UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA

v. CASE NO. 2:23CR88-SPC-KCD

18 U.S.C. § 1344
18 U.S.C. § 1343
18 U.S.C. § 1028A

DIOP MCKENZIE

INDICTMENT

The Grand Jury charges:

COUNTS ONE AND TWO
(Bank Fraud)

A. Introduction

At times material to this Indictment:

1. Diop McKenzie ("MCKENZIE") was a resident of the Middle District of Florida ("MDFL"). MCKENZIE purported to own and operate McKenzie Acquisitions LLC.

2. The United States Small Business Administration ("SBA") was an executive-branch agency of the United States government that provided support to entrepreneurs and small businesses. The mission of the SBA was to maintain and strengthen the nation's economy by enabling the establishment and viability of small businesses and by assisting in the economic recovery of communities after disasters.

3. As part of this effort, the SBA enabled and provided for loans through banks, credit unions, and other lenders. These loans had government- backed guarantees.

The Paycheck Protection Program

4. The Coronavirus Aid, Relief, and Economic Security ("CARES") Act was a federal law enacted in or around March 2020 designed to provide emergency financial assistance to the millions of Americans who were suffering the economic effects caused by the COVID-19 pandemic. One source of relief provided by the CARES Act was the authorization of forgivable loans to small businesses for job retention and certain other expenses, through a program referred to as the Paycheck Protection Program ("PPP").

5. To obtain a PPP loan, a qualifying business was required to submit a PPP loan application, which was signed by an authorized representative of the business. The PPP loan application required the business (through its authorized representative) to acknowledge the program rules and make certain affirmative certifications in order to be eligible to obtain the PPP loan. In the PPP loan application (SBA Form 2483), the small business (through its authorized representative) was required to state, among other things, its: (a) average monthly payroll expenses; and (b) number of employees. These figures were used to calculate the amount of money the small business was eligible to receive under the PPP. Individuals who operated under a sole proprietorship or as an independent contractor or eligible self-employment individual were also eligible to apply for a PPP loan.

6. PPP loan applications were processed by a participating lender. If a PPP loan application was approved, the participating lender funder the PPP loan

using its own monies, which were 100% guaranteed by the SBA. Data from the application, including information from the borrower, the total amount of the loan, and the listed number of employees, was transmitted by the lender to the SBA in the course of processing the loan.

7. PPP loan proceeds were required to be used for certain permissible expenses, including payroll costs, mortgage interest, rent, and utilities. Under the application PPP rules and guidance, the interest and principal on the PPP loan was eligible for forgiveness if the business spent the loan proceeds on these expense items within a designated period of time and used a certain portion of the loan towards payroll expenses.

The Economic Injury Disaster Relief Program

8. The Economic Injury Disaster Loan ("EIDL") program was an SBA program that provided low interest financing to small businesses, renters, and homeowners in regions affected by declared disasters.

9. The CARES Act authorized the SBA to provide EIDLs of up to $2 million to eligible small businesses experiencing substantial financial disruption due to the COVID-19 pandemic. In addition, the CARES Act authorized the SBA to issue advances of up to $10,000 to small businesses within three days of applying for an EIDL. The amount of the advance was determined by the number of employees the applicant certified having. The advances did not have to be repaid.

10. To obtain an EIDL and advance, a qualifying business had to submit an application to the SBA and provide information about its operation, such as the

number of employees, gross revenues for the 12-month period preceding the disaster, and cost of goods sold in the 12-month period preceding the disaster. In the case of EIDLs for COVID-19 relief, the 12-month period was that preceding January 31, 2020. The applicant also had to certify that all the information in the application was true and correct to the best of the applicant's knowledge.

11. EIDL applications were submitted directly to the SBA. The amount of the loan, if the application was approved, was determined based, in part, on the information provided by the applicant about employment, revenue, and cost of goods, as described above. Any funds issued under an EIDL or advance were issued directly by the SBA. EIDL funds could be used for payroll expenses, sick leave, production costs, and business obligations, such as debts, rents, and mortgage payments. If the applicant also obtained a loan under the PPP, the EIDL funds could not be used for the same purpose as the PPP funds.

PPP Lender

12. Lender 1 was a federally-insured financial institution based in Salt Lake City, Utah. Lender 1 participated in the SBA's PPP as a lender and was authorized to lend funds to eligible borrowers under the terms of the PPP.

Bank Accounts Controlled by the Defendant

13. Banks 1, 2, 3, and 4 and Lender 1 were federally-insured financial institutions that were insured by the FDIC.

14. MCKENZIE controlled and maintained the following financial accounts:

a. A checking account ending in -3742 at Bank 1 in the name of "K.V." ("Bank 1 account ending in -3742").

b. A checking account ending in -8371 at Bank 2 in the name of "L.N." ("Bank 2 account ending in -8371").

c. A checking account ending in -4303 at Bank 3 in the name of "M.D." ("Bank 3 account ending in -4303").

d. An investment account ending in -7068 at Bank 4 in the name of "D.J." ("Bank 4 account ending in -7068").

B. The Scheme and Artifice

15. Beginning on an unknown date, but no later than in or around May 5, 2020, and continuing through September 2020, in the Middle District of Florida and elsewhere, the defendant,

DIOP MCKENZIE,

did knowingly and intentionally execute, and attempt to execute, a scheme and artifice to defraud a financial institution, and to obtain monies, funds, credits, assets, and other property owned by, and under the custody and control of, a financial institution, by means of materially false and fraudulent pretenses, representations and promises.

C. Manner and Means of the Scheme

16. The manner and means by which the defendant sought to accomplish the scheme and artifice to defraud included, among others, the following:

a. It was part of the scheme and artifice to defraud that the defendant would and did engage in a scheme to obtain money from the SBA and PPP lenders by submitting false and fraudulent PPP and EIDL loan applications to the SBA, Lender 1 in the names of other individuals and a business purported to be owned and controlled by the defendant.

b. It was further part of the scheme and artifice to defraud that the defendant would and did make and cause to be made materially false and fraudulent statements to Lender 1 in PPP loan applications, including false and fraudulent representations regarding the applicant's average monthly payroll and the number of persons employed by the loan applicant.

c. It was further part of the scheme and artifice to defraud that the defendant would and did make and cause to be made materially false and fraudulent statements to the SBA in EIDL applications, including false and fraudulent representations regarding the number of persons employed by the loan applicant, and falsely representing the applicant's gross revenues and cost of goods sold.

d. It was further part of the scheme and artifice to defraud that the defendant would and did submit and cause the submission of materially false and fictitious documents to Lender 1 and the SBA in support of his fraudulent PPP and EIDL loan applications, including false and fictitious federal income tax documents.

e. It was further part of the scheme and artifice to defraud that the defendant would and did fraudulently use the means of identification of individuals who purported to own the company, such as their names, date of birth, and social security numbers, to submit and cause the submission of a false and fraudulent loan application to Lender 1 to qualify for PPP loans.

f. It was further part of the scheme and artifice to defraud that the defendant would and did fraudulently use the means or identification of an individual, such as the individual's name, date of birth, and social security number, to submit and cause the submission of a false and fraudulent EIDL application to the SBA.

g. It was further part of the scheme and artifice to defraud that the defendant would and did falsely and fraudulently certify that the PPP funds acquired from the requested PPP loans would be used to retain workers, maintain payroll, or make mortgage interest payments, lease payments, and utility payments on behalf of the applicants.

h. It was further part of the scheme and artifice to defraud that the defendant's materially false, fraudulent, and misleading representations would and did cause the SBA and Lender 1 to approve at least two PPP loan applications and two EIDL applications, resulting in the SBA and Lender 1 depositing approximately $237,664.00 in PPP and EIDL funds into accounts controlled by the defendant.

i. It was further part of the scheme and artifice to defraud that the defendant would and did open and cause the opening of bank accounts in the name of other individuals at Bank 1, 3, and 4 for the purpose of receiving PPP and EIDL proceeds.

j. It was further part of the scheme and artifice to defraud that the defendant would and did use and cause PPP and EIDL funds to be used for unauthorized purposes and for his own personal enrichment.

k. It was further part of the scheme and artifice to defraud that the defendant would and did misrepresent, hide, and conceal, and cause to be misrepresented, hidden and concealed, the purpose of the acts performed in furtherance of the scheme to defraud.

D. Execution of the Scheme

17. On or about the dates set forth below, in the Middle District of Florida and elsewhere, the defendant,

DIOP MCKENZIE,

knowingly and with intent to defraud executed and attempted to execute the scheme and artifice to defraud a financial institution whose deposits were insured by the FDIC, as described above, and knowingly and with intent to defraud executed and attempted to execute the scheme and artifice to obtain moneys, funds, credits, assets, securities and other property owned by and under the custody and control of a financial institution whose deposits were insured by the FDIC, by means of materially false and fraudulent pretenses, representation, and promises, as described above, in that DIOP MCKENZIE caused, and attempted to cause, the following PPP loans to be made:

COUNT	DATE	EXECUTION
ONE	May 5, 2020	$20,832.00 PPP loan from Lender 1 in the name of K.V.
TWO	May 29, 2020	$20,832.00 PPP loan from Lender 1 in the name of McKenzie Acquisitions.

In violation of 18 U.S.C. §§ 1344 and 2.

COUNTS THREE AND FOUR
(Wire Fraud)

A. Introduction

1. The Grand Jury hereby realleges paragraphs 1 through 14 of Counts One and Two of this Indictment and incorporates such paragraphs by this reference as though fully set forth herein.

B. The Scheme and Artifice

2. Beginning on an unknown date, but no later than in or around May 2020, and continuing through September 2020, in the Middle District of Florida and elsewhere, the defendant,

DIOP MCKENZIE,

knowingly devised and intended to devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises.

C. Manner and Means of the Scheme and Artifice

3. The manner and means of the scheme and artifice are set forth in Paragraphs 16a – 16k of Counts One and Two of this Indictment, the allegations of which are realleged and incorporated by reference as if fully set forth herein.

D. Execution of the Scheme and Artifice

4. On or about the dates set forth below, in the Middle District of Florida and elsewhere, the defendant,

DIOP MCKENZIE,

for the purpose of executing the scheme and artifice described above, transmitted and caused to be transmitted by means of wire communication in interstate and foreign commerce the writings, signs, signals, pictures, and sounds described below, each transmission constituting a separate count:

COUNT	DATE OF WIRE	INTERSTATE WIRE TRANSMISSION
THREE	June 21, 2020	Electronic transmission of fraudulent EIDL application in the name of D.J. from the MDFL to the SBA's servers located outside the State of Florida
FOUR	July 2, 2020	Electronic transmission of fraudulent EIDL application in the name of M.D. from the MDFL to the SBA's servers located outside the State of Florida

In violation of 18 U.S.C. §§ 1343 and 2.

COUNT FIVE
(Aggravated Identity Theft)

Beginning on an unknown date, but no later than in or around June 2020, and continuing through September 2020, in the Middle District of Florida, and elsewhere, the defendant,

DIOP MCKENZIE,

did knowingly transfer, possess, and use, without lawful authority, a means of identification of another person, that is the name, driver's license, social security number, and date of birth of M.D., during and in relation to a felony offense of wire fraud, in violation of 18 U.S.C. § 1343, as charged in Count Four of the Indictment.

In violation of 18 U.S.C. §§ 1028A(a)(1) and 2.

FORFEITURE

1. The allegations contained in Counts One through Four are incorporated by reference for the purpose of alleging forfeiture pursuant to 18 U.S.C. §§ 982(a)(1), 982(a)(2)(A), 981(a)(1)(C), and 28 U.S.C. § 2461(c).

2. Upon conviction of a violation of 18 U.S.C. §1344, the defendant,

DIOP MCKENZIE,

shall forfeit to the United States, pursuant to 18 U.S.C. § 982(a)(2)(A), any property, real or personal, which constitutes or is derived from proceeds traceable to the violation.

3. Upon conviction of a violation of 18 U.S.C. § 1343, the defendant,

DIOP MCKENZIE,

shall forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), any property, real or personal, which constitutes or is derived from proceeds traceable to the violation.

4. The property to be forfeited includes, but it not limited to, the following:

   a. An order of forfeiture in the amount of approximately $237,664.00, which represents the proceeds obtained from the offenses as well as the amount involved in the offenses;

   b. Approximately $91,906.91 seized from Fidelity Investments account number ending in 7068, held in the name of K.G. and D.J.;

   c. Approximately $8,000.62 seized from Fidelity Investments account number ending in 3064, held in the name of K.G.; and

d. Approximately $10,074.44 seized from BMO Harris Bank account number ending in 4303, held in the name of M.D.

5. If any of the property described above, as a result of any act or omission of the defendant:

a. cannot be located upon the exercise of due diligence:

b. has been transferred or sold to, or deposited with, a third party;

c. has been placed beyond the jurisdiction of the Court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be divided without difficulty, the United States shall be entitled to forfeiture of substitute property under the provisions of 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(b)(1) and 28 U.S.C. § 2461(c).

[redacted]

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FORM OBD-34
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No. 2:23-cr-

UNITED STATES DISTRICT COURT
Middle District of Florida
Fort Myers Division

THE UNITED STATES OF AMERICA

vs.

DIOP MCKENZIE

INDICTMENT

Violations:

18 U.S.C. § 1344 and 2
18 U.S.C. § 1343 and 2
18 U.S.C. § 1028A(a)(1) and 2

[redacted]

Filed in open court this 23rd

of August, 2023.

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Clerk

Bail $________________