UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA, **Case No.23-cr-60173-KMW (Graham)**

Plaintiff,

v.

CAROLYN D. WADE and,
TRACY WADE,

Defendant.
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AMENDED DEFENDANT CAROLYN D. WADE'S MOTION TO DISMISS COUNTS 4, 5, 8 and 9 OF THE SUPERSEDING INDICTMENT FOR VINDICTIVE AND RETALIATORY PROSECUTION AND INCORPORATED MEMORANDUM OF LAW

COMES NOW the Defendant, **CAROLYN D. WADE** (hereinafter Mrs. Wade"), through undersigned counsel, pursuant to the Fifth Amendment of the Due Process Clause of the Fifth Amendment of the United States Constitution, and hereby move this Honorable Court to Dismiss Counts 4, 5, 8 and 9 of the Superseding Indictment because the government's decision to file those charges was motivated by vindictiveness. In support thereof, Ms. Wade states:

Procedural and Factual Background

On September 14, 2023, Ms. Wade was indicted in the Southern District of

Florida one count of wire fraud, in violation of 18 U.S.C. Sec. 1343 (1). (DE# 3). In summary fashion the indictment alleged that Ms. Wade had caused the submission of a materially false and fraudulent application for a Paycheck Protection Program (PPP) loan from the Small Business Association (SBA), and that on June 7, 2021, Ms. Wade use the wires submit the fraudulent PPP loan application.

Ms. Wade was one of seventeen Broward Sheriff Deputies accused of falsifying paperwork to obtain PPP loans or Economic Disaster Loans (EIDL). *See* 17 Broward deputies charged in pandemic loan fraud, South Florida SunSentinel, updated October 12, 2023, https://www.sun-sentinel.com/2023/10/12/multiple-broward-sheriffs-employees-facing-indictments-over-pandemic-relief-fund-misuse/3, Like Ms. Wade, almost all of the other BSO deputies were only charged with wire fraud counts that reflected the number of loans they received.[1] Ms. Wade's jury trial commenced on May 13, 2024. (DE 62).

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[1] Alexandra Acosta, 23-60170-Cr-Scola Initially charged one count of wire fraud, superseding indictment added defendant Vilsaint St. Louis, a conspiracy count and false statement to SBA count

George Anthony, III 23-80168-Cr-Cannon, two counts of wire fraud

Katrina Brown, 23-60169-Cr-Altman, three counts of wire fraud

Rorie Brown, 23-60174-Cr-Williams, two counts of wire fraud

During the trial, the defense filed a motion to dismiss the indictment due to prosecutorial misconduct. (DE 65). Specifically, the defense alleged that the Government, through Assistant United States Attorney David Snider, improperly interfered with two material defense witnesses. The defense intended to call Haydee Granados and, her husband, Eduardo Rivera, to testify as defense witnesses. The defense theory at trial was that Haydee Granados prepared Ms. Wade's PPP loan application and included false information without Ms. Wade's knowledge.

Keshondra Davis, 23-60184-Cr-Altman, one count of wire fraud

Allen Dorvil, 23-60185-Cr-Moore one count of wire fraud

Ritchie Dubuisson-23-60183-Cr-Martinez one count of wire fraud

Keith Dunkley -23-60197-Cr-Dunkley one count of wire fraud

Alexis Greene 23-60182-Cr-Dimitrouleas two counts of wire fraud

Keshondra Davis 23-60172-Cr-Martinez two counts of wire fraud

La'Keitha Lawhorn, 23-60171-Cr-Bloom - three counts of wire fraud

Ancy Morancy, 23-60191-Cr-Bloom -- one count of wire fraud

Derrick Nesbitt, 23-60193-Cr-Bloom -- one count wire fraud

Jean Pierre-Toussant, 23-60189-Cr-Moore -- one count of wire fraud

Marcus Powell, 23-60192-Cr-Gayle -- one count of wire fraud

Stephanie Smith, 23-60203-Cr-Bloom (Cohn) -two counts of wire fraud

Prior to the trial, both Ms. Granados and Mr. Rivera, through their lawyer, indicated that they would testify at the trial. However, the day before Ms. Granados and Mr. Rivera were scheduled to testify, AUSA Snider advised their lawyer they could be charged with assisting Ms. Wade to commit PPP fraud if they testified at the trial.

The Court conducted a hearing evidentiary hearing on the motion to dismiss the indictment. (DE 67). The attorney for Haydee Granados and Edward Rivero testified at the hearing. The Court denied the motion to dismiss for prosecutorial misconduct. (DE 67).

Notably, after the defense filed the motion to dismiss, but before the evidentiary hearing, Mr. Snider approached the undersigned three times requesting him to withdraw the motion to dismiss for government misconduct. Undersigned counsel explained that he would and could not because he believed that there was a factual basis for the motion and that his client was extremely bothered that he had "threatened the prosecutor and put fear in them to prevent them from testifying " for the defense. Undersigned explained that he believed the facts and circumstances, as well as the case law, supported the motion.

Additionally, AUSA Snider approached the defense's legal assistant, Hendrith Smith, in an effort to persuade the defense to withdraw the motion to dismiss. While obviously upset, Mr. Snider stated, that he does not take too lightly ethical attacks against him because he values his ethical responsibilities and reputation.

After the Court denied the motion to dismiss, Mr. Snider, still upset, spoke with Ms. Wade's co-counsel, Mr. Wilcox, and indicated that he was not happy about the defense's motion to dismiss questioning him ethically, as he values him ethical duties. He further indicated the defense should not have filed the motion. In response, Mr. Wilcox stated to Mr. Snider that there was a good faith basis for filing the motion and that the defense team was merely discharging its duty to effectively and zealously represent Ms. Wade.

At the conclusion of all the evidence, closing arguments and the Court's instructions, the jury began their deliberations. (DE 68). The deliberations began in the afternoon of May 20, 2024 and continued on May 21, 2024. During the deliberations, the jury advised the Court on three separate occasions that it was deadlocked. (DE 68) The first two times the Court read the jury the Allen Charge. *See* 11th Circuit Pattern Jury Instructions Criminal Case, T5. The third time the jury advised the Court that it was deadlocked, the Court, over the government's objection, declined to read the Allen charge and declared a mistrial. (DE 68).

After the Court declared the mistrial, undersigned counsel proposed resolving the case by having Ms. Wade return the PPP loan money in exchange for a dismissal. AUSA Snider rejected the proposal and indicated that the government would not drop the case but would refile it unless Ms. Wade pleaded guilty to the original charge and repaid the money. AUSA Snider further indicated that if the government refiled the case, it would charge Ms. Wade with making a false statement to the SBA for each page that she DocuSigned, (SBA) would likely add a defendant or defendants.

On June 27, 2023, the government filed a superseding indictment and just as AUSA Snider threatened, the government charged Ms. Wade with additional charges and added her husband, Tracy Wade as a defendant. Count 1 of the superseding indictment charges Ms. Wade and Tracy Wade with conspiring to commit wire fraud with Haydee Rivero f/k/a Haydee Granados,[2] in

[2] Haydee Rivero f/k/a Haydee Granados is charged separately in an information with one count of conspiracy to defraud the United States in violation of 18 U.S.C. § 371, *United States v. Haydee Rivero f/k/a Haydee Grenado*, case no. 21-60124-Cr-Smith. Undoubtedly, this single charge by way of information is a result of her cooperating as a witness for the government against the Wades.

violation of 18 U.S.C. § 1349. Count 2 charges Tracy Wade singularly with a substantive count of wire fraud, in violation of 1343. This count involves a PPP loan that Mr. Wade obtained from the SBA. Count 3 charges Ms. Wade and Tracy Wade with a substantive count of wire fraud, in violation of 1343. This count is essentially the same as the single count of wire fraud that Ms. Wade was charged with in the original indictment.

Count 4 of the superseding indictment charges Ms. Wade and Tracy Wade with conspiring with Haydee Granados to make a false statement to the SBA, in violation of 18 U.S.C. § 371. Count 5 of the indictment charged Carolyn Wade with making a false statement against the SBA, in violation of 15 U.S.C. § 645(a). The alleged false statement(s) alleged in Count 5 appears to be related to the wire fraud count alleged in the original indictment and count 3 of the superseding indictment.

Counts 6 and 7 of the superseding indictment charges Tracy Wade with separate counts of making false statements to SBA, in violation of 645(a). These counts appear to be related to the loan that is referenced in Count 2 of the superseding indictment.

Count 8 and 9 charges Ms. Wade with separate counts of making false statements to the SBA, in violation of 15 U.S.C. § 645(a). Again, the false statements in these counts appear to be related to the wire fraud count alleged in the original indictment and count 3 of the superseding indictment. Count 10 of the indictment charges Tracy Wade with another count of making a false statement to the SBA. The false statement alleged in Count 10 appears to be related to the loan referenced in Count 2 of the superseding indictment.

Ms. Wade is seeking dismissal of counts 4, 5, 8 and 9 of the indictment because the government's decision to file those charges was motivated by vindictiveness.

ARGUMENT AND MEMORANDUM OF LAW

"Reindictment violates due process whenever a prosecutor adds new charges merely to retaliate against the defendant for exercising statutory or constitutional rights." *United States v. Kendrick*, 682 F.3d 974, 981 (11th Cir. 2012) citing *United States v. Spence*, 719 F.2d 358, 361 (11th Cir.1983). As a general matter, a superseding indictment is potentially vindictive only if it "add[s] additional charges or substitute[s] more severe charges based on the same conduct charged less heavily in the first indictment." *United States v. LaDeau*, 734

F.3d 561, 570 (6th Cir. 2013). Vindictiveness in this context means the desire to punish a person for exercising his rights. *United States v. Barner*, 441 F.3d 1310, 1315 (11th Cir. 2006).

Defendants may challenge the government's charging decisions for actual or presumptive vindictiveness. *United States v. Zakhari*, 85 F.4th 367, 379 (6th Cir. 2023); *See LaDeau*, 734 F.3d at 566. A defendant can show actual vindictiveness by producing objective evidence that a prosecutor acted to punish the defendant for standing on their legal rights. *See LaDeau*, 734 F.3d at 566. However, if a defendant establishes that "(1) the prosecutor has some stake in deterring a defendant's exercise of their rights and (2) the prosecutor's conduct was somehow unreasonable," then the district court may find that there is a "reasonable likelihood of vindictiveness" and may presume an improper vindictive motive. *Id*.

In the instant case, the government filed additional charges against Ms. Wade after Ms. Wade exercised two distinct rights. The first right Ms. Wade exercised was her right to move for a dismissal based on prosecutorial misconduct after the government advised the attorney her defense witnesses that the defense witnesses would likely be prosecuted if they testified at the trial.

(DE 66 and 67). The second right Ms. Wade exercised was objecting to the Court reading to the jury the Allen charge a third time the after the third time the jury advised the Court that they were deadlocked. (DE 69).

After Ms. Wade, through her attorneys, filed the motion to dismiss the indictment due to prosecutorial, AUSA Snider at some approached every member of the Ms. Wade's defense team to express his displeasure about the motion being filed. He expressly asked the undersigned attorney to withdraw the motion. The filing of additional charges against Ms. Wade after the filing of the motion to dismiss is objective evidence that AUSA Snider acted to punish Ms. Wade for exercising a legal right.

After the jury advised the Court for the third time that they were deadlocked, AUSA Snider asked the Court to read the Allen charge for a third time. The defense argued that to send the jury back a third time to deliberate would amount to coercion, especially in light of the body language demonstrated by several members of the jury. As such, the defense cited a fairly recent 11th Circuit Court case[i] which indicated that the trial judge may consider the body language in determining whether an additional Allen charge is warranted. [ii]AUSA Snider had a stake in having the Court to read the Allen charge for the third time.

Additionally, AUSA had a stake in requesting that the motion to dismiss be withdrawn.

AUSA Snider's filing additional charges against Ms. Wade is unreasonable. As stated above, the overwhelming majority of the BSO deputies that were charged with PPP fraud were only charged with wire fraud counts related to the PPP loans they received. Moreover, there was sufficient evidence for the government to charge counts 5, 8, and 9, false statements to the SBA, when the initial indictment was filed. Accordingly, this Cout should find that AUSA Snider's filing of additional charges against Ms. Wade is presumptively vindictive.

Conclusion

Based upon the above facts, arguments and citation of authorities, this Court should dismiss Counts 4, 5, 8 and 9 of the superseding indictment because the government's decision to file those charges was motivated by vindictiveness.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 21, 2024, I electronically filed the foregoing motion/document with the Clerk of the Court using CM/ECF. I also certify that the foregoing motion/document is being serving on all counsel of record via transmission of Notices of

Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Electronic Filing, on this 21st day of August, 2024.

Respectfully Submitted,

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[i] *See Rubinstein v. Yehuda,* 38 F. 4th 982, 996 (11th Cir. 2022) (When considering whether an *Allen* charge was coercive, we are mindful that "[a] district judge, watching the jurors file back into the courtroom and looking them in the eye, can make a better judgment ... than an appellate court reading the cold record)

[ii]