

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 23-60173-CR-GRAHAM

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SEPTEMBER 23, 2024

MIAMI, FLORIDA

TRACY D. WADE and

CAROLINE D. WADE,

Defendant.

PAGES 1-10

TRANSCRIPT OF **TELEPHONIC** MOTION HEARING
BEFORE THE HONORABLE DONALD GRAHAM
UNITED STATES SENIOR DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:

DAVID SNYDER, AUSA
ADAM LOVE, AUSA
Office of U.S. Attorney
Miami, Florida 33132

FOR THE DEFENDANTS:

JOHNNY LEONARD McCRAY, JR.
DARYL WILCOX, ESQ.
Miami, Florida 33130

Reported By:

Diane Miller, RMR, CRR, CRC
Official Court Reporter
United States District Court
Southern District of Florida
diane_miller@flsd.uscourts.gov

Monday, September 23, 2024.

P-R-O-C-E-E-D-I-N-G-S

THE COURT: Good afternoon, Counsel.

May I have the deputy call the case, please.

THE COURTROOM DEPUTY: Calling case United States of America versus Tracy D. Wade, case number 23-CR-60173.

THE COURT: Carolyn Wade and Tracy Wade, it's 23-CR-60173.

State your appearances, please, Counsel.

MR. SNYDER: Good afternoon, Your Honor. This is Assistant U.S. Attorney David Snyder on behalf of the United States; and I also have, for the Government, Assistant U.S. Attorney Adam Love.

THE COURT: Good afternoon.

DEFENSE COUNSEL: Good afternoon; Judge, Johnny McCrae on behalf of the Wades.

MR. WILCOX: Good afternoon; Your Honor, Daryl Wilcox also on behalf of the Wades.

THE COURT: Good afternoon all.

So, Counsel, I asked you on short notice to appear telephonically today because there is a matter that was filed late last -- I believe it was filed -- I saw it for the first time on Friday and fully reviewed it today. I generally like to issue written orders because time is of the essence. I felt it important to let you know my decision on this matter today.

The motion to continue is docketed as docket entry

Monday, September 23, 2024.

1 153. The Court is denying the relief requested, and I'm going
2 to explain in detail why.

3 The Defense indicated that the issues raised were
4 complex and novel issues of law. I do not find the case
5 complex nor novel issues of law.

6 Ms. Carolyn Wade's case was tried previously. It
7 was -- it was a five-day trial period in that case.
8 Codefendant Mr. Wade testified, and I don't recall anything
9 novel or complex.

10 I am reminded, however, that repeatedly in defense
11 motions, there is a reference to the Court giving an *Allen*
12 charge. I command you to look at the Eleventh Circuit pattern
13 instruction and the case law. The Court never gave an *Allen*
14 charge, so I don't know why the Defense continues to state
15 that.

16 The fact of the matter is, the Defense requested that
17 I not give an *Allen* charge and cited some cases that I
18 concurred with the argument of Defense and did not give the
19 *Allen* charge. So please, keep our record clear, and not refer
20 to the Court having give an *Allen* charge in the prior case.

21 In any event, I would like to recount what has
22 occurred in this case. On July 30th, a status conference was
23 scheduled, neither Defense Counsel appeared. The Court issued
24 an order [unintelligible due to background noise] for failure
25 of the Defense to attend. And generally, the response was

1 inadvertent not calendaring properly, et cetera. As a result
2 of the response to the order to show cause, the Court chose to
3 issue no sanction.

4 However, at the July 30th hearing, the case was
5 specially set for October 7th, and the Court indicated that
6 there would be no extensions given the calendar; and as a
7 matter of fact, a courtesy copy of the 7/30 status conference
8 was sent to the Defense Counsel, and the Court further directed
9 Mr. Snyder, Counsel for the Government, to convey what was
10 discussed at the status conference, as I stated was conducted
11 on July 30th.

12 At the July 30th status conference, the Court was
13 advised by the Government that it thought the case -- this case
14 would take about six days, that the Government had five or
15 fewer witnesses than -- additional witnesses than the original
16 case.

17 The Court announced that the case would start on
18 October 7th; we would not be in session on October 11th; we
19 would not be in session on October 14th, which is a federal
20 holiday; so accordingly, we would be in trial the 7th through
21 the 10th of October, the 15th, the 16th, and possibly the 17th.

22 I announced that I had a specially set case for
23 October 21st and that I would definitely like to get this
24 matter resolved during the time period scheduled.

25 As the parties know, this is one of the busiest trial

1 districts in the country, not the Eleventh Circuit but in the
2 United States.

3 I conferred with Judge Williams, and she cannot get
4 to this case as the request for extension is made. She has a
5 very, very heavy docket, and I'm assisting her by trying to get
6 this matter resolved.

7 We had a second telephonic conference on
8 October 12th. All Counsel were present for that -- August
9 12th. All Counsel were present for the August 12th telephonic
10 conference. There were no objections to the date announced, no
11 extensions. Everybody knew that this was about 60 days out and
12 that we were going to go as [unintelligible due to background
13 noise]. So frankly, to get a Defense motion to continue, which
14 is about ten trial days out from October 7th, is a little
15 frankly disappointing.

16 You know, you think about the courtesy of the issue.
17 There is a lot that goes on in trying to get a case set for
18 trial. The Government has to get it's witnesses; as a senior
19 judge, I don't have an assigned court reporter, so I have to
20 make a request and get that scheduled. I have to make a
21 request for a courtroom deputy and get that scheduled. The
22 jury section has to be contacted. I imagine that this case is
23 similar to the first one, the Government has out-of-town
24 witnesses who have to make travel plans, et cetera.

25 As I said, there is just quite a bit involved, and I

1 simply don't have the trial days to try the case other than as
2 scheduled. So for the reasons stated, the motion is denied and
3 we will be proceeding on October 7th. We will be in session
4 four days to try to insure that I can get this case completed
5 before the next case on my docket, and so I'm sorry I'm unable
6 to accommodate you.

7 I have done everything possible to try to get this
8 matter tried as scheduled to keep the Defense counsel and the
9 Government counsel informed of the dates. I've done that
10 repeatedly, and I don't have any alternative.

11 I did check with the magistrate judge who is handling
12 the motions that were filed by the Defense. Judge Hunt, I was
13 advised, is handling the matter personally and has scheduled a
14 hearing for this Thursday.

15 I don't know if Counsel had gotten an order on that
16 as of yet; but just 30 minutes or so ago, we were advised that
17 he will be conducting a hearing and he will have an order
18 issued prior to our calendar call which is the following
19 Tuesday, I believe.

20 So that's where we are, and I look forward to seeing
21 you all at the calendar call and next hearing.

22 There is one matter that's pending that I have not
23 resolved. The Government filed a motion to introduce evidence
24 of other crimes, laws, or acts pursuant to Federal Rule of
25 Evidence 404(b).

1 I guess the question I should ask is whether this
2 motion is timely. It was filed as docket entry 135 on
3 August 22nd. So in accordance with the federal rules which I
4 think just simply state that you have to give reasonable
5 notice, but I know our local rules have certain dates for
6 discovering 404(b) evidence. So I don't know if a motion is
7 the first indication of whether Defense was advised previously
8 what the status is in that regard.

9 Mr. Snyder.

10 MR. SNYDER: Yes, Your Honor, I can speak to that.

11 So the evidence that the Government put in its notice
12 was evidence that the Government had produced in the ordinary
13 course of discovery to defendant, when it produced discovery
14 for the superseding indictment.

15 THE COURT: All right. That answers my question. So
16 if that's the case, then it is timely.

17 MR. SNYDER: Yes.

18 From the Government's perspective, we did not view it
19 as a motion so much as a notice under Rule 404(b) that evidence
20 that we had previously produced, we were going to seek to
21 introduce under 404(b).

22 THE COURT: It doesn't have to be a motion, just
23 timely notice of the 404(b) information. And so that you
24 notify them timely and it sounds like that precedes the 8/22
25 filing, then that would be a timely notice.

1 MR. SNYDER: Yes.

2 THE COURT: So I'll take a look at that and -- how is
3 it that the Defense intends -- or the Government, I'm sorry,
4 intends to introduce the 404(b).? Is it your case in chief
5 or --

6 MR. SNYDER: Yes. We intend to call a witness from
7 the Small Business Administration who is with the Economic
8 Injury Disaster Loan Program, and that witness will seek to
9 introduce these records relating to idle loan that Mr. Wade had
10 submitted prior to submission of PPP loans that are charged in
11 the superseding indictment, and that witness will provide
12 testimony, as outlined in the 404(b) notice testimony, about
13 the idle program and the SBA's receipt of those applications
14 and what actions it took.

15 THE COURT: All right. All right. I'll have to take
16 a closer look at that.

17 Defense, do you intend to respond because
18 *[unintelligible due to background noise]*, if it is your desire
19 to respond to the -- to the original notice that was given in
20 discovery and on the motion that was filed naturally listed as
21 a notice. It is not listed as a motion that it is in effect
22 *[unintelligible due to background noise]*.

23 Do you intend to respond to the notice or would you
24 like to do that at this time or what is your position?

25 DEFENSE COUNSEL: Your Honor, our response is end of

1 business tomorrow.

2 THE COURT: All right, I appreciate that very much.

3 All right. Is there anything else we need to discuss
4 before Tuesday's calendar call?

5 DEFENSE COUNSEL: Nothing from the Defense, Judge.

6 THE COURT: All right.

7 All right, Counsel. Thank you all very much.

8 MR. SNYDER: I have a question, Judge -- David
9 Snyder. If the Defense is going to respond to the 404(b)
10 notice tomorrow, is the Court going to permit the Government to
11 reply, if necessary, or will it just take up the matter and --

12 THE COURT: When would you like it -- like the reply;
13 by Friday at 5:00 o'clock?

14 MR. SNYDER: What's tomorrow?

15 Yeah, to the extent that we need to reply.

16 THE COURT: I mean, let's make it Friday at
17 1:00 o'clock, all right, so that I'll have time to take a look at
18 that before the weekend, and we will be prepared to let you
19 know what we will be doing in this regard.

20 All right. Thank you all very much. Have a good
21 afternoon.

22 MR. SNYDER: Thank you, Judge.

23 THE COURT: Good day, everyone.

24 (PROCEEDINGS ADJOURNED AT 2:53 p.m.)
25

C-E-R-T-I-F-I-C-A-T-E

I hereby certify that the foregoing is
an accurate transcription and proceedings in the
above-entitled matter.

4/24/2025

DATE

/s/DIANE MILLER

DIANE MILLER, RMR, CRR, CRC
Official Court Reporter
United States District Court

Monday, September 23, 2024.