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

UNITED STATES OF AMERICA *v.* CARL TORJAGBO	Criminal Indictment No. 1:22-CR-171-MLB-RDC

GOVERNMENT'S RESPONSE TO DEFENDANT'S AMENDED MOTION IN LIMINE

The United States of America, by its counsel, Richard S. Moultrie, Jr., Acting United States Attorney for the Northern District of Georgia, and Kelly K. Connors and Nicholas L. Evert, Assistant United States Attorneys, hereby files its response to Defendant Carl Torjagbo's amended motion *in limine*. (Doc. 163).

I. The Court should deny Torjagbo's request to limit bank records to only the transactions identified in the Indictment.

Torjagbo seeks to cabin the government's presentation to only the financial transactions explicitly identified in the Indictment. He argues that any records falling outside the dates of the Indictment are irrelevant, and even if relevant, they are unfairly prejudicial. (*Id.* at 5-6). The Court should deny this exceptionally narrow and unsupported view of relevancy.

The Superseding Indictment alleges that Torjagbo committed bank fraud and other offenses related to a PPP loan that he obtained in the name of his sham company, Kremkov Industries, LLC. (Doc. 110 at 1-4). In this loan application, Torjagbo falsely alleged that he employed 493 people in the U.S. and had monthly payroll over $3.8 million. He also certified that Kremkov Industries had been in operation since February 15, 2020, more specifically since December 31,

2014. As a result of these lies, J.P. Morgan Chase, Bank, N.A. ("Chase Bank") disbursed $9,554,425 in PPP loan proceeds to Kremkov Industries in early 2021. The Indictment includes concealment and transactional money laundering charges related to transactions using PPP loan fraud proceeds that occurred on April 8, 2021, May 28, 2021, August 6, 2021, October 27, 2021, January 24, 2022, and March 7, 2022. (*Id.* at 6-11).

The Indictment also alleges that Torjagbo filed two fraudulent 2020 U.S. individual tax returns. (*Id.*at 12-13). These returns—one filed under his social security number and the other filed under a tax identification number—falsely reported wages, withholdings, and losses from Kremkov Industries. Each return claimed a tax return of over $3 million.

Following his arrest in this case, Torjagbo was interviewed by FBI Special Agent Scott Carauna. (Doc. 145, Transcript of FBI Interview dated May 12, 2022).[1] During this interview, he made the following statements about Kremkov Industries and its employees and about his financial circumstances:

- Kremkov Industries had been in business since 2014 or 2015. (Tr. at 46).
- Kremkov Industries was a mining business in Africa, most employees resided in Africa, and there were no U.S. business operations. (Tr. at 11-13, 46-48).
- Kremkov Industries was "lucrative." (Tr. at 13).
- The loan for Kremkov Industries was based on "how much you actually make" and not on employees' payroll. (Tr. at 23-25).

[1] The transcript erroneously identifies 2024 as the year of the interview.

- Bank accounts for Kremkov Industries are foreign accounts, and he reported how much he made on the foreign accounts for the loan application. (Tr. at 24-25).
- His 2020 tax returns were based on losses for Kremkov Industries and a tax credit for oil and mining companies. (Tr. at 48-51).
- Most of his property, including his house and cars, were purchased with his own money and not PPP loan proceeds. (Tr. at 9-10).

Torjagbo broadly requests that the Court exclude "banking records and any evidence of personal financial or commercial transactions that are not related to the transactions referenced in the indictment." (Doc. 163 at 5). He fails to identify any specific transactions, leaving the Court and the government to only guess what evidence he seeks to exclude. Moreover, Torjagbo fails to provide any explanation for why these records are irrelevant to the charges in the case, making only a conclusory statement that such records are unrelated to the Indictment. (*See* Doc. 163 at 5). For these reasons alone, the Court should deny the request.

But even if the Court considers Torjagbo's sweeping request to exclude these records, the Court should deny his motion. Torjagbo provides no support for his contention that bank records that are not directly related to the charges in the Indictment are excludable. And the Eleventh Circuit has made clear that this contention is incorrect. Evidence that is "inextricably intertwined with the evidence regarding the charged offense[s]" is admissible. *United States v. Ramsdale*, 61 F.3d 825, 869 (11th Cir. 1995). "Evidence[,] not part of the crime[s] charged but pertaining to the chain of events explaining the context, motive and set-up of the crime[s] is properly admitted if linked in time and circumstances with the charged crime, or forms an integral and natural part of an account of the crime, or is necessary to complete the story of the crime for the jury." *United States v. Williford*, 764 F.2d 1493, 1499 (11th Cir. 1985) (citation omitted). Thus, the Court should decline to exclude any bank records solely because they allegedly do not relate to the specific charges in the Indictment.

The government submits, however, that these records are relevant to all of the charges in the Indictment. To prove that Torjagbo committed bank fraud related to the PPP loan application and wire fraud related to the fraudulent tax returns, the government will have to prove, among other elements, that Torjagbo made material misrepresentations.[2] These misrepresentations concern Torjagbo's statements about Kremkov Industries, including how long Kremkov was in business, how many employees it had, that those employees were located in the U.S., and that wages were paid to employees. Torjagbo's bank records may be used to establish that he did not receive any income from Kremkov Industries and that he did not pay any wages to employees in the U.S. for Kremkov Industries, thus showing that he made false representations on his PPP application. Similarly, these records may be used to establish that Torjagbo also did not earn any wages from Kremkov Industries and that his allegations of millions of dollars submitted in federal tax withholdings were false. In addition, while the government is unaware of Torjagbo's exact defense strategy, during his custodial interview, Torjagbo asserted that his PPP loan amount was based on

[2] *See* Eleventh Cir. Pattern Jury Instr. (Criminal), Offense Instruction Nos. 51 (Wire Fraud) and 52 (Bank Fraud).

how much Kremkov Industries made in earnings, rather than on purported payroll. Torjagbo's bank records may be used to counter this defense.

Torjagbo asserts that records predating his submissions of the two fraudulent tax returns on February 13, 2021, and predating his PPP loan application on February 21, 2021, are irrelevant. (Doc. 163 at 5). This assertion ignores that the false tax returns are for 2020 and include allegations of wages and losses for Kremkov Industries in tax year 2020. It further ignores that Torjagbo made explicit representations about Kremkov Industries, including that the company had been in operation since December 31, 2014. Again, Torjagbo's bank records, including records before February 13, 2021, are relevant to establish the falsity of Torjagbo's statements about Kremkov Industries and the ability to pay $3.8 million per month in payroll to U.S. employees. The earlier bank records are also relevant to establish motive and intent since they show that Torjagbo had a much different financial situation before he obtained millions of dollars in government funds.[3] And they refute any notion that Torjagbo was funneling money from foreign bank accounts held by Kremkov Industries.

In conclusory fashion, Torjagbo claims that even if the bank records are relevant, their probative value is outweighed by unfair prejudice and that these records would confuse the jury.[4] For the same reasons that these records are

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[3] By pleading not guilty, Torjagbo has placed his knowledge and intent at issue, and the bank records, including records that predate the offenses, are relevant to Torjagbo's intent, plan, knowledge, absence of mistake, and lack of accident. *United States v. Colston*, 4 F.4th 1179, 1192 (11th Cir. 2021) ("Colston pleaded not guilty, so her intent was a material issue at the trial").

[4] "The term 'unfair prejudice,' as to a criminal defendant, speaks to the capacity of some concededly relevant evidence to lure the factfinder into

relevant, they are highly probative because these bank records go to the heart of the matter—that Torjagbo made material misrepresentations to Chase Bank and to the IRS to obtain millions of dollars in fraud proceeds that he then spent. The highly probative nature of the records simply is not outweighed by any risk of undue prejudice, and indeed, there is minimal risk because the jury is unlikely to be confused by this evidence since Torjagbo's bank records are closely tethered to the allegations in the Indictment.

Torjagbo identifies only one specific transaction that he alleges would prejudice him—a purchase at Victoria's Secret. (Doc. 163 at 6). He argues that a single purchase at a store that sells lingerie would inflame the jury and lead to unfair prejudice. Victoria's Secret is a national retailer of lingerie and other clothing items. The fact that it sells lingerie is hardly inflammatory or likely to "lure the factfinder into declaring guilt," particularly since this retailer has storefronts in malls and shopping centers throughout the country. The Court should deny Torjagbo's request to excise this single transaction from admissible bank records.

II. The Court should deny Torjagbo's other requests to exclude records and evidence.

Torjagbo makes several other requests to exclude evidence, primarily arguing that the information is prejudicial. The government addresses each request below.

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declaring guilt on a ground different from proof specific to the offense charged." *Old Chief v. United States*, 519 U.S. 172, 180 (1997).

Exotic Dancer and Text Messages

Torjagbo seeks to exclude any evidence that he "associated with exotic dancers," specifically Claudia. During Torjagbo's custodial interview, he admitted to giving approximately $2,000 to Claudia to help her close on a house. (Tr. at 29-30). When asked what Claudia's profession was, Torjagbo stated that she was an exotic dancer. (Tr. at 30). The fact that Claudia was not a miner or other employee of Kremkov Industries is relevant. As alleged in the Indictment, Torjagbo certified that he would only use the PPP loan funds for PPP-approved purposes. At trial, the government will present evidence that he did not use the funds for approved purposes, such as payroll for employees. That Torjagbo used PPP funds to pay Claudia, who is an exotic dancer rather than an employee of Kremkov Industries, is relevant and establishes motive and intent for obtaining the fraud proceeds. Rather than using the funds for a permissible purpose, Torjagbo used them to fund his lifestyle, purchase luxury items, and gift thousands of dollars to individuals who were not employees. Any potential prejudice that a juror may have toward exotic dancers does not substantially outweigh the highly probative value. The Court should deny the request to exclude any mention of Claudia's profession.[5]

Torjagbo further asserts that "[t]ext messaging with other persons in Mr. Torjagbo's cell phone raises similar concerns." (Doc. 163 at 7). He fails to explain what specific text messages he is referring to, and what specific concerns these

[5] In the event that the Court determines that there is a risk of undue prejudice that may outweigh the probative value, the government requests an opportunity to only redact the word "exotic" from the transcript and audio recording because Claudia's profession as a dancer is relevant.

text messages raise. Without more information about what specific messages he is referring to, or what "similar" concerns they raise, the government and the Court cannot meaningfully address this argument.

Equifax and Transunion credit reports

At this time, the government does not anticipate seeking admission of credit reports from Equifax or Transunion. The government requests that the Court defer the request to exclude these reports and take up the matter if the government advises that it may seek admission.

Gotham Plastic Surgery

Torjagbo seeks exclusion of records from Gotham Plastic Surgery for treatment from approximately April through June 2021. (Doc. 163 at 8). Torjagbo alleges that these records are irrelevant and "do[] not make any fact of consequence to determining this action more probable." (*Id.*). He is mistaken. As previously indicated, Torjagbo's use of fraud proceeds is highly relevant to the issues of motive and intent.[6] The highly probative value of his expenditures after receiving millions of dollars in PPP funds and from a tax refund is not outweighed by any alleged risk of prejudice. Furthermore, that he spent the money he received on plastic surgery, rather than employee payroll, indicates that Torjagbo lied in his PPP application. *See United States v. McClellon*, No. 2:22-CR-00073-LK, 2023 WL 9002865, at *3 (W.D. Wash. Dec. 28, 2023) (evidence that the defendant "did not spend the PPP funds on payroll tends to show that he lied on his PPP loan applications to secure those funds").

[6] "[M]otive is always relevant in a criminal case, even if it is not an element of the crime. And with financial crimes, the more money, the more motive." *United States v. Hill*, 643 F.3d 807, 843 (11th Cir. 2011) (internal citation omitted).

2014 Lamborghini Aventador

Torjagbo seeks to exclude evidence that he purchased a 2014 Lamborghini on April 23, 2022, after receiving the PPP loan funds and IRS tax refund. (Doc. 163 at 8-9). Although the Indictment does not allege a specific money laundering transaction related to this purchase, like the Gotham Plastic Surgery records and other records of expenditures, the Lamborghini purchase is relevant and highly probative of motive and intent to defraud. The purchase price for the Lamborghini was approximately $332,999.80.

> The district court ha[s] broad discretion to admit the Government's "wealth evidence" so long as it aid[s] in proving or disproving a fact in issue. Conversely, the court's discretion to exclude evidence under Rule 403 is limited. Evidence may be excluded only when its probative value is substantially outweighed by the danger of unfair prejudice. Because exclusion under Rule 403 is so drastic a remedy, [the Eleventh Circuit has] cautioned that the balance should be struck in favor of admissibility.

United States v. Bradley, 644 F.3d 1213, 1272 (11th Cir. 2011) (internal citations and quotation marks omitted).

Numerous courts have found that evidence of extravagant purchases is admissible as relevant to a defendant's motive. *See United States v. Pate*, 853 F. App'x 430, 436 (11th Cir. 2021) (unpublished) (evidence of defendant purchasing vehicle, diamonds, and a Rolex watch was relevant to show defendant's motive for committing fraud, which was making money to finance extravagant purchases for herself and her family members); *United States v. Murray*, 152 F. App'x 492, 494–95 (6th Cir. 2005) (unpublished) (evidence of defendant's lavish spending—including that he spent hundreds of thousands of dollars on travel, dining, and women; frequented strip clubs; and sometimes bought cars for dancers—was relevant to his motive for defrauding a bank); *United States v. Powell*, 124 F.3d 655, 661 (5th Cir. 1997) (evidence of defendant's extravagant lifestyle, including his generous patronage of topless bars and ownership of an expensive Cadillac, was relevant to his motive for committing tax evasion and to showing that he was not unable to pay his tax bills); *United States v. Mitchelson*, 51 F.3d 283 (9th Cir. 1995) (unpublished) (evidence of lavish spending was at least relevant to proving motive).

Here, as in *Pate*, *Murray*, *Powell*, and *Mitchelson*, evidence of Torjagbo's purchase of the Lamborghini is relevant to show his motive. However, it is also relevant to show that he did not use the PPP funds to pay his employees, and therefore lied in his application. *See McClellon*, 2023 WL 9002865, at *3 (evidence that the defendant "did not spend the PPP funds on payroll tends to show that he lied on his PPP loan applications to secure those funds").

Any prejudice that Torjagbo might suffer from the jury learning about his purchase of the Lamborghini is outweighed by this strong probative value. This is particularly so because the Lamborghini is but one of several luxury purchases that the jury will learn about—Torjagbo does not appear to dispute that the jury is entitled to hear about his purchases of a Land Rover, a BMW, and a large home in Marietta, Georgia. Accordingly, the evidence of the Lamborghini purchase should not be excluded.

Tax records from 2018 and 2019

Torjagbo asks the Court to exclude his 2018 and 2019 tax returns, claiming that these returns are irrelevant to the charges in the Indictment and prejudicial. (Doc. 163 at 9). Importantly, despite Torjagbo's claim that Kremkov Industries had been in operation since December 31, 2014, neither his 2018 nor 2019 tax returns reflect any losses, wages, or earnings from Kremkov Industries. It was not until Torjagbo filed two 2020 tax returns that he included any information about Kremkov Industries, despite the length of time that he claimed the company was in business, and the information that he provided resulted in a fraudulent tax refund of over $3 million due to material misrepresentations about federal withholdings and losses. As previously explained, the government must prove beyond a reasonable doubt that Torjagbo made material misrepresentations to Chase Bank and to the IRS, and the lack of any tax filings in 2018 and 2019 concerning Kremkov Industries is relevant and establishes that Torjagbo provided false information about Kremkov to secure the PPP loan and to obtain a substantial tax refund. Evidence that he did not claim any earnings or losses for Kremkov before filing two 2020 tax returns on February 13, 2021, is highly probative of knowledge, intent, motive, and absence of mistake, particularly since Torjagbo admitted during his custodial interview that he had been filing his own tax returns since college. (Tr. at 51). And Torjagbo's conclusory allegation that any prejudice would arise from admission of the 2018 and 2019 tax returns does not outweigh the considerable probative value of the returns.

Interlocutory sale of certain properties

Finally, Torjagbo asks the Court to exclude "any evidence that is the subject of the Government's motion for interlocutory sale of certain properties owned by Mr. Torjagbo or FlyingJack Freight and Logistics." (Doc. 163 at 9). To the extent that Torjagbo seeks to exclude evidence that the value of these properties has fallen during the pendency of this criminal matter or that the properties have suffered from decay, damage, or lack of care during the criminal case, the government does not intend to present such evidence during its case-in-chief. The government will, however, present evidence concerning the purchase of these properties, including, but not limited to, the purchase price and tracing of the proceeds used to make the purchase. As previously explained, evidence of Torjagbo's expenditures is relevant to the fraud and money laundering charges, and information concerning these properties is highly probative of intent and motive.

CONCLUSION

For the foregoing reasons, the Court should deny Defendant Torjagbo's amended motion *in limine*.

Respectfully submitted,

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