the statements and the circumstances in which they were made.

3. Motion to Exclude Certain Argument and Evidence at Trial.

The United States requests an order prohibiting Defendant from presenting argument or evidence blaming the victim of fraud by accusing the financial lenders in this case (including Benworth, Cross River Bank, Harvest, Kabbage, and Prestamos), the Small Business Administration, or their employees of negligence. Defendant may not assert that these victims lacked adequate procedures or could have prevented the fraud perpetrated in this case. It has long been held that "[a] perpetrator of fraud is no less guilty of fraud because his victim is also guilty of negligence." *United States v. Svete*, 556 F.3d 1157, 1165 (11th Cir. 2009); *United States v. Colton*, 231 F.3d 890, 903 (4th Cir. 2000) ("the susceptibility of the victim to fraud, in this case a financial institution, is irrelevant to the analysis"); *United States v. Coyle*, 63 F.3d 1239, 1244 (3d Cir. 1995) ("the negligence of the victim in failing to discover a fraudulent scheme is not a defense to criminal conduct"). Given this authority, the United States requests an order preventing Defendant from offering argument or evidence in blaming the victim.

WHEREFORE, the United States requests that the Court grant its *Motion in Limine* in its entirety.

Respectfully submitted this 3rd day of March, 2023.

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CERTIFICATE OF SERVICE

This is to certify that I have on this day filed this motion under seal and service will be made on all parties in this case in accordance with the notice of electronic filing ("NEF"), which will be generated as a result of electronic filing in this Court.

This 3rd day of March, 2023.

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