

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

CASE NO. 23-cr-60170-RNS

ALEXANDRA ACOSTA,)

Defendant.)

MOTION FOR NEW TRIAL

COMES NOW, the Defendant, ALEXANDRA ACOSTA (“Acosta”), by and through the undersigned attorney, and respectfully motions this Court to grant her a new trial, pursuant to *Rule 33, Federal Rules of Criminal Procedure*. In support thereof, Acosta states as follows:

RELEVANT PROCEDURAL HISTORY

1. On March 14, 2024, a superseding indictment was filed that charged Acosta with one count of Conspiracy to Defraud the United States, two counts of making false statements to the SMALL BUSINESS ADMINISTRATION (“SBA”), and one count of wire fraud. [DN-23]

2. On May 28, 2024, the Court ruled on a number of very important motions in limine. [DN-58] In essence, the Court's rulings permitted the government to admit 1) evidence that Acosta is a Deputy Sheriff at the BROWARD SHERIFFS OFFICE ("BSO"), 2) evidence of Acosta's IRS audit, 3) evidence of BSO's outside work policy. The Court also permitted Acosta to admit hearsay statements made to her by the co-defendant that she intended to use to establish her good faith defense. The Court also permitted her to admit evidence indicating that she paid the PPP loan in full plus penalties and interest. The Court denied the government's request to admit evidence of Acosta's dispute with her pool builder.

3. On June 3, 2024, trial commenced on the superseding indictment. At the close of the government's case, Acosta made a first motion for judgment of acquittal. That motion was denied. The Defense then put on a case, Acosta testified, and Defense evidence was admitted. At the close of all evidence, Acosta made a second motion for judgment of acquittal, however the Court reserved ruling on that motion. At the end of trial, the jury returned guilty verdicts on all four counts. The Court then gave the Defendant an initial deadline of July 19, 2024 to file post-trial motions, including the instant one, however that deadline was later extended to July 26, 2024. The instant motion follows. A separate motion for judgment of acquittal is being filed contemporaneously as well.

FIRST BASIS FOR RELIEF

4. Acosta incorporates herein by reference, the motion for judgment of acquittal that she is filing contemporaneously with the instant motion including all exhibits. Based on the evidence admitted at trial and the information contained in that motion, it is clear the jury acted unreasonably when they convicted Acosta. If the Court decides to deny Acosta's motion for judgment of acquittal, then Acosta respectfully requests a new trial as an alternative form of relief.

SECOND BASIS FOR RELIEF

5. Acosta contends that the jury was unduly swayed by learning that she was a Deputy Sheriff at BSO. The Defense motion the Court to exclude this information [DN-58] because it was overly prejudicial and its omission would not prevent the government from telling the story of its case. This evidence only served to inflame the jury against Acosta, who then held her to a higher standard by unreasonably ignoring all of the exculpatory evidence presented at trial. As a result, Acosta's trial resulted in an outcome whose result is unreliable. In the interests of justice, the Court should order a new trial where evidence of Acosta's status as a law enforcement officer is kept out or at least curtailed. At trial, the government spent most of its testimony time asking questions about Acosta's employment at BSO, hammering into the jury the entire time that she is a member of law enforcement –

which only served to unfairly turn them against Acosta more and more with each mention. Thus, a new trial is required where that evidence is excluded or at least minimized so that it does not unfairly prejudice Acosta.

THIRD BASIS FOR RELIEF

6. At trial, the government was permitted to admit extensive evidence indicating that Acosta failed to properly comply with an administrative rule at BSO requiring deputies to submit a certain form before taking any off-duty employment. This evidence was unfairly prejudicial in that it reiterated and reiterated and reiterated that Acosta is a law enforcement officer. Additionally, the evidence was unfairly prejudicial because it impugned her character by pointing out she didn't follow a rule at work. Thus, the jury acted unreasonably by basing its decision, at least in part, on evidence that unfairly impugned Acosta's character. Therefore, Acosta would respectfully request a new trial where evidence of BSO's off-duty work policy is excluded or at least substantially curtailed.

FOURTH BASIS FOR RELIEF

7. When the government wasn't asking questions about Acosta's employment at BSO, it was asking questions about the minutiae of Acosta's IRS audit, unfairly prejudicing the jury against her. Therefore, Acosta requests a new trial where evidence of her IRS audit is excluded or at least substantially limited.

MEMORANDUM OF LAW

8. Per *Rule 33, Federal Rules of Criminal Procedure*, “Upon the defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires. If the case was tried without a jury, the court may take additional testimony and enter a new judgment.”

9. In *United States v. Martinez*, 763 F.2d 1297, 1312-13 (11th Cir. 1985), the Court explained the standard applied to a Rule 33 motion for new trial:

On a motion for a new trial based on the weight of the evidence, the court need not view the evidence in the light most favorable to the verdict. It may weigh the evidence and consider the credibility of the witnesses. *United States v. Lincoln*, 630 F.2d 1313, 1319 (8th Cir. 1980); *United States v. Simms*, 508 F. Supp. 1188, 1202 (W.D.La.1980). If the court concludes that, “despite the abstract sufficiency of the evidence to sustain the verdict, the evidence preponderates sufficiently heavily against the verdict that a serious miscarriage of justice may have occurred, it may set aside the verdict, grant a new trial, and submit the issues for determination by another jury.” *Lincoln*, 630 F.2d at 1319.

The decision to grant or deny a new trial motion based on the weight of the evidence is within the sound discretion of the trial court. An appellate court may reverse only if it finds the decision to be a clear abuse of that discretion. *Id.*; *United States v. Indelicato*, 611 F.2d 376, 387 (1st Cir. 1979). While the district court's discretion is quite broad, there are limits to it. The court may not reweigh the evidence and set aside the verdict simply because it feels some other result would be more reasonable. *Simms*, 508 F. Supp. at 1202. The evidence must preponderate heavily against the verdict, such that it would be a miscarriage of

justice to let the verdict stand. *Indelicato*, 611 F.2d at 387; *United States v. Sinclair*, 438 F.2d 50, 51 n. 1 (5th Cir. 1971) (quoting Wright, Miller & Cooper, Federal Practice and Procedure: Criminal § 553, at 487). Motions for new trials based on weight of the evidence are not favored. Courts are to grant them sparingly and with caution, doing so only in those really “exceptional cases.” *Lincoln*, 630 F.2d at 1319; *Indelicato*, 611 F.2d at 387; *Simms*, 508 F. Supp. at 1202.

Applying these principles, courts have granted new trial motions based on weight of the evidence only where the credibility of the government's witnesses had been impeached and the government's case had been marked by uncertainties and discrepancies. Thus, for example, in *United States v. Simms*, 508 F. Supp. at 1204-08, the court granted a new trial, explaining there was no direct proof of the defendant's guilt and that “the government's case depends upon inferences upon inferences drawn from uncorroborated testimony that . . . is subject to questions of credibility.”

Martinez at 1312-1313.

CONCLUSION

10. The verdicts rendered in this case are unreliable because the jury acted unreasonably when it ignored all the exculpatory evidence admitted at trial, as was elaborated in Acosta's motion for judgment of acquittal. The jury gave too much weight to the fact that Acosta is a Deputy Sheriff and to the evidence concerning BSO's off-duty work policy. They also gave unreasonable weight to the IRS audit evidence. The cumulative effect of these unfair influences unjustly prejudiced the jury against Acosta even more, resulting in an unreliable verdict.

WHEREFORE, the Defendant and the undersigned attorney respectfully motion this Court for a new trial.

Respectfully Submitted,

/s/ Brian Silber

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this document was served on the following parties via CM/ECF on July 26, 2024.

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