

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 REPLY 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 reply brief in support of his motion and amended to suppress statements, docs. 44 and 88. Mr. Torjagbo states the following.

- I. The Court should suppress the statements that Mr. Torjagbo challenges, because Mr. Torjagbo did not knowingly, intelligently and voluntarily waive his Miranda rights as to those statements.

A person subject to custodial interrogation has the right to “control the time at the which the questioning occurs, the subjects discussed, and the duration of the interrogation.” Michigan v. Mosley, 423 U.S. 96, 102 (1975). Thus, the person may choose to answer some questions but not others. The act of reading Miranda warnings does not cure subsequent police over-reaching or actions that obfuscate

the meaning of the rights or the consequences of waiving them.

The issue here is not simply whether Mr. Torjagbo agreed to speak with the agents after having been read Miranda warnings and whether he subsequently unequivocally invoked his right to remain silent. Mr. Torjagbo had the rights to remain silent and request consultation with counsel at any time during the process of the interrogation. Of central concern here are the actions that the law enforcement agents took to coerce and coax Mr. Torjagbo into not exercising those rights after the interrogation began. When Mr. Torjagbo indicated repeatedly that he did not want to answer a question regarding the maximum number of employees he had at Kremkov Industries, Agent Caruana coerced and deceived him into giving an answer by falsely telling him that he would not lock him into his answer. Agent Caruana's statement went to the heart of Mr. Torjagbo's Miranda rights and undermined the voluntariness of any waiver of Miranda rights with respect to that topic. Agent Caruana obfuscated the clarity and meaning of the privilege against self-incrimination and the consequences of waiving it, and Mr. Torjagbo did not knowingly and intelligently waive his Miranda rights as to that topic.

Later in the interrogation, Agent Caruana told Mr. Torjagbo that any attorney would tell him that he should cooperate with the agents and truthfully answer their questions, and he suggested that Mr. Torjagbo might later regret if he

did not do so. Those statements from Agent Caruana undermined Mr. Torjagbo's Miranda rights in their entirety, as they misled Mr. Torjagbo as to the nature of the right to remain silent, the consequences of waiving that right, and the general lack of benefit of consulting with counsel. As to Mr. Torjagbo's subsequent statements, Mr. Torjagbo did not knowingly and intelligently waive his Miranda warnings.

II. The Court should suppress the statements that Mr. Torjagbo challenges, because the Government has failed to demonstrate that they were voluntarily rendered under the totality of the circumstances.

In the Eleventh Circuit, the evidentiary burden is on the Government to establish the voluntariness of the defendant's statement by a preponderance of the evidence when the defendant has challenged whether the statement was voluntarily rendered. United States v. Grimes, 142 F.3d 1342, 1350 (11th Cir. 1998).

Contrary to the Government's assertion, Mr. Torjagbo has not failed to meet any burden that applies to him. Instead, Mr. Torjagbo posits that the Government has failed to meet its burden.

The determination of whether Mr. Torjagbo's statements were voluntarily rendered is to be made based upon an assessment of the totality of the circumstances. United States v. Rivera, 372 Fed. Appx. 985, *4 (11th Cir. 2010). Subtleties in coercion and vulnerabilities in his state of the mind should be

considered. See Schneckloth v. Bustamonte, 412 U.S. 218, 229 (1973) (addressing voluntariness of consent to search). In this case, consideration of the circumstances in the aggregate supports a finding that Mr. Torjagbo's statements were not voluntary.

First, it was not simply the case that there were a number of agents at the scene of Mr. Torjagbo's arrest. There were at least ten agents, who travelled to Mr. Torjagbo's location in three or four vehicles. (T. 24-26). Those agents surrounded Mr. Torjagbo with their vehicles and quickly exited their vehicles. (T. 9, 24-27). They all pointed their guns at Mr. Torjagbo. (T. 9, 24-27). During the interrogation, Mr. Torjagbo spoke of how he had been frightened by the nature of the arrest, including having guns pointed at him. (Def. Exh. 1(b) at 00:05-00:57).¹ Mr. Torjagbo also noted the nature of the guns, which included assault rifles. (Def. Exh. 1(b) at 00:05-00:57). Whether those events qualify a routine arrest, as the Government suggests, is highly debatable. But, in any event, those circumstances could reasonably have a coercive impact on the arrestee who is interrogated immediately afterward.

Aggressive police conduct during the questioning can add an element of

¹ This citation is a reference to the second of two recordings contained on Defense Exhibit 1.

coerciveness. See United States v. Eubank, Unpublished, 2015 WL 3557493, *9 (S.D. Ga. Mar. 18, 2015). The use of curse words by the interrogator, such as occurred here, is a type of pertinent, aggressive police behavior. See id. Agent Caruana's offending statements are also a factor contributing to the involuntariness of Mr. Torjagbo's statements. That is, the deception Agent Caruana used in coaxing Mr. Torjagbo to state the maximum number of employees Kremkov Industries had is a consideration. Likewise, the assessment must take into account the coerciveness Agent Caruana exhibited in telling Mr. Torjagbo that any lawyer would tell him he should cooperate and truthfully answer the agents' questions and by suggesting to Mr. Torjagbo that he may later regret it if he did not do so.

The Government cites no cases that say a law enforcement agent can legitimately tell an interrogatee that he will not lock him into his answer and then do the opposite or where a court has sanctioned an officer telling an interrogatee that any lawyer would tell him he should cooperate and truthfully answer the agents' questions. See Doc. 109 at 19-20. While the Government has cited support for the proposition that the benefits of cooperation may be discussed, doc. 109 at 19-20, the latter statement from Agent Caruana goes further in terms of coerciveness.

It is notable that in one of the cases upon which the Government relies, United States v. Quinn, 123 F.3d 1415, 1423-1424 (11th Cir. 1997), the Eleventh Circuit did not endorse the agent having told Quinn that it would be difficult for him to cooperate once an attorney had been appointed. The Eleventh Circuit said only that “[w]e observe . . . that Quinn made no inculpatory statements after Kent’s statement about obtaining counsel.” Id. at 1424. Here, after Agent Caruana’s offending statement, Mr. Torjagbo discussed with the agents a range of topics that are likely to be viewed as germane to the pending charges. Among others, those topics included the following: Mr. Torjagbo’s purchases of tractor-trailers and real estate after obtaining the PPP loan; Mr. Torjagbo’s connection to Monica Sweeten, who is now named as an alleged victim in an aggravated identity theft charge against Mr. Torjagbo;² the operational history of Kremkov Industries; Mr. Torjagbo’s changing of his name; the existence of two social security numbers associated with Mr. Torjagbo; whether names listed on an employee payroll document for Kremkov Industries were real; and the basis for Mr. Torjagbo having claimed approximately \$9,000,000 as income on his personal tax return. (Def. Exh. 1 at 16:39-39:49).³ When all the circumstances here are considered, the Court

² That charge is set forth in Count 2 of the superseding indictment. Doc. 110.

³ This citation references the first of two recordings on Defendant’s Exhibit 1.

should find that Mr. Torjagbo's statements at issue should be suppressed as involuntary.

III. Prevailing precedent supports suppression of Mr. Torjagbo's statements.

As a general matter, the Government overlooks that Mr. Torjagbo had the right to decide at any time that he would exercise his rights to remain silent and to have counsel. The Government emphasizes that Mr. Torjagbo was read Miranda warnings and that afterward he agreed to speak with Agents Caruana and Pressley, waiving his rights. However, the rights were not forever waived. Agent Caruana did not have license to trick, deceive, and coerce Mr. Torjagbo into answering questions he otherwise might not have simply because Mr. Torjagbo had initially agreed to speak with the agents.

Mr. Torjagbo's reliance on United States v. Farley, 607 F.3d 1294, 1329 (11th Cir. 2010), is for the black letter proposition that a suspect's statements are involuntary when they ensue from "deception [by the police that] goes directly to the natures of the suspect's rights and the consequences of waiving them."⁴ In Hart v. Attorney General of the State of Florida, 323 F.3d 884, 892-895 (11th Cir. 2003), and United States v. Beale, 921 F.2d 1412, 1434-1435 (11th Cir. 1991), the

⁴ Farley involved a misrepresentation by an agent as to the topic about which he wanted to question the suspect. 607 F.3d at 1307-1308, 1326-1329.

Eleventh Circuit held that based on deceptive actions by officers, the two respective defendants did not render valid waivers of their Miranda rights. While the offending statements that Agent Caruana made to Torjagbo may not be the same as those expressed in Hart and Beale, they are comparable in both substance and effect.

Contrary to the Government's argument, Hart is not materially distinguishable because Hart, at one point, asked an interrogating detective whether he should get a lawyer. See Hart, 323 F.3d at 894. As in this case, an officer read Miranda warnings to Hart, and Hart executed a waiver of those rights. Id. at 893. The Eleventh Circuit observed that a detective "went to great lengths to apprise Hart of his rights." Id. When that detective asked Hart about certain homicides in which he had become a suspect, Hart asked to speak with another detective with whom he was familiar. Id. at 894. When that second detective came to speak with Hart, he asked her if he should get a lawyer. Id. She initially responded that she could not answer that question, and he subsequently asked her about the pros and cons of hiring a lawyer. Id. She responded by saying that in her opinion, "He'll protect your rights. He'll tell you what to answer, what not to answer, and he'll be there for you." Id. But she added, "I'm going to want to ask you questions and he's going to tell you you can't answer me." Id. That detective

also told Hart that “honesty wouldn’t hurt him.” Id. The Eleventh Circuit said that the detective’s statements to Hart were misleading as to Hart’s privilege against self-incrimination and right to counsel and the consequences of waiving the privilege against self-incrimination. Id.

The same is true here. It matters not that Mr. Torjagbo had submitted to some amount of questioning before he indicated that he did not want to answer questions about the maximum number of employees that Kremkov Industries had, and Agent Caruana told him that he would not lock him into his answer. Caruana’s statement was comparable to the detective’s statement in Hart that “honesty wouldn’t hurt him.” Both contradicted the Miranda warning that anything the person said could be used against him in court. See Hart, 323 F.3d at 894.

It also does not matter that it was approximately seventeen minutes into the interrogation when Agent Caruana told Mr. Torjagbo that any lawyer would tell him that he should cooperate and truthfully answer questions the agents posed to him. The statement was misleading as to the benefits of exercising the rights to counsel and to remain silent. That bears similarity to what the detective did in Hart. In both this case and in Hart, the officer imputed advice from a prospective lawyer for the purpose of encouraging the suspect to waive his right to remain silent and answer potentially incriminating questions at that time without a lawyer

present.

In Beale, an FBI agent told the defendant, Francisco Lavin, that signing a Miranda waiver form would not hurt him. 921 F.2d at 1434. That statement is comparable to Agent Caruana's statement to Mr. Torjagbo that he would not lock Mr. Torjagbo into a statement about the maximum number of employees that Kremkov Industries had. In both instances, the law enforcement agent misled the defendant as to the nature of his privilege against self-incrimination and the consequences of waiving the privilege.

Beale is also significant for the second offending statement that Agent Caruana made to Mr. Torjagbo – that any attorney would tell him that he should cooperate and truthfully answer the agents' questions. Agent Caruana's statement was premised on the assertion that continued waiver of the privilege would not be detrimental to Mr. Torjagbo. That bears similarity to Beale.

Conclusion

For these reasons and those stated in Mr. Torjagbo's motions to suppress statements and initial brief in support, Mr. Torjagbo moves the Court to suppress his statements regarding the maximum number of employees that Kremkov Industries had and any statements he made after Agent Caruana told him that any lawyer would tell him he should cooperate and truthfully answer the agents'

questions and suggested that Mr. Torjagbo might later regret it if he did not do so. Mr. Torjagbo also moves the Court to suppress any evidence that the Government may have derived as fruit of those statements by Mr. Torjagbo. See Wong Sun v. United States, 371 U.S. 471 (1963).

DATED: This 25th day of October, 2024.

Respectfully submitted,

S/ Kendal D. Silas

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CERTIFICATE OF SERVICE

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

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

Dated: This 25th day of October, 2024.

s/ Kendal D. Silas

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