UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FORIDA

CASE No. 22-20290-CR-BLOOM/OTAZO-REYES

UNITES STATES OF AMERICA,

Plaintiff,

v.

ERIC DEAN SHEPPARD,

Defendant.

_______________________________________/

DEFENDANT'S MOTION *IN LIMINE*

The Defendant Eric Dean Sheppard, by and through his undersigned counsel, submits this Motion *in Limine*, pursuant to Fed. R. Evid. 401, 402, 403, and 404, to preclude evidence and testimony about: (1) collateral business disputes; (2) Mr. Sheppard's personal relationships, his children and family life; (3) potential tax violations that may have been committed by Mr. Sheppard that he has not been charged with; (4) Mr. Sheppard's wealth and lifestyle; (5) employees or disgruntled worker's criticisms about nonpayment; and (7) an alleged improper visa application, and related forgery.

BACKGROUND

The Superseding Indictment charges Mr. Sheppard with nine counts of Wire Fraud related to certain government loan applications and five counts of Aggravated Identify Theft. The Government contends that Mr. Sheppard submitted false and fraudulent PPP loan and EIDL applications on behalf of three companies and that Mr. Sheppard forged signatures of other persons for certain documents submitted in support of the different loan applications. [D.E. 60]. The expected introduction of evidence related to collateral business disputes, Mr. Sheppard's personal relationships, children and family, wealth and lifestyle, any purported tax violations, employees or worker's criticisms about nonpayment, an alleged improper visa application, and related forgery should be excluded because it is irrelevant under Rules 401 and 402, unduly prejudicial and likely to confuse or mislead the jury pursuant to Rule 403, and is not admissible evidence of other crimes, wrongs, or acts under Rule 404(b).

ARGUMENT

I. Legal Standard.

"The real purpose of a Motion *in Limine* is to give the trial judge notice of the movant's position so as to avoid the introduction of damaging evidence which may irretrievably effect the fairness of the trial." *Stewart v. Hooters of Am., Inc.,* No. 8:04-cv-40-T-17-MAP, 2007 WL 1752843, at *1 (M.D. Fla. June 18, 2007); *see also Reyes v. Aqua Life Corp.,* No. 10-23548-CIV, 2012 WL 12892213, at *1 (S.D. Fla. July 9, 2012).

Evidence is relevant and admissible if "it has any tendency to make a fact more or less probable than it would be without the evidence; and . . . the fact is of consequence in determining the action." Fed. R. Evid. 401. Irrelevant evidence is inadmissible under Rule 402. Fed. R. Evid. 402. Further, "[t]he court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed. R. Evid. 403. Finally, character evidence or evidence of other crimes, wrongs, or acts are not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character. Fed. R. Evid. 404. This type of evidence may be admissible if it is used for another purpose, "such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." *Id*. Specifically, for evidence of other crimes or acts to be admissible under Rule 404(b), (1) it must be relevant to an issue other than the defendant's character; (2) there must be sufficient proof to enable a jury to find by a preponderance of the evidence that the defendant committed the act(s) in question; and (3) the probative value of the evidence cannot be substantially outweighed by undue prejudice, and the evidence must satisfy Rule 403. *United States v. Edouard*, 485 F.3d 1324, 1344 (11th Cir. 2007).

II. Motion *in Limine* No. 1: This Court Should Exclude Reference to Collateral Business Disputes.

Mr. Sheppard anticipates that the Government will attempt to introduce evidence and argument of other collateral business disputes or allegations made by business associates.[1] Over the course of Mr. Sheppard's career in a very competitive and challenging business, he has been involved in business disputes from time to time with business associates. As is common in this type of business, associates have made accusations and allegations against Mr. Sheppard and Mr. Sheppard has his own allegations and accusations against those same associates.

This evidence is not proper evidence under Fed. R. Evid. 404(b) of other crimes, wrongs, or acts. Fed. R. Evid. 404(b). The Government has just provided notice to Mr. Sheppard of its intent to use Rule 404(b) evidence. [ECF No. 77]. However, in a meet and confer this morning, the Government made it clear that it intends to make these types of arguments against Mr. Sheppard throughout the case. In fact, based on the meet and confer, defense counsel is concerned that the Government will attempt to suggest to the jury that Mr. Sheppard has lied and cheated with business associates (based only on accusations of others), and therefore, he must have lied to and cheated the banks and the SBA. In defending against the charges in this case, Mr. Sheppard should not have to defend against collateral

[1] The Government has produced evidence from a civil litigation involving Mr. Sheppard's prior business associate, *Wildstein Investments, Inc., et al. v. Sheppard Flagler holdings, LLC, et. al.*, Case No. 18-10456-CA-10, which has no bearing on this case at all.

allegations and accusations and he should not have mini trials regarding collateral issues in this case. Instead, this evidence is classic propensity evidence which Rule 404 is designed to protect against.

Finally, this evidence has no relevance to the issues in this case and would only cause prejudice by inviting the jury to consider extraneous facts and matters. Fed. R. Evid. 401. Not only is such evidence without relevance to the current case, but it would be highly prejudicial to Mr. Sheppard. In this matter, reference to extraneous business disputes involving Mr. Sheppard are without any probative value and would result in unfair prejudice to Mr. Sheppard, would confuse the issues, and would mislead the jury. This evidence will certainly result in mini side trials about other disputes, and will only serve to divert the issues and waste days of this Court's time between the governments presentation of evidence and the cross examination by the defense. Accordingly, any statement, comment, and/or testimony related to collateral business disputes involving Mr. Sheppard that are not related to the instant case should be excluded.

III. Motion *in Limine* No. 2: General Evidence Related to Mr. Sheppard's Personal Relationships, Children, and Family Should be Excluded.

Mr. Sheppard expects that the Government will seek to introduce evidence related to his personal relationships, children and family life. First, Mr. Sheppard's personal relationships, his children, and family are irrelevant as it is not information that would assist the jury in determining the issues in the current case: whether Mr. Sheppard committed Wire Fraud or Aggravated Identify Theft. Second, this type of evidence is extremely personal, would only be elicited for purposes of humiliation and embarrassment to the Defendant and, therefore, should be excluded because it is unfairly prejudicial, inflammatory, and invites an emotional reaction from the jury, which Rule 403 is intended to prevent.

IV. Motion *in Limine* No. 3: Mr. Sheppard's Alleged Tax Violations Should be Excluded.

Mr. Sheppard expects that the Government will seek to introduce evidence and make arguments regarding alleged tax violations. The Government has disclosed Mr. Sheppard's personal accountant as a "key witness." [D.E. 49]. The Government also intends to call Mr. Philip Palmer, "a revenue agent and lead employment tax specialist with the Internal Revenue Service" as an expert witness. [D.E. 74]. As disclosed by the Government, Mr. Palmer is expected to testify about: (1) an employer's responsibilities for W-2 employees; (2) IRS forms, such as W-2, Form 940 and Form 941s, and different tax and reporting obligations of an employer; (3) the employer's responsibilities for independent contractors; and (4) the ways in which payments to a business partner from a partnership are to be reported to the IRS. *Id*.

Evidence of Mr. Sheppard's uncharged alleged tax violations should be excluded because they are irrelevant, substantially more prejudicial than probative, and improper 404(b) evidence. The expected testimony related to Mr. Sheppard's alleged uncharged tax violations, including an employer's tax obligations and responsibilities with respect to certain workers, is not relevant to any issue other than to besmirch Mr. Sheppard's character and reputation – and, worse still, to induce the jury to convict because, if he did not commit the charged crimes (insofar as the workers were bona fide employees in view of IRS policies), then he must have committed tax violations (for misclassifying employees as independent contractors). In the meet and confer this morning, *the Government confirmed its intent to make this very argument* arguing that if the Defendant did not commit the charged PPP fraud, then he must have committed the uncharged tax violations. Additionally, evidence of uncharged tax violations is inflammatory and prejudicial, and will lead to mini trials within the trial that will only confuse and mislead the jury and therefore does not pass Rule 403 muster. As such, the evidence should be excluded.

V. **Motion *in Limine* No. 4: Mr. Sheppard's Wealth and Lifestyle Should be Excluded.**

Mr. Sheppard expects that the Government will seek to introduce evidence regarding his personal wealth and lifestyle. For example, the Government has produced photos of Mr. Sheppard's home and his personal tax returns. Although "evidence of wealth or extravagant spending may be admissible when relevant to issues in the case and where other evidence supports a finding of guilt[,]" "[u]se of a defendant's wealth to appeal to class bias can be 'highly improper' and can deprive that defendant of a fair trial." *United States v. Bradley*, 644 F.3d 1213, 1271 (11th Cir. 2011). Evidence of Mr. Sheppard's wealth and lifestyle, including the introduction of pictures of his home and personal tax returns, is irrelevant to the issues in the current case, and is unfairly prejudicial and inflammatory. This type of evidence will only be used to appeal to class bias and is therefore highly improper. As such, any evidence related to Mr. Sheppard's personal wealth and lifestyle should be excluded.

VI. **Motion *in Limine* No. 5: Evidence Related to Employees or Worker's Criticism about Nonpayment Should be Excluded.**

Mr. Sheppard expects that the Government will seek to introduce evidence regarding his prior disgruntled employees or worker's criticisms about nonpayment. First, this evidence is irrelevant as it would not assist the jury in determining the issues in the current case. Second, this type of evidence is improper character or 404(b) evidence and should be excluded because it has no probative value and is instead, unfairly prejudicial as it will only be used to unnecessarily and prejudicially cast Mr. Sheppard in a negative light. As such, evidence related to employees or worker's criticisms about nonpayment should be excluded.

VII. **Motion *in Limine* No. 6: Documents Related to Alleged Improper Visa Application, Related Forgery, and Privileged Letter Should be Excluded.**

Two days ago, (On September 12), the Government produced documents related to a potential employee's visa application and alleged forgery. Additionally, in this production, the government included what appears to be privileged communications between Mr. Sheppard and an immigration attorney. Upon receipt, Mr. Sheppard's counsel immediately demanded that all privileged documents be destroyed by the Government. The next day, on September 13, 2032, the Government provided disclosure of a potential witness, with allegations to this immigration situation. Finally, yesterday, on September 14, 2023, the Government filed a notice of intent to rely on 404(b) evidence [ECF No. 77], which provided more allegations about the alleged improper visa application and alleged forgery. Mr. Sheppard opposes the use of this alleged 404(b) evidence. The defense is continuing their investigation on the matter based on the Government's very recent disclosures and seeks additional time within which file an appropriate response in opposition before trial.

MEET AND CONFER CERTIFICATION

Undersigned counsel has conferred with the Government who stated the following:

Motion *in Limine* No. 1 (other disputes and litigations) – The Government opposes the Motion.

Motion *in Limine* No. 2 (Personal Relationship) – The Government consents to the Motion with respect to its case in chief, unless it believes the defenses opens the door. The Government opposes with respect cross-examining the Defendant should he testify.

Motion *in Limine* No. 3 (alleged tax violations) – The Government opposes the Motion, stating it will argue that Defendant either committed the charged crimes or he committed tax fraud.

Motion *in Limine* No. 4 (wealth and lifestyle) – The Government opposes the Motion.

Motion *in Limine* No. 5 (Employee or worker claims of being underpaid) – The Government opposes the Motion.

Motion *in Limine* No. 6 (Rule 404(b) disclosure) – The Government does not oppose the Defendant having additional time to respond.

WHEREFORE, Defendant, Eric Dean Sheppard, respectfully requests that this Court exclude evidence and testimony related to: (1) collateral business disputes; (2) Mr. Sheppard's personal relationships, children and family life; (3) potential tax violations that may have been committed by Mr. Sheppard that he has not been charged with; (4) Mr. Sheppard's wealth and lifestyle; (5) employees or worker's criticisms about nonpayment; and (7) alleged improper visa application and related forgery, and for such other and further relief as may be just and proper.

Dated: September 15, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 15, 2023 the foregoing document was filed via the Court's CM/ECF system to all counsel of record.

/s/ Jayne C. Weintraub
Jayne C. Weintraub