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
TRACE D. WADE,

Defendants.
_______________________________________/

UNITED STATES' NOTICE OF INTENTION TO INTRODUCE EVIDENCE OF OTHER CRIMES, WRONGS, OR ACTS, PURSUANT TO FED. R. EVID. 404(b)(2)

Introduction

The United States of America, by and through its undersigned counsel, hereby provides notice to Defendants Carolyn Denise Wade and Tracy D. Wade (each a "Defendant" and collectively "Defendants") of its intention to introduce evidence of other crimes, wrongs, or acts, pursuant to Rule 404(b)(2) of the Federal Rules of Evidence (FRE) (this "Notice"). Specifically, as identified and described in greater detail herein, the United States seeks to introduce at trial documentary and testimonial evidence related to Small Business Administration ("SBA") loan application numbers 3303453793, created on April 10, 2020, and 3000109849, created on May 7, 2020, each of which sought an Economic Injury Disaster Loan ("EIDL") and advance funds for Wade Funeral Home (collectively, the "Wade Funeral Home EIDL Applications").

The United States provides this Notice to Defendants as an alternative basis to admit evidence related to the Wade Funeral Home EIDL Applications to the extent that such evidence is not otherwise admitted at trial as direct evidence of, or inextricably intertwined with, the offenses charged in the Superseding Indictment. Furthermore, the United States provides this Notice regardless of how it intends to use evidence of the Wade Funeral Home EIDL Applications, *i.e.*, during its case-in-chief as proof of motive, intent, knowledge, absence of mistake or accident, or identity; for impeachment; or for possible rebuttal.

The Offenses Charged in the Superseding Indictment

The Superseding Indictment, filed on June 27, 2024 (ECF No. 88) (the "S1 Indictment"), charges Defendants with one or more of the following offenses: conspiracy to commit wire fraud, in violation of Tile 18, United States Code, Section 1349; wire fraud, in violation of Tile 18, United States Code, Section 1343; conspiracy to make false statements to the SBA, in violation of Tile 18, United States Code, Section 371; and false statements to the SBA, in violation of Title 15, Untied States Code, Section 645(a).

With respect to the conspiracy to commit wire fraud (Count 1), the S1 Indictment alleges that, from May 2021 through August 2021, Defendants agreed with each other, with Haydee Rivero, f/k/a Haydee Granados ("Granados"), and with others, to obtain SBA Paycheck Protection Program ("PPP") loans based upon materially false and fraudulent information, including fictitious tax documents. The substantive wire fraud counts allege that, from May 2021 through August 2021, Defendants devised a scheme and artifice to defraud in which they obtained PPP loans based upon materially false and fraudulent information, including fictitious tax documents. Count 2 charges Tracy Wade with causing the execution of a wire communication in interstate commerce related a fraudulent PPP loan in his name, and Count 3 charges both Defendants with causing the execution of a wire communication in interstate commerce related to a fraudulent PPP loan in Carolyn Wade's name.

The conspiracy to make false statements to the SBA (Count 4) alleges that, from May 2021 through August 2021, Defendants 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). Additionally, Carolyn Wade and Tracy Wade are 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).

The PPP loan applications related to Carolyn Wade and Tracy Wade, which Defendants submitted and caused to be submitted in furtherance of one or more of the offenses alleged in the S1 Indictment, include the following:

1) the PPP loan application created on May 4, 2021, and assigned Womply ID "bdcd28a5-a9d0-4141-ba64-ad5ca515cb8b" (the "Tracy Wade PPP Application");
2) the PPP loan application created on May 4, 2021, and assigned Womply ID "72d63c08-df04-4a1e-a649-c6cf086adfb7" (the "Carolyn Wade PPP Application"); and
3) the PPP loan application created on May 6, 2021, and assigned SmartBiz application number "6781674" (the "Wade Funeral Home PPP Application").

The materially false and fraudulent representations in the Tracy Wade PPP Application, the Carolyn Wade PPP Application, and the Wade Funeral Home PPP Application include, but are not limited to, the following:

- The Tracy Wade PPP Application included three SBA Forms 2483-C (PPP Borrower Application Forms for Schedule C Filers Using Gross Income) signed via DocuSign by Tracy Wade on May 18, 2021, May 19, 2021, and May 27, 2021, respectively. Each SBA Form 2483-C in the Tracy Wade PPP Application falsely represented that a sole proprietorship with the business legal name "Tracy Wade" had gross income of "$112,430" in tax year 2019, and was supported by a fictitious IRS Form Schedule C submitted therewith. The Tracy Wade PPP Application was approved and resulted in the disbursement of $20,833 on June 3, 2021.

- The Carolyn Wade PPP Application included two SBA Forms 2483-C (PPP Borrower Application Forms for Schedule C Filers Using Gross Income) signed via DocuSign by Carolyn Wade on May 18, 2021 and May 28, 2021, respectively. Each SBA Form 2483-C in the Carolyn Wade PPP Application falsely represented that a sole proprietorship with the business legal name "Carolyn Wade" had gross income of "$113,560" in tax year 2019, and was supported by a fictitious IRS Form Schedule C submitted therewith. The Carolyn Wade PPP Application was approved and resulted in the disbursement of $20,833 on June 7, 2021.
- The Wade Funeral Home PPP Application falsely represented, among other things, that, in 2020, Wade Funeral Home had "45" paid employees and gross payroll of "3,368,990.56." The Wade Funeral Home PPP Application was supported by several fictitious documents, including a fake IRS Form 941 purportedly for the first quarter of 2020 and three fake payroll documents. Based on these (and other) false representations, the Wade Funeral Home PPP Application requested a PPP loan in the amount of $701,873. The Wade Funeral Home PPP Application was conditionally approved by SBA on May 6, 2021, but ultimately declined on June 6, 2021.

<u>The Noticed 404(b) Evidence: Wade Funeral Home EIDL Applications</u>

In addition to PPP loans, the SBA was authorized to issue loans and forgivable advance funds through its existing EIDL program for small businesses experiencing temporary loss of revenue due to the COVID-19 pandemic. Eligibility for an EIDL due to the COVID-19 pandemic was based on the business applicant's net profit, that is, the difference between gross revenue and cost of goods sold, for the 12-month prior to January 31, 2020 (the start of the pandemic). The maximum EIDL amount available was $150,000. EIDL advance amounts were based on the business's reported number of employees as of January 1, 2020. The SBA provided $1,000 in EIDL advance funds for each employee on the applicant's payroll, up to the maximum of 10 employees ($10,000).

At trial, the United States intends to offer, pursuant to Rule 404(b) or otherwise, documents and testimony concerning the Wade Funeral Home EIDL Applications. A witness from the SBA will testify about the EIDL program during the COVID-19 pandemic and the content of Wade Funeral Home EIDL Applications received by the SBA. The documents consist of certified records from the SBA concerning the Wade Funeral Home EIDL Applications, all of which the United States produced to Defendants in discovery on July 25, 2024 in an electronic folder named "EIDL (Tracy Wade)." For purposes of this Notice, those records are identified as follows:[1]

No.	Description	Bates Range
1.	SBA certified records related to SBA application number 3303453793 for Wade Funeral Home.	23-60203-CR_006518 to 23-60203-CR_006632
2.	SBA certified records related to SBA application number 3000109849 for Wade Funeral Home.	23-60203-CR_006503 to 23-60203-CR_006517

The SBA's certified records related to the Wade Funeral Home EIDL Applications show that Tracy Wade applied for two EIDL loans for Wade Funeral Home, each of which is described in turn below.

i) Wade Funeral Home EIDL Application No. 3303453793.

On April 10, 2020, Tracy Wade submitted EIDL application number 3303453793 for Wade

[1] The certification accompanying these records pursuant to Fed. R. Evid. 902(11) includes an inventory of each record related to the Wade Funeral Home EIDL Applications that the United States intends to offer pursuant to this Notice. The inventory of the records related to the Wade Funeral Home EIDL application number 3303453793 was produced bearing Bates number 23-60203-CR_006636. The inventory of the records related to the Wade Funeral Home EIDL application number 3000109849 was produced bearing Bates number 23-60203-CR_006634.

Funeral Home (the "4/10 EIDL Application"). The 4/10 EIDL Application represented that Tracy Wade was the 100% owner of Wade Funeral Home and supplied information about the business and about Tracy Wade, including Mr. Wade's name, phone number, email address, social security number, date of birth, and address, among other information. The application represented that, as of January 31, 2020, Wade Funeral Home had "10" employees; that its gross revenues for the prior 12-months was $465 million ("$465,000,000.00"); and that its costs of goods sold for the prior 12-months prior was $175 million ("$175,000,000.00") (Bates no. 23-60173-CR_006578). The 4/10 EIDL Application requested an advance of $10,000 (based on 10 employees) (Bates no. 23-60173-CR_006580). Additionally, the 4/10 EIDL Application represented that no one had assisted Tracy Wade in completing the application, and affirmatively certified under penalty of perjury that all the information contained therein was true and correct (Bates no. 23-60173-CR_006580-81).

The $10,000 advance requested in the 4/10 EIDL Application was approved on May 1, 2020 and disbursed to Tracy Wade the next day, May 2.

On May 28, 2020, Tracy Wade called the SBA to check the status of the loan. The SBA advised him that it was still processing. On August 13, 2020, Tracy Wade called again to check on the status of the loan. The SBA advised him that his email address needed to be updated, which Mr. Wade thereafter corrected.

On August 16, 2020, the SBA noted the following to the assigned Loan Officer ("LO"): "We need to substantiate the 465 million dollars the application is stating this business does. In googling the business it appears as if this is a fairly small operation. LO to request most full copy of the most recent tax return to verify revenues/COGS [cost of goods sold] and ownership." (Bates no. 23-60173-CR_006530).

On August 17, 2020, at approximately 9:25 a.m. ET, Tracy Wade called the SBA to check the status of the loan and was advised that it was still in review. Later that day, at approximately 3:18 p.m., the LO spoke with Tracy Wade, verified Mr. Wade's identity, and informed Mr. Wade that, to avoid decline of the 4/10 EIDL Application, the SBA needed to receive within 24 hours a full copy of the 2019 business tax return that was sent to the IRS. At approximately 4:38 p.m., the SBA received a 2019 business tax return for Wade Funeral Home, which reflected 2019 revenue of $345,359 (not $465 million) and 2019 cost of goods sold of $165,339 (not $175 million). The SBA updated the 4/10 EIDL Application accordingly, and noted that Wade Funeral Home no longer qualified for the maximum available EIDL ($150,000). Instead, based on the revised revenue and cost of good sold reflected in the 2019 tax return, the SBA approved an EIDL for Wade Funeral Home in the amount of $80,100. Tracy Wade signed the note for this EIDL and related documents on August 25, 2020, and the $80,100 loan was disbursed to Mr. Wade on August 27, 2020. A supplemental targeted advance for this loan was approved in the amount of $5,000 on July 2, 2021, and was disbursed to Tracy Wade on July 6, 2021.

ii) Wade Funeral Home EIDL Application No. 3000109849.

On May 7, 2020, Tracy Wade submitted EIDL application number 3000109849 for Wade Funeral Home (the "5/7 EIDL Application"). The 5/7 EIDL Application represented that Tracy Wade was the 100% owner of Wade Funeral Home and supplied information about the business and about Tracy Wade, including Mr. Wade's name, phone number, email address, social security number, date of birth, and address, among other information. The application represented that, as of January 31, 2020, Wade Funeral Home had "5" employees; that its gross revenues for the prior 12-months was $350 million ("$350,000,000.00"); and that its costs of goods sold for the prior 12-months prior was $250 million ("$250,000,000.00") (Bates no. 23-60173-CR_006514). The 5/7

EIDL Application requested an advance of $5,000 (based on 5 employees) (Bates no. 23-60173-CR_006516). Additionally, the 5/7 EIDL Application represented that no one had assisted Tracy Wade in completing the application, and affirmatively certified under penalty of perjury that all the information contained therein was true and correct (Bates no. 23-60173-CR_006516-17). On June 16, 2020, the SBA identified the 5/7 EIDL Application as duplicative of the 4/10 EIDL Application, and no further action was taken.

The Evidence Noticed Herein is Admissible Under Fed. R. Evid. 404(b)(2)

To the extent not otherwise admitted at trial as direct evidence or necessary to complete the story of the charged crimes and/or as inextricably intertwined, the evidence noticed herein is admissible under Rule 404(b)(2). Rule 404(b) provides that "[e]vidence of other crimes, wrongs, or acts" may be admitted "as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident" with respect to the charged offense. F.R.E. 404(b)(2). Importantly, Rule 404(b) is a rule of "inclusion which allows [extrinsic] evidence unless it tends to prove only criminal propensity." *See United States v. Stephens*, 365 F.3d 967, 975 (11th Cir. 2004) (quoting United States v. Cohen, 888 F.2d 770, 776 (11th Cir. 1989) (internal quotations omitted)); *United States v. Jernigan*, 341 F.3d 1273, 1280 (11th Cir. 2003) ("Rule 404(b) is a rule of inclusion, and . . . accordingly 404(b) evidence, like other relevant evidence, should not be lightly excluded when it is central to the prosecution's case."). Rule 404(b) evidence is not limited to criminal convictions, but can consist of uncharged crimes, wrongs, or other acts.

A district court wields considerable discretion in deciding whether to admit other crimes, wrongs, or other acts evidence under Rule 404(b). *United States v. Hicks*, 798 F.2d 446, 451 (11th Cir. 1986). The test for admissibility of Rule 404(b) evidence is as follows: (1) the evidence must be relevant to an issue other than the defendant's character; (2) the act must be established by sufficient proof to permit a jury finding that the defendant committed the extrinsic act; and (3) the probative value of the evidence must not be substantially outweighed by its undue prejudice under Rule 403. *United States v. Miller*, 959 F.2d 1535, 1538 (11th Cir. 1992) (en banc); *see also United States v. Mills*, 138 F.3d 928 (11th Cir. 1998). The evidence relating to the Wade Funeral Home EIDL Applications, noticed herein, satisfies all three prongs.

i) The evidence is relevant to an issue other than a Defendant's character.

The Wade Funeral Home Applications are relevant as proof of motive, intent, knowledge, absence of mistake or accident, and identity with respect to the charged offenses.

As to motive and intent, the Wade Funeral Home EIDL Applications show that Tracy Wade was motived, and intended, to obtain pandemic assistance from the SBA that he was not entitled to receive. Almost immediately after SBA became authorized to provide economic assistance in response to the pandemic, Tracy Wade started applying for SBA loans based on materially false information. On April 10, 2020, Tracy Wade submitted his first EIDL application for Wade Funeral Home (the 4/10 EIDL Application), which inflated the business's 2019 revenue and expenses by hundreds of millions of dollars. Less than a month later, on May 7, 2020, and while 4/10 EIDL Application was still pending, Tracy Wade submitted his second EIDL application for Wade Funeral Home (the 5/7 EIDL Application), which likewise inflated the business's 2019 revenue and expenses by hundreds of millions of dollars. Thereafter, Tracy Wade called the SBA at least three times (on May 28, August 13, and August 17, 2020) to check the status of his pending applications. Evidence of these prior acts is admissible under 404(b) to show that, with respect to the charged offenses in the S1 Indictment, Tracy Wade had the motive and requisite intent when he later submitted, or caused the submission of: 1) the Tracy Wade PPP Application (which falsely represented "$112,430" in 2019 gross revenue for a sole proprietorship that did not exist); 2) the

Carolyn Wade PPP Application (which falsely represented "$113,560" for a sole proprietorship that did not exist); and 3) the Wade Funeral Home PPP Application (which falsely represented that, for the year 2020, the business had 45 employees and $3 million in payroll).

As to knowledge and absence of mistake or accident, the Wade Funeral Home EIDL Applications are admissible to show: 1) Tracy Wade knew that Wade Funeral Home did not have "45" employees nor "$3,368,990.56" in payroll; and 2) this false representation in the Wade Funeral Home PPP Application was not a mistake or accident. With respect to the inflated number of employees, the EIDL records demonstrate Tracy Wade's knowledge because, in the 4/10 and 5/7 EIDL Applications, he certified under penalty of perjury that Wade Funeral Home had "10" employees and "5" employees, respectively. With respect to the inflated payroll, the EIDL records demonstrate Tracy Wade's knowledge because, in response to the SBA asking him to validate the $175 million in costs of goods sold he represented in the 4/10 EIDL Application, Tracy Wade supplied a 2019 business tax return showing that Wade Funeral Home's *total* expenses *before* the pandemic was only $165,339.[2]

Furthermore, Tracy Wade's prior acts of inflating Wade Funeral Home's revenue and expenses is admissible proof that the subsequent inflation of revenue and expenses alleged in the charged offenses (that is, in the Tracy Wade, Carolyn Wade, and Wade Funeral Home PPP Applications) was not a mistake or accident. Such 404(b) evidence serves as proof that inflating business revenue and expenses was the modus operandi used by Defendants in the charged offenses to obtain pandemic assistance that they were not entitled to receive. It also establishes Tracy Wade's familiarity with applying for pandemic assistance through the SBA. That is, Tracy Wade certified under penalty of perjury that he completed both the 4/10 EIDL Application and the

[2] The 2019 and 2020 tax returns for Wade Funeral Home are admissible as direct evidence that Wade Funeral Home did not have $3 million in payroll in 2020.

5/7 EIDL Application without third-party assistance, and the records of his phone calls with the SBA inquiring about the Wade Funeral Home EIDL Applications further corroborate that Tracy Wade was directly involved in the application processes. Having twice applied for pandemic assistance through the EIDL program before seeking PPP loans, and inflating business revenue and expenses in each prior instance, such evidence is admissible under 404(b) to establish that Tracy Wade did not accidently or mistakenly inflate the revenue and expenses in the PPP applications alleged in the S1 Indictment.

Finally, as to identity, the 404(b) evidence is also admissible to prove that Tracy Wade was one of the persons who committed the charged offenses. As noted above, both the 4/10 and 5/7 EIDL Applications contained Tracy Wade's personally identifiable information (*e.g.*, his date of birth, social security number, and address). These documents also contained certifications, under penalty of perjury, that Tracy Wade was the 100% owner of Wade Funeral Home, and that he completed both the 4/10 EIDL Application and the 5/7 EIDL Applications without third-party assistance. The EIDL records show that Tracy Wade called the SBA multiple times to inquire about his pending EIDL loans, and that the SBA verified his identity during the call. Because this evidence clearly shows that Tracy Wade acted on behalf of Wade Funeral Home to seek pandemic assistance from the SBA through the EIDL program, such evidence is admissible under 404(b) to prove Tracy Wade's identity with respect to the charged offenses.

ii) Sufficient proof exists to permit a jury to find that Tracy Wade committed the extrinsic acts.

Under this second prong, the government must prove by a preponderance of the evidence that the extrinsic act occurred. *United States v. Lamb*, 831 F. App'x 938, 940 (11th Cir. 2020). The facts proffered herein are sufficient to meet this burden. To summarize: 1) the Wade Funeral Home EIDL Applications contained Tracy Wade's personally identifiable information; 2) Tracy

Wade certified under penalty of perjury that no one assisted him in completing the Wade Funeral Home EIDL Applications; 3) the SBA records reflect that the SBA verified Tracy Wade's identity when he called to the check the status of his loans; and 4) the proceeds of the $80,100 EIDL loan for Wade Funeral Home were deposited into a checking account controlled by Tracy Wade. Accordingly, the government can prove by a preponderance of the evidence that Tracy Wade committed the extrinsic acts.

iii) The probative value of the evidence is not substantially outweighed by undue prejudice under Rule 403.

The third prong of the Rule 404(b) test consists of balancing, under Rule 403, the probative value of the evidence against its prejudicial effect, and requires the court to conduct the Rule 403 inquiry based "upon the circumstances of the extrinsic offense." *Lamb*, 831 F. App'x at 940 (quoting *United States v. Ramirez*, 426 F.3d 1344, 1354 (11th Cir. 2005)). The court must view the disputed evidence in the light most favorable to admission, maximizing the probative value of the evidence and minimizing the prejudicial impact of the evidence. *Id.* (citing *United States v. Elkins*, 885 F.2d 775, 784 (11th Cir. 1989)).

The probative value of the evidenced noticed herein is not substantially outweighed by undue prejudice under Rule 403. As explained in detail above, evidence related to the Wade Funeral Home EIDL Applications is highly probative for the purposes for which the United States seeks its admission (*i.e.*, to show motive, intent, knowledge, absence of mistake or accident, and/or identity with respect to the charged offenses). To summarize, the evidence shows that Tracy Wade was motivated and intended to obtain pandemic relief assistance he was not entitled to receive based on inflated business revenue and expenses; he knew that the 4/10 and 5/7 EIDL Applications contained representations about Wade Funeral Home's employees and payroll that were far less than the number of employees and payroll later represented in the Wade Funeral Home PPP

Application; he was familiar with the SBA's application processes for pandemic assistance; and Tracy Wade was the person who, on his own, twice applied for EIDL pandemic assistance for Wade Funeral Home. As the Eleventh Circuit has explained, "[a] similarity between the other act and a charged offense will make the other offense highly probative with regard to a defendant's intent in the charged offense." *United States v. Ramirez*, 426 F.3d 1344, 1354 (11th Cir. 2005).

Finally, relevant evidence in inherently prejudicial, which is why Rule 403 concerns "unfair" prejudice. The Eleventh Circuit has explained that "[u]nfair prejudice cannot be simplistically defined as evidence having adverse effects on a party's case; rather it is an undue tendency to suggest [a] decision on an improper basis, commonly, though not necessarily, an emotional one." *Cauchon v. United States*, 824 F.2d 908, 914 (11th Cir. 1987). Under this standard, the Wade Funeral Home EIDL Applications do not create "unfair" or "undue" prejudice, much less unfair or undue prejudice that substantially outweighs the highly probative value of this evidence.

<u>Similar EIDL Evidence Was Admitted Under FRE 404(b) in a Similar Criminal Trial</u>

In March 2024, another former BSO Deputy Sheriff, Stephanie Smith, proceeded to trial in a similar case in which she was charged with two counts of wire fraud in connection with obtaining PPP loans based on materially false information. *See United States v. Stephanie Smith*, Case No. 23-60203-CR-BB (COHN) (S.D. Fla.). In a notice filed in that case on January 26, 2024 pursuant to Rule 404(b)(2) (ECF No. 26), the government asserted that defendant's prior, uncharged conducted related to an EIDL application was admissible evidence of defendant's motive, intent, knowledge, lack of mistake or accident, and identity with respect to the charged offenses relating to defendant's fraudulent PPP applications. Judge Cohn agreed. In a written Order dated February 16, 2024, Judge Cohn ruled that the EIDL evidence was admissible under

Rule 404(b)(2), finding that "the EIDL evidence bears strongly on the Defendant's motive, intent, knowledge, identity, and absence of mistake with respect to the charged scheme to defraud," and that "[t]he probative value of this evidence is not substantially outweighed by the prejudicial effect." (Docket 23-CR-60203, ECF No. 58, at 2-3).

Conclusion

As set forth in this Notice, the United States submits that the evidence identified herein related to the Wade Funeral Home EIDL Applications is, to the extent not otherwise admitted, admissible pursuant to FRE 404(b)(2) as prior uncharged crimes, wrongs, and acts relevant to prove motive, intent, knowledge, absence of mistake or accident, and/or identity with respect to the offenses charged in the S1 Indictment.

Respectfully submitted,

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