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' RESPONSE TO DEFENDANT'S MOTION IN LIMINE TO ADMIT HEARSAY STATEMENTS AND LOAN REPAYMENT EVIDENCE

This Court should deny in part and grant in part the Defendant Alexandra Acosta's motion seeking to admit evidence, ECF No. 52, as follows:

I. Testimony about What a Tax Preparer Told a Defendant Concerning Loan Eligibility, or the Defendant's Reliance on that Advice, Is Inadmissible Hearsay if Offered for It's Truth.

Hearsay is an out-of-court statement "offered in evidence to prove the truth of the matter asserted." Fed. R. Evid. 801(c). Statements "offered only to show their effect on the listener," however, are not hearsay because the statements are introduced not for their truth, but to "provide a context to assess [the listener]'s response." *United States v. Rivera*, 780 F.3d 1084, 1092 (11th Cir. 2015); *see also* Fed. R. Evid. 801(c) Advisory Committee Note ("If the significance of an offered statement lies solely in the fact that it was made, no issue is raised as to the truth of anything asserted, and the statement is not hearsay.").

Defendant's reliance on her tax preparer during the loan application process makes intent the centerpiece of her defense. ECF No. 52 at 4. For her part, if she chooses to testify, Defendant's use of statements made to her by St. Louis must be used only to show how or why she relied on the advice to overcome a hearsay objection. Any statement is not hearsay if it is offered for the sole purpose to show their effect on Defendant. Consequently, the trier of fact will not be allowed to consider testimony about St. Louis' advice for the truth or accuracy of such advice.

The specific statements attributed to St. Louis, however, conflates the issue. Statements by St. Louis as to Defendant's eligibility, loan amount, and that a Paycheck Protection Program loan is forgivable may be admitted to show the effect those statements had on Defendant's reaction and belief. But statements offering to "handle the entire process," and "to fill out and submit all the necessary paperwork to obtain the loan" go to the heart of Defendant's defense: that she did not participate in the preparation or submission of her PPP loan application. The truth of those statements is pertinent to Defendant's defense and should be excluded as hearsay statements because they go beyond a mere backdrop of her state of mind.

Furthermore, excluding these statements does not prevent Defendant from establishing her defense. In *United States v. Eisenstein*, 731 F.2d 1540, 1543 (11th Cir. 1984), the trial court erred in sustaining the government's hearsay objection to defendant's attempt to introduce his own statements through a lawyer-witness. However, the "testimony was admissible to show the attorney's knowledge and to show [defendant's] compliance with the 'full disclosure' requirement of his advice of counsel defense." *Id.* at 1544. Unlike *Eisenstein*, Defendant is not calling a witness to testify about her statements but rather attempting to introduce St. Louis' statements about the preparation and completion of her PPP loan through her own testimony. Those statements are not necessary to establish good faith reliance because Defendant can simply testify that she did not prepare or submit the PPP loan application.

"Whenever a district court admits a statement for one purpose but not another, it must, 'on timely request, [] restrict the evidence to its proper scope and instruct the jury accordingly.'" *United States v. Elysee*, 993 F.3d 1309, 1342 (11th Cir. 2021) (alternation in original) (quoting Fed. R. Evid. 105). If the testimony about St. Louis' advice is admissible only for its effect on Acosta and not for its truth, the government requests that the Court instruct the jury to consider the advice only for its effect on Acosta and not for its truth. *See, e.g.*, *United States v. Trujillo*, 561 F. App'x 840, 842 (11th Cir. 2014) (affirming district court's decision to admit newspaper articles for their effect on the defendant and instruct the jury not to consider the articles for their truth).

II. Evidence of Loan Repayment is Irrelevant and Inadmissible Extrinsic Evidence of the Defendant's Credibility.

The United States incorporates by reference the argument set forth in it's motion in limine seeking to exclude evidence of repayment. *See* ECF No. 39 at 2-5. Repayment of the loan three years after the crime is irrelevant and will mislead or confuse the jury as to the issue at trial, i.e., whether the Defendant made or aided and abetted St Louis in making a false statement to the SBA in the loan application and the forgiveness application. Defendant's backdoor approach to admit the loan repayment as some sort of credibility evidence is misguided and she does not support her position with any case law.

The credibility of a witness is determined by "whether [the trier of fact] believe[s] what each witness had to say, and how important that testimony was. In making that decision [the trier of fact] may believe or disbelieve any witness, in whole or in part." Eleventh Circuit Pattern Jury Instructions – Criminal, Basic Instructions No. O5 (rev. April 15, 2024).

Every witness who testifies places their credibility at issue, but credibility turns on whether the witness is believable. Put differently, the focus will be whether the witness testified truthfully. Defendant wants to present extrinsic evidence of loan repayment under the guise of "credibility evidence," but it is only for the purpose of seeking improper jury nullification. Indeed, it is entirely unclear how future repayment of the loan goes to credibility without the United States somehow challenging the Defendant's admission at trial that she was not entitled to the loan. The United States would agree with the Defendant's statement. It is exactly why she is on trial.

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Conclusion

For the foregoing reasons, the United States of America respectfully submits that the Court should deny in part and grant in part the Defendant's motion as set forth herein.

Respectfully submitted,

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