

**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' REPLY TO DEFENDANT'S RESPONSE
TO THE GOVERNMENT'S RULE 404(B) NOTICE**

The United States of America, through the undersigned Assistant United States Attorney, files this reply to the defendant's response seeking to exclude the evidence set forth in the government's Rule 404(b) notice (DE 77). The government has learned additional facts from J.G. that render the defendant's conduct described in its notice, and further described below, admissible at trial as inextricably intertwined evidence, as well as properly admissible evidence under Rule 404(b).

I. Expected Evidence

As charged in the Superseding Indictment, the evidence will show that the defendant used several companies to fraudulently seek and obtain multiple Paycheck Protection Program ("PPP") loans and multiple Economic Injury Disaster loans ("EIDL"). As explained below, J.G. is a witness who will testify regarding the defendant's companies. During a recent meeting with J.G. to prepare his trial testimony, J.G. provided the government additional facts regarding the positions he held within the defendant's companies. J.G. explained that until March of 2019, J.G. was an officer or "manager" of several of the defendant's corporations, including HM Management and

Development, LLC (“HM Management”), the main corporation that manages the other companies, which other companies exist simply to hold the defendant’s ownership interest in the properties that the defendant owns and develops. Until March of 2019, J.G. was also the listed manager for HM Four, LLC, and as far as he was aware, he was the listed manager on four additional companies. J.G. is expected to testify that once he learned of the defendant’s conduct described in the Rule 404(b) notice, he immediately directed the defendant’s corporate counsel (not counsel in this case) to remove his name from the State of Florida, Division of Corporations (“Sunbiz”) records of the defendant’s companies on which he was the listed manager, and to replace his name with the defendant’s name. According to J.G., he took this step so that the defendant would be unable to misuse J.G.’s name and title as the legal representative of HM Management, and of other companies, on documents and company activity about which J.G. was unaware. J.G. supplied the government a copy of the March 11, 2019 email he wrote to the defendant’s corporate counsel with instructions to remove him as Manager, listing the name of six of the defendant’s corporations, including HM Management and HM Four. HM Management and HM Four are two of the three corporations listed in the Superseding Indictment as having applied for and obtained fraudulent PPP and/or EIDL loans.

J.G. also produced an “engagement letter agreement” that HM Management entered into with a law firm, dated May 2, 2018, for the purpose of having that law firm prepare and file the visa application documents discussed in the government’s Rule 404(b) notice. The engagement letter contains J.G.’s name and purported signature as Manager of HM Management. J.G. explained that he had not hired this law firm for any purpose, that his name and title were used on the engagement letter without his knowledge and permission, and that his signature had been forged on this document in connection with the events involving the visa application discussed in

the Rule 404(b) notice.

J.G. also discussed the *handwriting* style involved in the forgeries of his signature on the three documents: the engagement letter, the letter to the U.S. Embassy in Mexico, and the Notice of Appearance filed with the U.S. Department of Homeland Security (DHS Form G-28). J.G. has known the defendant since they were kids in school together and is familiar with the defendant's handwriting. According to J.G., the forged signature and other writing on the engagement letter reflect the defendant's handwriting, while the forged signature on the other two documents do not reflect the defendant's handwriting. J.G. is expected to testify that the person who signed or forged J.G.'s name on behalf of HM Management on those documents would have done so at the defendant's direction. As to the false information provided on the letter to the U.S. Embassy about the individual being sponsored for a visa, J.G. knows the visa applicant as someone who worked in a marketing-type capacity at the defendant's entertainment/strip club and was not someone who was expected to fill a "full-time" "graphic designer" position at HM Management.

In an effort to streamline this evidence, at trial the government is expected to elicit from J.G. why he was removed as an officer from the defendant's companies after 2018. The government will elicit the circumstances under which J.G. learned that his name had been misused in this way, which occurred when the billing department at a law firm contacted him in 2019 to be paid for services rendered. J.G. would explain that he requested to see the documents, which the law firm then provided him. J.G. would further explain that he then discovered that his name and signature had been used without his permission as the representative of HM Management to hire a law firm for an immigration matter, and to be the sponsor of a visa application (that misrepresented the job of the applicant) that the law firm would be handling. J.G. is expected to testify that he confronted the defendant about it, and that he took action by directing that his name

be removed as an officer or manager from all of the defendant's corporations. The government will seek to introduce into evidence the March 2019 email from J.G. to the defendant's corporate counsel which contains J.G.'s instructions to remove his name as Manager of certain companies from the Sunbiz records.

Finally, J.G. is expected to testify that the defendant's unauthorized use of J.G.'s name, title and signature on the visa documents and engagement letter was not the main reason for J.G.'s departure in 2020, but it was a factor in his decision to take a position elsewhere.

II. Argument

- A. Evidence of the Defendant's use of J.G.'s name, signature and title in connection with the hiring of a law firm and submission of visa application documents, without his permission, is admissible as inextricably intertwined evidence.

In the Eleventh Circuit, evidence is admissible as intrinsic to the offense charged if it is inextricably intertwined or necessary to complete the story:

Evidence of criminal activity other than the charged offense is not considered extrinsic within the proscription of Rule 404(b) of the Federal Rules of Evidence if it is an uncharged offense which arose out of the same transaction or series of transactions as the charged offense, *United States v. Kloock*, 652 F.2d 492, 494 (5th Cir. 1981), if it was inextricably intertwined with the evidence regarding the charged offense, *United States v. Killian*, 639 F.2d 206, 211 (5th Cir. 1981), *cert. denied*, 451 U.S. 1021, 101 S. Ct. 3014, 69 L. Ed. 2d 394 (1981), or if it is necessary to complete the story of the crime of the trial, *United States v. Wilson*, 578 F.2d 67, 72-73 (5th Cir. 1978).

United States v. Weeks, 716 F.2d 830, 832 (11th Cir. 1983); United States v. Edouard, 485 F.3d 1324, 1344 (11th Cir. 2007). Stated somewhat differently, "[e]vidence, not part of the crime charged but pertaining to the chain of events explaining the context, motive and set-up of the crime, is properly admitted if linked in time and circumstances with the charged crime, or forms an integral and natural part of an account of the crime, or is necessary to complete the story of the crime for the jury." United States v. McLean, 138 F.3d 1398, 1403 (11th Cir. 1998); United States

v. Horner, 853 F.3d 1201, 1213 (11th Cir. 2017). Because such evidence is not extrinsic to the offense charged, the Court need not conduct a Rule 404(b) analysis. United States v. Williford, 764 F.3d 1493, 1499 (11th Cir. 1985).

In this case, J.G. worked alongside the defendant for 20 years, until the end of March of 2020. J.G. is expected to testify about the defendant's companies, particularly the companies that applied for the PPP and EIDL loans that are the subject of the Superseding Indictment – HM Management, HM-UP Development Alafaya Trails, LLC (“Alafaya Trails”), and HM Four. J.G. was the listed Manager of HM Management and HM Four until he requested to be removed from those companies in March of 2019.

The PPP loan applications as well as the EIDL applications requested information about the business operations, gross revenues, and number of employees going back to the 2019 calendar year. The defendant's loan applications contained information about his business revenues, number of employees, and names of employees in 2019. J.G. is expected to testify about his role within the defendant's business operations. The reason for J.G.'s decision to be removed as Manager of several companies, particularly HM Management, is inextricably intertwined evidence and completes the story of J.G.'s association with, and departure from, the defendant's companies.

B. The same evidence is admissible under Rule 404(b).

The defendant raises several arguments against the admissibility of this evidence under Rule 404(b). First, as to the government's Notice being “inaccurate” or “misleading,” the government did have incomplete information when it filed the Rule 404(b) notice, which the factual recitation above addresses.¹ As to the argument that J.G. does not claim or believe that the

¹ The defendant complains that the government made disclosures about some of the information it learned from J.G. regarding the forged visa documents by way of an email instead of FBI 302 reports. However, neither the government's emails nor the FBI reports constitute

defendant forged the visa documents, that too is addressed above. The distinction that the defendant relies upon – that the defendant was not the one who held the pen over the paper and wrote out J.G.’s name – is a distinction without a difference. The decision to use J.G.’s name on documents submitted on behalf of HM Management– without his knowledge or consent - was the defendant’s decision, not the decision of his staff. Next, J.G. will testify to having personal knowledge of all of the facts described above. Furthermore, the defendant’s arguments are not persuasive that, on the one hand, the J.G. forgery incident is not sufficiently similar to the crimes charged in this case to be probative, but on the other hand, the evidence is highly prejudicial because it will cause the jury to draw an improper propensity inference - that if the defendant forged before, he forged again. Finally, the defendant is not entitled to an evidentiary hearing so that his counsel can have an extra, pre-trial opportunity to cross examine the government’s witness.

- i. The testimony of J.G. will prove that the defendant committed these acts by a preponderance of the evidence.

J.G. will testify about his job responsibilities at HM Management; about the HM Management engagement letter and other documents that he himself saw, that had been prepared and signed without his knowledge or consent; about confronting the defendant about it; and about taking steps to have his name removed from HM Management and from the other of the defendant’s corporations on which he was listed as an officer. J.G.’s testimony will be based

Jencks material of J.G., and both types of disclosures can be used to impeach the witness if the information provided is impeachment material. Furthermore, the FBI report referenced by the defendant’s counsel does not contradict the government’s 404(b) notice or J.G.’s account. The report notes that, after J.G. spoke with the attorney (and learned what had happened), J.G. “contacted Sheppard to see why his name and his signature were used without his knowledge or permission for the DHS Form-28. [J.G.] said Sheppard became angry at him and yelled at him stating ‘I have to clean up the mess you made!’” The only words quoted in the report were the words that the defendant said to J.G. The FBI report is intended as a summary of the interview; it is not a “statement” of the witness. Defendant’s Response at 3, 9.

entirely on his personal knowledge. The defendant cannot deny that this occurred; that J.G.'s name and signature were used as the company representative on the defendant's own company's documents, without J.G.'s knowledge or consent. The government will prove these facts by and beyond a preponderance of the evidence.

J.G. would also testify that he recognized the defendant's handwriting, and that the defendant himself penned J.G.'s signature and other writings on the engagement letter, without his knowledge or consent. As to the visa documents that contain J.G.'s forged signature, J.G. has always maintained that his name and his signature were used without his knowledge or permission and that his signature was forged. As noted above, the government had not previously delved into the particulars of the *handwriting* of the forgeries. Whether the defendant himself penned J.G.'s name, or whether he directed his staff to sign for J.G. and told his staff, for instance, that J.G. was out of the office and needed the document signed, J.G. has always maintained that the defendant is responsible for the use of J.G.'s name and signature on documents from the defendant's company, HM Management, and that it was done without his knowledge or permission.

The defendant denies that he made any admission about this conduct in the letter he wrote to the law firm in an effort to explain what had happened after J.G. confronted him.² The defendant's letter is a self-serving statement full of transparent excuses: the defendant refers to the engagement letter having been "inadvertently executed by my office" and J.G.'s name "was supposed to be removed," and that "I forwarded the engagement letter without even looking at the

² The defendant's letter to the law firm is not a "facially" privileged communication. The letter is dated March 8, 2019, ten months after the original engagement letter. The letter is an effort to explain away the defendant's inexplicable use of J.G.'s name as the HM Management representative on all of the documents. The defendant refers to the visa applicant as having needed the visa by July 2018, and the only ongoing matter that he references is the outstanding bill that he still needs to pay the firm.

signature so that would ultimately be my inadvertent mistake.” As for the “visa submission,” the defendant’s excuse for the use of J.G.’s name is downright silly. He states, “I personally was not in [t]own as I was on vacation and instructed people by telephone while hiking on a mountain, so obviously a misunderstanding occurred.” The defendant tries to blame his staff: “Their [sic] in no shape or form was any intention or bad faith with the signature mistake, just miss [sic] understanding and careless by office staff.” To be clear, the defendant’s office staff consisted of four people: J.G. (who had worked there for 19 years at that point), the defendant’s office manager/bookkeeper (also a long-time worker for the defendant), the office manager’s daughter, and a part-time worker/ runner who made trips to the bank for deposits (and was also a long-time worker for the defendant). J.G. is expected to testify that, based on his experience working alongside the defendant for 20 years, the defendant’s “staff” does what the defendant tells them to do. No one would replace the defendant’s name with J.G.’s name, as the authorized representative of HM Management, without being told to do so by the defendant himself. J.G. would testify from personal knowledge to an incontrovertible fact: that the three documents – the law firm’s engagement letter, the letter to the U.S. Embassy in Mexico and the Visa Form G-28 – listed J.G.’s name and signature, as the representative of HM Management, without his knowledge or consent.

ii. The forgery incident is highly probative of the defendant’s intent.

In the defendant’s response, he “denies signing any of the alleged forged signatures” in this case. Defendant’s Response at p. 6. That is all the more reason why this conduct should be admitted at trial. The government has a need for this evidence. As the Eleventh Circuit has recognized, a defendant who enters a not guilty plea “makes intent a material issue which imposes a substantial burden on the government to prove intent.” *United States v. Zapata*, 139 F.3d 1355, 1358 (11th Cir. 1998). In this case, the defendant specifically *denies* signing the forged documents

that are the subject of substantive counts. Aside from being inextricably intertwined evidence, this evidence is probative of the defendant's intent. *See Id.* (the government "may prove [intent] by qualifying Rule 404(b) evidence"); *United States v. Barrington*, 648 F. 3d 1178, 1187 (11th Cir. 2011) (in scheme to change students' grades on the university's grading system, co-defendant's testimony of the defendant's prior forgery was "highly probative" of the defendant's intent).

The defendant's letter to the attorney may be a preview of his defense in this case: that he was away hiking on a mountain when his staff falsified and forged his accountant's signature on those tax returns, or that his staff was "careless" and falsified the documents submitted in support of the loan applications that are the subject of this case. The defendant forged – or directed others to sign- J.G.'s signature on the engagement letter and the visa documents, as he forged or directed others to sign documents submitted to support the loan applications in this case. The defendant's prior use of J.G.'s name, title, and signature without J.G.'s knowledge or consent involves similar conduct and the same state of mind that is at issue in this case with the defendant's submission of falsified and forged documents. This evidence should be admitted to prove that the defendant's conduct in this case was intentional; that it was not due to the "carelessness" of his staff. The proposed evidence will bear on the defendant's intent, opportunity, preparation, plan, knowledge, *absence* of mistake and lack of accident, as to the forged and falsified documents in this case.

- iii. The probative value of this evidence is not substantially outweighed by the danger of undue prejudice.

The defendant complains that this evidence is prejudicial. The question for the Court is whether this evidence is *substantially* outweighed by the danger of *undue* prejudice. This evidence involves a single, highly probative incident, close in time to the events in this case. Any danger of undue prejudice can be mitigated by an accompanying instruction from the Court to help the jury put the evidence in its proper context.

iv. The defendant is not entitled to an evidentiary hearing.

The defendant requests an evidentiary hearing. The defendant is not entitled to an evidentiary hearing, the purpose of which will be to have a pre-trial opportunity to cross examine the government's witness. Furthermore, the defendant cites no case law to support this request. The government acquired additional information from J.G., set forth above, which addresses the issues the defendant raised in his response about the forgeries. The government has laid out its evidence in the Rule 404(b) notice and in this Reply, and it has provided the defendant all of the documents the government received relating to this conduct. The defendant's counsel will be able to fully cross examine the government's witness on this subject at trial.

Conclusion

For the reasons set forth above, the government respectfully requests that the Court allow the proposed evidence set forth both in its Notice and in this Reply, as inextricably intertwined evidence, and evidence that is admissible under Fed. R. Evid. 404(b).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 10, 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