

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

UNITED STATES OF AMERICA	)	
	)	
vs.	)	CRIMINAL ACTION NO.
	)	1:22-CR-171-MLB-RDC
CARL DELANO TORJAGBO	)	
_____	)	

AMENDED MOTION TO SUPPRESS STATEMENTS

COMES NOW the Defendant, CARL TORJAGBO, by and through his undersigned counsel, and files this amended motion to suppress statements.¹ In support of this motion, Mr. Torjagbo states the following.

Mr. Torjagbo is under indictment for one count of bank fraud in violation of 18 U.S.C. §§ 1344 and 2, three counts of concealment money laundering in violation of 18 U.S.C. §§ 1956(a)(1)(B)(i) and 2, and three counts of transactional money laundering in violation of 18 U.S.C. §§ 1957 and 2. Count One alleges that Mr. Torjagbo provided materially false information while applying for a Paycheck Protection Program (PPP) loan that he obtained on behalf of Kremkov Industries, LLC, a business he organized. (Doc. 1 at 2-4).

¹ Mr. Torjagbo's preliminary motion to suppress statements is docketed as entry number 44.

The indictment was issued on May 10, 2022. (Doc. 1). Two days later, Federal Bureau of Investigation (FBI) Agents Caruana and Pressley arrested Mr. Torjagbo on a warrant issued in connection with the indictment.

The agents questioned Mr. Torjagbo after arresting him.² Agent Caruana read Miranda warnings to Mr. Torjagbo at the inception of the recording. The questioning addressed a range of topics pertaining to Mr. Torjagbo, the PPP loan application, the formation and operation of Kremkov Industries, Mr. Torjagbo's expenditures after obtaining the PPP loan, the formation of Flying Jack Freight and Logistics, activities conducted by and through Flying Jack Freight and Logistics, an income tax return that Mr. Torjagbo filed, and items of the property that the Government was seizing.

During the questioning, Agent Caruana asked Mr. Torjagbo to tell him the maximum number of employees Kremkov had at any one time. Mr. Torjagbo indicated an unwillingness to answer the question several times, but Agent Caruana induced Mr. Torjagbo to give him an answer by telling Mr. Jackson that he would not lock him into the answer. Mr. Torjagbo invoked and maintained his

² The questioning was recorded, but it is apparent that some amount of discussion leading up to that, such as about the possibility of benefitting by cooperating with the agents, was not recorded.

right to remain silent regarding how much money he had paid to Kremkov's employees, Kremkov's earnings, and where he had obtained a certain employee list that he provided to JPMorgan Chase Bank in connection with the PPP loan application. During the interrogation, Agent Caruana also told Mr. Torjagbo that he guaranteed that any attorney Mr. Torjagbo could speak to, whether retained or appointed, would tell him that the best way to help himself was to be cooperative with the agents and truthfully answer their questions.

The Fifth Amendment provides, in part, that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law." U.S. Const., Amend. V. The Sixth Amendment provides for a right to counsel in all criminal prosecutions. U.S. Const., Amend. VI. In light of the inherently compelling pressures of the custodial setting, the Supreme Court held in Miranda v. Arizona, 384 U.S. 436, 467-473 (1966), that before a person in custody is interrogated, he must first be informed in clear and unequivocal terms that he has the right to remain silent, that anything he says can and will be used against him in court, that he has the right to consult with an attorney, that he has the right to have an attorney present with him during any questioning, and that an attorney will be appointed to represent him if he is unable to pay for one. Minnesota v. Murphy, 104 S.Ct. 1136, 1143 (1984);

accord, J.D.B. v. North Carolina, 131 S.Ct. 2394, 2401 (2011).

Admissibility of a defendant's statements made while in custody and subject to interrogation depends upon whether the defendant voluntarily, knowingly, and intelligently waived his Miranda rights and whether he rendered the statements voluntarily. Miller v. Dugger, 838 F.2d 1530, 1537-1538 (11th Cir. 1988). The determination of whether a defendant has rendered a knowing, intelligent, and voluntary waiver of his Miranda rights involves two distinct dimensions:

First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the totality of the circumstances surrounding the interrogation reveals both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the Miranda rights have been waived.

United States v. Farley, 607 F.3d 1294, 1326 (11th Cir. 2010) (quoting Moran v. Burbine, 475 U.S. 412, 421 (1986)). The Government bears the burden of proving that the defendant validly waived his Miranda rights. Berghuis v. Thompson, 560 U.S. 370, 383 (2010). When the defendant challenges the voluntariness of a statement attributed to him, the Government bears the burden of proving by preponderance of the evidence that the statement was voluntary. United States v. Louis, 157 Fed. Appx. 165, 169 (11th Cir. 2005).

Mr. Torjagbo posits that statements that Agent Caruana elicited from him regarding Kremkov's number of employees should not be admitted at trial, because they were elicited in violation of his Miranda rights and because the statements were not rendered voluntarily. At least a portion of the interrogation is also tainted by Agent Caruana's assertion to Mr. Torjagbo that a defense attorney would tell him that he should be cooperative with the agents in their questioning of him.

Mr. Torjagbo asks the Court to hold a hearing to determine whether the statements he made during the interrogation were rendered voluntarily and whether any of the statements were obtained in violation of his Miranda rights. Mr. Torjagbo further moves the Court to suppress from admission at trial any statements unlawfully obtained along with any evidence the Government may have derived as fruit of those statements. See Wong Sun v. United States, 371 U.S. 471 (1963).

WHEREFORE, Mr. Torjagbo requests that this motion be granted.

DATED: This 10th day of May, 2024.

Respectfully submitted,

S/ Kendal D. Silas

KENDAL SILAS

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CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing Amended Motion to Suppress Statements, formatted in Times New Roman 14-pt., upon:

John Russell Phillips, Esq.
Assistant United States Attorney
Federal Courthouse, Ste. 600
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by electronically filing the same through the Court's ECF system.

Dated: This 10th day of May, 2024.

s/ Kendal D. Silas

KENDAL SILAS, Esq.

Attorney for CARL TORJAGBO