UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 23-60170-CR-SCOLA

UNITED STATES OF AMERICA

v.

ALEXANDRA ACOSTA and
VILSAINT ST LOUIS,

Defendants.
______________________________________/

UNITED STATES' MOTION IN LIMINE TO ADMIT INEXTRICABBLY INTERTWINED EVIDENCE OR, IN THE ALTERNATIVE, EVIDENCE OF OTHER CRIMES, WRONGS, OR ACTS, PURSUANT TO FED. R. EVID. 404(b)(2)

Introduction

> "St Louis, Please do not bring up anything about **my IRS case or the loan** to my wife. She does not know about it and I don't want to stress her out. Thanks!"

02/16/21 Email from Defendant Alexandra Acosta ("Acosta") to Defendant Vilsaint St Louis ("St Louis") (emphasis added).

At trial, the United States of America intends to introduce the following evidence:

(1) Internal Revenue Service ("IRS") records, Acosta's emails, and witness testimony about Acosta's 2018, 2019, and 2020 tax returns and an IRS tax audit of Acosta's 2018 and 2019 tax returns—which returns were prepared with the help of St Louis—resulting in a January 21, 2021 Report of Income Tax Examination Changes reflecting that Acosta owed the IRS $18,491.55—just two weeks before the Defendants fraudulently applied for a $20,180 Paycheck Protection Program ("PPP") loan (collectively, the "IRS Evidence");

(2) Documents and testimony about Section 3.16 of the Broward County Sheriff's Office Policy Manual, titled "OFF-DUTY and EXTRA DUTY EMPLOYMENT," including completed off-duty employment forms by Acosta in 2016, 2017, and 2018, and the absence of completed forms for 2019, 2020, and 2021 (collectively, the "BSO Policy Evidence"); and

(3) Documents and testimony about Broward County civil case number CACE21-022582, related to Acosta's dispute with a pool contractor, in which Acosta attached a copy of a $70,000 contract executed on June 2, 2020, for the construction of a pool that led to a counterclaim for $19,500 in unpaid labor that completed on June 30, 2021, i.e., during the alleged conspiracy to defraud the United States of $20,180 (collectively, the "Pool Evidence"); and

The United States submits that the aforementioned evidence is inextricably intertwined with the charged crimes in that it relates to the chain of events explaining the context, motive, and set-up of the crime at issue—the fraudulent application for $20,180 PPP loan on February 1 through 4, 2021, and the fraudulent application for forgiveness of that loan on April 21, 2021. In the alternative, the IRS, BSO Policy, and Pool Evidence should be admitted under Rule 404(b) to prove motive, opportunity, intent, preparation, plan, opportunity, and knowledge.

Background

The Superseding Indictment charges the Defendants with one count of conspiracy to defraud the United States, 18 U.S.C. § 371, two counts of false statements to the Small Business Administration ("SBA"), 18 U.S.C. § 645(a), and one count of wire fraud, 18 U.S.C. § 1343, all in relation to a fraudulent Paycheck Protection Program ("PPP") loan application and loan forgiveness application that were submitted to the Small Business Administration ("SBA") through its approved lender and servicer. ECF No. 23.

Defendant Acosta was a full-time Broward County Deputy Sheriff with $13,904 income as a real estate broker in 2019, $0 as a real estate broker in 2020, and no income as a real estate broker in 2021 during the alleged conspiracy.

Defendant St Louis was the Chief Executive Officer of Victory Tax Inc. and had prepared Acosta's taxes for many years, including tax years 2018, 2019, 2020, and 2021. St Louis is scheduled to change his plea on May 14, 2024. ECF No. 33.

On February 1, 2021, around 12 pm, Acosta and St Louis created an online application for a PPP loan. On February 3, 2021, Acosta and St Louis finalized the application for the maximum loan amount for a sole-proprietor under the PPP using materially[1] false information about Acosta's average monthly payroll, i.e., $8072 per month, and fraudulent representations about purpose of the loan, i.e., payroll costs, rent/mortgage interest, utilities, covered operations expenditures, covered property damage, covered supplier costs, and covered worker protection expenditures. The Defendants also submitted a false 2019 Form 1099-MISC, Miscellaneous Income listing $103,255 in nonemployee

[1] Materiality is only required to prove Count 4—wire fraud. Counts 1–3 do not require materiality of the false statement.

compensation from payer, Valordog, LLC and a false 2019 IRS Form Schedule C-Profit or Loss From Business (Sole Proprietorship) listing a business name of Valordog, LLC and purported gross income of $103,255.

The application was created electronically using Acosta's Gmail account and signed through a DocuSign link sent to Acosta's Gmail account. Copies of the loan application and promissory note were provided to Acosta's Gmail account contemporaneously. As a result of the fraudulent representations in the application, the SBA and its approved lender approved and funded the maximum forgivable loan under the PPP program for a sole proprietor—i.e., $20,180.

That same day, Acosta executed a $19,000 transfer of the loan proceeds into her Robinhood Markets, Inc. trading account. Ultimately, $10,000 cleared on February 10 and it was immediately used to purchase $8,000 in shares of one publicly traded stock.

On April 21, 2021, Acosta provided St Louis with her personal Gmail login credentials to access the loan servicer's online portal to apply for PPP loan forgiveness, i.e., that she used the loan on the qualified business expenses listed in the application for the loan—they were not. On June 11, 2021, the SBA forgave the loan totaling $20,180 plus interest.

Memorandum of Law

A. The IRS, BSO Policy, and Pool Evidence is Inextricably Intertwined with the Charged Offenses

Evidence of other bad acts is not extrinsic under Rule 404(b) if it: (1) arose out of the same transaction as the charged offense; (2) is necessary to complete the story of the crime; or (3) is inextricably linked with the charged offense.

United States v. Ellisor, 522 F.3d 1255, 1269 (11th Cir. 2008); *United States v. Edouard*, 485 F.3d 1324, 1344 (11th Cir. 2007) ("[E]vidence is inextricably intertwined with the evidence regarding the charged offense if it forms an 'integral and natural part of the witness's accounts of the circumstances surrounding the offenses to which the defendant was indicted.'" (quoting *United States v. Foster*, 889 F.2d 1049, 1053 (11th Cir. 1989)); *United States v. McClean*, 138 F.3d 1398, 1403 (11th Cir. 1998) ("Evidence, not part of the crime charged but pertaining to the chain of events explaining the context, motive and set-up of the crime, is properly admitted if it is 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." (internal quotation marks omitted)).

The IRS Evidence

At trial, the United States will offer the IRS Evidence in the form of the certified 2018, 2019, and 2020 tax returns and the certified examination file for the 2018 and 2019 audit, email correspondence between Acosta and St Louis about the audit (referred to by Acosta as "the tax case"), and testimony.

First, as to the 2018 through 2020 tax returns, these records are probative of Acosta's real estate earnings in the relevant periods surrounding the 2019 year that she relied on for her PPP loan and provide context to any purported operations as a real estate broker in 2020 and 2021 when she applied for the $20,180 PPP loan, which is also probative of whether she knew that she was not entitled to the $20,180 loan.

Second, as to the IRS audit of Acosta's 2018 and 2019 tax returns, the evidence shows that the IRS contacted Acosta in December 2020 about the issues with her 2018 and 2019 tax returns. Acosta was interviewed on December 17, 2020, via telephone. The IRS records reflect that Acosta said she makes an appointment with St Louis as her tax preparer and that she takes him her tax forms and some receipts for purchases, credit card statements, gas receipts, supplies for her home office, etc. for the Schedule C expenses. Acosta stated that she and St Louis figured out the expenses together. She stated that St Louis analyzed it pretty well because she is there for a while. She said that the figure she puts on the Schedule C is "pretty close to what she has in her head" and that she sat with St Louis for 2018 and 2019 returns. She said that St Louis went over the returns with her each year. After she explained some expenses on her 2018 Schedule C, Acosta reiterated that all figures and expenses on the Schedule C were information that she and St Louis came up with together—she did not leave it all to him.

On January 21, 2021—about 11 days before the PPP loan application was started—the IRS provided Acosta and St Louis with an Examination Change Report that reflected $12,675.55 and $5,816.00 in taxes and penalties ($18,491.55 total) owed by Acosta for overreporting business expenses in 2018 and 2019 respectively. During the audit, the IRS interacted with both Acosta and St Louis as Acosta's limited power of attorney to discuss those tax years.

On February 1, 2021—the same day the PPP loan application was created on behalf of Acosta—Acosta and St Louis jointly spoke to the examiner about the issues with Acosta's 2018 and 2019 tax returns. The evidence also shows that the PPP application was created that same day with an Internet Protocol address associated with St Louis's email victorytaxes@gmail.com. The audit remained open as Acosta tried to lower the liability and eliminate the penalties. On March 29, 2021, before using St Louis to apply for forgiveness for the PPP loan by sending him her email login information, and in an attempt to eliminate the tax penalties assessed, Acosta sent the IRS a self-serving letter contradicting the information previously provided during her December 17, 2020 interview. Acosta stated that she did not know where St Louis got the figures in her 2018 and 2019 returns and recanted her statement that she was with him in person those years to do her returns.

The timing of the IRS audit of Acosta's 2018 and 2019 tax returns, which were prepared with her co-conspirator St Louis, is such that it established a clear motive for the defendants to seek a fraudulent loan. Indeed, the amount Acosta was told she owed was incredibly close to the amount Acosta would now get through the PPP program. Acosta herself linked the two actions together in an email to St Louis on February 16, 2021, wherein she stated: "St Louis, Please do not bring up anything about **my IRS case or the loan** to my wife. She does not know about it and I don't want to stress her out. Thanks!" It is also probative of her plan, preparation, knowledge, intent, and opportunity to apply for the loan with St Louis.

Furthermore, the IRS Evidence cuts against any potential good faith defense as to intent to defraud because it strains credulity that during a period where Acosta was being significantly challenged on the details of a formal submission to the United States with the help of St Louis, she would then blindly rely on St Louis on two more formal submissions to the United States regarding a $20,180 loan and a promissory note.

The BSO Policy Evidence

In pertinent part, the BSO Off-Duty Employment Policy requires all BSO employees to seek and receive BSO's approval for any off-duty employment, including self-employment. This approval "sunset" every year and employees had to seek reapproval. Acosta completed the forms for 2016, 2017, and 2018, but not for 2019, 2020, or 2021. Evidence of her prior compliance and then cessation of reporting the employment is not offered to show that she violated a policy in 2019, 2020, or 2021, rather, it is relevant evidence that the Court should admit at trial because it is probative of whether Acosta could have believed that she was entitled to the maximum PPP loan for a sole proprietor when she did not consider her outside employment significant enough to report as she had previously done, i.e., knowledge and intent.

The United States does not intend to argue that Acosta violated the BSO Off-Duty Employment Policy by not reporting off-duty employment for the year 2019, 2020, or 2021; rather, the United States will argue that Acosta did not report any off-duty employment to BSO for those years because Acosta knew that real estate side hustle was *de minimis*, i.e., not worth reporting as off-duty employment, and thus, Acosta knew she was not entitled to a $20,180, forgivable PPP loan.

Finally, to the extent that Defendant should have sought and received BSO's approval for off-duty employment pursuant to the BSO Off-Duty Employment Policy because Defendant made a couple of real-estate transactions in 2019, the United States will not argue that such a policy violation is evidence tending to show that Defendant breaks rules. In fact, the United States will argue that she effectively did not break the rules because she knew she wasn't doing anything with real estate worth reporting.

The Pool Evidence

The Pool Evidence is primarily the existence of a large, $70,000 home-improvement expenditure during the relevant period that was funded by a bank loan, the existence of which is augmented by the outstanding balance of $19,500 that is alleged to have remained unpaid to the contractor as of June 2021—an amount that is almost equal to the IRS levy and the PPP loan. The evidence is not offered not to show that Acosta has been sued, or that she is the type of person who would breach a contract and not pay someone for work, it is offered as probative of Acosta's motive to defraud because Acosta was dealing with a large outstanding expenditure when she applied for the PPP loan in addition to the tax liability and at the time she applied for loan forgiveness.

B. In the Alternative, the IRS, BSO Policy, and Pool Evidence is Admissible Under Fed. R. Evid. 404(b)(2)

To the extent not admitted as necessary to complete the story of the crime and inextricably intertwined, the IRS, BSO Policy, and Pool Evidence is admissible under Rule 404(b)(2). Rule 404(b) provides that "[e]vidence of other crimes, wrongs, or acts" may be admitted "as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident" with respect to the charged offense. Fed. R. Evid. 404(b)(2). Rule 404(b) is a rule of "inclusion which allows [extrinsic] evidence unless it tends to prove only criminal propensity." *See United States v. Stephens*, 365 F.3d 967, 975 (11th Cir. 2004) (quoting *United States v. Cohen*, 888 F.2d 770, 776 (11th Cir. 1989) (internal quotations omitted)); *United States v. Jernigan*, 341 F.3d 1273, 1280 (11th Cir. 2003) ("Rule 404(b) is a rule of inclusion, and . . . accordingly 404(b) evidence, like other relevant evidence, should not be lightly excluded when it is central to the prosecution's case."). Rule 404(b) evidence is not limited to criminal convictions, but can consist of uncharged crimes, wrongs, or other acts. Indeed, even evidence of an act for which a defendant was previously acquitted can be admitted under Rule 404(b). *See Dowling v. United States*, 493 U.S. 342, 348–49 (1990); *United States v. Culver*, 598 F.3d 740, 748–49 (11th Cir. 2010).

A district court wields considerable discretion in deciding whether to admit other crimes, wrongs, or other acts evidence under Rule 404(b). *United States v. Hicks*, 798 F.2d 446, 451 (11th Cir. 1986). The test for admissibility of Rule 404(b) evidence is as follows: (1) the evidence must be relevant to an issue other than the defendant's character; (2) the act must be established by sufficient proof to permit a jury finding that the defendant committed the extrinsic act; and (3) the probative value of the evidence must not be substantially outweighed by its undue prejudice under Rule 403. *United States v. Miller*, 959 F.2d 1535, 1538 (11th Cir. 1992) (en banc); *see also United States v. Mills*, 138 F.3d 928 (11th Cir. 1998).

As addressed in the prior section, the IRS, BSO Policy, and Pool Evidence is relevant as proof of motive, opportunity, intent, preparation, plan, and knowledge with respect to the charged conduct.

Second, there can be no dispute that the IRS, BSO Policy, and Pool Evidence adequately support a jury finding consistent with what it is being offered to show, i.e., (1) Acosta had a substantial tax liability that gave her motive to lie for $20,180 and that the same person with whom she is charged with conspiring was also responsible for her tax liability; (2) Acosta did not file off-duty employment disclosures for 2019, 2020, 2021, which shows she did not believe her side-hustle was substantial enough to warrant disclosure and thus should not have warranted the maximum, $20,180 in forgivable loans from the SBA; and (3) she had a substantial financial undertaking during the same period that she was hit with the tax liability and she had an outstanding balance on the pool contract that is almost the same amount as the PPP loan.

Third, the probative value of the IRS, BSO Policy, and Pool Evidence is not substantially outweighed by its undue prejudice under Rule 403. This evidence is highly probative for the purpose for which the United States seeks its admission (i.e., to show motive, intent, knowledge, opportunity, preparation, and plan). The BSO Policy Evidence is not unduly prejudicial and will not be offered or argued as some basis to show that Acosta breaks rules. The Pool Evidence could carry slight prejudice as to the dispute portion with a contractor, but it does not outweigh the probative value of the motive for her to need the fraudulent loan. And though the existence of an IRS audit could be cast as prejudicial, here, the timing, impact, and parties involved in that audit are so probative of the motive, knowledge, opportunity, intent, preparation, and plan in this case that any prejudice does not substantially outweigh the probative value. Accordingly, this Court should permit the IRS, BSO Policy, and Pool evidence to be introduced in the United States' case in chief.

Certificate Pursuant to Local Rule 88.9

Pursuant to Local Rule 88.9, undersigned counsel met and conferred in good faith with counsel of record for Defendant Alexandra Acosta, Attorney Brian Silber, via Microsoft Teams on May 1, 2024, and via telephone on May 6, 2024, to resolve the issues raised in this Motion but the parties were unable to do so.

Conclusion

The United States submits that the IRS, BSO Policy, and Pool Evidence is admissible as inextricably intertwined with the charged offenses, or, in the alternative, pursuant to Rule 404(b)(2) as prior uncharged crimes, wrongs, and acts relevant to prove motive, opportunity, intent, preparation, plan, and knowledge.

Respectfully submitted,

MARKENZY LAPOINTE
UNITED STATES ATTORNEY

BY: **Trevor C. Jones**
TREVOR C. JONES
Assistant United States Attorney
Fla. Bar No. 0092793
500 E. Broward Blvd., 7th Floor
Fort Lauderdale, Florida 33394
Tel: (786) 564-9109
Trevor.Jones@usdoj.gov