

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 22-20290-Cr-Bloom(s)

UNITED STATES OF AMERICA

vs.

ERIC DEAN SHEPPARD,

Defendant.

**UNITED STATES' MOTION FOR PRETRIAL DEADLINE
FOR DEFENSE EXPERT DISCLOSURE
OR ALTERNATIVELY TO EXCLUDE DEFENSE EXPERT**

The undersigned Assistant U.S. Attorney respectfully files this motion for a pretrial deadline for the defense to provide its complete expert witness disclosure, or in the alternative, to exclude the proposed defense expert. In support, the United States provides the following.

Background

This case involves a scheme to defraud devised and executed by defendant Eric Sheppard. The defendant is a wealthy real estate developer and owner of commercial properties such as shopping malls with large national-chain stores. During the pandemic, the defendant obtained approximately \$900,000 in loans, based on multiple applications under multiple corporate names. He applied for these loans under the Paycheck Protection Program and the Economic Injury Disaster Loan Program. The defendant based his applications on false information and false documents, such as falsified and forged tax returns, a forged banker's letter, and a falsified and forged lease.

Trial in this case is set for September 26, 2023. The defense filed a notice to utilize expert testimony (DE 67), and provided the CV for Scott Boucher. As to the anticipated expert testimony, the notice provides a single sentence, and it is not signed by the witness. It states: “Mr. Boucher is expected to testify about the cash flows of certain of Defendant’s companies, including source of funding and use of funds.”

The parties have conferred. The United States asked by when the defense would complete the expert disclosure. Defense counsel was unable to provide a timeframe.

Today, September 15, 2023, the defense filed a motion with the Court seeking to bring in electronic equipment for the defense team. The proposed defense expert, Mr. Boucher, was included as part of the defense team.

Argument

The United States respectfully requests that the Court set a deadline for the defense to complete its expert disclosure in advance of trial, in accordance with Fed. R. Crim. P. 16 and Local Rule 88.10. Alternatively, the United States requests that the proposed expert be excluded.

Both Rule 16 and local rule 88.10 were amended in 2022 to require more fulsome and timely expert disclosures in criminal cases. Expert discovery is recognized as important because specialized knowledge or opinions are used to assist the jury. The Court also plays a role as a gatekeeper of appropriate expert testimony. More advance preparation is needed to prepare to meet expert testimony. The defendant in this case is represented by multiple experienced counsel, who have advised the United States that they are aware of their obligations. The United States understands trial preparation is challenging for all involved, and only seeks a timeframe sufficiently in advance of trial to allow the United States to prepare for, or challenge, the proposed testimony. That window is closing fast.

In *United States v. Caldwell*, ___ F.4th ___ (11th Cir. 2023), 2023WL5274338, the Eleventh Circuit affirmed the district court's exclusion of a defense expert because the notice was untimely and vague. *Id.* at 8. In that case, the defense expert disclosure had been provided six business days before trial. The Court noted the commonsense 2022 amendment of Rule 16, which requires expert disclosures sufficiently before trial for adequate preparation. The Eleventh Circuit found that the district court "reasonably concluded that it was unfair to ask the government to formulate its response after the trial had started." *Id.*

In this case, the defendant's single and vague sentence is far from sufficient to meet the requirements of the federal or local rules to provide expert disclosures. Now, the trial is set to start on Tuesday September 26. Even a disclosure now would hardly be sufficient to prepare before trial as to any proposed defense expert testimony.

Conclusion

For the reasons stated above, the United States respectfully requests that this Court set a deadline of no later than noon September 19, 2023, for the defense to comply with Fed. R. Crim. P. 16 and Local Rule 88.10, and provide a complete expert disclosure. In the alternative, the United States respectfully requests that any defense expert be excluded.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 15, 2023, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via Notices of Electronic Filing generated by CM/ECF.

s/Ana Maria Martinez
Ana Maria Martinez
Assistant United States Attorney