UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 23-60173-CR-WILLIAMS

UNITED STATES OF AMERICA

Plaintiff,

v.

CAROLYN DENISE WADE and
TRACY D. WADE,

Defendant,
______________________________/

DEFENDANT TRACY WADE'S RESPONSE IN OPPOSTION TO THE GOVERNMENT'S NOTICE OF INTENT TO INTRODUCE EVIDENCE OF OTHER CRIMES, WRONGS, OR ACTS PURSUANT TO FED. R. EVID. 404(b)(2)

Defendant Tracy Wade, through counsel, files his response in opposition to the Government's Notice of Intent to Introduce Evidence of Oher Crimes, Wrongs or Acts pursuant to Federal R. Evid. 404(b)(2) (DE 135). In support thereof, Mr. Wade states:

Background

Mr. Wade and his wife, Caroly Wade, are charged by way of superseding indictment with several offenses related to fraudulently acquiring Paycheck Protection Program (PPP) loans from the Small Business Administration (SBA). In count 1, Mr. Wade and Ms. Wade are charged with conspiracy to commit wire fraud, in violation of 18 U.S.C.§ 1349 from May 2021 to August 2021. Count 1 also names Haydee Rivero f/k/a Hayde Granados as an uncharged coconspirator who created and prepared false documents to be submitted with PPP loan applications.

The superseding indictment also charges Mr. Wade and Ms. Wade with substantive wire fraud counts for allegedly obtaining PPP loans by means of fraudulent representation, in violation of 18 U.S.C. § 1343; conspiracy to make false statements to the SBA, in violation of 18 U.S.C. §371; and substantive counts of making false statements to the SBA in violation of 15 U.S.C. § 645(a). Haydee Rivero f/k/a Hayde Granados is also named as a co-conspirator in the conspiracy to make false statements to the SBA count.

The government seeks to introduce evidence that Mr. Wade applied for two Economic Injury Disaster Loans (EIDL) for his funeral home. Neither of these loans are referenced in the superseding indictment.

The government alleges that in an EIDL submitted on April 10, 2020, Mr. Wade represented that the funeral home's gross revenue for the prior 12 months was $465,000,000 and the cost of goods sold was $175,000,000. However, when questioned by an SBA loan officer, Mr. Wade provided a full copy of his business tax return which reflected a correct gross revenue amount of $345,359 and a correct cost of goods amount of $165,339. As a result, Mr. Wade received a loan in the amount of $80,100 loan. The government does not allege that Mr. Wade was not entitled to receive the $80,100 EIDL loan from SBA.

In the second EIDL loan submitted on May 7, 2020, Mr. Wade allegedly represented that the funeral home's gross revenue for the prior 12 months was $350,000,000. After the SBA identified the application was duplicative, no further action was taken by the SBA.

The government seeks to introduce evidence of the EIDL loan applications under Fed. R. Evid. 404(b)(2). Mr. Wade seeks to exclude evidence of the EIDL applications and submits that the evidence of the EIDL loan applications is not probative of any issue other than Mr. Wade's character, which is prohibited under Fed. R. Evid. 404(a)(1). Additionally, Mr. Wade submits that the evidence of the EIDL applications is excludable under Fed. R. Evid 403 because the probative value of the evidence substantially outweighed by unfair prejudice and confusion of the issues.

Argument and Memorandum of Law

Under Fed. R. Evid. 404(b)(1), evidence of a person's character is not admissible to prove that a person acted in accordance with that character on a particular occasion. Under Fed. R. Evid 403, the Court may exclude relevant evidence if its probative value is substantially outweighed by a danger of unfair prejudice, confusing the issues or misleading the jury. Because the evidence of the EIDL loans is inadmissible under Rule 404(b)(1) and excludable under Rule 403, the Court should preclude the government from introducing the evidence at trial.

The inflated gross revenue amounts that were represented in the EIDL applications most likely resulted from a mistake by Mr. Wade or caused by the software guiding the online application process. When asked by an SBA loan officer Mr. Wade produced a tax return reflecting the true gross income amount and the true cost of goods amount. In addition, Mr. Wade provided SBA with a duly executed IRS Form 4506-T Request for Transcript of Tax Return enabling SBA to obtain tax records for the applicant directly from the IRS. It does not stand to reason that Mr. Wade would provide SBA with an accurate tax return if his intent to was to deceive the SBA.

Additionally, as the government is aware, the theory of defense is that Haydee Rivero f/k/a Haydee Rivero included fraudulent information on the PPP loan application without the knowledge of Mr. and Ms. Wade. The PPP loan application process and the EIDL application process are different. Mr. Wade's applying for an EIDL does not suggest that Mr. Wade was familiar with the PPP loan application process. *See United States v. Chaveaz,* 204 F.3d 1305 (11th Cir. 2000) (error to admit evidence of similar conduct that bore no relationship to defendant's defense).

Finally, the superseding indictment does not contain any allegations of wrongdoing with respect to the EIDL loans. The jury is likely to be confused if the government is allowed to introduce evidence that Mr. Wade applied for an EIDL loan and argue to the jury that he intentionally attempted to deceive the SBA in the EIDL application process, when the government's entire case against the Wades relates to Mr. and Mrs. Wade's conduct in the PPP loan application process.

Conclusion

Based on the foregoing facts, arguments and citations to authorities, Mr. Wade respectfully requests that the Court exclude the evidence that the government seeks to admit pursuant to Fed. R. Evid. 404(b)(2)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing pleading was electronically filed with the Clerk of the Court via CM/ECF. I also certify that the foregoing pleading was served electronically on this date on all counsel of record via Notice of Electronic Filing generated by CM/ECF on September 24, 2024.

Respectfully Submitted,

/s/ Daryl E. Wilcox.
Daryl E. Wilcox, Esquire
Florida Bar No.838845
5201 S.W. 18th Street
Plantation, Florida 33317
Phone: (954) 303-1457
darylewilcox06@gmail.com

/s/ Johnny L. McCray
Johnny L. McCray, Jr., Esq.
Florida Bar Number 342319
Law Office of Johnny L. McCray, Jr., P.A.
400 East Atlantic Boulevard
Pompano Beach, FL 33060
Phone: (954) 781-3662
mccrayjlaw@gmail.com

Attorneys for the Defendants

Cc: Carolyn D. Wade
Tracy D. Wade