UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

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

GOVERNMENT'S RESPONSE TO DEFENDANT BERNARD OKOJIE'S MOTION IN LIMINE

Prior to the return of the indictment in this case, Defendant Bernard Okojie agreed to be interviewed by law enforcement in the presence of his retained counsel. During the interview, Defendant specifically identified Brandon Richardson as the individual who advised him how to commit numerous aspects of the fraud scheme that is the subject of the indictment in this case. To put it simply, Defendant identified Richardson as a conspirator in this case. Defendant now has changed his mind and seeks to exclude "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." ECF No. 75. Defendant's attempt to keep out evidence he previously admitted was part of the conspiracy should be denied.

I. EVIDENCE OF BRANDON RICHARDSON'S ADMITTED PARTICIPATION IN THE CONSPIRACY IS HIGHLY RELEVANT TO THE CRIMES CHARGED IN THE INDICTMENT AND ADMISSIBLE AT TRIAL.

Defendant Bernard Okojie identified Brandon Richardson as a co-conspirator in his proffer interview with law enforcement before the indictment was even returned in this case. The Government has filed its own motion in limine asking the

Court to admit all the statements in his proffer interview, including the ones about Brandon Richardson, because they are admissible admissions no longer subject to any protection under the proffer agreement. *See* ECF No. 79, at 2-3. The memorandum of interview describes the substance of Defendant's statements in detail. The memorandum is attached as an exhibit to the Government's motion in limine. *See* ECF 79-2.

In summary, in his proffer interview, 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. ECF 79-2, 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.

Defendant barely mentions his proffer interview in his motion in limine. He instead raises several contentions in an effort to keep out evidence he told law enforcement was relevant. No contention has any merit.

Defendant first argues that the loan documents associated with Brandon Richardson do not "reference Mr. Okojie or any of the other persons identified as being involved in the Okojie Indictment." ECF No. 75, at 2. Similarly, Defendant argues that a spreadsheet outlining numerous loan applications associated with Richardson, do not explicitly link Okojie to a particular application *Id.*

Defendant's argument misapprehends the scope of the evidence admissible to prove a criminal conspiracy. Defendant is charged with two conspiracy counts in the indictment, Conspiracy to Commit Wire Fraud and Bank Fraud, in violation of 18 U.S.C. § 1349 (Count One), and Conspiracy to Commit Money Laundering, in violation of 18 U.S.C. § 1956(h). ECF No. 3. As explained in the Eleventh Circuit Pattern Jury Instruction (O54) for these offenses:

> The Government does not have to prove that all the people named in the indictment were members of the plan, or that those who were members made any kind of formal agreement. The Government does not have to prove that the members planned together all the details of the plan. The heart of a conspiracy is the making of the unlawful plan itself, so the Government does not have to prove that the conspirators succeeded in carrying out the plan. A person may be a conspirator even without knowing all the details of the unlawful plan or the names and identities all of the other alleged conspirators.

Accordingly, it is not necessary that Defendant be mentioned in a specific application filed by Brandon Richardson; that Defendant know the people who are mentioned in Richardson's applications; or that the Defendant know all the details of Richardson's role in the scheme.

Further, the fact that Richardson extended the fraudulent scheme beyond him and included others is exactly what Defendant told law enforcement during his interview. The loan applications submitted in Brandon Richardson's company's name (Credit Achieved LLC) and the spreadsheets linking one of those loan applications to many others, primarily on the basis that they were submitted from the same IP address, corroborate Okojie's proffer statements. Therefore, the extension of the scheme is not a basis to keep the evidence out. It's a basis for admitting it.

Defendant next argues, apparently in the alternative, that even if the evidence supports a conspiratorial agreement between him and Richardson, "such would allege a different conspiracy form the one alleged in the present Indictment." ECF No. 75, at 2. But this contention is flatly contradicted by Defendant's own proffer statements, which identify Richardson and explain how he taught him to fill out false EIDL and PPP applications, which are at the center of the indictment in this case. Further, the Government intends to show at trial, through documents and testimony, that Defendant and Richardson did not come up with some completely different conspiracy involving different types of loans or different fraudulent tactics. The Government will show that, as the Defendant admitted in his proffer interview, Richardson was connected to the conspiracy charged in the Indictment.

Defendant also errs in suggesting that "[n]o information has been included in the discovery disclosures as to any connection or involvement of any of the two Brandon Richardson application spreadsheets to the transactions contained in the Indictment." ECF No. 75. Defendant again misapprehends the scope of evidence admissible to prove a conspiracy. It is not necessary for Richardson's applications to be mentioned in the indictment or specifically tied to a transaction alleged in the indictment. What is required is for the Government to show that Defendant and at least one other co-conspirator "in some way or manner, agreed to try and accomplish a common and unlawful plan to commit wire and bank fraud, as charged in the indictment." The Government intends to do that at trial, and the evidence outlined in Defendant's motion in limine regarding Brandon Richardson is relevant to the conspiracy charged in the Indictment.

Defendant finally argues that "Brandon Richardson is not mentioned or referenced in the Indictment, nor was he mentioned during the grand jury testimony leading to this Indictment." ECF No. 75, at 3. But as Judge Cheesbro explained in rejecting Defendant's motion to dismiss, "an indictment alleging a conspiracy is sufficient if it alleges a defendant conspired with another person, even if the indictment does not name the coconspirators." ECF No. 53 at 5 (citing *United States v. Stapleton*, 39 F.4th 1320, 1330 (11th Cir. 2022); *United States v. Daniels*, 135 F. App'x 305, 308 (11th Cir. 2005). It is of no moment, therefore, that the name "Brandon Richardson" is not in the Indictment.

For all the above reasons, Defendant's motion in limine should be denied. At trial, Defendant is free to contest the link of any particular piece of evidence to the charged conspiracy, including the evidence linking Richardson to the fraudulent scheme alleged in the indictment. But his attempt to keep the jury from hearing any evidence regarding an admitted co-conspirator is without basis and should be denied.

Respectfully submitted this 10th day of March, 2023.

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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.

This 10th day of March 2023.

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