

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	)	
_____	)	

POST-HEARING BRIEF IN SUPPORT OF MOTION
TO SUPPRESS STATEMENTS

COMES NOW the Defendant, CARL TORJAGBO, by and through his undersigned counsel, and files this post-hearing brief in support of his motion and amended to suppress statements, docs. 44 and 88. Mr. Torjagbo states the following.

Facts

Carl Torjagbo applied for and obtained a Payroll Protection Program (PPP) loan on behalf of Kremkov Industries. (T. 24; Def. Exh. 1 at 06:06-06:15). On May 12, 2022, the instant federal indictment was returned against Mr. Torjagbo. (Doc. 1). The indictment charges Mr. Torjagbo with seven offenses relating to acquisition of the loan and alleged use of the proceeds: 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. (Doc. 1). The bank fraud count alleges that Mr. Torjagbo provided materially false information while applying for the PPP loan that he obtained for Kremkov Industries. (Doc. 1 at 2-4). In part, that count alleges, “On the application, Defendant Torjagbo stated that Kremkov Industries had 493 employees. That was not true.” (Doc. 1 at 3). Further, that count alleges, “In support of the PPP loan application, Defendant Torjagbo submitted fraudulent documents to Chase Bank, including . . . fake reports that listed the names and make-believe payroll information of 493 people who allegedly worked for Kremkov Industries.” (Doc. 1 at 4).

On May 12, 2022, two days after the indictment was returned, a team of Federal Bureau of Investigation (FBI) agents sought to execute an arrest warrant for Mr. Torjagbo that was issued in connection with the indictment. (T. 7).¹ The agents found Mr. Torjagbo at a location in Dallas, Georgia. (T. 8). According to FBI Agent Marissa Pressley, agents had set a meeting with Mr. Torjagbo. (T. 7). The agents planned to arrest him. (T. 7).

¹ “T.” is a reference to the transcript of the evidentiary hearing conducted on June 5, 2004 on Mr. Torjagbo’s motion to suppress statements.

Approximately ten agents went to the location in three or four vehicles. (T. 24-26). The agents were wearing bullet proof vests with FBI placards. (T. 9). As they observed Mr. Torjagbo walking across the parking lot, the ten agents surrounded Mr. Torjagbo with their vehicles, quickly exited their vehicles with their guns drawn, pointed their guns at Mr. Torjagbo, and identified themselves as FBI agents. (T. 9, 24-27). At least one agent yelled commands to Mr. Torjagbo, such as “show your hands” or “get on the ground.” (T. 27-28). Mr. Torjagbo complied. (T. 28). He got on the ground, and the agents arrested him. (T. 26, 28). They placed Mr. Torjagbo in handcuffs behind his back and placed him in Special Agent Scott Caruana’s Government vehicle. (T. 10-11, 24, 26). Once Mr. Torjagbo was secured in the rear of the vehicle, the agents handcuffed Mr. Torjagbo’s hands in front of his body. (T. 11).

While still at the Dallas location, FBI Agents Caruana and Pressley questioned Mr. Torjagbo while he sat in the vehicle. (T. 11-16, 28-29). The agents audio-recorded the interrogation.² (T. 14; Gov. Exh. 2; Def. Exh. 1). Agent Caruana read Miranda warnings to Mr. Torjagbo at the inception of the

² Although the questioning was recorded, it is apparent that some amount of discussion leading up to the interrogation, such as the possibility of benefitting by cooperating with the agents, was not recorded. See (T. 31-32; see also Def. Exh. 1 at 17:22-18:04).

recording. (T. 12; Def. Exh. 1 at 00:23-01:45). Mr. Torjagbo signed an advice of rights form. (T. 11; Gov. Exh. 1). 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 FlyingJack Freight and Logistics, activities conducted by and through FlyingJack Freight and Logistics, an income tax return that Mr. Torjagbo filed, and items of property that the Government was seizing. See (T. 35; Def. Exh. 1).

During the questioning, Agent Caruana asked Mr. Torjagbo to tell him how many employees Kremkov Industries currently had. (Def. Exh. 1 at 06:22-06:26). Mr. Torjagbo said that at the time the company's activities were on halt because most of its business was done in Africa, where its mining activities were conducted. (Def. Exh. 1 at 06:26-06:44). Thus, Mr. Torjagbo said, he had rechanneled his efforts into transportation. (Def. Exh. 1 at 06:44-06:50). Mr. Torjagbo said that most of the company's employees were in Africa, where its mining activities were operated. (Def. Exh. 1 at 06:50-07:10).

Shortly afterward, Agent Caruana asked Mr. Torjagbo about how many employees he had in 2020 and 2021. (Def. Exh. 1 at 07:40-07:48). Mr. Torjagbo said about fifty. (Def. Exh. 1 at 07:48-07:53). Agent Caruana asked Mr.

Torjagbo, “What was the maximum number of employees that you’ve ever had?” (Def. Exh. 1 at 08:00-08:04). Mr. Torjagbo said that it was a high turnover and that he did not know off the top of his head. (Def. Exh. 1 at 08:04-08:11). Agent Caruana then told Mr. Torjagbo to take a guess. (Def. Exh. 1 at 08:11-08:13). Mr. Torjagbo said that he honestly could not answer the question, as he did not know. (Def. Exh. 1 at 08:13-08:24). Agent Caruana again insisted that Mr. Torjagbo take a guess, and Mr. Torjagbo said again that he did not know off the top of his head because there was a high turnover. (Def. Exh. 1 at 08:24-08:47). Agent Caruana then told Mr. Torjagbo, “Just take a guess. I’m not going to lock you into it. Just a rough guesstimate.” (Def. Exh. 1 at 08:47-08:51). Mr. Torjagbo replied, “A rough guesstimate, maybe 50, 60.” (Def. Exh. 1 at 08:51-08:56).

Agent Caruana next asked Mr. Torjagbo about how much annually or quarterly he paid his employees. (Def. Exh. 1 at 08:57-09:04). Mr. Torjagbo said those were hard figures and he did not know off the top of his head; so, honestly he did not want to answer that question. (Def. Exh. 1 at 08:57-09:09). Agent Caruana said, “Are you sure you want to . . . tell me this stuff. Because it’s not really going to help you.” (Def. Exh. 1 at 09:09-09:16). Mr. Torjagbo replied, “I know that. But I don’t [want] to tell you something which is wrong and then . . .

it'll appear as if I'm . . . deceiving you or something.” (Def. Exh. 1 at 09:16-09:23). Agent Caruana accused Mr. Torjagbo of telling him “bullshit.” (Def. Exh. 1 at 09:47-10:00). Mr. Torjagbo told Agent Caruana that he was being honest with Agent Caruana to the best of his abilities. (Def. Exh. 1 at 10:00-10:11).

Later, during the interrogation, Agent Caruana told Mr. Torjagbo with regard to cooperating and truthfully answering questions that he had been clear to Mr. Torjagbo and explained to him how he could help himself in the federal system. (Def. Exh. at 17:22-17:52). He added, “And I guarantee you, you speak to any attorney, an attorney gets appointed to you . . . when you go through these proceedings, or you hire your own attorney . . . they will tell you the same thing. And I don't want you to sit back there later on and say, ‘Damn, he told me so.’” (Def. Exh. 1 at 17:52-18:08). Afterward, Mr. Torjagbo answered additional questions from Agents Caruana and Pressley, and he signed a form consenting to the agents using his key fob to enter his home garage and seize a BMW he owned.

Argument and Citation of Authorities

- I. Mr. Torjagbo's statements regarding the maximum number of employees Kremkov Industries had should be suppressed, because Mr. Torjagbo did not knowingly, intelligently and voluntarily waive his Miranda rights.

The Fifth Amendment to the United States Constitution provides that “[n]o person . . . shall be compelled in any criminal case to be a witness against himself.”

U.S. Const., Amend. V; United States v. Barry, 479 Fed. Appx. 297, 298 (11th Cir. 2012). 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). A person is in “custody” when he has been formally arrested or restrained to the degree associated with formal arrest. J.D.B. v. North Carolina, 564 U.S. 261, 270 (2011). For purposes of Miranda, “interrogation” includes any words or actions on the part of the police that are reasonably likely to elicit an incriminating response. Rhode Island v. Innis, 446 U.S. 291, 301 (1980).

“Before the Government may introduce a suspect’s uncounselled statement made during custodial interrogation, it must show that the suspect made a voluntary, knowing and intelligent waiver of his privilege against self-incrimination and his right to counsel.” U.S. v. Beale, 921 F.2d 1412, 1435 (11th

Cir. 1991) (citing Miranda, 384 U.S. at 475). 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)).

“Voluntariness in the context of Miranda waiver means the same thing as voluntariness in the due process context, i.e., freedom from official coercion.” Miller, *supra* at 1538. Thus, this portion of the inquiry focuses on whether there was police over-reaching or coercion associated with inducing the defendant to make a statement or answer questions. *See* Bradley v. Nagle, 212 F.3d 559, 566 (11th Cir. 2000).

The Government’s burden in demonstrating that a waiver of Miranda rights was knowing, intelligent, and voluntary is great. North Carolina v. Butler, 441 U.S. 369, 373 (1979); *see also* Farley, 607 F.3d at 1326. Ultimately, the Court must

indulge every reasonable presumption against waiver of fundamental constitutional rights and cannot presume acquiescence in the loss of fundamental rights.

Colorado v. Spring, 479 U.S. 564, 581-82 (1987), (Marshall, J., dissenting) (citing Johnson v. Zerbst, 304 U.S. 458, 464 (1938); Brewer v. Williams, 430 U.S. 387, 404 (1977)).

Deception by police officers is prohibited where it “goes directly to the nature of the suspect’s rights and the consequences of waiving them.” Farley, 607 F.3d 1294, 1329 (11th Cir. 2010) (citing Hart v. Attorney Gen. of the State of Fla., 323 F.3d 884, 894-95 (11th Cir. 2003)). Hart is a seminal case on this topic in this circuit. In that case, law enforcement officers engaged in several deceptive acts during or in connection with interrogating Hart. Two deceptive acts, in particular, were found to be constitutionally significant to the validity of Hart’s waiver of Miranda rights. In the subsequent case of Farley, the Eleventh Circuit explained:

Hart asked the detective about the ‘pros and cons’ of hiring a lawyer, which indicated that he ‘did not fully understand’ his rights and was asking for clarification of them. Id. at 894. In response, the detective told him that the ‘disadvantage’ of having a lawyer was that the lawyer would tell him not to answer incriminating questions. Id. That statement was misleading because the whole point of having a lawyer present during an interrogation is to protect the suspect’s privilege against self-incrimination. Id. The detective also told Hart that ‘honesty wouldn’t hurt him.’ Id. That was misleading because it

simply was not true — honesty can doom a guilty man — and it contradicted the warning required by Miranda that anything a suspect says can be used against him in court. Id. As a result of the detective's deception, which went to the heart of the Miranda warnings themselves, we concluded that Hart ‘did not truly understand the nature of his right against self-incrimination or the consequences that would result from waiving it,’ meaning that his waiver was not voluntary. Id. at 895.

Farley, 607 F.3d at 1329.

The Hart court determined that there was no significant difference between the facts in that case and those in United States v. Beale, 921 F.2d 1421, 1434-1435 (11th Cir. 1991), where the Eleventh Circuit held that the trial court had erred in admitting at trial the defendant’s statements to FBI agents. Beale had signed a Miranda waiver form only after the FBI agents had told him that signing the form would not hurt him. Id. at 1435. The Eleventh Circuit observed in Beale, “It appears that by telling LAVIN that signing the waiver would not hurt him the agents contradicted the Miranda warning that a defendant’s statements can be used against the defendant in court, thereby misleading LAVIN concerning the consequences of relinquishing his right to remain silent.” Id.

United States v. Castor, 598 Fed. Appx. 700 (11th Cir. 2015), provides another pertinent example. There, the defendant’s waiver of Miranda rights and subsequent admissions were deemed involuntary where the police officer had told

the defendant he could not charge him for additional drugs. 598 Fed. Appx. at 703-704. The Eleventh Circuit stated, “Castor’s decision to waive his rights and confess was the product of [the officer’s] deception, and Castor did not truly understand the nature of his right against self-incrimination or the consequences of waiving it.” Id. at 704.

In United States v. Harris, 72 F.Supp.3d 1332, 1336-1338 (M.D. Ga. 2014), the District Court for the Middle District of Georgia suppressed the defendant’s statements made to law enforcement officers where one of the officers had acknowledged and agreed with the defendant that his statements would be “off the record.” Law enforcement officers and the defendant’s probation officer had approached the defendant Harris at his home based on suspicion of marijuana production. Id. at 1335. The district court found that after Harris received a Miranda warning, the following occurred:

During his conversation with Agent Luke, Defendant said ‘all of the things I’m telling you are probably going to hurt me,’ and Agent Reed responded ‘yeah, they probably will.’ Agent Luke went on to say ‘you don’t have to talk to me.’ After Agent Luke reiterated Defendant did not have to confer with him, Defendant declared he would speak to Agent Luke ‘off the record’ about marijuana production. Agent Luke responded ‘sure’, and when asked again by Defendant for confirmation their conversation was ‘off the record’, Agent Luke stated ‘okay, off the record.’

Id. at 1335. The defendant Harris proceeded to make additional

incriminating statements, including some that led to the discovery of firearms for which he was prosecuted federally. Id. at 1335-1336. At a suppression hearing, Agent Luke testified that there was “no such thing as off the record” and that in his opinion it is okay to lie when interrogating individuals in custody. Id. at 1335.

The district court held that Harris’s statements after the acknowledgement and agreement that their statements were “off the record” were involuntarily rendered. Id. at 1337. First, the court stated, “[I]ntentionally false representations directly contradicting a Miranda warning are never appropriate.” Id. Moreover, when law enforcement officers make statements to the defendant that are clearly inconsistent with the intent of Miranda, ensuing statements by the defendants are considered involuntary under Miranda and its progeny. Id.

The District Court for the Southern District of Alabama noted a similar proposition in United States v. LaForgia, Unpublished, 2012 WL 1869035 (S.D. Ala. May 22, 2012). The court noted that a false promise, such as “whatever you say will just be between us”, is deceptive regarding the nature of the defendant’s rights and the consequences of abandoning them and will generally trigger suppression. 2012 WL 1869035, *4.

In this case, Agent Caruana coerced Mr. Torjagbo into making statements regarding the maximum number of employees he had at Kremkov Industries by telling Mr. Torjagbo that he would not lock Mr. Torjagbo into the answer. At the time of the questioning, Mr. Torjagbo was in custody, and his responses were being given in response to interrogation. Thus, Miranda warnings were required. Miranda and the Fifth Amendment require not simply that Miranda warnings be given but that the spirit and intent of the warnings be followed. Agent Caruana contradicted the element of the Miranda warnings that the defendant has a right to remain silent. By telling Mr. Torjagbo that he would not lock Mr. Torjagbo into his answer, Agent Caruana essentially told Mr. Torjagbo that he would not hold his answer against him, which is not true. That contradicts the element of the Miranda warning that anything the suspect says during the custodial interrogation can and will be used against him in court.

Agent Caruana's deception goes to the heart of Mr. Torjagbo's right to remain silent. The deception undermined not only Mr. Torjagbo's understanding of his right to remain silent. It also undermined his understanding of the consequence of waiving the right to remain silent. Mr. Torjagbo clearly had reluctance to answer the question of the maximum number of employees he had at Kremkov Industries. He stated multiple times that he was unsure and did not

want to answer the question or guess. Soon afterward, when discussing amount of money that he paid his employees on an annual or quarterly basis, Mr. Torjagbo said that he did not want to give answer, because he was unsure, and an incorrect answer would make it appear that he was trying to be deceitful. The recording suggests that Mr. Torjagbo felt similarly about the topic of the maximum number of employees he had at Kremkov. However, on that question, Agent Caruana deceptively coaxed Mr. Torjagbo into waiving his right to remain and responding by telling Mr. Torjagbo that he would not lock him into his answer. However, if the statement is introduced at trial, that is exactly what the Government will have done — lock him into his answer. That type of deception is not tolerated by the Fifth Amendment. Mr. Torjagbo’s statement was the product of deception, and the waiver of Miranda rights from which it ensued was not voluntarily, knowingly, and intelligently rendered. Thus, the statement must be suppressed.

II. Mr. Torjagbo’s statements regarding the maximum number of employees he had at Kremkov Industries should be suppressed, because Mr. Torjagbo did not voluntarily render the statements.

The Due Process Clause of the Fifth Amendment prohibits the Government from introducing at trial involuntary statements made by the Defendant. See Lall, 607 F.3d 1277, 1285 (11th Cir. 2010); Mincey v. Arizona, 437 U.S. 385, 398 (1978) (“[A]ny criminal trial use against a defendant of his involuntary statement

is a denial of due process of law.”) (emphasis removed). If the voluntariness of a statement is challenged, the Court must find that it was voluntarily made before it may be introduced. Jackson v. Denno, 378 U.S. 368, 378 (1964). The Eleventh Circuit has held:

The standard for evaluating the voluntariness of a confession is whether a person made an independent and informed choice of his own free will, possessing the capability to do so, his will not being overborne by the pressures and circumstances swirling around him. Voluntariness depends on the totality of the circumstances and must be evaluated on a case-by-case basis.

United States v. Rivera, 372 Fed. Appx. 958, *4 (11th Cir. 2010) (quoting United States v. Castaneda–Castaneda, 729 F.2d 1360, 1363 (11th Cir.1984)). This totality of the circumstances test directs the Court to determine whether a defendant's statement was the product of “an essentially free and unconstrained choice.” Hubbard v. Haley, 317 F.3d 1245, 1252 (11th Cir. 2003). The goal is to assess whether the police over-reached or coerced the defendant, considering the totality of the circumstances. United States v. Bernal-Benitez, 594 F.3d 1303, 1318 (11th Cir. 2010). The burden is on the Government to establish by a preponderance of the evidence that the statement was voluntary. Lall, 607 F.3d at 1285.

“When evaluating the totality of the circumstances, a law enforcement

officer's promise not to use a suspect's statement may be the most significant factor in assessing the voluntariness of a confession." United States v. Castor, 598 Fed. Appx. 700, 703 (11th Cir. 2015). If the government gives the defendant false information regarding whether his statements will be used against him, the defendant's ability "to weigh the pros and cons of confessing and go with the balance as it appears at that time" is seriously distorted. Lall, 607 F.3d at 1286 (citing Judge Posner's analysis in United States v. Rutledge, 900 F.2d 1127, 1129 (7th Cir. 1990)). In that scenario, the incriminating statement must be suppressed. Id.; see, e.g., Hopkins v. Cockrell, 325 F.3d 579, 584-85 (5th Cir. 2003) (officer assured suspect that their conversation was confidential); United States v. Walton, 10 F.3d 1024, 1286 (3rd Cir. 1993) (officer told suspect, "You can tell us what happened off the cuff.").

United States v. Lall, 607 F.3d 1277, 1283-1284 (11th Cir. 2010), provides a prominent example from this circuit. Two men broke into Lall's home and robbed it while Lall's mother and two younger siblings were present. Id. at 1281. The robbers demanded money and indicated that were interested in certain equipment that Lall had. Id. Ultimately, the robbers left the home without that equipment but with other items. Id. While police officers were at the home investigating, Lall's younger brother said that Lall "was into credit card fraud and

making ID's and stuff with the internet." Id. at 1281. While the police were on the scene investigating, Lall came home. Id. Detectives read him Miranda warnings in the front yard. Id. Then, they took him into his bedroom, where they questioned him. Id. Before doing so, the officers told Lall and his family that any information he shared with the police would not be used to prosecute him. Id. Lall proceeded to make incriminating admissions and produce equipment that he used to commit identity theft. Id. Later, one of the detectives called Lall and told him to come to the police station with his father. Id. The detective told Lall's father that they did not need to be accompanied by a lawyer. Id. The detective again told Lall that he was not going to bring charges against him related to the identity fraud. Id. at 1281. At the police station, Lall was given Miranda warnings again, and he proceeded to expound on his initial statement. Id. at 1282-1283.

The Eleventh Circuit held that Lall's initial statement was inadmissible because he did not render a voluntary, knowing and intelligent waiver of his privilege against self-incrimination. Id. at 1284. In part, the Court noted that because of the detective's statement before entering the bedroom that he would not pursue charges against Lall, Lall "did not truly understand the nature of his right against self-incrimination or the consequences that would result from waiving it."

Id. at 1283-1284.

The Eleventh Circuit also held that the circumstances of Lall's confession at the police station leaned even more heavily towards involuntariness. Id. at 1290. The court noted that the second interview took at the police station rather than at Lall's house, the detective told Lall's father they did not need to bring a lawyer with them, and the detective had already contacted the Secret Service when he promised non-prosecution before the police station interview. Id. at 1291.

In Castor, 598 Fed. Appx. at 701, the Eleventh Circuit held that the defendant's confession was involuntary, where an officer had told the defendant beforehand that he could not charge the defendant with any additional drugs. Following Lall and Castor, United States Magistrate Bly ruled in United States v. Aquino-Bustos, Unpublished, 2019 WL 7840667 (N.D. Ga. Nov. 21, 2019), that Defendant Penaloza-Bravo's statements were not voluntarily rendered. 2019 WL 7840667, *12-*15. Penazola-Bravo and co-defendant Aquino-Bustos were both arrested during the execution of a search warrant at a certain house. The warrant was issued in connection with a drug investigation. While at the location, an agent interviewed Penaloza-Bravo. The agent first read Miranda warnings to Penaloza-Bravo. Id. at *13. Penaloza-Bravo said that he wanted a lawyer, and the agent told him that his questions only related to Immigration and not to the

criminal investigation. Id. During the questioning, the agent asked Penaloza-Bravo if Aquino-Bustos called him by a certain name. Id. Penaloza-Bravo answered affirmatively and later moved to suppress his statements as involuntary. Id. Judge Bly agreed, holding that agent's statement that he was questioning Penaloza-Bustos for immigration purposes only and not for the criminal investigation was materially indistinguishable from the promise in Lall that the defendant's statements would not be used against him. Id. at *14.

Mr. Torjagbo's statements regarding the maximum number of employees he had at Kremkov Industries were not the product of a free and unrestrained choice. As discussed above, Agent Caruana deceptively coaxed Mr. Torjagbo into making the statement by telling him that he would not lock him into his answer. That promise that he would not lock Mr. Torjagbo into his answer distorted Mr. Torjagbo's ability to weigh the pros and cons of making a statement and going with the balance as it appeared at that time. In particular, Agent Caruana distorted Mr. Torjagbo's ability to weigh the consequence of making the statement. For all these reasons and those discussed above, Mr. Torjagbo's statements regarding the maximum number of employees he had at Kremkov Industries were involuntary and should be suppressed.

III. Mr. Torjagbo's statements rendered after Agent Caruana told him that any attorney would tell him he should cooperate and truthfully answer the agents' questions should be suppressed, because those statements did not result from a knowing, intelligent, and voluntary waiver of Mr. Torjagbo's Miranda rights.

Mr. Torjagbo incorporates his discussion of the law from section I of this brief. United States v. Ramirez, 991 F.Supp.2d 1258, 1268-1270 (S.D. Fla. 2014) provides another pertinent example. Following Hart and Beale, the District Court for the Southern District of Florida granted the defendant's motion to suppress in Ramirez. After Miranda warnings were read to the defendant Ramirez, a detective told him that "it would be worse for him" if he did not cooperate and speak with the officers. Id. at 1262. The district court held that the statements were involuntarily rendered. Id. at 1268-1270. The district court noted that the detective's offending advice implicated the Fifth Amendment in two respects. First, it ran opposite to the right to remain silent and the prohibition on using the defendant's decision to remain silent against him. Id. at 1270. Second, there was no element within the Miranda warning that would have informed the defendant that his silence could not be used against him. Id.

As in Hart, Beale, and Ramirez, Agent Caruana's statements to Mr. Torjagbo undermined the effect of the Miranda warning. In Hart, a detective made multiple offending statements to the defendant in connection with

interrogating him. One was that “honesty wouldn’t hurt him.” Hart, 323 F.3d at 889. The Eleventh Circuit stated that phrase was “simply not compatible with the phrase ‘anything you can say can be used against you in court.’” Id. at 895. In Beale, FBI agents told the defendant that signing the Miranda waiver form wouldn’t hurt him. Beale, 921 F.2d at 1435. The Eleventh Circuit held that statement also contradicted the Miranda warning that the defendant’s statements could be used against him in court. Id.

The same is true here. In fact, Agent Caruana’s statement to Mr. Torjagbo that any attorney would tell him to cooperate and answer the agents’ questions runs counter to every aspect of the Miranda warning. On its face, the statement is at odds with right to remain silent, and as in Hart, Beale, and Ramirez, the statement contradicts the admonition that Mr. Torjagbo’s statements would be used against him in court. Moreover, Caruana’s statement told Mr. Torjagbo that silence would hurt him and that disclosure would help him. Lastly, Caruana’s statement undermined the right to counsel. His statement suggested that it would be futile to consult counsel, as any lawyer would tell him to cooperate and any answer questions the agents posed — that is, waive your right to remain silent and disregard any potentially incriminating impact your statements might have in court.

In that portion of the interrogation, Mr. Torjagbo’s waiver of his Miranda

rights was the product of coercion and deception rather than a free and deliberate choice. Agent Caruana's statements clouded understanding of the nature of the rights being waived and the consequences of abandoning those rights. In sum, the record does not demonstrate that Mr. Torjagbo voluntarily, knowingly, and intelligently waived his Miranda rights at that juncture of the interrogation. Any ensuing statements by Mr. Torjagbo should be suppressed.

IV. Mr. Torjagbo's statements were not voluntary after Agent Caruana told him that any attorney would tell him that he should cooperate and answer the agents' questions.

Mr. Torjagbo incorporates his discussion of the law from previous sections of this brief. As discussed, Agent Caruana's statements that any attorney would tell Mr. Torjagbo he should cooperate and truthfully answer the agents' questions and that Mr. Torjagbo would later regret it if he did not do so were coercive.

Officer Caruana over-reached. Although Mr. Torjagbo had been indicted for nonviolent offenses, approximately ten FBI agents had quickly surrounded him with guns drawn, handcuffed him on the ground, and placed him in the rear of a police car. Those preceding events, Agent Caruana's assertions, at times, that Mr. Torjagbo's responses were "bullshit," Agent Caruana's admonition as to what any lawyer would tell Mr. Torjagbo, and his statements that Mr. Torjagbo would later regret if he did not cooperate and truthfully answer the agents' questions all

combined to produce an environment that was not conducive to Mr. Torjagbo making a free and unrestrained choice to make statements. Statements Mr. Torjagbo rendered after Agent Caruana claimed any lawyer would tell him that he should cooperate and truthfully answer the agents' questions were involuntary. Accordingly, Mr. Torjagbo's statements from that point onward in the interrogation should be suppressed.

Conclusion

For the reasons stated herein and in his motion to suppress, Mr. Torjagbo moves the Court to suppress his statements and any evidence the Government may have derived as fruit of those statements. See Wong Sun v. United States, 371 U.S. 471 (1963).

DATED: This 13th day of August, 2024.

Respectfully submitted,

S/ Kendal D. Silas

KENDAL SILAS

State Bar No. 645959

Attorney for CARL TORJAGBO

Federal Defender Program, Inc.
101 Marietta Street, N.W., Suite 1500
Atlanta, GA 30303
404/688-7530

CERTIFICATE OF SERVICE

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

John Russell Phillips, Esq.
Assistant United States Attorney
Federal Courthouse, Ste. 600
75 Ted Turner Drive, S.W.
Atlanta, GA 30303

by electronically filing the same through the Court's ECF system.

Dated: This 13th day of August, 2024.

s/ Kendal D. Silas

KENDAL SILAS, Esq.
Attorney for CARL TORJAGBO