

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 TORJAGBO	)	
_____	)	

OBJECTIONS TO REPORT AND RECOMMENDATION

COMES NOW the Defendant, CARL TORJAGBO, by and through undersigned counsel, and files these objections to the Report and Recommendation (hereinafter “R&R”) of the Magistrate recommending denial of his preliminary motion to suppress statements (doc. 44), amended motion to suppress statements (doc. 88), and motion to strike surplusage (doc. 83).¹

1.

Mr. Torjagbo objects to the review and consideration of a transcript of the FBI interview of Mr. Torjagbo. See (Doc. 128 at 2). The exhibits admitted into evidence at the June 5, 2024 evidentiary hearing did not include a transcript of the recorded interview. See (Docs. 89, 90, 91, & 92); see also (Doc. 128 at 2, 10-14,

¹ The Report and Recommendation of the Magistrate is document number 128 on the docket of the Clerk.

23, 27-28, 30, 32-33, & 37 n. 6).

2.

Mr. Torjagbo objects to the Magistrate's assertion in footnote 4 that he is requesting that inferences be drawn from utter speculation rather established facts with respect to whether there was a portion of the interview or discussion between Agent Caruana and Mr. Torjagbo that was not recorded. (Doc. 128 at 14). There was, in fact, a portion of the discussion that was not recorded. During the interrogation, Agent Caruana confronted Mr. Torjagbo about not being truthful in Agent Caruana's view. (Def. Exh. 1 at 17:22-17:52). Among other things, Agent Caruana told Mr. Torjagbo, "That's why I was clear to you and explained to you how you can help yourself in the federal system." Id. Agent Caruana went on to tell Mr. Torjagbo that any attorney would tell him the same thing. (Def. Exh. 1 at 17:52-18:08). Agent Caruana was alluding to being cooperative with the agents in the questioning of him and truthfully answering their questions. The audio recording of the interrogation does not contain a prior discussion wherein Agent Caruana told Mr. Torjagbo how he could help himself in the federal system. Thus, that discussion and advice from Agent Caruana to Mr. Torjagbo must have taken place at time when the discussion between Mr. Torjagbo and Agent Caruana was not being recorded.

Mr. Torjagbo posits that Agent Caruana's statements to him that any attorney would tell him that he should cooperate and truthfully answer the agents' questions undermined the effect of the Miranda warning and also rendered Mr. Torjagbo's subsequent statements involuntary. (Doc. 108 at 20-23). In connection with those statements to Mr. Torjagbo, Agent Caruana reminded Mr. Torjagbo that he already told him how he could help himself in the federal system. Although the specifics of Caruana's prior, unrecorded statements to Mr. Torjagbo are not known, the fact that Agent Caruana had previously made statements on that topic to Mr. Torjagbo are relevant to the Court's consideration of the impact of Agent Caruana's later statements to Mr. Torjagbo that any attorney would tell him that he should cooperate with the agents' questioning of him and truthfully answer their questions.

3.

Mr. Torjagbo objects to the Magistrate's determinations that he voluntarily, knowingly, and intelligently waived his Miranda rights and that his statements were voluntarily rendered. (Doc. 92 at 18-32).

4.

Mr. Torjagbo objects to the Magistrate's determinations that under the totality of the circumstances he was not coerced into waiving his Miranda rights

and that his statements were voluntarily rendered. (Doc. 128 at 22-26). In particular, Mr. Torjagbo objects to the Magistrate's assertion that the evidence does not indicate that the agents coerced him into waiving his rights. (Doc. 128 at 24-26).

5.

Mr. Torjagbo objects to the Magistrate's assertion that the evidence does not indicate that the agents physically intimidated or coerced him into waiving his Miranda rights. (Doc. 128 at 24). Mr. Torjagbo was interrogated shortly after he had been arrested at gunpoint by ten FBI agents. The agents arrived to the location in three or four vehicles. (Doc. 94. at 24-26). As they observed Mr. Torjagbo walking across the parking lot, the 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. (Doc. 94 at 9, 24-27). The weapons pointed at Mr. Torjagbo included assault rifles. (Def. Exh. 1, pt. 2 at 00:00-00:57). At least one agent yelled commands to Mr. Torjagbo, such as "show your hands" or "get on the ground." (Doc. 94 at 27-28). Mr. Torjagbo got on the ground, and the agents arrested him. (Doc. 94 at 26, 28). They placed Mr. Torjagbo in handcuffs and placed him in Special Agent Scott Caruana's Government vehicle. (Doc. 94 at 10-11, 24, 26). During the recorded interview,

Mr. Torjagbo told Agent Caruana that they had scared him by the manner in which they arrested him. (Def. Exh. 1, pt. 2 at 00:00-00:57). The assessment of whether Mr. Torjagbo voluntarily waived his Miranda rights should take into account the nature of the arrest encounter and its impact on Mr. Torjagbo.

6.

Mr. Torjagbo objects to the Magistrate's determination that Agent Caruana's statement that he would not lock Mr. Torjagbo into his answer did not undermine Mr. Torjagbo's understanding of his Miranda rights or the consequences of waiving those rights. (Doc. 128 at 26-28). As argued in Mr. Torjagbo's initial brief and reply brief in support of his motion to suppress statements, (docs. 108, 123), Agent Caruana contradicted the element of the Miranda warning that anything the suspect says during the custodial interrogation can and will be used against him court. Agent Caruana's statement undermined Mr. Torjagbo's Fifth Amendment right against self-incrimination.

Mr. Torjagbo had the right to invoke his Fifth Amendment privilege at any point and as to any topic or question during the interrogation. See Michigan v. Mosley, 423 U.S. 96, 102 (1975) (interrogatee has the right to control the timing of and duration of interrogation and the subjects discussed). Mr. Torjagbo told Agent Caruana multiple times that he could not answer the question of the maximum

number of employees he had at Kremkov Industries. Agent Caruana then coaxed Mr. Torjagbo into giving him an answer by telling Mr. Torjagbo that he would not lock Mr. Torjagbo him into his answer. But if Mr. Torjagbo's statement is introduced against him at trial, that is exactly what the Government will have done. Agent Caruana seriously distorted Mr. Torjagbo's ability "to weigh the pros and cons of [making the statement] and go[ing] with the balance as it appeared at that time." See United States v. Lall, 607 F.2d 1277, 1286 (11th Cir. 2010) (citing Judge Posner's analysis in United States v. Rutledge, 900 F.2d 1127, 1129 (7th Cir. 1990)).

7.

Mr. Torjagbo objects to the Magistrate's assertion that Agent Caruana's statement that he would not hold Mr. Torjagbo's statement against him is qualitatively different from the statements of law enforcement officers that were in issue in Hart v. Att'y Gen. of Fla., 323 F.3d 884 (11th Cir. 2003), Lall, *supra*, and United States v. Castor, 598 Fed. Appx. 700 (11th Cir. 2015). (Doc. 128 at 26-28). As with those cases, the only plausible interpretation of Agent Caruana's statement to Mr. Torjagbo was that the information Mr. Torjagbo provided regarding the maximum number of employees at Kremkov would not be used against him.

The Magistrate notes that Agent Caruana told Mr. Torjagbo multiple times

that he did not need Mr. Torjagbo's cooperation to make a case against him, but those statements by Agent Caruana bolster rather than limit the significance of Agent Caruana telling Mr. Torjagbo that he would not lock him into an answer regarding the maximum number of employees he had at Kremkov. Agent Caruana's assertions were effectively a claim that he already had a strong enough case, and therefore, it would be all the more believable that he would not need to use against Mr. Torjagbo a statement regarding the maximum of employees he had.

The Magistrate also states that Mr. Torjagbo's statements both before and after his admission establish that he understood his right to remain silent and the consequences of waiving that right. (Doc. 128 at 27). However, this was the only occasion when Agent Caruana told Mr. Torjagbo that he would not lock him into his answer. Thus, the statement at issue here stands on different footing in terms of distortion of the ability to weigh the consequences of making the statement.

Lastly, the Magistrate notes that Mr. Torjagbo expressed understanding that the giving incorrect information would be detrimental to him. (Doc. 128 at 28). But the circumstances surrounding Mr. Torjagbo's statements about the maximum number of employees differentiated it from other statements he made. This was the one time when Agent Caruana told Mr. Torjagbo he would not lock him into

his answer. For these reasons and those expressed in Mr. Torjagbo's initial brief and reply brief in support of his motion to suppress statements, Mr. Torjagbo posits that the Government has not demonstrated by a preponderance of the evidence that Mr. Torjagbo voluntarily made a statement regarding the maximum number of employees he had at Kremkov Industries.

8.

Mr. Torjagbo objects to the Magistrate's determination that Agent Caruana's statement that any attorney would tell Mr. Torjagbo to cooperate and answer the agents' questions did not undermine Mr. Torjagbo's understanding of his Miranda rights or the consequences of waiving those rights. (Doc. 128 at 28-33). Contrary to the Magistrate's assertion, Mr. Torjagbo posits that the facts of this case are not materially distinguishable from those in Hart and Beale. Most of the interrogation in this case took place after Agent Caruana told Mr. Torjagbo that any attorney would tell him to cooperate and truthfully answer the agents' questions. After making that statement to Mr. Torjagbo, Agent Caruana and Agent Pressley questioned Mr. Torjagbo about a number of topics. (Def. Exh. 1 at 17:10-41:46). Mr. Torjagbo was cooperative. Agent Caruana's statement Mr. Torjagbo realistically had an impact on the degree to which Mr. Torjagbo engaged in the interrogation and made statements. Mr. Torjagbo posits that the Government has

not borne its burden of establishing by a preponderance of the evidence that he knowingly, voluntarily, and intelligently waived his Miranda rights after Agent Caruana told him that any attorney would tell him that he should cooperate and truthfully answer the agents' questions. Likewise, the Government has not borne its burden of establishing by a preponderance of the evidence that he voluntarily rendered the statements he made after Agent Caruana's offending.

9.

Mr. Torjagbo objects to the Magistrate's denial of his motion to strike surplusage from the indictment, which requests that "a/k/a Karl Lucius Delano" be stricken throughout the indictment.

Conclusion

For the reasons set forth herein, in his preliminary motion to suppress statements (doc. 44), amended motion to suppress statements (doc. 88), and motion to strike surplusage (doc. 83), and supporting briefs, Mr. Torjagbo asks that those motions be granted.

Dated: This 11th day of December, 2024.

Respectfully submitted,

s/ Kendal D. Silas

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Objections to Report and Recommendation was formatted in Times New Roman 14pt., in accordance with Local Rule 5.1C, and was electronically filed this day with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to the following:

John Russell Phillips, Esq.
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Dated: This 11th day of December, 2024.

s/ Kendal Silas
KENDAL SILAS, Esq.
Attorney for CARL TORJAGBO