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' RESPONSE IN OPPPOSITION TO DEFENDANT'S MOTION(S) *IN LIMINE*

The United States of America, through the undersigned Assistant United States Attorney, files this response in opposition to the defendant's motions *in limine* seeking to exclude evidence that is relevant and admissible under the Federal Rules of Evidence. The defendant asks the Court to exclude evidence relating to six subjects, listed as motions *in limine* nos. 1 through 6. As for the defendant's motion *in limine* no. 6, it relates to the government's notice of intent to use Rule 404(b) evidence, for which the defendant seeks additional time to respond. With respect to the defendant's motions *in limine* nos. 1 through 5, the defendant simply asks the Court to exclude certain subjects without specifying what the expected evidence may be. These motions are meritless. They are simply an effort by the defense to require the government to lay out its case in order to respond to the defendant's objections to categories of potential evidence in a fulsome way.

Legal Standard

"In fairness to the parties and their ability to put on their case, a court should exclude evidence *in limine* only when it is clearly inadmissible on all potential grounds." United States v.

Gonzalez, 718 F. Supp. 2d 1341, 1345 (S.D. Fla. 2010) (citing In re Seroquels Prods. Liab. Litig., 2009 WL 260989, at *1 (M.D. Fla. Feb. 4, 2009)). "The movant has the burden of demonstrating that the evidence is inadmissible on any relevant ground." Id. "'Unless evidence meets this high standard, evidentiary rulings should be deferred until trial so that questions of foundation, relevancy, and potential prejudice may be resolved in proper context.'" Id. (quoting In re Seroquels Prods. Liab. Litig., 2009 WL 260989, at *1). In this case, the direct evidence of the defendant's scheme to defraud includes the evidence, or subjects, that the defense is incorrectly labelling as collateral. The defendant's motions *in limine* should be denied.

Response to Motion *in Limine* No. 1:

The defendant asks the Court to exclude evidence relating to collateral business disputes. The defendant does not indicate what these collateral business disputes are. In a footnote, the defendant indicates that the government has produced evidence from a civil litigation involving the defendant's former business partner, Leon Wildstein. In an abundance of caution, the government turned over to the defense transcripts of the defendant's deposition in that case, as well as transcripts of other individuals who were deposed in that case.

The government will seek to introduce evidence that is intrinsic to the crimes charged, evidence that is admissible as inextricably intertwined evidence, and evidence that is properly allowed under Federal Rule of Evidence 404(b). This motion should be denied.

Response to Motion *in Limine* No. 2:

The defendant seeks to exclude evidence relating to "personal relationships, children and family life." The defendant does not specify what this evidence may be. The defendant submitted in several of his Paycheck Protection Program ("PPP") loan applications the names of many individuals whom the defendant claimed were his W-2 employees. The government expect to call as witnesses current and former workers and independent contractors who performed jobs for the defendant, some of whom the defendant has known for many years. Are these witnesses' personal relationships with the defendant covered by this motion, or is the defendant seeking to exclude a specific type of personal relationship, i.e., extramarital affairs? The government does not intend to elicit testimony from its witnesses about the latter, even if, for instance, one former worker's duties included assisting individuals involved in such affairs at the defendant's direction. Should the defendant attempt to put forth falsehoods about any personal relationships, this may open the door to permissible cross-examination of a defense witness, or permissible redirect of the government's witnesses.

Regarding the category of children and family life, the defendant does not indicate what evidence should be excluded. The government, for instance, has evidence showing that proceeds from the fraud were used to pay for college tuition of the defendant's child. This is relevant, admissible evidence. This motion should be denied.

Response to Motion *in Limine* No. 3:

The defendant seeks to exclude evidence relating to his tax violations. The evidence relating to the defendant's tax-related conduct is intrinsic to the wire fraud crimes charged in this case. The basic requirement of the Paycheck Protection Program was that businesses would be eligible for a loan based on 2.5 times their average monthly payroll, calculated using the wages paid to W-2 employees. As a result, the defendant was required to submit income, unemployment and quarterly tax returns, including IRS 1065 returns, IRS Form 941s and IRS Form 940s, to substantiate his W-2 payroll. The defendant submitted the requested tax returns as part of this scheme in order to be approved for the PPP loans, except that, as part of carrying out his scheme to defraud, all of the tax returns the defendant submitted were falsified. The evidence is expected to show that by the year 2019, the defendant had converted any remaining W-2 employees to independent contractors, and he did not have a single W-2 employee on his "payroll" when he applied for the PPP loans.

In addition, one of the defendant's PPP loan applications included a typed document listing payments to the purported employees, and a column for "withholdings" listing "withholding" amounts for a period of time when the defendant only paid independent contractors and had made no "withholdings" from anyone on that list (because none were wage employees). The government expects to present testimony explaining to the jury an employer's "withholding" obligations for W-2 employees, and the employer's obligations to pay Social Security, Medicare and unemployment taxes for each employee. Similarly, the government expects to present testimony regarding the absence of any such withholdings or tax contributions for a business that makes payments to 1099 independent contractors. To the extent the defendant had any workers who should have been designated as wage employees during the years at issue – 2019 and 2020 – he did not file any IRS Form 941s or 940 with the IRS or pay the required Social Security, Medicare or unemployment taxes on their behalf.

All of the tax-related evidence is intrinsic, not extrinsic, to the defendant's scheme to defraud. This motion should be denied.

Response to Motion *in Limine* No. 4:

The defendant seeks to exclude evidence regarding "his personal wealth and lifestyle." Once again, the defendant does not specify what evidence he is seeking to exclude, except that he makes a reference to photos of the defendant's house and his personal tax returns. The defendant accuses the government of wanting to display the defendant's wealth in order to appeal to class bias and improperly inflame the jury. This is another effort by the defendant to prevent the government from presenting relevant evidence in its case. The Internet Protocol (IP) addresses captured by the lenders or the loan processors in connection with the submission of the fraudulent PPP loan applications on behalf of the defendant's businesses were IP addresses registered to the defendant's home internet account. The two or three photographs taken of the exterior of the defendant's home address depict the scene of the crimes charged in the superseding indictment.

As for the tax returns, the defendant's businesses are partnerships which report income to the IRS on Form 1065. Any income or loss reported on the IRS Form 1065 flows to the owner(s) of the partnership and are reported on the partner's individual tax return, IRS Form 1040. In carrying out the defendant's scheme to defraud, the defendant submitted IRS Form 1065 partnership returns in connection with several of the loans for which he applied. The defendant's personal tax returns are relevant and intrinsic to the crimes charged in this case, and they help complete the story.

Finally, to the extent that fraud proceeds deposited into the defendant's business accounts were used for personal expenses, this is relevant evidence that the government intends to present to the jury. This motion should be denied.

Response to Motion *in Limine* No. 5:

The defendant wants to exclude evidence that the defendant's workers are owed money by the defendant. The defendant listed a number of individuals as his wage employees to apply for PPP loans, and yet, when the defendant received the PPP funds, he did not pay the debts he owed them (as independent contractors). This is evidence intrinsic to the crimes charged and necessary to complete the story. Furthermore, the government expects to present testimony on this point because it goes to the issue of the witness's bias. It is appropriate to present testimony about a witness's own possible bias during direct examination. This motion should be denied.

Response to Motion *in Limine* No. 6:

The government advised the defense that it does not object to their request for additional time to respond to the government's notice of intent to use Rule 404(b) evidence.

Conclusion

For the reasons set forth above, the government respectfully requests that the defendant's motions *in limine* be denied. Should the Court require additional information in order to rule on the defendant's motions *in limine* before the start of the trial, the government respectfully requests leave to file a supplement to this response.

Respectfully submitted,

MARKENZY LAPOINTE
UNITED STATES ATTORNEY

By: *s/Aimee C. Jimenez*
Aimee C. Jimenez
Assistant United States Attorney
Court No. A5500795
99 N.E. 4th Street
Miami, Florida 33132-2111
Tel: (305) 961-9028
Fax: (305) 530-7976
Email: aimee.jimenez@usdoj.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 18, 2023, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

s/Aimee Jimenez
Aimee C. Jimenez
Assistant United States Attorney