

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 REPLY IN SUPPORT OF ITS MOTIONS IN LIMINE [160]

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 reply in support of its motions *in limine* [160].

1. Precluding testimony and argument regarding negligence or mismanagement by the PPP lender or SBA

The government first seeks to preclude the introduction of evidence or argument of any claimed negligence, mismanagement, or lack of concern by the PPP lender or SBA, as this would be an improper attempt to shift the blame for Torjagbo’s fraudulent conduct to the victim(s). Torjagbo concedes, as he must, “that an alleged victim’s negligence is not a defense to criminal conduct.” Doc. [166] at 1. However, after doing so, he immediately states that he has a right to present a complete defense, and that the lender’s and SBA’s conduct in relation to the loan is relevant to the charge. *Id.* at 1–2. He adds that the jury should “be allowed to consider all the circumstances relating to the government’s charges, the PPP loan, and the process through which it was issued and approved by [the

lender] and the SBA. The jury is entitled to draw their own conclusions from this evidence.” *Id.* at 2.

While Torjagbo is certainly entitled to present a complete defense, presenting a complete defense does not include presenting irrelevant evidence. *See* Fed. R. Evid 402 (“Irrelevant evidence is not admissible.”).

In *United States v. Powell*, 509 F. App’x 958, 960 (11th Cir. 2013) (unpublished), the defendant was charged as part of a mortgage fraud scheme that took place between 2004 and 2007 (*i.e.*, during the buildup to the foreclosure crisis). The defendant had induced various lenders to fund fraudulent mortgages by supplying them with false loan applications. *Id.* The government filed a motion *in limine* seeking to bar the defendant from referring to, *inter alia*, “(1) the mortgage lenders’ negligence and/or failure to investigate further any issues with the mortgage applications originated by [the defendant]; [and] (2) the present foreclosure crisis and the role of the mortgage lenders in any ongoing foreclosure actions....” *Id.* at 961. The Eleventh Circuit affirmed the district court’s decision to grant the motion *in limine*, finding that “whether the lenders negligently created an environment of lax lending standards is irrelevant[, as c]ontributory negligence is not a defense to the crime of fraud.” *Id.* at 967.

More recently, in *United States v. Joseph*, 108 F.4th 1273, 1277 (10th Cir. 2024), the defendant had submitted several false and unauthorized applications to federal COVID-19 relief programs on behalf of a medical practice. On appeal, the defendant argued that the district court had improperly denied him the opportunity to “emphasize on cross that [the lender] had a practice of inadequately vetting relief applications and, therefore, made it easier for [him] to

obtain funds without scienter.” *Id.* at 1281. The Tenth Circuit found that the district court had not improperly limited the defendant’s cross examination. *Id.* at 1282. It noted that the lender’s “history of imprecise application review ... [did] not remotely relate to [the defendant’s] offenses” and that “it appear[ed] the desired cross-examination would [have] serve[d] only to deflect blame onto the lender.” *Id.*

Here, as in *Powell* and *Joseph*, Torjagbo fails to explain why evidence or argument about the lender’s or SBA’s purported negligence would serve as anything more than an irrelevant and improper attempt to shift the blame for Torjagbo’s fraud to the victim(s). Accordingly, the motion *in limine* should be granted.

2. Penalty evidence

The government’s next request is that Torjagbo be prohibited from attempting to introduce evidence of or arguing about the potential penalties or collateral consequences associated with a conviction for the charged offenses. Torjagbo concedes that it would be improper for him to do so. Doc. [166] at 3.

3. Character evidence

Next, the government moves to exclude all evidence of Torjagbo’s general good character and evidence of specific instances of good conduct. Torjagbo responds that he has not yet decided whether he will introduce any evidence of his other conduct, but maintains that he has the right to introduce evidence of “pertinent” character traits, subject to the restrictions in Fed. R. Evid. 405. Doc. [166] at 3–4. The government does not disagree, accordingly, there appears to be nothing in dispute.

4. Jury Nullification

The government next moves to preclude Torjagbo from attempting to introduce evidence or make arguments designed to induce jury nullification. In connection with this, the government provided a list of examples of evidence and arguments that would be inappropriate: (1) Torjagbo's financial status or to any financial hardship; (2) his mental health or medical conditions; (3) his familial obligations, such as care for an ailing parent; (4) his immigration and naturalization status, including his reasons for immigrating to the United States; (5) allegations that the statutes at issue have been unfairly or unjustly applied in this case; and (6) suggestions that charges were brought based on improper factors, such as race or ethnicity. Torjagbo specifically takes issue with two of these categories — his immigration status and his financial status — and argues that they could be relevant to the case. Doc. [166] at 5–6. Certainly, some evidence regarding Torjagbo's finances will be relevant. For example, it will be relevant that Torjagbo spent money he received from the PPP loan on personal expenses, rather than to pay his purported employees. That said, evidence about financial hardships caused by the instant prosecution or other financial evidence intended merely to elicit sympathy would be improper. *See Securities & Exch. Comm'n v. Arrowood*, No. 1:12-CV-0082-RWS, 2014 WL 11517838, at *1 (N.D. Ga. May 15, 2014) (“to the extent [evidence] is offered merely to elicit sympathy from the jury, it is improper”).

As for Torjagbo's immigration status, the government does not dispute that Torjagbo is a naturalized citizen, and it does not intend to elicit testimony that Torjagbo was (1) ineligible to apply for a PPP loan based on his immigration

status or (2) not obligated to file a tax return. If he merely wishes to present evidence that he was not precluded from applying for a PPP loan as a United States citizen and that he was obliged to pay taxes, the government has no issue with him doing so. But Torjagbo seeks to go much further than those limited facts. Instead, he seeks permission to present evidence that he “legally came to the United States from Ghana on a student visa, and he continued to work in the United States after college.” Doc. [166] at 5. He claims that these facts are “relevant to present the jury with important context regarding the facts of the case and would dispel any unfair prejudice.” *Id.* He fails to explain, however, the relevance that his immigration history would have on the facts of the case or how they would provide additional context. The circumstances by which he ultimately obtained citizenship are irrelevant to the charges and designed only to garner sympathy based on real or perceived collateral consequences, such as deportation, if he is convicted. *Cf. United States v. McDonald*, 935 F.2d 1212, 1222 (11th Cir. 1991) (“[t]he question of punishment should never be considered by the jury in any way in deciding the case”).

5. Exclusion of undisclosed evidence

The government next asks that the Court exclude any evidence that Torjagbo and/or Kremkov Industries, LLC fail to produce in discovery. Torjagbo responds that he “is aware of and will oblige by [his] Rule 16 obligations.” Doc. [166] at 6. Accordingly, there appears to be no dispute that this request should be granted.

6. Preclusion of impeachment through investigative reports

The government next moves to preclude Torjagbo from cross-examining or seeking to impeach witnesses with investigative reports that the witnesses have

not signed or otherwise adopted. In response, Torjagbo spends nearly five pages discussing the right to cross examine witnesses regarding prior inconsistent statements. The issue is that a third party's characterization or interpretation of something that a witness has previously said is not a "statement" by the witness. See *United States v. Saget*, 991 F.2d 702, 710 (11th Cir. 1993) ("a witness may not be impeached with a third party's characterization or interpretation of a prior oral statement unless the witness has subscribed to or otherwise adopted the statement as his own"); *United States v. Rizza*, No. 2:14-CR-00002-SPC, 2014 WL 3747624, at *2 (M.D. Fla. July 29, 2014) ("Defendants may not use the 302s to impeach witnesses because they are not statements of the witnesses themselves."). Of course, to the extent that Torjagbo wishes to question an agent about his or her own report, he is welcome to do so.

7. Addressing discovery issues outside jury's presence

Finally, the government requests that, to the extent any discovery-related issues arise at trial, those matters be addressed outside the presence of the jury. Torjagbo did not respond to this request, so it should be granted as unopposed.

CONCLUSION

For the foregoing reasons, the government respectfully requests that the Court grant its motions *in limine* [160].

Respectfully submitted,

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