

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

UNITED STATES OF AMERICA

v.

CARL DELANO TORJAGBO,
a/k/a KARL LUCIUS DELANO

CRIMINAL ACTION NUMBER
1:22-CR-171-MLB-RDC

**RESPONSE IN OPPOSITION TO
DEFENDANT’S MOTION TO SUPPRESS POST-ARREST STATEMENTS**

The United States of America files this response in opposition to
Defendant’s Motion to Suppress Post-Arrest Statements [Doc. 88].

Facts

The Indictment alleges that Torjagbo committed bank fraud when he submitted a PPP loan application which falsely stated that Kremkov Industries had 493 employees and an average monthly payroll of \$3,821,770. [Doc. 1, Count 1]. When he was arrested, Torjagbo waived his *Miranda* rights and agreed to answer questions without a lawyer present. Torjagbo moved to suppress his post-arrest statements [Doc. 88], and the Court conducted an evidentiary hearing on the motion [*see* transcript, hereinafter referred to as “T”]. The government called one witness, FBI Special Agent Marissa Pressley. [T. 6]. Three government exhibits were admitted. [T. 11-12, 15, 17].

The relevant parts of Agent Pressley's testimony and Torjagbo's post-arrest interview are as follows:

- The FBI arrested Torjagbo a few minutes before 9:58 AM, on May 12, 2022, in a parking lot in Dallas, Georgia. [T. 7-8].
- The agents were wearing vests that had FBI placards on the front and back; they verbally identified themselves as FBI agents when they first saw Torjagbo; and they told Torjagbo that he was under arrest and placed him in handcuffs, with his hands behind his back. [T. 8-9].
- The agents were armed, and they had their weapons drawn when they first encountered Torjagbo; but they put their weapons back in their holsters after making the arrest, and they never unholstered their weapons after that. [T. 9].
- After Torjagbo was handcuffed, agents searched him to be sure that he had no weapons. [T. 9].
- Before placing Torjagbo in the back seat of Agent Scott Caruana's FBI sedan, agents repositioned Torjagbo's handcuffs to the front of his body so that he would be more comfortable. [T. 9-10].
- Agent Caruana and Agent Pressley sat in the vehicle with Torjagbo. [T. 9, 13]. No one else was in the vehicle. [T. 13].
- Before the questioning began, Agent Caruana read Torjagbo his *Miranda* rights virtually verbatim from the FBI Advice of Rights form that was admitted into evidence as Government Exhibit 1. [T. 10-12; Gov't Ex. 1; Gov't Ex. 2 at 00:24-00:59].
- Agent Caruana asked Torjagbo whether he understood all of his rights, and Torjagbo said yes. [Gov't Ex. 2 at 00:57-00:59].
- Agent Caruana asked Torjagbo whether he would be willing to answer questions without a lawyer being present, and Torjagbo said that he would. [Gov't Ex. 2 at 01:01-01:06; T. 12, 13-14].

- Torjagbo said that he was willing to waive all his rights, and he then signed the Advice of Rights form, which states as follows: “I have read this statement of my rights and I understand what my rights are. At this time, I am willing to answer questions without a lawyer present.” [Gov’t Ex. 1; Gov’t Ex. 2 at 01:07-01:31; T. 12, 13-14].
- Agent Caruana recorded the audio portion of the entire interview, and a complete, unedited copy of the recording was saved to a CD and admitted into evidence as Government Exhibit 2. [Gov’t Ex. 2; T. 14-15].
- The entire interview lasted only 42 minutes. [T. 16].
- All communications between the agents and Torjagbo were in English. [T. 10]. Torjagbo is fluent in English. [See Gov’t Ex. 2].
- Agent Caruana and Torjagbo discussed a large number of vehicles that were the subject of seizure warrants. [Gov’t Ex. 2 at 01:45-04:45]. Later in the interview, Torjagbo gave the FBI permission to enter the garage at his residence to seize one such vehicle – a 2022 BMW M850xi. [Gov’t Ex. 2 at 18:59-19:25; Gov’t Ex. 3; T. 16-18, 34].
- Torjagbo said that he purchased “most” of his property, including his house and his cars, with his own money, not PPP money, and he said, “I can prove that to you.” [Gov’t Ex. 2 at 04:46-05:00]. Agent Caruana said, “Let me tell you something, the last thing you want to do is be deceptive with us and not be honest.” [Gov’t Ex. 2 at 05:01-05:07]. Torjagbo said, “I know better than to lie to the FBI.” [Gov’t Ex. 2 at 05:07-05:11].
- Torjagbo stated that no one helped him apply for the PPP loan; he did it by himself. [Gov’t Ex. 2 at 06:06-06:15].
- Agent Caruana asked how long Kremkov had been in business, and Torjagbo said, “About three or four years.” [Gov’t Ex. 2 at 06:15-06:22].
- Agent Caruana asked how many employees Kremkov currently had, and Torjagbo said, “Right now, it’s on halt because most of the business is down in Africa. It’s a mining business.” [Gov’t Ex. 2 at 06:22-06:32]. Torjagbo further stated, “We can’t do anything right now [because of Covid restrictions]. So, that’s why I’m rechanneling my efforts into transportation.” [Gov’t Ex. 2 at 06:32-06:50].

- Torjagbo said that most of Kremkov's employees were in Africa. [Gov't Ex. 2 at 07:01-07:10].
- When asked how much income he earned per year from Kremkov, Torjagbo said that the mining business is "lucrative [but] it depends on how much you sell." [Gov't Ex. 2 at 07:15-07:28].
- Torjagbo said that Kremkov had several foreign bank accounts, including some in the Emirates and some in Africa. [Gov't Ex. 2 at 07:30-07:40].
- Agent Caruana asked how many employees Kremkov had in 2020 and 2021, and Torjagbo said "about 50." [Gov't Ex. 2 at 07:41-07:52]. Agent Caruana then asked how many of those employees were in the United States, and Torjagbo said, "Off the top of my head, I don't know." [Gov't Ex. 2 at 07:53-07:59].
- Agent Caruana asked, "What was the maximum amount of employees that you've ever had?" Torjagbo said that it was a "high turnover" and that he did not know the exact number "off the top of [his] head." [Gov't Ex. 2 at 08:00-08:11]. Agent Caruana said, "Take a guess." [Gov't Ex. 2 at 08:11-08:13]. Torjagbo said, "Honestly, I can't answer that question." [Gov't Ex. 2 at 08:11-08:22]. Agent Caruana said, "Just take a guess. You're the owner, right? And you pay them, right? So, you cut the checks. . . . Approximately how much do you pay them?" [Gov't Ex. 2 at 08:22-08:31]. Torjagbo said, "It depends on how many people are digging and mining at the time." [Gov't Ex. 2 at 08:37-08:41]. Agent Caruana said, "Approximately how many people is that?" [Gov't Ex. 2 at 08:41-08:43]. Torjagbo said, "Like I said, I don't know off the top of my head." [Gov't Ex. 2 at 08:44-08:47]. Agent Caruana then said, "Just take a guesstimate. I'm not going to lock you into it. Just a rough guesstimate." [Gov't Ex. 2 at 08:47-08:51]. Torjagbo replied, "A rough guesstimate, maybe 50, 60." [Gov't Ex. 2 at 08:51-08:54].
- Agent Caruana asked Torjagbo how much he paid his employees annually or quarterly and what his total payroll was. [Gov't Ex. 2 at 08:57-09:04]. Torjagbo said, "those are hard figures, and I don't know off the top of my head; so, honestly I don't want to answer that question." [Gov't Ex. 2 at 09:05-09:09].

- Torjagbo said, "I had income from Kremkov." [Gov't Ex. 2 at 10:38-10:42]. "The business started back in Africa. . . . I inherited a piece of property that had gold and diamonds on it. At that time, I was living . . . in Dubai. . . . So when I came back to the States, I registered the business in the States, and that made me eligible to apply for the PPP loan." [Gov't Ex. 2 at 10:48-11:11]. Agent Caruana said, "How much of that PPP money did you pay employees here in the United States?" [Gov't Ex. 2 at 11:21-11:28]. Torjagbo said, "Save the employees I have right now and then rechanneling the . . . money into transportation. . . ." [Gov't Ex. 2 at 11:29-11:37]. Agent Caruana interjected, "So, you rechanneled the money, the PPP money for Kremkov, for your employees, into buying all these rigs?" [Gov't Ex. 2 at 11:39-11:45]. Torjagbo said, "Because I intended to take it as a loan, instead of asking for forgiveness." [Gov't Ex. 2 at 11:45-11:50]. Agent Caruana said, "Why didn't you get a loan in FlyingJack's name?" [Gov't Ex. 2 at 13:44-13:46]. Torjagbo said, "Because at that time FlyingJack was not established." [Gov't Ex. 2 at 13:47-13:50]. Later, Torjagbo added, "I started FlyingJack after the PPP program was over." [Gov't Ex. 2 at 15:10-15:13].
- Agent Caruana said, "In order to get a loan through Kremkov, you had to submit the false documents and that sort of thing in order for them to approve it." [Gov't Ex. 2 at 15:27-15:34]. Torjagbo said, "I didn't submit any false documents." [Gov't Ex. 2 at 15:34-15:36]. Agent Caruana said, "You submitted a list of 493 employees that are all here in the United States, with your loan package. So, that's fake. That's bullshit." [Gov't Ex. 2 at 15:42-15:53]. Torjagbo said, "They changed the rules on how you get the PPP money. They changed the rules from the number of employees to how much you actually make." [Gov't Ex. 2 at 16:25-16:34]. In response, Agent Caruana said, "So, how much do you actually make?" [Gov't Ex. 2 at 16:40-16:42]. Torjagbo said, "Like I said, those are like hard figures." [Gov't Ex. 2 at 16:42-16:44].
- Agent Caruana said, "I don't want to see you get in any more trouble than what you're already in. That's why I was clear to you and explained to you how you can help yourself in the federal system. And I guarantee you, you speak to any attorney . . . , they will tell you the same thing." [Gov't Ex. 2 at 17:41-18:03].

- Agent Caruana said, “Who’s Monica Sweeten?” And Torjagbo replied, “Monica is a girl I used to work with. She was actually my [flight simulator] partner . . . when I was working for United Express.” [Gov’t Ex. 2 at 25:54-26:04].
- Agent Caruana said, “The 493 people, their names, that you had on that 71-page list that you submitted to Chase, where’d you get all that data from? [Gov’t Ex. 2 at 30:48-30:58]. Torjagbo said, “I refrain from answering that question.” [Gov’t Ex. 2 at 31:28-31:30]. Agent Caruana said, “Are they real names, or are they fake names?” [Gov’t Ex. 2 at 31:57-32:00]. Torjagbo said, “They are real.” [Gov’t Ex. 2 at 32:00-32:01].
- Torjagbo admitted that, before he registered Kremkov in the United States, Kremkov had “no U.S. operations.” [Gov’t Ex. 2 at 33:41-35:15].
- Torjagbo never indicated that he did not understand any of the questions that he was asked. [T. 13, 18-19].
- Torjagbo was calm throughout the interview. [T. 18].
- Agent Caruana and Agent Pressley never made any promises to Torjagbo. [See Gov’t Ex. 2].
- No one threatened Torjagbo or tried to intimidate him. [T. 23].
- Torjagbo never stated that he wanted to stop the interview or that he wanted to speak to a lawyer. [T. 18, 19, 45].

Applicable Law

Law enforcement officers must inform a suspect in custody of his Fifth Amendment rights before interrogating him. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

A suspect seeking to invoke his right to remain silent must do so “unambiguously,” such as by telling police “that he want[s] to remain silent or that he [does] not want to talk with [them].” *Berghuis v. Thompson*, 560 U.S. 370, 381, 382 (2010). “The inquiry as to whether a suspect’s invocation of his right to remain silent was ambiguous or equivocal is an objective one.” *Medina v. Singletary*, 59 F.3d 1095, 1101 (11th Cir. 1995) (citing *Davis v. United States*, 512 U.S. 452, 458-59 (1994)). A statement is either an assertion of the right to remain silent or it is not. *See Smith v. Illinois*, 469 U.S. 91, 97-98 (1984); *United States v. Hurst*, 228 F.3d 751, 759 (6th Cir. 2000) (holding that the *Davis* standard for invocation applies equally to the right to counsel and the right to remain silent).

If a suspect waives his rights after receiving the *Miranda* warnings, law enforcement officers may question him. *North Carolina v. Butler*, 441 U.S. 369, 372-376 (1979).

“The obligation to cease questioning a suspect arises only when the suspect unambiguously invokes the right to remain silent.” *Coleman v. Singletary*,

30 F.3d 1420, 1426 (11th Cir. 1994). “A suspect must articulate his desire to cut off questioning with sufficient clarity that a reasonable police officer in the circumstances would understand the statement to be an assertion of the right to remain silent.” *Id.* at 1424. If the suspect’s statement is ambiguous or equivocal, then the police may continue the interrogation. *Id.*

If a suspect does not wish to cut off *all* questioning, he may “selectively” waive his *Miranda* rights “by indicating that he will respond to some questions, but not to others.” *United States v. Lorenzo*, 570 F.2d 294, 297-98 (9th Cir. 1978); *see also Michigan v. Mosley*, 42 U.S. 96, 103-04 (1975) (holding that the right to remain silent includes the ability to “control . . . the subjects discussed”). But “a suspect’s refusal to answer certain questions is not tantamount to the invocation, either equivocal or unequivocal, of the constitutional right to remain silent.” *United States v. Mikell*, 102 F.3d 470, 477 (11th Cir. 1996).

“Once a person has indicated that he does not wish to talk about a particular subject, all questioning on *that* topic must cease.” *United States v. Lopez-Diaz*, 630 F.2d 661, 664 n.2 (9th Cir. 1980) (emphasis added). Law enforcement officers may continue questioning the suspect on *other* topics, “‘until and unless the suspect clearly requests’ that the questioning cease.” *Mikell*, 102 F.3d at 477 (quoting *Davis*, 512 U.S. at 461).

The admissibility of statements obtained after the suspect has exercised his right to cut off questioning on a particular topic depends on whether that right was “scrupulously honored.” *Mosley*, 42 U.S. at 103-04; *see also United States v. Rosso*, No. 3:14-CR-00014-TCB, 2015 WL 7115860, at *7 (N.D. Ga. Nov. 12, 2015) (“A limited invocation of the right to counsel does not preclude the admissibility of statements a defendant makes which fall outside the limited invocation.”) (quoting *United States v. Boyer*, 914 F.2d 144, 146 (8th Cir. 1990)).

The government must show by a preponderance of the evidence that the defendant knowingly and intelligently waived his rights. *Miranda* 384 U.S. at 475; *Colorado v. Connelly*, 479 U.S. 157, 158 (1986). In deciding whether the government has met its burden, the Court looks at two things: First, the Court looks at whether “the relinquishment of the right [was] voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception.” *Moran v. Burbine*, 475 U.S. 412, 421 (1986). Second, the Court looks at whether “the waiver [was] made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.” *Id.* “Only if the totality of the circumstances surrounding the interrogation reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived.” *Id.*

Argument

- 1. The government has met its burden of demonstrating by a preponderance of the evidence that Torjagbo knowingly and intelligently waived his rights.**

(A) Torjagbo voluntarily waived his *Miranda* rights.

In the context of a *Miranda* waiver, “‘voluntariness’ means . . . freedom from official coercion.” *Miller v. Dugger*, 838 F.2d 1530, 1538 (11th Cir. 1988) (citing *Connelly*, 479 U.S. at 170). “Therefore, in the absence of police coercion, a court cannot conclude a defendant’s waiver or inculpatory statements are involuntary.” *United States v. Sakapala*, No. 3:18-CR-00008-TCB-RGV, 2019 WL 2482173, at *16 (N.D. Ga. Jan. 30, 2019), *report and recommendation adopted*, 2019 WL 1398902 (N.D. Ga. Mar. 28, 2019) (citation omitted). “Conduct sufficient to render a statement involuntary normally involves subjecting the accused to an exhaustingly long interrogation, the application of physical force or the threat [of physical force], or the making of a promise that induces a confession.” *United States v. Rush*, 144 F. App’x 13, 15 (11th Cir. 2005) (quotation marks omitted).

Torjagbo does not allege coercion “by physical violence or other deliberate means calculated to break [his] will.” *Oregon v. Elstad*, 470 U.S. 298, 312 (1985). Likewise, Torjagbo does not allege that his age, education, or intelligence undermined his ability to waive his *Miranda* rights voluntarily, knowingly, and

intelligently, nor does he allege that he was deprived of food, sleep, or medical treatment while being questioned. And he does not allege that the FBI made any promises to him to get him to waive his rights or answer questions without a lawyer being present. Also, the recording of Torjagbo's interview [Gov't Ex. 2] shows that Torjagbo and the agents were calm and used a conversational tone throughout the interview. *See United States v. Aquino-Bustos*, No. 1:18-CR-452-MHC-CCB, 2019 WL 7840667, at *10 (N.D. Ga. Nov. 21, 2019) (noting that defendant "d[id] not sound intimidated or scared on the recording [and his] tone (like that of the agents) was conversational"), *report and recommendation adopted*, 2020 WL 91500 (N.D. Ga. Jan. 7, 2020). There being no evidence of official coercion, the Court cannot conclude that Torjagbo's statements were involuntary. *Connelly*, 479 U.S. at 167; *Sakapala*, 2019 WL 2482173, at *16.

(B) Torjagbo's *Miranda* waiver was made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.

"An express written or oral statement of waiver of the right to remain silent or of the right to counsel is usually strong proof of the validity of that waiver." *Butler*, 441 U.S. at 373. Thus, "cases in which a defendant can make a colorable argument that a self-incriminating statement was 'compelled' despite the fact that the law enforcement authorities adhered to the dictates of *Miranda* are rare." *Berkemer v. McCarty*, 468 U.S. 420, 433 n.20 (1984).

There is simply no basis to conclude that Torjagbo did not understand his *Miranda* rights, and it follows that he chose not to invoke or rely on those rights when he did speak. *See Berghuis*, 560 U.S. at 385.

First, there is no contention that Torjagbo did not understand his rights. "[A]nd from this it follows that he knew what he gave up when he spoke." *Id.* There is more than enough evidence in the record to conclude that Torjagbo understood his *Miranda* rights. Torjagbo concedes that Agent Caruana read him his *Miranda* warnings and that he signed a *Miranda* waiver before questioning began. [Doc. 108 at 3-4]. This is "strong proof of the validity of that waiver." *Butler*, 441 U.S. at 373. Moreover, Torjagbo does not allege that he unambiguously invoked his right to remain silent. *See Coleman*, 30 F.3d at 1426.

And the recording of Torjagbo's post-arrest interview [Gov't Ex. 2] affirmatively shows that he did not.

Second, there is no evidence that Torjagbo's statement was coerced. *See Moran*, 475 U.S. at 421. Torjagbo does not claim that the agents threatened or injured him in any way. Moreover, the interrogation lasted just 42 minutes [T. 16], not an unreasonably long time. *See United States v. Olaniyi*, 796 F. App'x 601, 604 (11th Cir. 2019) (noting with approval that "the agents kept the interview to a reasonable time of just under two hours"). "There is no authority for the proposition that an interrogation of this length is inherently coercive." *Berghuis*, 560 U.S. at 386 (referring to an interrogation that lasted three hours). "Indeed, even where interrogations of greater duration were held to be improper, they were accompanied, as this one was not, by other facts indicating coercion, such as an incapacitated and sedated suspect, sleep and food deprivation, and threats." *Id.*

Third, at no point did Torjagbo state that he wanted the questioning to end or that he wanted to speak to a lawyer. [T. 18, 19, 45]. While Torjagbo did say, "I can't answer that question" [Gov't Ex. 2 at 08:11-08:22]; "I don't want to answer that question" [*id.* at 09:05-09:09]; and "I refrain from answering that question" [*id.* at 31:28-31:30] in response to some of Agent Caruana's questions, the "refusal

to answer certain questions is not tantamount to the invocation, either equivocal or unequivocal, of the constitutional right to remain silent.” *Mikell*, 102 F.3d at 477; *see Gill v. Martel*, No. 2:09- CV- 748 JAM, 2011 WL 2038712, at *15, 16 (E.D. Cal. May 24, 2011) (“A reasonable police officer would not have understood the cited statements [‘I can’t answer that’ and ‘I’m not going to answer that’] to be invocations of the right to remain silent.”) (citing *Davis*, 512 U.S. at p. 459). Furthermore, after Torjagbo indicated that he did not want to answer certain questions, he answered other questions, “which is inconsistent with an unequivocal invocation of the right to remain silent.” *United States v. White*, No. 4:22-CR-0017-WMR, 2023 WL 7703553, at *3, 11 (N.D. Ga. Nov. 15, 2023) (denying motion to suppress statements); *see also United States v. Thomas*, 358 F. Supp. 2d 1100, 1101 (M.D. Ala. 2005) (“As in *Mikell*, Thomas never told Inspector Tynan that he wished questioning to cease. Rather, he simply stated, ‘I won’t say where I got [the money orders].’ After making that statement, Thomas continued to speak with Inspector Tynan and answered other questions posed to him. At no time did he inform Inspector Tynan that he refused to answer *any* further questions, and at no point did he state that he wished questioning *as a whole* to cease. At most, Thomas selectively responded to the questions posed to him during interrogation. Thus, the court concludes that Thomas did not

unambiguously and unequivocally invoke his right to silence by stating ‘I won’t say where I got [the money orders].’”), *aff’d*, 176 F. App’x 997 (11th Cir. 2006).

Under these circumstances, Torjagbo was fully aware of both the nature of the rights he abandoned and the consequences of the decision to abandon them.

See Moran, 475 U.S. at 421.

(C) The totality of the circumstances surrounding Torjagbo’s interrogation reveal both an uncoerced choice and the requisite level of comprehension.

Even though Torjagbo signed a *Miranda* waiver, the Court is still “required to examine the ‘totality of the circumstances surrounding the interrogation’ to determine whether [Torjagbo’s] decision to waive his rights was made voluntarily, knowingly, and intelligently.” *Hart v. Att’y Gen. of State of Fla.*, 323 F.3d 884, 893 (11th Cir. 2003). “The signed waiver form . . . is merely one piece of evidence to be considered in the totality of the circumstances analysis.” *Id.* at 893 n.18. Nevertheless, looking at the totality of the circumstances, nothing indicates that Torjagbo did not voluntarily, knowingly, and intelligently waive his rights. *See, e.g., United States v. Hardeman*, No. 1:15-CR-00094-MHC-RGV, 2016 WL 8671972, at *12 (N.D. Ga. Mar. 11, 2016) (“The evidence shows that defendant was an adult, who had graduated from high school and could read and write in the English language, and that he was not under the influence of drugs or alcohol

during the questioning, but was able to respond with coherent and precise answers. Defendant did not ask to stop the interview at any time or refuse to answer questions, nor did he otherwise indicate that he did not understand his rights or the consequences of his waiver. Thus, the totality of the circumstances surrounding the interrogation demonstrates that defendant was clearly advised of his rights, and he voluntarily, knowingly, and intelligently waived them. Furthermore, there is no basis for concluding that the entire sequence of events brought about an involuntary confession. Defendant's post-*Miranda* statements . . . are therefore not due to be suppressed.") (internal citations omitted), *report and recommendation adopted*, 2016 WL 2658169 (N.D. Ga. May 9, 2016).

The testimony of Agent Pressley establishes a *prima facie* case that Torjagbo's statements were made freely and voluntarily after a valid waiver of his *Miranda* rights. *See United States v. Copeland*, No. 1:19-CR-00009-MHC-RGV, 2020 WL 2502423, at *4 (N.D. Ga. Jan. 27, 2020), *report and recommendation adopted*, 2020 WL 1131026 (N.D. Ga. Mar. 9, 2020). Once a *prima facie* case is established by the government, the burden shifts to the defendant to offer evidence to rebut the government's *prima facie* case; if the defendant fails to rebut the government's *prima facie* case, the defendant's motion to suppress must be denied. *United States v. Toro*, 359 F.3d 879, 885 (7th Cir. 2004); *see also United States*

v. Johnson, No. 1:06-CR-11 (WLS), 2007 WL 9735788, at *3 (M.D. Ga. Jan. 11, 2007) (denying defendant's motion to suppress because defendant "failed to rebut" government's evidence showing that defendant's statements were voluntary).

2. Torjagbo's arguments all fail.

Torjagbo's main argument is that the circumstances of his arrest, Agent Caruana's assertion that his responses were "bullshit," and Agent Caruana's admonition that any attorney would tell him he should cooperate and truthfully answer the agents' questions "all combined to produce an environment that was not conducive to Torjagbo making a free and unrestrained choice to make statements." [Doc. 108 at 22-23]. This argument is not supported by the case law.

As to the circumstances of his arrest, Torjagbo alleges that, shortly before his interview, "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." [*Id.* at 22]. The circumstances of Torjagbo's arrest were routine, not coercive.

First, the presence of a large number of agents at the scene of the arrest "does not indicate a level of intimidation or coercion sufficient to render Defendant's waiver involuntary [if] there is no evidence that the agents at the scene 'employed any tactics that would augment the degree of coercion that is

inherent in any arrest.” *United States v. Vaughn*, No. 1:22-CR-00107-MHC-JEM-5, 2023 WL 4409541, at *7 (N.D. Ga. June 15, 2023) (quoting *United States v. Garcia*, 890 F.2d 355, 360-362 (11th Cir. 1989) (finding that defendant’s consent to search was voluntary despite the presence of 14 agents)), *report and recommendation adopted*, 2023 WL 4411957 (N.D. Ga. July 7, 2023). Torjagbo does not allege that the FBI agents who arrested him employed any such tactics. Furthermore, it is “not out of the ordinary that several officers . . . had their weapons drawn as the defendant was taken into custody.” *United States v. Haddix*, No. CRIM. 12-75, 2013 WL 3177749, at *7 (W.D. Pa. June 24, 2013). And it is undisputed that, once Torjagbo was in custody, the agents reholstered their weapons and never pointed them at him again. [Tr. 9].

Second, “the use of handcuffs does not establish coercion.” *Shriner v. Wainwright*, 715 F.2d 1452, 1456 (11th Cir. 1983).

Third, Torjagbo has not demonstrated that, by calling his responses “bullshit” and accusing him of lying, Agent Caruana used “impermissible coercive techniques that overborne his will.” *Gomez v. California*, No. 1:18-CV-00642-DAD-SAB-HC, 2019 WL 358631, at *15 (E.D. Cal. Jan. 29, 2019); *see also United States v. Salceda*, No. CR 10-274 CAS, 2012 WL 763583, at *7 n.3 (C.D. Cal. Feb. 27, 2012) (“Taken in context, it is clear that [the agent] was simply

instructing defendant to tell the truth when he said, '[Y]ou can't bullshit me.' Such actions are permissible under the Fifth Amendment."); *United States v. Wolf*, 813 F.2d 970, 975 (9th Cir. 1987) ("The fact that [a police officer] accused [the defendant] of lying does not automatically render the questioning coercive, as an interrogator can legitimately express his disbelief at a defendant's story in order to elicit further comments or explanations.").

Fourth, Agent Caruana's admonition to Torjagbo that any attorney would tell him he should cooperate and truthfully answer the agents' questions [Doc. 108 at 22] was not improper. As Judge Grimberg recently noted, "encouraging [a defendant] to cooperate by informing him of the benefits of cooperation is not inherently coercive." *United States v. Brown*, No. 1:20-CR-00113-SDG-JSA, 2021 WL 3828797, at *6 (N.D. Ga. Aug. 27, 2021) (citation omitted). And as Judge Baverman noted before that, warning "a defendant of the consequences of telling a lie, where he already had been advised that he did not have to speak, is not impermissibly coercive." *United States v. George*, No. 1:05-CR-403-02-CAP-AJB, 2006 WL 8428886, at *6 (N.D. Ga. Apr. 24, 2006), *report and recommendation adopted*, 2006 WL 8429107 (N.D. Ga. May 19, 2006). Numerous Eleventh Circuit cases reached similar results. *See, e.g., United States v. Quinn*, 123 F.3d 1415, 1423-24 (11th Cir. 1997) (finding that police did not improperly induce the defendant's

confession by telling him that “he was facing a 40-year sentence but might receive a more favorable sentence if he cooperated” and that “it would be difficult to cooperate once an attorney had been appointed”); *United States v. Nash*, 910 F.2d 749, 752 (11th Cir. 1990) (finding that telling the defendant “that cooperating defendants generally ‘fared better time-wise’” did not amount to illegal inducement); *United States v. Davidson*, 768 F.2d 1266, 1271 (11th Cir. 1985) (finding that law enforcement assurance that “the accused’s cooperation would be passed on to judicial authorities and would probably be helpful to him is not a sufficient inducement so as to render a subsequent incriminating statement involuntary”); *United States v. Ballard*, 586 F.2d 1060, 1063 (11th Cir. 1978) (“[T]elling the [defendant] in a noncoercive manner of the realistically expected penalties and encouraging him to tell the truth is no more than affording him the chance to make an informed decision with respect to his cooperation with the government.”).

Torjagbo’s other arguments fare no better. For example, Torjagbo argues that Agent Caruana asked him “about how much annually or quarterly he paid his employees.” [Doc. 108 at 5]. 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.” [*Id.*]. Torjagbo’s “refusal to answer certain questions is not tantamount

to the invocation, either equivocal or unequivocal, of the constitutional right to remain silent.” *Mikell*, 102 F.3d at 477. Moreover, Agent Caruana “scrupulously honored” Torjagbo’s decision to cut off questioning on that particular topic. *Mosley*, 42 U.S. at 103-04.

Torjagbo argues that he stated multiple times that he did not want to guess, “because he was unsure, and an incorrect answer would make it appear that he was trying to be deceitful.” [Doc. 108 at 13-14]. This is not something that “a reasonable police officer in the circumstances would understand . . . to be an assertion of the right to remain silent.” *Coleman*, 30 F.3d at 1424.

Finally, Torjagbo argues that “[d]eception by police officers is prohibited where it ‘goes directly to the nature of the suspect’s rights and the consequences of waiving them.’” [Doc. 108 at 9]. The cases that Torjagbo relies on—*Hart*, 323 F.3d 884; *United States v. Farley*, 607 F.3d 1294 (11th Cir. 2010); and *United States v. Beale*, 921 F.2d 1412, 1435 (11th Cir. 1991)—are distinguishable.

Unlike Torjagbo, “Hart did not fully understand his right to counsel” and asked a detective for clarification. *Hart*, 323 F.3d at 894. The detective “responded by telling him that the disadvantage of having a lawyer present was that the lawyer would tell [him] not to answer incriminating questions.” *Id.* The detective “also told Hart that ‘honesty wouldn’t hurt him.’” *Id.* The Eleventh Circuit found

that the detective's statements were inconsistent with the *Miranda* warnings:

"The reason for requiring a lawyer during custodial interrogation is to protect a suspect's privilege against self incrimination," and "[t]he phrase 'honesty will not hurt you' is simply not compatible with the phrase 'anything you say can be used against you in court.'" *Id.* In sum, Hart was tricked into waiving his *Miranda* rights. Torjagbo, on the other hand, was not; he fully understood the *Miranda* warnings he was given and needed no clarification. He was not tricked into making any incriminating statements.

Torjagbo's reliance on *Farley* is misplaced. The Eleventh Circuit found that Farley's waiver of his rights was "knowing and voluntary." *Farley*, 607 F.3d at 1331. The court noted that "the agents warned Farley, as required by *Miranda*, that 'anything' he said could be used against him in court. . . . Not just some things, but anything." *Id.* at 1329-30. The same is true of Torjagbo. [*See* Gov't Ex. 1]. The court further stated that "[t]here is nothing to indicate that Farley was unsure of his rights or needed them clarified. He was not deceived about the nature of his rights and the consequences of abandoning them[,] [which] distinguishes his case from *Hart*." *Farley*, 607 F.3d at 1330. Again, the same is true of Torjagbo. [*See* T. 13, 18-19; Gov't Ex. 1].

In *Beale*, the Eleventh Circuit held that a defendant's *Miranda* waiver was invalid because, "by telling [him] that signing the waiver form would not hurt him the [FBI] agents contradicted the *Miranda* warning that a defendant's statements can be used against the defendant in court, thereby misleading [him] concerning the consequences of relinquishing his right to remain silent." 921 F.2d at 1435. Torjagbo implies that he, too, was tricked or coerced into waiving his *Miranda* rights. [Doc. 108 at 10, 21]. There is no evidence that Torjagbo was tricked or coerced into signing the FBI Advice of Rights form. The only alleged coercion that Torjagbo complains of is Agent Caruana's statement "that any attorney would tell him to cooperate and answer the agents' questions." [See Doc. 108 at 21-22]. The record shows that Agent Caruana made that statement more than 17 minutes *after* Torjagbo had signed the FBI Advice of Rights form. [See Doc. 108 at 6, citing recorded interview at 17:52-18:08]. Because the statement by Agent Caruana was made *after* Torjagbo had waived his *Miranda* rights, it necessarily had no effect on Torjagbo's waiver decision. See *United States v. Dickerson*, 773 F. App'x 571, 574 (11th Cir. 2019) ("Although [the police officer] did warn [the defendant] that he could get a longer sentence if he did not cooperate, those statements were made after [the defendant] had incriminated himself and thus could not have been said to elicit his incriminating statement.").

Conclusion

For all of these reasons, Torjagbo's Motion to Suppress Post-Arrest Statements [Doc. 88] should be denied.

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