UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 23-60173-CR-KMW(s) (GRAHAM)

UNITED STATES OF AMERICA

vs.

CAROLYN DENISE WADE and
TRACY D. WADE,

Defendants.
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UNOPPOSED MOTION IN LIMINE BY THE UNITED STATES

Introduction

The United States of America, by and through its undersigned counsel, in advance of the jury trial as to Defendants Carolyn Denise Wade and Tracy D. Wade ("Defendants"), set to commence on October 7, 2024, hereby moves the Court *in limine*, and without objection from Defendants, as follows:

1. The United States renews its First Motion in Limine, filed on April 2, 2024 (ECF No. 35) (the "First Motion in Limine"), as to both Defendants. On May 9, 2024, the Court entered an Order (ECF No. 58) granting the First Motion in Limine, which Order required Defendant Carolyn Wade to first notify the Court should she wish to refer to or seek to admit any evidence relating to the issues raised in the motion, which were: 1) jury nullification; 2) profits by the victims; and 3) negligence of lenders. This renewed motion seeks an Order applying the Court's prior ruling to both Defendants.

2. The United States moves to preclude the parties from mentioning, referencing, or otherwise suggesting in any way to the jury that this case was previously tried,

including the preclusion of any reference to the following in the presence of the jury: a "first trial"; a "prior trial," a "mistrial," or a "hung jury." Any reference to a witness's prior testimony in this case shall be referred to as testimony in another "proceeding" without mentioning that the "proceeding" was an earlier trial of this case.

Undersigned counsel for the government and counsel for the Defendants have conferred regarding this Motion, and the parties are in agreement as to the relief sought herein.

Procedural History

On September 14, 2023, a grand jury sitting in the Fort Lauderdale Division of this Court (the "Grand Jury") returned an indictment (ECF No. 3) (the "Indictment") charging Defendant Carolyn Wade with one count of wire fraud, in violation of Tile 18, United States Code, Section 1343. In sum, the Indictment alleged that, from May 2021 through August 2021, Carolyn Wade, then employed by the Broward Sheriff's Office (BSO) as a Deputy Sherriff in the Detention Department, participated in a scheme to defraud in which she obtained a loan through the Small Business Administration (SBA)'s Paycheck Protection Program ("PPP") based upon materially false information. Such materially false information allegedly included, among other things, that a sole proprietorship having the business legal name "Carolyn Wade" earned "$113,560" of gross income in 2019.

Carolyn Wade pleaded not guilty and proceeded to a jury trial. The trial commenced on May 13, 2024, in the Miami Division before Senior United States District Judge Donald L. Graham. The case was submitted to the jury on May 20, 2024. On May 21, 2024, the Court declared a mistrial after the jury advised the Court that it was unable to reach a unanimous verdict.

On June 27, 2024, the Grand Jury returned a superseding indictment (ECF No. 88) (the "S1 Indictment"). The S1 Indictment added a new defendant, Tracy Wade (the husband of Carolyn Wade), and the following new charges: conspiracy to commit wire fraud, in violation of Tile 18, United States Code, Section 1349 (as to both Defendants); wire fraud, in violation of Tile 18, United States Code, Section 1343 (a new count as to Tracy Wade); conspiracy to make false statements to the SBA, in violation of Tile 18, United States Code, Section 371 (as to both Defendants); and false statements to the SBA, in violation of Title 15, Untied States Code, Section 645(a) (as to both Defendants).

With respect to the conspiracy to commit wire fraud (Count 1), the S1 Indictment alleged that Carolyn Wade and Tracy Wade agreed with each other, with Haydee Rivero, f/k/a Haydee Granados ("Granados"), and with others, to obtain PPP loans based upon materially false and fraudulent information, including false and fictitious tax documents. The substantive wire fraud counts charged Tracy Wade with causing his own fraudulent PPP loan (Count 2) and charged Tracy Wade and Carolyn Wade with causing Carolyn Wade's fraudulent PPP loan (Count 3). The conspiracy to make false statements to the SBA (Count 4) alleged that Carolyn Wade and Tracy Wade agreed with each other, with Granados, and with others, to make false statements to the SBA in PPP loan applications (using SBA Form 2483-C) and SBA PPP loan forgiveness applications (using SBA Form 3508S). Carolyn Wade and Tracy Wade were each charged individually with three counts of making false statements to the SBA in their respective PPP loan applications and forgiveness applications (Counts 5, 8, and 9 as to Carolyn Wade and Counts 6, 7, and 10 as to Tracy Wade).

Renewal of the First Motion in Limine as to Both Defendants

In connection with the first trial, the government filed the First Motion in Limine on April 2, 2024 (ECF No. 35). The First Motion in Limine sought to preclude Defendant Carolyn Wade from introducing evidence and arguments concerning the following:

1. Any alleged negligence by the victim lenders, their loan processors, or the SBA;
2. Any profit by the above-referenced victims; and
3. Jury nullification, including evidence and argument about the nature of the prosecution, use of federal resources, and the Government's charging decisions.

Defendant Carolyn Wade did not file a response to the First Motion in Limine. On May 9, 2024, the Court entered an Order granting the First Motion in Limine (ECF No. 58). The Order required Defendant Carolyn Wade to first notify the Court should she wish to refer to or seek to admit any evidence relating to the issues raised in the motion.

The government hereby incorporates by reference as though fully set forth herein all the facts, arguments, and authorities in First Motion in Limine (ECF No. 35). For the reasons stated therein, the government respectfully asks the Court to grant the relief requested in the First Motion in Limine for the forthcoming trial as to both Defendants. Defendants do not oppose this request.

Exclusion of References to the First Trial

The United States seeks an Order precluding the parties from mentioning, referencing, or otherwise suggesting in any way to the jury that this case was previously tried, including the preclusion of any reference to the following in the presence of the jury: a "first trial"; a "prior trial," a "mistrial," or a "hung jury." Any reference to a witness's prior testimony in this case shall be referred to as testimony in another "proceeding" without mentioning that the "proceeding" was an earlier trial of this case. Courts routinely grant such requests. *See*, *e.g.*, *United States v. Hicks*, 15-CR-33-A, 2018 WL 1789932, at *2 (granting Government's motion and citing L. Sand, *et al.*, Modern Federal Jury Instructions: Criminal (2016) Instruction 2-13, cmt. (noting that "many jurisdictions proscribe any reference to previous trials, using instead references to 'a prior proceeding'")). Defendants do not oppose this request.

Certificate Pursuant to Local Rule 88.9

Pursuant to Local Rule 88.9, on August 15, 2024, undersigned counsel for the government emailed attorneys Johnny McCray and Daryl Wilcox, who are jointly counsel of record for Defendants, for each Defendant's respective position on the relief requested herein by the government. On August 16, 2024, Mr. McCray advised by reply email that the defense agrees that the evidentiary matters raised in this motion should be precluded from admissibility, and that the parties shall not mention, reference, or suggest these matters.

Conclusion

For the foregoing reasons, the United States respectfully asks the Court to grant the relief requested herein.

Respectfully submitted,

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