UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
---X
UNITED STATES OF AMERICA,

AFFIRMATION IN OPPOSITION

- against -

ADEDAYO ILORI,

21 Cr. 746 (MKV)

Defendant.
---X

Defendant Adedayo Ilori, by and through undersigned counsel, respectfully submits his Opposition to certain of the Government's Motions in Limine.

The government's motion to introduce evidence of prior bad acts in its case-in-chief rests upon an allegation that it cannot prove and is inherently prejudicial.

In its Motion in Limine, Section B.1., the government seeks to introduce evidence of uncharged crimes and prior bad acts to, essentially, establish Mr. Ilori's propensity to commit the crimes charged herein (though this is obviously not the government's stated purpose). While Defendant acknowledges the broadly inclusive rule for introducing such evidence, we also suggest that the admission of much of this evidence on the government's case-in-chief is a prescription for a guilty verdict based not upon the facts in this case but on government speculation and Mr. Ilori's past behaviors.

Initially, the Government's proffer of its factual basis for introducing evidence of prior or related bad acts rests on a premise that it cannot prove. As stated in its motion, "Ilori worked with other people including the as yet uncharged CC-1," an individual whom the government believe it has identified. The government thus wishes to introduce the alleged vicarious admissions of CC-1 from a recovered telephone in its case-in-chief.

When in a criminal case the government seeks, under the co-conspirator rationale, to introduce as an admission the out-of-court statement of a declarant other than the defendant, the trial judge must make a preliminary determination that there is sufficient independent evidence to establish the following: (1) that a conspiracy existed, *United States v. Nixon*, 418 U.S. 683, 701 n. 14 (1974); (2) that the conspiracy was still in existence at the time the statement was made, *United States v. DeVaugn*, 579 F.2d 225, 227-28 (2d Cir. 1978); (3) that the declarations were made in furtherance of the conspiracy, *United States v. Lang*, 589 F.2d 92, 99 (2d Cir. 1978); and (4) that both the declarant and the defendant participated in the conspiracy, *United States v. Cafaro*, 455 F.2d 323, 326 (2d Cir.), Cert. denied, 406 U.S. 918 (1972); *United States v. Calabro*, 449 F.2d 885, 889 (2d Cir. 1971), Cert. denied, 405 U.S. 928 (1972). See *U.S. v. Lyles*, 593 F.2d 182 (2d Cir. 1979).

The government's assertions regarding the conspiracy among Recamier, Ilori and CC-1 are first posited on the claim that a Samsung phone found in the searched Mercedes belonged to Mr. Ilori. (The government does not assert that the Samsung phone was recovered from Mr. Ilori's person.) The basis for this assumption is that a Telegram app was found on the Samsung phone that contained conversations that the government asserts and/or speculates were between Mr. Ilori and CC-1, and Mr. Ilori and Mr. Recamier. None of the individuals in these conversations are identified by those names in the chats. However, on a few occasions, the individual asserted to be CC-1 refers to another individual as D, and on one occasion refers to him as Dayo.

In addition, in the conversation between who the government asserts to be Recamier and who the government asserts to be Mr. Ilori, there are some references to an apartment on the same street as an apartment Mr. Recamier rented, as well as some discussions of the other individual looking for an apartment to rent. No doubt the government asserts that there is some tangential relation between this individual's apartment search and Mr. Ilori, who is asserted to have ultimately rented an apartment under someone else's name.

In making these assertions, the government wholly ignores the fact that it is alleging the existence of a sophisticated identity theft ring, had charged Mr. Recamier with engaging in identity theft and fraud, and believes the individual it asserts to be CC-1 also was involved in that ring. In other words, the government asks the Court to rely on its ascribing true identities to individuals who were actively and repeatedly, as per the government, assuming the identities of others, based upon conversations it ascribes to these same individuals. However, in this instance, as opposed to the many instances of asserted identity theft, the government is apparently suggesting that the true identities of these same individuals are easily ascertainable and its conclusions as to these identities is not something that must be proven. Rather, the government appears to say that this Court should rely on the government's claim that it found conversations that reveal the individuals' true identities in order to rule that other alleged acts of identity theft are properly admissible—that the government's hand-picked conversations are by who the government says they are. This is circular logic and cannot be credited.

If pressed, the government must also admit that sophisticated identity thieves routinely rely on spoofing, phishing and other methods of gathering individuals' private information through deceit. The theft of an individual's personal identifying information has, in recent years, led to routine cloning of the victim's devices and apps to gain access to their finances. See, e.g., "When Customers Say Their Money Was Stolen on Zelle, Banks Often Refuse to Pay," *The New York Times*, June 20, 2022.[1] Indeed, one of the touted features of the Telegram app is that "You can use Telegram on all your devices at the same time — your messages sync seamlessly across

[1] Found at https://www.nytimes.com/2022/06/20/business/zelle-money-stolen-banks.html?searchResultPosition=1 on June 22, 2002.

any number of your phones, tablets or computers." Telegram FAQ.[2] The reliability of the government's claims that the phone in question was used by the perpetrators of the identity theft and not the victims is not supportable by the evidence proffered thus far.

The government's surmise as to the identities of the individuals it identifies as CC-1 and Recamier are also insufficiently reliable grounds for the Court to allow such evidence to be introduced before a jury. Even if the government could assert in good faith and with a solid evidentiary basis that the Samsung phone belonged to Mr. Ilori, it cannot be proved that the conversations in the Telegram app originated from that phone. In sum, the government cannot satisfy the requirements for admitting these out-of-court statements as those of co-conspirators. Without the statements, the evidence of prior bad acts alleged to have been committed both knowingly and intentionally by Mr. Ilori lack the requisite indicia of reliability for this Court to allow the government to introduce on its case-in-chief.

Mr. Ilori's work relationship and friendship with Mr. Recamier is an unreliable basis to assert his connection to the identity theft and fraud scheme.

Mr. Ilori does not deny that he worked as Mr. Recamier's personal trainer or that they developed a friendship. Mr. Recamier leased the Mercedes and he regularly allowed Ilori to drive it. This does not establish Ilori's knowledge that the Mercedes was leased fraudulently.

Recamier also occasionally bought Mr. Ilori coffee. The government's assertion that the fact Mr. Ilori used a bank card with someone else's name on it ascribes knowledge of the name on the card to Mr. Ilori is without basis in fact. How often does anyone look at the name on the card they are using to buy anything, especially a small item like a coffee, and especially when a friend offers his card to use for the purchase? You take the card, swipe it in the reader, and put it

[2] Found at https://telegram.org/faq#:~:text=You%20can%20use%20Telegram%20on,downloaded%20apps%20in%20the%20world on June 22, 2022.

in your pocket; you don't stare at it. The government is ascribing knowledge and *mens rea* to an innocent activity engaged in by people every day.

The government again makes assertions that fail to reach the threshold for admissibility when it claims that Ilori and Recamier submitted bank statements "in connection with loan applications charged in the Indictment" that were similar to those submitted by Mr. Ilori when applying for an apartment lease. Even assuming, *arguendo*, that Mr. Ilori submitted documents under someone else's name when applying for the apartment, the government cannot establish that he maintained exclusive control over those documents or that Recamier did act alone when applying for government loans using those documents. It is just as likely that, under the government's own theory, Mr. Ilori was given those documents by Mr. Recamier, who otherwise maintained control over them, so that Ilori could apply for the apartment.

The government's further unsupported assertion that "Ilori and Recamier applied for at least two fraudulent loans using Identity Theft Victim-4's name and other identifiers" is just that, an assertion unsupported by sufficiently reliable evidence to allow it to be introduced on the government's say-so.

The government's application that such evidence be admitted to show knowledge and intent should also fail. The evidence shows, at best, the knowledge and intent of Mr. Recamier, who has already pleaded guilty, not Mr. Ilori.

As the old trope goes, we should be thinking of horses here, not zebras. If Mr. Recamier "reveal[ed] his face," it is because Mr. Recamier was committing fraud. If Mr. Recamier was on video, it was because Mr. Recamier was committing fraud. Ilori's involvement in Recamier's fraud is mere speculation that the government wishes were more. As such, it is certainly inflammatory and prejudicial to introduce these alleged acts without evidence that Mr. Ilori was knowingly and intentionally involved in anything other than a friendship.

As such, we suggest that the government's application is highly speculative and would lead to unwarranted and highly prejudicial assumptions against Mr. Ilori by a jury. The evidence should be excluded.

Admission of evidence of Mr. Ilori's prior arrests and/or convictions is improper.

The government's wish to introduce Mr. Ilori's past arrests and/or convictions will lead to improper prejudice against him and an inability to receive a fair trial on the pending charges.

Mr. Ilori was convicted after a guilty plea in 2021 in this Court and sentenced before Judge Liman after he was arrested on this matter. The potential for prejudice if the jury were to hear of this conduct is enormous, given the proximity in time to the current alleged activity. The potential for the jury to make a decision based on propensity is huge.

The 2019 case in New York County Supreme Court was dismissed.

As for the earlier convictions, they are too far removed in time to have any relevance to the charged conduct. The 2007 conviction was over 15 years ago. The 2006 conviction is over 16 years old. The 2004 conviction is nearly 18 years old. The 2000 conviction is over 22 years old. The 1998 conviction is over 24 years old.

The Defendant agrees that these arguments are less persuasive should he choose to testify.

The Defendant has no intention of raising the potential consequences he faces if convicted.

As the Defendant has no intention of raising the potential consequences he faces if convicted, this motion should be moot.

Dated: New York, New York
June 25, 2022

Respectfully submitted,

Brill Legal Group, P.C.
Attorneys for Adedayo Ilori

By: PETER E. BRILL, ESQ.
306 Fifth Avenue, Penthouse
New York, NY 10001

TO: DAMIAN WILLIAMS, ESQ.
United States Attorney
Southern District of New York
One St. Andrew's Plaza
New York, NY 10007
Attn: AUSA Daniel Nessim