

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN
AND FOR PALM BEACH COUNTY, FLORIDA

Case No. 502009CA040800XXXXMB

JEFFREY EPSTEIN,

Plaintiff,

vs.

SCOTT ROTHSTEIN, individually,
BRADLEY EDWARDS, individually,

Defendants/Counter-Plaintiffs.

TRANSCRIPT OF PROCEEDINGS

VOLUME I

DATE TAKEN: Tuesday, October 3rd, 2017
TIME: 10:01 a.m. - 4:43 p.m.
PLACE 205 N. Dixie Highway, Room 10C
West Palm Beach, Florida
BEFORE: Donald Hafele, Presiding Judge

This cause came on to be heard at the time and place
aforesaid, when and where the following proceedings were
reported by:

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1 THE COURT: We have various motions on
2 the Edwards counterclaim that was brought
3 against Mr. Epstein relative to the
4 remaining count of malicious prosecution.

5 I have read as much as the materials
6 that someone can sit down and read for the
7 better part of five or six hours. I tried
8 to highlight as many of the provisions as I
9 thought were appropriate as possible.

10 Mr. Goldberger, I see that you are
11 here. I have not yet seen a motion to stay.

12 MR. GOLDBERGER: It's here, Your Honor.
13 It's ready to go. I am going to file it
14 today. I am going to file it this morning.
15 I will give a courtesy copy to all counsel
16 and for the court as we speak.

17 THE COURT: What I was going to say --
18 Mr. Goldberger and Mr. Scarola, if I could
19 be heard on the subject is this. The motion
20 to stay, which you essentially explained the
21 purpose behind it -- at least as to most of
22 the motions that are scheduled for today --
23 is not really germane to those issues as far
24 as the Court is concerned.

25 There may be some peripheral relevance

1 in that respect. But as far as my review of
2 the materials are concerned, it really
3 doesn't apply here today that I can really
4 see.

5 So I don't know if you want to deal
6 with that issue first.

7 MR. GOLDBERGER: I agree with the Court
8 in large part that the motion to stay does
9 not necessarily impact some of the matters
10 here today, other than the motions in
11 limine, Your Honor.

12 Mr. Scarola and his team of lawyers are
13 trying everything they can to inject into
14 your case criminal investigations of
15 Mr. Epstein, civil lawsuits that have been
16 settled, all of which, if Your Honor is the
17 gatekeeper, allows those matters to come
18 into evidence, would very much impact our
19 motion to stay because he wants to go -- he
20 wants to dive headfirst into matters that
21 are a subject of the non-prosecution
22 agreement and other possible prosecutions of
23 Mr. Epstein.

24 So I do agree with the Court that many
25 of the matters can be heard today. But

1 anything that approaches or touches on
2 evidentiary matters as to what the Court may
3 allow into evidence on their cause of action
4 for malicious prosecution alleging that
5 Mr. Epstein did not have probable cause to
6 file a lawsuit against Mr. Edwards.

7 If they want to go on this fishing
8 expedition and put in front of the jury all
9 kinds of matters totally unrelated to the
10 cause of action, then, yes, the motion to
11 stay does need to be heard.

12 THE COURT: Thank you.

13 Mr. Scarola.

14 MR. SCAROLA: Your Honor, Jack Scarola,
15 David Vitale from Searcy, Denney, Scarola,
16 Barnhart and Shipley; and Mr. Phil
17 Burlington of Burlington and Rothenbach, on
18 behalf of Mr. Edwards in this matter.

19 As has been acknowledged, we have not
20 yet seen a motion to stay. It has not been
21 filed. It's hard for me to see how it could
22 possibly have any merit. But you and I are
23 both speculating in that regard, since we
24 have not seen a motion.

25 In light of the fact that the Court set

1 a deadline for filing motions in this
2 matter, and that deadline has long passed, I
3 suggest that we should proceed with
4 everything that is scheduled to be heard as
5 if no motion to stay existed, because no
6 motion to stay exists.

7 So we are ready to proceed.

8 THE COURT: That's fine. I think that,
9 again, without the filing for the motion to
10 stay and the terms and conditions of the
11 motion, as well as what the ultimate request
12 for relief may be, is unknown at this
13 juncture.

14 However, at the same time, there will
15 be arguments that are made relative to
16 motions in limine, that while they may touch
17 on what would be formally filed as a motion
18 to stay, maybe -- that being the
19 arguments -- relevant to the Court's
20 consideration of those specific items,
21 irrespective of the motion to stay, meaning,
22 for example, there's been some reference to
23 Mr. Epstein as a, quote, serial child
24 molester, end quote. That can be discussed,
25 in my respectful view, outside of a formal

1 motion to stay.

2 The one thing that I do want -- and I'm
3 sure it's in this three- or
4 three-and-a-half-foot proof of paper -- is
5 the plea agreement, what Mr. Epstein
6 actually pled to. That would be of
7 assistance to me if it's tabbed somewhere or
8 if it's somewhere handy for someone to get
9 their hands on for me to see that.

10 MR. GOLDBERGER: When I send a courtesy
11 copy of my motion to stay, I will include a
12 copy as well.

13 THE COURT: If somebody has it handy, I
14 will need it during the proceeding, because
15 I want to see that -- because it's only
16 going to be material to some of the Court's
17 decision-making, as far as I'm concerned, in
18 how far we go with regard to the terminology
19 that's going to be used, what Mr. Epstein
20 pled to.

21 And obviously, the touchtone here and
22 malicious prosecution is obviously one
23 element -- one of the important ones as far
24 as malice the issues.

25 So we recognize that malice being one

1 of the primary element of the malicious
2 prosecution claim, what may have been in the
3 mindset of Mr. Epstein when he filed the
4 claim against Rothstein, Edwards and LM --
5 initials being used only since she was
6 allegedly a minor at the time that the suit
7 was brought -- is of importance to the
8 Court. What was the motivation? What was
9 the theory? What was the intent? All of
10 these things do go to malice.

11 So, while I would love to be able to
12 try a case that is sanitized, both from the
13 acts of Rothstein and the Rothstein firm and
14 those who were involved in the Ponzi scheme
15 that Mr. Rothstein engaged in, as well as
16 sanitized as to a great deal of the
17 allegations as it relates to those claims
18 that Mr. Epstein settled pertaining to the
19 claims of sexual misconduct on the part of
20 Mr. Epstein I am not certain that we are
21 going to be able to get that far.

22 However, there will be limitations, I
23 can assure you, that the Court will
24 institute once I have been able to hear the
25 respective arguments of both sides.

1 There have been concessions made by
2 both sides in their papers. There's a
3 modicum of evidence as it relates to these
4 issues that's likely going to be heard by
5 the jury.

6 So, let's go ahead and proceed. What I
7 would like to do is proceed first with the
8 motion for summary judgment that was filed
9 by Mr. Edwards -- strike that -- by
10 Mr. Epstein -- excuse me -- as it relates to
11 Mr. Edwards' fourth amended counterclaim.
12 So let's start there.

13 Thank you both, gentlemen.

14 MR. GOLDBERGER: Your Honor, may I take
15 my time at the podium just to address some
16 issues that's been festering a little bit?
17 I don't know if the Court wants to hear from
18 me.

19 THE COURT: Let's wait, Mr. Goldberger.
20 I promise if those matters are still
21 festering at the conclusion of today's
22 hearing, I would be glad to hear from you.
23 I would like to get into the substantive
24 matters if we can.

25 MR. GOLDBERGER: Thank you, Your Honor.

1 MR. SCAROLA: With Your Honor's
2 permission --

3 MR. GOLDBERGER: I apologize,
4 Mr. Scarola, but we do have a motion for
5 enlargement of time that is pending, and we
6 would like to be heard on that, at least,
7 prior to you hearing the summary judgment
8 motion.

9 I apologize, Mr. Scarola, for jumping
10 in.

11 THE COURT: Okay, the motion of
12 enlargement of time relative to the motion
13 filed on September 25th, 2017?

14 What was the title of the motion?

15 MR. GOLDBERGER: It's Ms. Haddad
16 Coleman's motion that was filed. I am going
17 to let her argue it, Your Honor. But it
18 addresses all issues that we have not had
19 sufficient time for lots of reasons to be
20 prepared to argue the motion for summary
21 judgment today.

22 Your Honor will recall at the hearing
23 of September 15th when I was on vacation
24 there were two motions that were pending at
25 the time, and the Court said we are going to

1 be ready to go on those two motions.

2 We received a barrage of motions
3 subsequent to that time filed by Mr. Scarola
4 and his team of lawyers. We have three
5 lawyers. One is a criminal defense lawyer
6 and two sole practitioners who are working
7 on this case, and we have a client who has
8 been devastated by the hurricane, whose home
9 is gone, we cannot communicate with, so the
10 motion for enlargement is based on all of
11 the matters I'm asking Ms. Haddad Coleman to
12 address.

13 THE COURT: I saw this reference to a
14 motion for enlargement of time, the motion
15 filed on September 25th, and I didn't see
16 anything else.

17 Which motion are you talking about?
18 Again, I didn't go back and try to
19 cross-reference dates with material here.
20 It is not a easy task for one person to do.

21 MS. HADDAD COLEMAN: May I approach,
22 Judge? I have an extra copy.

23 The motion is very short, the basis for
24 which is clearly delineated within it.

25 As the Court's aware, we had a hearing

1 on September 15 to get a hearing date on our
2 motion for summary judgment, at which time
3 you had us agree to file certain motions by
4 September 25th and our responses to those
5 motions to be filed by September 28th.

6 At the time of this hearing, Judge --
7 again, I am a sole practitioner. I reside
8 in Broward County. My office is in Broward
9 County. I did not regain power, Internet or
10 any other access until late after hours
11 Monday, September 18th, 2017.

12 As the Court is also aware, at the last
13 hearing at which the Court ordered these
14 deadlines, Mr. Brewer -- who is also a sole
15 practitioner, who is my civil co-counsel in
16 this matter -- indicated to the court in the
17 transcript that he was going to be gone the
18 entire week of September 25th.

19 We were able to file motions that we
20 felt the Court had discussed at the hearing
21 and wanted to hear, which were filed
22 previously, in this case being the motion in
23 limine. The motion for summary judgment had
24 been filed in June. And then three motions
25 directed at discovery for which we were

1 compelling better responses from
2 Mr. Edwards, which again, had been filed in
3 the past, because the Court may remember,
4 this case was stayed for three years while
5 it was on appeal -- from 2014 until June of
6 this year.

7 As of September 8th when Hurricane Irma
8 hit the Virgin Islands -- Mr. Epstein
9 resides in the Virgin Islands -- I have
10 little to no ability to communicate with him
11 since that date, and as such, he has been
12 unable to really participate in anything
13 dealing with the motions that are pending
14 for today.

15 And on September 25th, we received a
16 number of substantive motions from
17 Mr. Scarola. And in addition, we've
18 received motions directed at our motion for
19 summary judgment. And then in addition to
20 that, on the 28th, received replies,
21 responses, motions to strike and things of
22 that nature, just related to the summary
23 judgment alone, never mind discovery issues,
24 motions in limine and things of that nature
25 Judge.

1 It was just me. And in those three
2 days I also had one arbitration, one
3 mediation, five depositions scheduled
4 previously. And Yom Kippur and Rosh
5 Hashanah fell within those dates which you
6 gave us to respond.

7 We are not trying to delay, Judge. We
8 are ready to go forward. As the Court
9 knows, the Florida Supreme Court finished
10 with this case mid-June. Within a week and
11 a half we had our motion for summary
12 judgment filed. We have been actively
13 pursuing discovery. This is not for a delay
14 tactic at all, Your Honor.

15 Many of Mr. Scarola's motions,
16 especially those germane to discovery
17 issues -- and you said that you don't think
18 anything will be impacted by the stay
19 here -- my client's right to attorney-client
20 privilege and things like that are the crux
21 of many of these motions. And with little
22 to no input from Mr. Epstein, or any ability
23 for him to access his files or even
24 communicate with us regarding these motions,
25 I am ineffective to proceed.

1 I haven't had a chance to go forward
2 with him in the three-day turnaround time on
3 these motions. It's left me in an
4 uncompromising position where I either have
5 to disobey an order of this court or provide
6 ineffective assistance to my client.

7 Basically right now as we stand on many
8 of these motions that Mr. Scarola would like
9 heard today, as you have noticed by the
10 notice of hearing he filed for today, I have
11 little to no ability to really get into the
12 issues with my client to discuss what is
13 needed to go forward, much less prepare for
14 them, in light of the very short turnaround
15 time and the holidays that fell within those
16 dates.

17 THE COURT: Okay. Mr. Scarola. Thank
18 you, Ms. Haddad Coleman.

19 MR. SCAROLA: Your Honor, with regard
20 to the hearing at which Mr. Edwards was
21 represented by able counsel, at which an
22 agreement was reached before the Court that
23 a deadline would be established of
24 September 25 to file pretrial motions, and
25 that both sides would have three days after

1 September 25 in which to file responses, the
2 Court expressly stated there would be no
3 replies that would be filed, and that the
4 issues joined by those motions filed by
5 September 28th and responded to -- excuse me
6 by September 25 and responded to three days
7 later, by September 28th, would be heard
8 today.

9 This case has been pending since 2009,
10 and none of the issues that are raised in
11 any of the matters pending before Your Honor
12 are issues that come as a surprise to
13 anyone.

14 Indeed, the interrelationship between
15 the assertion of Fifth Amendment rights and
16 the ability to proceed with the prosecution
17 and defense of claims on Mr. Epstein's part
18 has been a primary focus of determinations
19 to be made by the Court since the filing of
20 our motion for summary judgment on
21 Mr. Epstein's claims against Mr. Edwards,
22 which were set for hearing.

23 And on the eve of that hearing, with no
24 response filed to that motion for summary
25 judgment -- a primary focus of which was you

1 cannot use the Fifth Amendment as both a
2 sword and a shield -- you cannot file a
3 claim for RICO violations for criminal
4 actions arising out -- excuse me -- for
5 civil relief arising out of criminal
6 actions, for fraud, for abuse of process and
7 malicious prosecution, knowing that you
8 intend to hide behind the Fifth Amendment
9 with regard to issues central to those
10 claims.

11 Those issues were raised years ago and
12 they have continuously arisen at every stage
13 of this proceeding when discovery was sought
14 from Mr. Epstein. And knowing about those
15 problems he has chosen to hide behind the
16 Fifth Amendment.

17 So there's nothing new here. And quite
18 frankly, I am amazed that opposing counsel
19 keeps referring to Mr. Scarola's team of
20 lawyers when Your Honor is well aware that
21 there have been many, many, many lawyers
22 involved in the defense of Mr. Epstein for
23 many years. And Mr. Epstein has all of the
24 resources necessary to be able to respond in
25 a timely fashion to the legal issues present

1 in this case.

2 These are legal issues. They don't
3 require further testimony from Mr. Epstein.

4 And the excuse that there was a
5 hurricane that swept through the Virgin
6 Islands many weeks ago when allegedly
7 Mr. Epstein's home was destroyed, and
8 Mr. Epstein had every ability to come to
9 Palm Beach County, Florida, to consult with
10 his lawyers, if they felt that was
11 necessary, those assertions, in the absence
12 of any supporting affidavit, any
13 presentation of any evidence whatsoever,
14 ought not to sway this court from abiding by
15 the terms of an agreement that was entered
16 into with knowledge of all of those things.

17 That hurricane didn't happen between
18 the time that Your Honor held the last
19 hearing in this case and September 25th. It
20 did not occur between September 25th and
21 September 28th. All of those factors that
22 they are now complaining of existed at the
23 time that that agreement was entered into.

24 THE COURT: Thank you.

25 MR. SCAROLA: Thank you, sir.

1 MR. BREWER: Your Honor, may I respond
2 since it's been stated that I agreed --

3 THE COURT: Sure.

4 Who else is sitting with you?

5 MR. GOLDBERGER: Your Honor, this is
6 Mr. Darren Indyke, who is in-house counsel
7 to Mr. Epstein.

8 THE COURT: Darren?

9 MR. GOLDBERGER: Indyke, I-N-D-Y-K-E.

10 THE COURT: Thank you. Welcome.

11 MR. BREWER: Your Honor, I want to
12 speak to the statement agreement inchoate.
13 When we appeared before you on September the
14 15th -- that was the date of the hearing --
15 we had asked the Court to give us a date to
16 hear our motion for summary judgment. We
17 appeared at calendar call for that
18 discussion.

19 At that time there was pending our
20 motion for summary judgment. There was a
21 motion that was filed by Mr. Scarola that
22 went to net worth of Mr. Epstein, and it
23 merely said objections not well taken, which
24 is a nullity of the pleading.

25 And the night before -- you might

1 remember the colloquy where Mr. Scarola said
2 that he was going to be filing a motion to
3 strike. And he, at the time, thought it
4 hadn't been filed yet, but in fact I
5 complimented his assistant and said, No, she
6 did get it in late yesterday afternoon. It
7 was filed late on the 14th of September.
8 That's what was pending.

9 We discussed with the Court the fact
10 that we were preparing a motion in limine.
11 It goes to many of the issues, really, at
12 the heart of this thing. The statement was
13 made to the Court that we thought that we
14 could get that motion in -- we were
15 preparing and thought we could get it in the
16 next week.

17 THE COURT: Which was done?

18 MR. BREWER: Which was done. Since
19 that time -- and I counted -- there had been
20 21 motions in other matters filed, which we
21 had no idea about. And to sit there and
22 say, Oh, we agree to this deluge of
23 discovery and motions is just not correct.

24 THE COURT: I really wasn't
25 contemplating a significant number of

1 motions to be filed on the 25th of
2 September. I used that as a deadline so
3 that anything could be cleaned up and
4 prepared and proceed accordingly.

5 So, a couple of things -- you can have
6 a seat, Mr. Brewer. Thank you very much,
7 sir.

8 Number one, I don't want to be accused
9 of being insensitive to those who have
10 suffered through the recent storms, nor do I
11 want to be accused of being insensitive to
12 the fact that Jewish holidays fell within
13 the time period at issue. But at the same
14 time, the information, at least that is
15 contained in the documents that I have
16 reviewed, for example, reflect Mr. Epstein's
17 access to airplanes. There's been no
18 suggestion -- I don't know one way or the
19 other whether or not there is access to
20 airplanes at this point in time.

21 Again, I agree with Mr. Scarola there
22 was no -- has been no factual recitation in
23 the form of an affidavit or declaration that
24 was submitted to support any of these
25 opinions.

1 Also, while I eminently respect choice
2 of counsel, at the same time there has not
3 been any demonstration that, for whatever
4 reason, Mr. Epstein does not have the
5 wherewithal economically to be able to have
6 sufficient representatives so as to fortify
7 lead counsel in the preparation and defense
8 of the -- in preparation of any written
9 materials or in the defense of the subject
10 claim.

11 So again, while I have personal empathy
12 for anyone who is a sole practitioner, that
13 is not my choice. That is the choice of a
14 sophisticated business person in the form of
15 Mr. Epstein, who again, to my knowledge, and
16 totally from what I have read in the
17 materials and his agreement, at least at one
18 point in time, to stipulate to a significant
19 net worth.

20 There is no suggestion of economic
21 hardship so as to limit his choice of
22 lawyers or law firms, lawyers or law firms
23 that have sufficient resources to be able to
24 respond instantaneously to many of the
25 arguments that were raised by way of the

1 motions filed on September 25th.

2 However, with that said, because we
3 really weren't anticipating -- I wasn't
4 anticipating, I should say -- multiple
5 motions being filed at the very end of the
6 deadline, we will take those on a
7 matter-by-matter basis. And if I find that
8 they are not purely legal in nature and
9 would require some type of additional
10 factual development, then I will take that
11 into consideration.

12 The reason I set this a couple of
13 months before trial was to try my best to be
14 able to streamline between now and then what
15 may be necessary and properly address any
16 pretrial issues so that we can hopefully
17 resolve as many of those that we can before
18 the commencement of trial and not during
19 trial, which is when appellate courts have
20 been loathed to allow the trial courts to
21 take valuable time away from those who are
22 mostly volunteering their time -- that being
23 the jury -- and engaging in lengthy motion
24 practice during the time that the jury is
25 seated.

1 As I said, I would like to begin with
2 Plaintiff/Counter-Defendant Epstein's motion
3 for summary judgment on Defendant/
4 Counter-Plaintiff Edwards' fourth amended
5 counterclaim. Let's proceed.

6 MR. SCAROLA: Your Honor, the first
7 issue raised with regard to that motion is
8 the argument that that motion is precluded
9 by virtue of collateral estoppel. And
10 Mr. Burlington -- res judicata -- excuse me
11 Mr. Burlington is here to address that.

12 If it's easier for the Court, I have an
13 extra copy of the motion that I can hand to
14 Your Honor.

15 THE COURT: Okay. Thank you.

16 MS. HADDAD COLEMAN: Your Honor, just
17 for the record, again, that motion from
18 Mr. Burlington was filed on the 28th, and
19 our motion for summary judgment was filed
20 June 30th. And the other two motions
21 directed at our motion for summary
22 judgment -- one of which is to strike
23 Mr. Epstein's affidavit, and another one is
24 in opposition -- again, we haven't had time
25 to go over or prepare for. These are

1 brand-new arguments that --

2 THE COURT: I wouldn't expect you to.
3 It was actually filed on the 25th, not on
4 the 28th, but I haven't seen it.

5 MR. SCAROLA: Your Honor, that is in
6 fact, a motion to which a response has been
7 filed.

8 I can hand that to Your Honor as well,
9 if you would like.

10 THE COURT: Sure. That's fine. Thank
11 you.

12 MR. SCAROLA: Here you go, sir. I am
13 not sure what the objection is, since this
14 is a motion filed on the 25th. It was
15 responded to on the 28th, so it would appear
16 that it is ready to be argued today.

17 THE COURT: I have no problem. It is
18 simple, so let's proceed.

19 MS. HADDAD COLEMAN: Judge, I am just
20 trying to find it. I apologize. There's so
21 many filed.

22 THE COURT: Whenever you're ready step
23 up to the podium please. Thanks.

24 I would rather first hear the substance
25 of the motion, then we will listen to the

1 motion to strike.

2 MS. HADDAD COLEMAN: I'm sorry?

3 THE COURT: I would like to hear from
4 you first on the substantive aspects of the
5 motion, then I will listen to the motion to
6 strike. I believe the counter-argument, if
7 you will, or the arguments to defeat the
8 motion are partly substantive, partly
9 procedural.

10 MR. SCAROLA: Your Honor, in case the
11 Court is keeping track of these, the motion
12 for summary judgment was responded to by
13 Mr. Burlington in his motion that raises a
14 procedural issue with regard to res
15 judicata.

16 There's also a motion to strike
17 Mr. Epstein's affidavit, which was the
18 primary support of the motion for summary
19 judgment, and a second independent response
20 in opposition to the motion for summary
21 judgment. They are all in this group.

22 THE COURT: The motion -- strike that.

23 The response that you filed in
24 opposition was the one I concentrated on
25 during my review of the motion. I tried to

1 match both up to the other. I now see that
2 I did have the motion from Mr. Burlington
3 and the response from Ms. Haddad Coleman.

4 MS. HADDAD COLEMAN: Judge, the motion
5 to strike the affidavit, the June 30th
6 affidavit to summary judgment, that motion
7 filed by Mr. Scarola -- again within this
8 time frame, which we were forced to operate
9 in -- is solely based on the Fifth
10 Amendment. It's a huge argument about the
11 Fifth Amendment, Judge. And I am about a
12 third of the way complete with it, but it
13 was requiring me to go through the
14 deposition of Mr. Epstein. And I can submit
15 and proffer to the Court that I'm only up to
16 page 33 of Mr. Epstein's deposition. But he
17 substantively answered all questions that
18 were related to this lawsuit.

19 THE COURT: Let's go ahead and proceed
20 with the substance of the motion and we will
21 go from there, please.

22 MS. HADDAD COLEMAN: Good morning,
23 Judge. Jeffrey Epstein's motion for summary
24 judgment is based on a very simple issue
25 that was not addressed by this Court in a

1 previous motion or on the appellate level,
2 and that is the issue of probable cause.

3 As this court is aware, there are
4 several elements that must be proven by
5 Mr. Edwards in order for him to prevail on a
6 case of malicious prosecution. So what is
7 relevant and germane to this issue of
8 probable cause is that it's a very low
9 threshold, and it's very easily satisfied by
10 Mr. Epstein.

11 And Mr. Epstein had probable cause at
12 the time he filed his complaint against
13 Mr. Edwards.

14 Contrary to Mr. Edwards' assertions
15 that everything that has been laid out in
16 this case, since 2009, Mr. Epstein filed
17 suit against Mr. Edwards, Scott Rothstein
18 and LM, based on the undeniable and
19 inconvertible facts of what was transpiring
20 at RRA specifically with what will be
21 referenced as the Epstein cases during the
22 time in question.

23 As this Court and everyone in this room
24 is aware, in November 2009 it became
25 national news that Scott Rothstein was the

1 named partner of Rothstein, Rosenfeldt,
2 Adler -- a firm which Brad Edwards, at the
3 time, was part of -- in funding the largest
4 Ponzi scheme in history.

5 It was also known -- Judge, if you look
6 through our motion -- I just want to point
7 out to the Court and put on the record every
8 single undisputed fact to which we refer --
9 there is a citation -- and the documentation
10 is provided to you -- that supports these
11 undisputed facts. It is not just the
12 affidavit of Jeffrey Epstein, although, that
13 is also listed herein.

14 Part of that Ponzi scheme is that
15 Rothstein and his partners and other
16 coconspirators who were not determined at
17 the time this lawsuit was filed, or at the
18 time the federal government became involved
19 to prosecute Mr. Rothstein, that they were
20 defrauding investors into purchasing fake
21 settlement agreements or inflated settlement
22 agreements that were being litigated with
23 cases by RRA. One of those cases,
24 Mr. Epstein and the rest of the United
25 States became aware, were the cases that

1 were being pursued by Mr. Edwards and RRA
2 against Mr. Epstein.

3 In December 2009, the federal
4 government filed a 66-page -- I'm sorry --
5 36-page information against Scott Rothstein
6 stating that RRA, which Edwards was a
7 partner at that time, was a racketeering
8 enterprise, and that Rothstein, his partners
9 and other named coconspirators were
10 committing crimes in order to defraud
11 investors and further their Ponzi scheme.

12 It is noteworthy to mention, Judge,
13 that subsequent to filing this motion, we
14 did file an amended supplemental list, in
15 which we've added that earlier last week --
16 the federal government has come out and
17 stated that they are seeking to withdraw
18 their recommendation that Mr. Rothstein
19 receive a reduced sentence because he has
20 lied to the government.

21 We feel that also is important and goes
22 to the crux of what Mr. Rothstein did and
23 continued to do, even after he was caught.

24 It is important to know, Judge, through
25 these facts, if you look through the motion

1 that the unnamed conspirators of
2 Mr. Rothstein were people who worked with
3 Mr. Rothstein, they were being investigated
4 by the Florida Bar as well as by the federal
5 government.

6 There was testimony given that these
7 investors and these -- and there are
8 citations to all this testimony in which
9 they were given the Epstein cases to look
10 at. Scott Rothstein and his other unnamed
11 coconspirators brought to the attention of
12 these investors the Epstein cases and
13 created outrageous allegations pursuant to
14 which they stated that because Mr. Epstein
15 had all of this money they could get the
16 defendant -- in this case, Mr. Epstein -- to
17 settle for substantial sums of money.

18 Scott Rothstein admitted to all this,
19 and was sentence to 50 years, and he's
20 currently serving that sentence.

21 Mr. Epstein also became aware during
22 that time that news reports that Rothstein
23 had been disbarred and that the Florida Bar
24 was investigating at least half of the
25 attorneys employed by RRA in connection with

1 this Ponzi scheme.

2 On November 20, 2009, the law firm of
3 Conrad Scherer initiated a lawsuit against
4 Rothstein and others entitled Razorback
5 Funding, again, a copy of which is provided
6 to the Court and is relied upon as
7 undisputed facts related to the summary
8 judgment motion in which the Epstein cases
9 and the use of the Epstein cases to defraud
10 the investors is discussed at length.

11 Judge, in our motions on pages five
12 through seven, specific sections of the
13 Razorback complaint is cited to the Court.
14 It states that purported settlements, albeit
15 fraudulent, were based on actual cases being
16 handled by RRA.

17 For example, one of the settlements
18 involved was based upon facts surrounding
19 Jeffrey Epstein, the infamous billionaire
20 financier. Representatives of D3 -- which
21 was the investment company -- were offered
22 the opportunity to invest in pre-suit \$30
23 million court settlements against Epstein
24 involving different underaged female
25 plaintiffs, cases that were being prosecuted

1 by Brad Edwards, while a partner at RRA.

2 In addition to that, Judge, at this
3 time in question, which Mr. Edwards worked
4 at RRA -- was a partner there from April to
5 November 2009, Judge. A very small period
6 of time.

7 There were several filings in federal
8 court which raised suspensions of
9 Mr. Epstein, his attorneys and the
10 government.

11 For example, there were some filings
12 about dignitaries and other parties being on
13 Mr. Epstein's planes. One of the plaintiffs
14 for whom Mr. Edwards was prosecuting cases
15 against Edwards (sic) had ever made
16 allegations such as that.

17 Further, according to the defrauding of
18 investors, the Epstein cases -- there's
19 several discovery practices and motions that
20 were filed to salaciously sexually charge
21 the nature of the facts and make it
22 explosive that will truly convince investors
23 that Epstein would in fact be quick to
24 settle these cases.

25 Also during that time, Judge, what

1 Mr. Edwards did in the federal cases
2 personally as legal counsel or lead counsel
3 on those Epstein cases -- again, as a
4 partner of RRA -- there was a filing of a
5 federal claim for LM, who was a plaintiff in
6 this case filed in federal court against
7 Mr. Epstein based on the same exact
8 allegations of facts and circumstances that
9 were filed in the state court, but then
10 salaciously embellish some of the facts.

11 And again, this complaint was never
12 served on Mr. Epstein, but it was shown to
13 the investors, and there is testimony to
14 that fact.

15 Then Mr. Edwards filed a motion. It
16 was a motion asking that the court -- Judge
17 Marra -- federal district court -- to enter
18 a bond -- enter an order requiring
19 Mr. Epstein to post a multi-million-dollar
20 bond. Judge Marra threw that out, stating
21 that there was no basis in fact.

22 Judge, that was in Doe versus Epstein,
23 08-80893 in which the Court said there was
24 no basis in fact for it.

25 This motion went through such detail

1 delineating the financial net worth of
2 Mr. Epstein. And again, this was solely
3 that very small time period during which
4 Mr. Edwards was a partner RRA, and during
5 which the Epstein cases were being used to
6 defraud investors.

7 This is the information known to
8 Mr. Epstein at the time he chose to file
9 suit. Contrary to what Mr. Edwards is
10 trying to do, and the information he tries
11 to bring forth in this Court, if the Court
12 looks at the initial complaint that
13 Mr. Epstein filed, it clearly delineates
14 solely these facts upon which he relied, as
15 does Mr. Epstein's deposition testimony --
16 which we were prepared again in response in
17 opposition to Mr. Scarola's motion to
18 provide to this court. These facts show
19 what was in Mr. Epstein's mind at the time
20 he filed this suit, at the time he sought
21 counsel, attorneys to file this suit on his
22 behalf.

23 He testified he read about this case in
24 the Daily News. His affidavit delineates
25 all the facts upon which he replied. And

1 even if the Court didn't look to
2 Mr. Epstein's affidavit, which we submit is
3 consistent with his deposition testimony,
4 his response to certain discovery requests,
5 the undisputed facts available at the time
6 he filed suit, the indictment of Scott
7 Rothstein, every report in which it's
8 discussed what Mr. Edwards and RRA were
9 doing in these Epstein cases, as well as the
10 filings in the federal court, and the
11 Razorback complaint itself, which was one of
12 the largest settlements in Broward County,
13 and it did, in fact, was one of the things
14 upon which Mr. Rothstein relies in trying to
15 get his sentence reduced, was if those
16 investors were able to get all of their
17 money back.

18 The Razorback complaint was a
19 successful suit. And at the time
20 Mr. Epstein filed the suit, that was the
21 case that was filled just before he did.

22 THE COURT: What I was going to ask,
23 though, is remember that this case was filed
24 not only against Mr. Rothstein, but against
25 Mr. Edwards. The focus really has to be on

1 the probable cause issue pertaining to
2 Mr. Edwards. Perhaps that's a reason why
3 Mr. Rothstein did not counterclaim or filed
4 his own malicious prosecution case, was the
5 focus has to be on Mr. Edwards.

6 MS. HADDAD COLEMAN: Yes, Judge. And
7 at the time Mr. Epstein filed suit against
8 Mr. Edwards, Mr. Edwards was the lead
9 counsel of these cases. Mr. Edwards signed
10 every pleading. Mr. Edwards, pursuant to
11 Florida Bar rules and his ethical duties as
12 a lawyer, is charged with knowledge of what
13 is transpiring in his cases.

14 Mr. Edwards, during this relevant time
15 period, was prosecuting these cases.
16 Mr. Edwards engaged in discovery practices.
17 Mr. Edwards signed pleading practices.
18 Mr. Edwards engaged in these acts.

19 Judge, it's important to note, again,
20 it's very easy to sit here and Monday-
21 morning quarterback in 2017.

22 In 2009, and as late as 2012, the
23 federal government was still saying,
24 unknown, unnamed, unindicted coconspirators.
25 Judge, even the federal government was

1 unsure who was involved at that time.

2 Again, it's very easy to sit back later
3 and say Mr. Edwards wasn't involved. But
4 the information available to Mr. Epstein at
5 the time -- which is solely the time period
6 germane to when he filed suit -- was that
7 Mr. Edwards' name appeared on all these
8 pleadings. Mr. Edwards was engaging in
9 discovery. Mr. Edwards was seeking to
10 depose David Copperfield and Donald Trump
11 and Bill Clinton when his clients had never
12 alleged they were on planes with them.

13 If you look at all of these facts in
14 2009, coupled with a criminal investigation,
15 the largest Ponzi scheme in Florida history,
16 and the government saying unknown and
17 unindicted coconspirators, including the
18 fact that the Florida Bar was investigating
19 over half of the attorneys, and that
20 Mr. Edwards himself was a partner at that
21 firm.

22 His business cards, his letterhead,
23 everything said Brad Edwards, partner, RRA.
24 That is the information at the time.

25 Mr. Rothstein might have chosen not to

1 file against Mr. Epstein. I have no idea
2 and I can't speak to that. But I can tell
3 you at the time Mr. Epstein filed suit, the
4 undisputed facts known to him at that time
5 clearly and unequivocally showed that what
6 was transpiring in the cases that were being
7 prosecuted against him by Mr. Edwards and
8 his law firm, at which he was a partner,
9 were used to fleece money and defraud
10 investors. And that based on what was
11 transpiring in those Epstein cases from
12 April to November 2009, while Mr. Edwards
13 was a partner at RRA, gave the requisite
14 probable cause to Mr. Epstein to believe
15 that these cases were used to do this and
16 that it did cause him damage.

17 THE COURT: That assumes -- as both
18 sides have talked about the issue of
19 undisputed facts -- that assumes that these
20 facts are undisputed, because the case law
21 has well established what facts and
22 circumstances constitute probable cause is a
23 pure question of law. Whether they exist is
24 a pure question of fact. And I will omit
25 the citations.

1 And it says, Question of whether
2 probable cause exists is thus a jury issue,
3 only when material facts are in controversy.

4 So speak to me about that, please.

5 MS. HADDAD COLEMAN: Judge, the
6 inconvertible facts -- again, at the time
7 this was going on, Mr. Edwards filed 100 --
8 let me look to see how many pages it was --
9 I apologize. It's in my motion -- filed a
10 federal complaint against Mr. Epstein,
11 again, for plaintiff LM, when the LM lawsuit
12 was already pending. That complaint was --
13 and again, that's undisputed. He did it.

14 Judge --

15 THE COURT: Really, I guess what I'm
16 speaking about, Counsel, is more so mindset.
17 In other words, what you're suggesting to me
18 today is that Mr. Edwards, without, to my
19 knowledge -- and please correct me if I'm
20 wrong -- but without, to my knowledge,
21 anything but pure supposition at this
22 juncture, even eight years later --

23 MR. SCAROLA: Excuse me. Your Honor
24 said Mr. Edwards, and I think you meant to
25 say Mr. Epstein.

1 THE COURT: No. I meant to say
2 Mr. Edwards.

3 MR. SCAROLA: I apologize for
4 interrupting then.

5 THE COURT: That's okay. Not a
6 problem.

7 -- but simply at this juncture, eight
8 years later, that somehow Mr. Edwards had
9 the mindset that you are suggesting. And
10 you may be right. I'm not necessarily
11 saying or taking a position one way or the
12 other as to whether you are right or wrong,
13 but the proposition that you are espousing
14 is one of Mr. Edwards having the mindset
15 back whenever this federal case was filed,
16 to file it in a manner that would have been
17 disingenuous and contrary to the state case
18 that was filed.

19 And that, to me, raises factual issues
20 in and of itself, does it not? Because,
21 again on the one hand we don't know -- for
22 example, there has been no deposition
23 testimony provided to the Court of
24 Mr. Edwards where he said, Yes, I am going
25 to fall on my sword and admit to you that I

1 filed this federal case as a rouse to
2 inflate the value of these factored cases.

3 You smile because the suggestion that
4 Mr. Edwards is going to admit to this is
5 probably very, very slim. But at the same
6 time what I'm trying to suggest to you is
7 the fact that when you're injecting a
8 mindset -- you may be very, very correct
9 based upon the facts that are involved here.
10 You may be -- you may be able to convince
11 the members of the jury about that. But I
12 don't see where, under these facts and
13 circumstances, the facts are so crystalized
14 so as to yield but one result here.

15 In these cases that I have reviewed,
16 most of them deal with false arrest issues.
17 And the facts aren't terribly controverted.
18 There were arrests made. There were videos
19 reviewed, and was there probable cause based
20 upon that black and white video, the fact
21 that the arrest was made, the report that
22 was made, and the glowing threshold that's
23 associated typically with probable cause
24 analysis.

25 So I don't have a problem with your

1 position in terms of what you are stating to
2 me. But my concern is that the factual
3 issues that may still be -- might be
4 uncontroverted is raised by what you've just
5 indicated. Was it Mr. Edwards' mindset to
6 file these federal claims -- one or more
7 federal claims to bolster the Ponzi scheme
8 that Rothstein was later convicted on, or
9 did he have another motive to do so, or was
10 there another reason to do so? I don't know
11 that, because there hasn't been, to my
12 knowledge -- again, please correct me if I'm
13 wrong -- is there anything in the record
14 that would support that conclusion, other
15 than the argument to say, Well, it was
16 Edwards' mindset to do that to inflate the
17 value of the Ponzi scheme, when, to my
18 knowledge, Edwards has never been charged?
19 He's not, to my knowledge, an unindicted
20 coconspirator.

21 Rothstein, at best, was equivocal in
22 his deposition. And to what extent we can
23 believe what he said, I agree with you, it's
24 suspect, at best, based upon the recent
25 charges that he has accumulated.

1 But at best, what Rothstein is saying
2 is that maybe Edwards would have turned him
3 in. He was unequivocal about many of the
4 other people in his firm.

5 So that's what I am trying to figure
6 out. What is the undisputed fact, and can
7 there be undisputed facts when we are
8 speaking about the mindset of an individual
9 and the motive that one may have had where
10 it's not explained, to my knowledge, one way
11 or the other.

12 MS. HADDAD COLEMAN: I will speak to
13 all of that. I will start with your most
14 recent question first.

15 Judge, Mr. Edwards -- although he does
16 like to get up here and espouse how
17 Mr. Epstein hides behind privileges -- three
18 of our motions filed today before this court
19 for consideration were motions to compel
20 Mr. Edwards to answer questions in his
21 deposition and his interrogatories.

22 Every question -- every single solitary
23 question posed to Mr. Edwards when asked why
24 he did everything he did in the Epstein
25 cases, he asserts work product or claims

1 privilege and refuses to answer the
2 question.

3 THE COURT: I am here all the time to
4 be able to take care of those matters. If
5 there's ever a need for time, you know that
6 if I have it, I give it to you. So, you
7 know, this has been going on a long time.
8 And I recognize that some of these matters
9 are unresolved. But unresolved matters are
10 probably the most dangerous grounds to grant
11 summary judgment for the trial judge.

12 MS. HADDAD COLEMAN: My second point,
13 which would go right to you granting summary
14 judgment, I can't offer you what was in
15 Edwards' mind because Edwards doesn't tell
16 us.

17 With respect to the standard for
18 probable cause for summary judgment, why
19 Edwards did what he did really isn't
20 relevant, Judge. It's a question of
21 probable cause. The burden of proof is on
22 Edwards, not Mr. Epstein.

23 Mr. Epstein was germane to the issue
24 right now before this court. And whether or
25 not Mr. Epstein had probable cause to file

1 suit is what was in Mr. Epstein's mind.

2 And what was in Mr. Epstein's mind is
3 based on what, we submit to this court, are
4 incontrovertible facts.

5 It is an incontrovertible fact that
6 Mr. Edwards filed a 234-page, 156-count
7 federal complaint on behalf of LM when the
8 identical case was pending in state court.
9 Fact. Fact, he never served it on
10 Mr. Epstein. Fact, federal court dismissed
11 it. Fact, it was shown to investors, and it
12 was filed three days before the order coming
13 down on RRA. That is what Mr. Epstein knew
14 at the time, to answer your question about
15 that complaint.

16 If the Court would like to ask me about
17 any of the other facts, I would be happy to
18 address those as well, but the law is clear
19 that the probable cause -- the only issue
20 for this court to consider -- is not why
21 Mr. Edwards did what he did. It's what was
22 in the mind of Mr. Epstein at the time he
23 filed suit. And what was in the mind of
24 Mr. Epstein at the time he filed suit is
25 delineated in the first eight pages of our

1 motion and is supported by pleadings in
2 courts, orders from federal judges,
3 statements from other people involved in the
4 cases, and in the pleadings provided by
5 Mr. Edwards himself.

6 If Mr. Edwards had a reason that he did
7 all of these things, he certainly has never
8 provided it to us.

9 THE COURT: Okay, thank you. I will
10 give you some time to rebut. I appreciate
11 your presentation, both written and oral.
12 Thank you, Ms. Haddad Coleman.

13 Counsel for Mr. Edwards.

14 MR. SCAROLA: Yes, Your Honor. We
15 would like to begin with Mr. Burlington's
16 arguments that these matters are foreclosed
17 as a consequence of prior Kelly proceedings.

18 THE COURT: All right, Mr. Burlington.
19 Welcome.

20 MR. BURLINGTON: Phil Burlington on
21 behalf of Counter-Plaintiff Edwards.

22 We filed a separate motion to strike in
23 response to the summary judgment, based on
24 law of the case. We did it as a separate
25 motion because, otherwise, they would not

1 have had an opportunity to respond, because
2 your order and the agreement provided for no
3 replies.

4 You can treat this as a motion to
5 strike. You can treat it as a basis to deny
6 the motion. But what is very clear is, you
7 previously ruled on the summary judgment
8 hearing -- and it is three and a half years
9 ago, so all of us who have not lived with
10 the transcript can be understood for not
11 remembering. But Epstein moved for summary
12 judgment on three grounds: litigation
13 privilege that the Wolfe case compelled
14 with, and also that we were unable to prove
15 two elements of the malicious prosecution
16 claim. One of them was lack of probable
17 cause, and the other was bona fide
18 termination.

19 Your Honor felt bound by the Third
20 District's decision in Wolfe, but you did
21 point out, rather clearly in the transcript,
22 that you felt there were questions of fact
23 that barred summary judgment for both the
24 probable cause and bona fide termination.

25 And I'm reading from page 24 of that

1 transcript of January 27th, 2014. And you
2 state, I would not grant the motion because
3 of at least these two reasons, that I
4 believe there are questions of fact related
5 to the probable cause issue, as well as the
6 bona fide -- and they have determination.
7 Should be termination issue, additionally.
8 And after a little colloquy, you say, That's
9 why I want to make clear that, standing
10 alone, the elements of the malicious
11 prosecution claim will not muster summary
12 judgment in my view.

13 So that was your ruling. You found on
14 the litigation privilege. You rejected the
15 summary judgment on probable cause and bona
16 fide termination. We filed an appeal. That
17 case was briefed. And prior to the oral
18 argument, the Fourth District rejected the
19 Wolfe case.

20 Now, what happened in the briefing in
21 our case is our initial brief addressed
22 solely litigation privilege, because that
23 was the only basis on which you ruled.

24 In their answer brief, they had a
25 footnote in which they said, Well, we also

1 moved on other grounds, and we hereby
2 incorporate all of our argument from our
3 motion for summary judgment as an
4 alternative basis for affirmance, which is
5 known as the Topsy Coachman doctrine. I
6 filed a replay, and I said they have not
7 properly raised the Topsy Coachman
8 arguments, because you can't just do it in a
9 footnote and incorporate a trial pleading.
10 That is where it stood.

11 And then the Fourth District ruled on
12 Fischer. At that point, I moved to dispense
13 with oral argument, Epstein moved to file
14 supplemental briefs -- excuse me -- a
15 supplemental brief. And what he wanted to
16 file a supplemental brief on was the
17 probable cause issue. And in his motion he
18 talks about how this will give him an
19 exception to the Fischer decision, and also
20 specifically says, We properly raise this as
21 a Topsy Coachman argument.

22 I am reading from page six. He says,
23 "The court has respectfully requested to
24 afford Epstein the opportunity to file a
25 supplemental argument to show that the

1 litigation privilege applies under the rule
2 announced in Fischer, because the element of
3 absence of probable cause is not satisfied
4 in Edwards' action for malicious
5 prosecution."

6 His next sentence, "The missing element
7 in Edwards' malicious prosecution action is
8 also properly before this court as a ground
9 for affirmance under the Topsy Coachman
10 doctrine."

11 Now, they take the position in their
12 response to my motion here, Oh, no, it was
13 never properly raised. And now they
14 supposedly admit that. But this is what
15 they argued to the court. And they said
16 Epstein did note in his answer brief for
17 alternative grounds for affirmance, and he
18 reasserted all of them in the motion for
19 summary judgment.

20 I opposed this motion for supplemental
21 briefing saying it was improper on the eve
22 of oral argument, and that, in fact, the
23 Topsy Coachman arguments had not been
24 properly raised. The Fourth District
25 dispensed with oral argument, issued it's

1 decision, and agreed as to my argument that
2 the Wolfe case was wrongly decided and
3 refused to follow it.

4 However, they rejected my position that
5 the Topsy Coachman argument was not properly
6 before them. And in their very short
7 opinion, they have one paragraph that says,
8 "Epstein suggests that this case could be
9 decided on a Topsy Coachman analysis, as he
10 alleges that all the elements" -- plural --
11 "on the cause of action were not present.

12 "However, the trial court specifically
13 found that material issues of fact remain as
14 to the elements of the claim based upon the
15 facts presented and the inferences which
16 might be drawn from those facts. We will
17 not disturb the trial court's evaluation."

18 So therefore, the Fourth District not
19 only ruled on the litigation privileged
20 issue, but despite my argument that Topsy
21 Coachman hadn't been properly raised, they
22 addressed it on the merits -- spoken
23 plural -- because there's no bona fide
24 termination and lack of probable cause. And
25 they rejected their arguments, and that is a

1 determination of law.

2 As we have cited, there's cases that a
3 determination of whether there's a material
4 issue of fact is subject to the law of the
5 case doctrine, and therefore this court
6 should not be entertaining the merits of
7 this. The law is determined by the Fourth
8 District and under the law and case
9 doctrine. And Juliano is the Florida
10 Supreme Court case that establishes that any
11 determination of law made by an appellate
12 court is binding through all subsequent
13 proceedings. And that's what we are saying
14 here. Is they are trying to reargue what
15 you already ruled on, what the Fourth
16 District already ruled on.

17 And their only argument against it is
18 claiming that I am somehow estopped because
19 I argued in response to their motion for
20 supplemental briefing in the Fourth District
21 that they had not raised the issue of lack
22 of probable cause properly in their brief.

23 But that cannot in any way affect the
24 law of the case, because the Fourth District
25 rejected my argument on that. But they

1 rejected their argument on the merits, and
2 there's no basis now to start this all over.

3 And I just want to read one other
4 statement that they've represented to the
5 Court in the Fourth District as to their
6 Tippy Coachman issue and why the Court
7 should address it.

8 The resolution probable cause issue in
9 this appeal also serves the interest of
10 judicial economy, as it would be a waste of
11 time, expense and resources to reverse and
12 remand for a trial if a judgment entered in
13 favor of Edwards would be subject to
14 reversal on a ground this court can now
15 resolve.

16 Now they are here engaging in the exact
17 waste of time, expense and resource, which
18 they've said that the Fourth District could
19 avoid by ruling on the probable cause issue.

20 So, respectfully, they got what they
21 wanted on the ruling on the alternative
22 grounds. It was heard on the merits but the
23 Fourth District rejected it, as you had
24 previously. And there's no basis, there's
25 no change in the facts, and therefore,

1 there's no basis to deviate.

2 In fact, respectfully, I don't think
3 you have the authority to deviate from what
4 the Fourth District said, which was that you
5 were right in the first place.

6 So therefore, we believe it's
7 unnecessary to spend all of this time on the
8 summary judgment. It should either be
9 stricken or denied based on the law of the
10 case.

11 THE COURT: Okay. Thank you,
12 Mr. Burlington.

13 MR. BREWER: Your Honor, may I respond
14 to that motion?

15 THE COURT: Sure.

16 MR. BREWER: Your Honor, I have read
17 the transcript of what you had to say with
18 regard to the probable cause issue when I
19 argued for the motion for summary judgment.
20 And you did make the statement, I believe,
21 that there are issues as to material fact.
22 You were clearly, though -- you had read the
23 Wolfe case, and you saw that this was -- it
24 was clear as day.

25 THE COURT: I'm not taking issue with

1 you there, Mr. Brewer. When I saw the Wolfe
2 case, I read it carefully. I remember
3 Mr. King was here on behalf of Mr. Edwards,
4 as was Mr. Scarola. And I asked Mr. King
5 certain pointed questions that I thought
6 were relevant to the findings made by the
7 Third District Court of Appeal in Wolfe, and
8 found that essentially all of the material
9 issues that were decided by Wolfe were
10 clearly present in this case, and as the
11 Fourth District kindly pointed out -- I say
12 that, respectfully, because the decision by
13 Judge Warner was such that it took into
14 consideration the arguments made by
15 Mr. Edwards' counsel that somehow I was
16 ruined in a fashion that was anomalous to
17 hording in on another state's rulings and
18 that my ruling was somewhat convoluted and
19 not consistent with governing law.

20 And I thought Judge Warner, as I
21 recollect, kindly, as I said, point out that
22 the court did, in fact, follow the
23 appropriate precedent in Wolfe, and that in
24 a prior opinion, the Fabricant case --
25 F-A-B-R-I-C-A-N-T, I believe is the

1 spelling -- actually, it's Fischer versus
2 Debrincat. Fischer, F-I-S-C-H-E-R. In that
3 case, they respectfully disagreed with the
4 holding of the Third District Court of
5 Appeal. The case went up to the Florida
6 Supreme Court conflict jurisdiction, and the
7 Florida Supreme Court ended up siding with
8 the Fourth District Court of Appeal on this
9 issue.

10 So, what I had forgotten about, quite
11 frankly, until I ran into Mr. Burlington's
12 filing, was that they did comment on this
13 issue pertaining to the Court's finding --
14 my finding -- that material facts remain as
15 to the elements of the claim.

16 Mr. Burlington has already read that
17 paragraph into the record. I am not going
18 to repeat it here. And it seems to me --
19 because we as trial judges we move on to the
20 next case, with all due respect. So I don't
21 follow the machinations, for lack of a
22 better word, that go on in the district
23 court of appeal. I simply don't have time,
24 so I don't know what was being requested to
25 be heard, not being requested to be heard,

1 and things of that nature.

2 So it's been three years or so since
3 that decision came out. And frankly I had
4 forgotten about the fact that they commented
5 on that particular item. So I am glad it
6 was brought to my attention.

7 But what would be the legal argument
8 that would contradict or contravene
9 Mr. Burlington's position? Because, again,
10 I fully concur, which, in part, I wanted to
11 hear Ms. Haddad Coleman argue the substance.

12 I fully concur that the focus of the
13 hearing was clearly as a result of a Wolfe
14 decision. And my concentration in that
15 hearing was to determine whether or not the
16 facts of this case fell under the Wolfe
17 holding. Finding that it did, I entered my
18 decision.

19 But again, it appears from
20 Mr. Burlington's recitation of events that
21 took place at the district court of appeal
22 level, that your client, through counsel,
23 was adamant about including this issue in
24 their briefing and in the court's decision.
25 And, in fact, the Fourth District Court of

1 Appeal did, in fact, decide to deal with the
2 denial of the summary judgment on those
3 alternative grounds.

4 So I feel a bit hemmed in here that,
5 while I agree with what you are suggesting
6 to me that in fact it did transpire the way
7 it did, it was at the insistence, though, of
8 Mr. Epstein through counsel that the Fourth
9 consider the propriety of this court's
10 denial of the motion based on factual
11 considerations pertaining to the probable
12 cause issue and perhaps, to a lesser degree,
13 the bona fide termination issue.

14 MR. BREWER: Your Honor, if I may.

15 THE COURT: Sure.

16 MR. BREWER: What has been very
17 interesting to me about this hearing thus
18 far is that we have not heard one word from
19 anyone with regard to the substantive issue
20 that is before the Court, which is are there
21 facts here that are not disputed.

22 There's been no dispute what has been
23 put before the court.

24 THE COURT: Hold on just a second, if I
25 might. If I don't interrupt -- I don't do

1 it disrespectfully, just that I may forget
2 what I'm going to say. That may very well
3 be. You hear the term law of the case
4 thrown around. And I am sure Mr. Burlington
5 often cringes as an appellate specialist
6 when he sees that term thrown around in the
7 trial courts by lawyers who really are not
8 accurate in terms of what they're talking
9 about as far as the cases. It's a term
10 that's used improperly almost always.

11 Here, however, is a much different
12 proposition and it does, in fact, in my
13 respectful view, constitute law of the case,
14 because -- again -- and I am going to
15 emphasize this once again -- the movant
16 here -- for the Fourth to discuss, consider,
17 and ultimately write on the propriety of
18 the Court's decision pertaining to the
19 factual issues that remain on what -- they
20 generically speak to the elements of the
21 claim -- inclusive, of course, of probable
22 cause and bona fide termination, which the
23 court did discuss. They commented on the
24 subject and refuse to disturb the trial
25 court's findings in that respect. That is

1 the law of the case.

2 MR. BREWER: Can I try to persuade you
3 otherwise, Your Honor?

4 THE COURT: Absolutely.

5 MR. BREWER: You use, actually, I think
6 the correct terminology when you were first
7 referring to this as a comment. That's what
8 this is. It's a comment.

9 For it to be law of the case, the issue
10 has to have been briefed by you and decided
11 at the appellate level. What they did there
12 really is not more than dicta, because when
13 appellate counsel for Epstein attempted to
14 raise -- and he had to -- I mean the Fischer
15 vs. Debrincat case --

16 THE COURT: Debrincat -- let's call it
17 Fischer, F-I-S-C-H-E-R.

18 MR. BREWER: Fischer had come down, and
19 clearly the court was going to follow its
20 own precedent and go with Fischer in the
21 Epstein case. So an attempt was made to
22 supplement the brief and to supplement the
23 record with regard to the probable cause
24 Topsy Coachman -- well, even if the court --
25 in the Topsy Coachman, you are probably

1 aware, the court was correct in its ruling,
2 maybe not for the reasons that were
3 expressed. In other words, there was
4 another issue in the case.

5 THE COURT: There was the WQBA. I
6 think is one of the cases.

7 MR. BREWER: In any event, that attempt
8 was made. It was denied, so it was never
9 briefed. This issue was never briefed. The
10 record was never supplemented. And they
11 make a comment that the court made a
12 statement that there were issues as to
13 material fact and they would not disturb
14 that.

15 THE COURT: No one is more sensitive to
16 dicta than I am. I was reversed recently on
17 a contention by the Fourth that the Second
18 DCA said something but didn't mean to say
19 it. Had to do with a foreclosure issue.

20 But here, again, they said what they
21 said. And I will read it into the record so
22 that it is clear. Quote, Epstein suggests
23 that this case could be decided on a
24 contingency Coachman analysis, as he alleges
25 that all the elements of the cause of action

1 were not present.

2 However, the trial court is
3 specifically found that material issues of
4 fact remain as to the elements of the claim.
5 Based upon the facts presented and the
6 inferences which may be drawn through those
7 facts, we will not disturb the trial court's
8 evaluation, end quote.

9 It certainly doesn't sound like dicta
10 to me. It sounds like part of the holding
11 of the case.

12 MR. BREWER: Your Honor, let me just --
13 if the appellate counsel had been allowed to
14 file supplemental briefs and supplement the
15 record, and the Fourth District Court of
16 Appeal then found, no, there are issues of
17 material fact as relates to the probable
18 cause issue, and therefore we refuse to
19 reverse on those grounds or whatever on
20 those grounds, if they had it before them, I
21 would agree with Mr. Burlington. It's law
22 of the case. We are flapping our gums. But
23 they didn't. They refused to have it -- the
24 supplement brief, and they refused to
25 supplement the record. And so it is not --

1 with all due respect, Your Honor, that does
2 not rise to the level of law of the case.

3 THE COURT: We are going to have to
4 agree to disagree and remain colleagues,
5 because I've looked at the opinion. It's
6 two paragraphs. The one paragraph deals
7 with Fischer and the second paragraph deals
8 with the recited paragraph that the court
9 just entered again into the record.

10 Is that the thing in this case?

11 MR. BURLINGTON: Your Honor, when you
12 asked about the opinion, this case was a
13 tagalong to the Florida Supreme Court with
14 Fischer. And there is an order out of the
15 Supreme Court what happened after they
16 decided Fischer on the merits. And the
17 Florida Supreme Court, they issued an order
18 asking the parties --

19 THE COURT: I'm sorry. My apologies.
20 I didn't mean to interrupt you. I just
21 wanted to make sure -- it was a footnote. I
22 knew that Judge Warner made a comment about
23 the court -- the trial court and says,
24 quote, The trial court properly relied on
25 Wolfe at time because that case was binding

1 upon the trial court in the absence of
2 interdistrict conflict. And I will omit the
3 citation. And she indicated that after the
4 trial court ruling, the court held contrary
5 in Fischer to constitute conflict that was
6 ultimately resolved by the Florida Supreme
7 Court.

8 So I just wanted to make sure that was
9 the opinion. I didn't realize it was so
10 short. I didn't recognize that, although
11 she indicated that present --

12 MR. BURLINGTON: Your Honor, may I
13 interrupt you to correct something? Their
14 motion in the Fourth District was not to
15 supplemental their record. Their position
16 was the record was sufficient. Their answer
17 brief incorporated their motion for summary
18 judgment from the trial level. That's what
19 I said was insufficient. The Fourth
20 District obviously found it sufficient, so
21 they had their entire motion for summary
22 judgment, which was in the record, to
23 evaluate.

24 They could have filed a rehearing and
25 said, Fourth District, you should not have

1 reached this. We didn't brief it. It
2 wasn't properly presented. And that would
3 have put me in an odd position, because that
4 had been my position.

5 But also, when it went to the Supreme
6 Court and it was a tagalong case after
7 Fischer was -- the Fischer opinion was
8 issued and they issued an order saying, Is
9 there any reason for us to review this, or
10 is it controlled by Fischer? they didn't
11 respond and say, Yes, the Fourth District
12 reached issues they shouldn't have reached.
13 They didn't do anything. They said, No, you
14 decide it, it will go back.

15 So they had two opportunities, if they
16 thought it was unfair, for the Fourth
17 District to consider the issue that they
18 repeatedly said was properly before the
19 Fourth District.

20 THE COURT: I just want to complete the
21 record for now, so, Mr. Scarola, let me hear
22 from you on substantive issues just so that
23 we can tie a bow around this matter, and I
24 can rule comprehensively as to Mr. Epstein's
25 motion for summary judgment.

1 Did you want to add something,
2 Mr. Brewer?

3 MR. BREWER: Yes. All I wanted to
4 add -- the only issue that was before the
5 Florida Supreme Court was the litigation
6 privilege.

7 THE COURT: I am not suggesting that
8 was not the case. But the Fourth District
9 squarely dealt with the issue as decided by
10 Mr. Edwards' counsel and by the court.

11 Go ahead, Mr. Scarola.

12 MR. SCAROLA: Thank you, Your Honor. I
13 am here as driver of the Topsy Coach. In
14 the event what we are confident is a correct
15 ruling, that as a procedural matter, these
16 issues can't be reached, as a substantive
17 matter, this motion should be denied as
18 well.

19 There are two memoranda that have been
20 filed by -- on behalf of Mr. Edwards which
21 address this motion for summary judgment.
22 The first is Edwards' motion in limine to
23 strike the June 30, 2017 affidavit of
24 Jeffrey Epstein and to exclude evidence as
25 to which discovery was withheld under claims

1 of privilege with incorporated memoranda of
2 law.

3 Let me very briefly see if I can
4 summarize what I believe the state of mind
5 issues relevant to the pending claim to be.

6 Jeffrey Epstein initiated this
7 litigation with the filing of a five-count
8 complaint. Those counts were Florida Civil
9 Remedies for Criminal Practices Act
10 violations, alleging that not only
11 Mr. Rothstein -- whom we can set aside for
12 all practical purposes today -- but that
13 Bradley Edwards committed securities
14 violations, criminal fraud, fraudery,
15 extortion, perjury and, quote, improper
16 litigation tactics, unquote. Those were the
17 alleged criminal practices that Mr. Epstein
18 said Bradley Edwards was responsible for
19 committing.

20 In count two, he claimed relief for
21 violation of Florida's Racketeer Influence
22 and Corrupt Organization Act -- Florida
23 RICO -- and alleged the same predicate acts
24 as the basis for the Florida RICO claims.

25 Then he alleged abuse of process. And

1 the foundation for the abuse of process
2 claim was, quote, improper litigation
3 tactics, unquote.

4 He alleged fraud on the basis that the
5 claims against Mr. Epstein, then pending,
6 brought by Brad Edwards on behalf of various
7 victims of Mr. Epstein's criminal conduct
8 were, quote, an attempt to extort as much
9 money as possible from Epstein, unquote.

10 The last count was a conspiracy claim.
11 And the conspiracy claim said that the civil
12 actions were used in a, quote, unlawful,
13 improper and fraudulent manner.

14 We filed a motion for summary judgment.
15 And although Your Honor apparently did not
16 recall, Brad Edwards was deposed. He did
17 sworn testimony.

18 THE COURT: It's not that I didn't
19 recall. I was suggesting that I did not
20 receive anything from the -- from the
21 Epstein team to support their motion for
22 summary judgment based on Mr. Edwards --
23 whatever Mr. Edwards may have said to
24 support whatever the mindset that they are
25 claiming Mr. Edwards may have had at the

1 time he filed those federal court actions
2 that may have -- to some degree mirror the
3 pending state court action.

4 MR. SCAROLA: Yes, sir. When
5 Mr. Edwards filed his counterclaims against
6 Mr. Epstein and filed a motion for summary
7 judgment on all of the claims that
8 Mr. Epstein has brought to support his
9 motion for summary judgment, Mr. Edwards
10 needed to provide evidence to the court,
11 record evidence that he didn't do these
12 things that Mr. Epstein alleged that he did.
13 And so he filed a very detailed affidavit,
14 and he had his deposition testimony and he
15 had the testimony of Mr. Rothstein.

16 And while Mr. Rothstein gave one answer
17 that might be interpreted as somewhat
18 equivocal, Mr. Rothstein clearly and
19 unequivocally said Brad Edwards was part of
20 the legitimate part of my law firm. He had
21 no idea what was going on with respect to
22 the Ponzi scheme. He was not involved in
23 any way, and his cases were used in that
24 Ponzi scheme without his knowledge.

25 So Brad Edwards testified to that

1 clearly and unequivocally. Mr. Rothstein
2 testified to that clearly and unequivocally.
3 And Mr. Edwards, in his affidavit, went
4 through every alleged impropriety in
5 connection with his prosecution of those
6 claims and detailed the basis that he had
7 for everything that he did, why he
8 subpoenaed the pilots, why he named various
9 celebrities, what the source of the
10 information was to believe that they had
11 information relating to Mr. Epstein's
12 criminal conduct.

13 Those cases that Mr. Edwards was
14 prosecuting included claims for punitive
15 damages, very substantial claim for punitive
16 damages that focus on the magnitude of
17 Mr. Epstein's wrongdoing.

18 Mr. Epstein throughout the prosecution
19 of those civil claims asserted a Fifth
20 Amendment right. He refused to acknowledge
21 that he knew any of these young women. He
22 refused to acknowledge any relationship with
23 any of them, or any other alleged victim.
24 He refused to answer questions about what
25 went on on his plane, what went on on his

1 private island, what was going on in New
2 York with the young women who were known to
3 have been traveling back and forth with
4 Mr. Epstein, and as to whom very substantial
5 evidence existed that he had engaged in a
6 protracted intense pattern of not only
7 abusing these children himself, but
8 prostituting them to others as well.

9 So part of the investigation into the
10 magnitude of his wrongdoing included
11 allegations with regard to the scope of his
12 misconduct over an extended period of time,
13 over a very wide geographic basis involving
14 dozens and dozens of under-aged female
15 victims.

16 So all of that is laid out in this very
17 extensive affidavit from Mr. Edwards
18 detailing why he did what he did, including
19 why he filed a very substantial federal
20 claim at the same time that a state court
21 claim was pending, because under the terms
22 of the non-prosecution agreement that
23 Mr. Epstein somehow managed to enter into
24 with the federal government, federal claims
25 became significant because he committed to

1 compensate victims under a federal statute.

2 So there was a basis for everything
3 that Mr. Edwards did detail in that
4 affidavit.

5 No opposition was filed to the affidavit.
6 And on the eve of the hearing on that motion for
7 summary judgment, Mr. Epstein took a voluntary
8 dismissal of every claim against Mr. Edwards. So,
9 to the --

10 THE COURT: By the way, was the
11 voluntary dismissal only as to Mr. Edwards?

12 MR. SCAROLA: It was only as to
13 Mr. Edwards. The case against LM had been
14 voluntary dismissed earlier, as I recall it.
15 And there was a default entered with regard
16 to Mr. Rothstein, who never appeared to
17 defend against these claims.

18 So the only claim that was at issue at
19 that time was the case as to which a
20 voluntary dismissal was taken as to
21 Mr. Edwards.

22 So to the extent that Mr. Edwards'
23 state of mind has ever been an issue, that
24 issue has been resolved conclusively in
25 favor of Mr. Edwards by virtue of the motion

1 for summary judgment and the voluntary
2 dismissal.

3 So what we have now is a claim pending
4 against Mr. Epstein. And in order to
5 substantiate that claim for malicious
6 prosecution against Mr. Epstein, we need to
7 be able to demonstrate that his allegations
8 were not only factually untrue, but that he
9 had no reason to believe that they were true
10 at the time he brought those claims, that
11 they were brought maliciously.

12 And malice under Florida law may be
13 either actual malice or implied malice. So
14 by proving that the allegations themselves
15 are untrue, the implication arises that they
16 were filed maliciously.

17 So part of our claim is proving that
18 all of these allegations were false. Then,
19 in order to demonstrate actual malice, we
20 can go on to show that Mr. Epstein had no
21 probable cause to believe they were true,
22 because a mistaken but good faith belief is
23 a defense to a malicious prosecution claim.

24 If Mr. Epstein can come in and say,
25 Well, now we all know that these allegations

1 were false, but at the time I had a good
2 faith subjective basis to believe that these
3 allegation were true.

4 Now, this is where the Fifth Amendment
5 assertion becomes relevant, because there
6 were all sorts of things that could have
7 given rise to a suspicion on the part of
8 someone who didn't know the truth about the
9 viability of these claims because
10 Mr. Rothstein pled guilty to involvement in
11 a very widespread Ponzi scheme.

12 And one might think one might have a
13 suspicion that those who were in his law
14 firm had knowledge of what was going on and
15 participated.

16 And as Mr. Epstein claimed in his --
17 not only in his lawsuit, but in his
18 deposition, these cases against him were
19 fabricated. They were, quote, ginned up,
20 unquote. That's the phrase he used. These
21 case were ginned up. And when asked what
22 does that mean, he said they were
23 fabricated.

24 So the truthfulness of the allegations
25 made in the complaint against Mr. Epstein

1 become relevant and material. Were these
2 fabricated claims, were they ginned up
3 claims, or were they true claims?

4 Now, there's one person who knew
5 without a doubt whether these were
6 fabricated claims, ginned up claims, or
7 whether they had a true reasonable basis,
8 whether they were indeed very valuable
9 claims. And that one person was clearly
10 Mr. Epstein himself.

11 Mr. Epstein can't say I relied upon all
12 of these third-party sources to give rise to
13 a reasonable suspicion that claims were
14 ginned up, when the claims were against him
15 and he knew they weren't ginned up. He knew
16 they weren't fabricated.

17 THE COURT: I don't want to mix apples
18 and oranges. I think in my reading of the
19 pertinent testimony -- and it's a difficult
20 read because all of the objections and the
21 bantering going on between counsel -- I
22 understand a situation like this is
23 relatively sensitive. It doesn't make it
24 easy to read.

25 But in my reading of the testimony,

1 Mr. Epstein was taking a position, as I
2 understand it, that the ginned up claims, so
3 to speak, were not so much relating to the
4 substantive allegations of alleged abuse and
5 molestation, but instead were ginned up or
6 fabricated or enhanced to attract the
7 investors who were involved in putting money
8 into this \$30 million dollar enterprise.

9 Whereas, in the state court claim, the
10 claims were rather straightforward. The
11 damages were not mentioned, to my knowledge,
12 other than in excess of \$15,000.

13 I have a vague recollection, because
14 the state court claims, coincidentally --
15 and as I pointed out the beginning of my
16 handling of this case -- were before me in
17 another civil division before I was assigned
18 to the juvenile division. So I have some
19 significant familiarity with those cases
20 while I was in the other division.

21 But the point that was made was that so
22 that these investors, for lack of a better
23 term, would be assuaged and satisfied with
24 their monetary commitment. Those federal
25 cases were brought, ginned up, fabricated --

1 MR. SCAROLA: Federal case,
2 respectfully, sir.

3 THE COURT: Then I apologize.

4 MR. SCAROLA: That's quite all right.

5 THE COURT: The federal case was
6 brought mirroring the essential allegations,
7 but going further so as to appease these
8 investors who were coming down from New
9 York, as I recollect. And the presentation
10 was by Mr. Rothstein allegedly through some
11 intervention by Mr. Adler. And as I
12 recollect, that was the substance of
13 Mr. Epstein's testimony, as it related to
14 those issues.

15 MR. SCAROLA: May I respectfully call
16 the Court's attention to the following
17 questions and the following answers which
18 indicate that, while there may have been
19 some argument along those lines, while there
20 may be allegations in the complaint along
21 those lines, that's not what Mr. Epstein's
22 testimony was.

23 THE COURT: Please feel free. It's
24 only my review --

25 MR. SCAROLA: I understand that.

1 THE COURT: -- and it's a lot of
2 material.

3 MR. SCAROLA: It's an extremely
4 extensive record, so I don't fault the Court
5 in any respect at all with regard to the
6 inability to recall details.

7 THE COURT: As I said, that was -- the
8 essence of my recollection. Feel free.

9 MR. SCAROLA: Yes, sir.

10 Mr. Epstein, at page 20 of his
11 deposition, is asked specifically, "What are
12 the allegations against you which you
13 contend Mr. Edwards ginned up?"

14 He refuses to answer. Fifth Amendment
15 rights.

16 "What specific discovery proceedings
17 did Mr. Edwards engage in which you contend
18 form the basis of your lawsuit?" Refuses to
19 answer. Fifth Amendment. That's page 21.

20 Page 23, "Well, which of Mr. Edwards'
21 cases do you contend were fabricated?"
22 Fifth Amendment.

23 Page 23, "Are you now telling us that
24 there were claims against you that were
25 fabricated by Mr. Edwards?"

1 Refusal to answer. Fifth Amendment.

2 Page 22, "Is there anything in LM's
3 complaint that was filed against you in
4 September of 2008" -- that's the federal
5 complaint -- "which you contend to be
6 false?"

7 Refusal to answer. Fifth Amendment.

8 At page 73, "I would like to know
9 whether you ever had any physical contact
10 with the person referred to as Jane Doe in
11 that federal complaint."

12 Refusal to answer. Page 24. "Did you
13 ever have any physical contact with [REDACTED]"

14 Fifth Amendment. Refusal to answer.

15 Page 26. "What is the actual value
16 that you contend the claim with [REDACTED] against
17 you has?"

18 Deposition page 26, refusal to answer.

19 Interrogatory question, "Describe in
20 your own words all interactions you have had
21 with the individual identified in this
22 action as [REDACTED] including but not limited to
23 the dates, places, participants in,
24 witnesses to, and description of all sexual
25 activity involving [REDACTED]"

1 Answer to interrogatory, Fifth
2 Amendment. Refusal to respond.

3 Those are objections filed on October
4 8th, 2010.

5 So while the defense may argue that
6 there was this parceling out of which claims
7 were alleged to be ginned up and which
8 claims were alleged to be fabricated, and
9 other claims where he's not responding,
10 that's what Mr. Epstein did.

11 Mr. Epstein made blanket assertions of
12 Fifth Amendment privilege to preclude
13 discovery into what is the heart of this
14 case. What are the claims that you allege
15 were somehow misused?

16 So if we go back to the four counts
17 that we are talking about here, at the time
18 that Mr. Epstein filed those claims he knew
19 he could not proceed with those claims for
20 four different reasons. One, because he
21 knew he was guilty. He had actual knowledge
22 of his own guilt. And we can prove that
23 through independent third parties, who will
24 testify that man abused me, used me as a sex
25 slave and prostituted me out to others.

1 He knew that he was going to assert his
2 Fifth Amendment privilege. He knew he was
3 going to try to use the Fifth Amendment as
4 both a sword and a shield, which he could
5 not do.

6 He knew that the litigation privilege
7 barred all of these allegations about
8 improper litigation conduct, because
9 improper litigation conduct -- it has been
10 the law of the State of Florida for a very
11 long time -- cannot form the basis of an
12 independent tort claim.

13 And most significantly of all -- I
14 don't want to say that, because I diminish
15 by saying that, the importance of the other
16 three defenses. But Mr. Epstein was not a
17 victim of the Ponzi scheme. He suffered no
18 damage, and he knew that he suffered no
19 damage.

20 How could he have been defrauded by the
21 fact that some investor is being shown the
22 claims against Mr. Epstein? He never relied
23 upon anything Brad Edwards said. He never
24 relied on anything Mr. Rothstein said.

25 He didn't know they were saying those

1 things until the Ponzi scheme gets uncovered
2 and he seizes upon the Ponzi scheme as a
3 means by which to try to extort Bradley
4 Edwards into abandoning the legitimate
5 interest of his clients or compromising
6 those interests for less than those
7 interests were worth.

8 THE COURT: Let's focus, though, on the
9 motion that's before the Court, please, and
10 that is the issue of whether or not the
11 summary judgment should be granted or
12 denied. The wisdom of Mr. Epstein bringing
13 suit in the first place is something that I
14 think is more appropriate to argue and would
15 be in respect to the motion itself.

16 MR. SCAROLA: Well, sir, what I am
17 suggesting is that all of that evidence is
18 indicative of malice on Mr. Epstein's part,
19 because since he knew that he was in fact
20 guilty, since he knew that because Brad
21 Edwards was leading an effort to set aside
22 the non-prosecution agreement -- which is
23 specifically referenced in his complaint --
24 the non-prosecution agreement is referenced
25 in the complaint -- that's one of the things

1 that they want Your Honor to exclude as
2 irrelevant.

3 But a principle motive for Mr. Epstein
4 was, I need to get Brad Edwards off my back,
5 because if he continues to prosecute the
6 Crime Victims' Rights Act case, sets aside
7 the non-prosecution agreement, I face
8 federal criminal prosecution for a wide
9 variety of crimes that could send me away
10 forever.

11 That's what -- that's what was a
12 significant part of his motivation. A
13 significant part of his motivation was that
14 there were 40 women who were making
15 claims -- 40 children who were making claims
16 against him civilly, and he faced an
17 enormous compensatory damage result and
18 punitive damage result as well.

19 And what's extremely significant to
20 understand is that after Mr. Epstein lays
21 all of these things out as efforts to gin up
22 the value of the claims that Brad Edwards
23 was bringing against him, he voluntarily
24 enters into a settlement of those, of each
25 and every one of those claims, as well as a

1 whole bunch of others. And the record
2 reflects at this point by virtue of
3 interrogatory responses that were requested
4 in the record by the defense, what the
5 amount of those settlements were.

6 And no one can look at that and say
7 these were trivial matters. These were
8 fabricated cases. These were claims that
9 didn't have any significant value. So we
10 are focusing on Mr. Epstein's state of mind,
11 Mr. Epstein's motive, Mr. Epstein's
12 assertion to Fifth Amendment privilege from
13 which reasonable inferences against him may
14 be drawn and proving our case through all of
15 that direct and circumstantial evidence.

16 Mr. Epstein can't come in now and
17 selectively attempt to waive his Fifth
18 Amendment privilege and file an affidavit
19 that suggests, I had a good faith basis for
20 my filing these claims against Mr. Edwards
21 because there was this case filed down in
22 Broward County that never even mentions
23 Bradley Edwards' name.

24 And he can't come and stand before Your
25 Honor and say, as he just did through

1 Counsel, even the federal government did not
2 know who was involved in the Ponzi scheme,
3 quote, unquote, and say that provided a
4 reasonable basis for charging Bradley
5 Edwards with crimes -- with this long litany
6 of crimes. That's no reasonable basis for
7 charging Bradley Edward with anything.
8 That's reckless, that's malicious, that's
9 extortion. That's what was going on here.

10 So, we have detailed in our responses
11 the case law that relates to the concept
12 that one may not assert the Fifth Amendment
13 privilege and then at the last minute
14 attempt to withdraw it, and certainly not
15 attempt to withdraw it on the very limited
16 basis upon which it's attempted to be
17 withdrawn now. There's a long litany of
18 cases included in our memo. We have cited
19 all of the disputed issues of fact upon
20 which Your Honor relied previously in
21 finding that this was not a summary judgment
22 case in favor of the defense by any means.

23 I suggest that at the conclusion of
24 this case Your Honor is going to be able to
25 rule as a matter of law that there was no

1 probable cause. But you certainly can't
2 rule at the present time that there was
3 probable cause on the part of Mr. Epstein on
4 the basis of the record that exists
5 presently.

6 And I thank you very much for being as
7 patient with me in making those arguments as
8 you were, sir.

9 THE COURT: Thank you, Mr. Scarola.

10 Ms. Haddad Coleman, I will give you a
11 few moments to rebut.

12 MS. HADDAD COLEMAN: Thank you, Judge.

13 Since Mr. Scarola was kind enough to
14 quote us, I would like to --

15 MR. SCAROLA: Excuse me. Before
16 Ms. Haddad Coleman begins, may
17 Mr. Burlington be excused if he chooses to
18 be?

19 THE COURT: Yes. Thank you,
20 Mr. Burlington. I appreciate the briefing
21 on the res judicata issue.

22 Go ahead.

23 MS. HADDAD COLEMAN: Thank you, Judge.
24 With respect to Mr. Burlington's argument,
25 we would also point out to the court that we

1 did file a detailed written motion in
2 opposition to his with case law spelling it
3 out.

4 THE COURT: You're talking about the
5 Fifth Amendment issue?

6 MS. HADDAD COLEMAN: No, Judge. That,
7 I haven't been able to file yet, because we
8 just received it, but I am working on it.

9 The Court should be aware that
10 Mr. Epstein did give two depositions. In
11 response to the motion to strike and when I
12 present to this Court that Mr. Epstein did,
13 in fact, answer many questions as to what he
14 believed as to why he filed the suit, we
15 will be addressing that in our response to
16 the motion to strike the affidavit.

17 THE COURT: So what was the response
18 you are speaking of? I may have
19 misunderstood you.

20 MS. HADDAD COLEMAN COLEMAN: To the
21 document provided by Mr. Burlington's firm.

22 THE COURT: You're talking about the
23 Topsy Coachman issue?

24 MS. HADDAD COLEMAN: Yes, we did file a
25 written response.

1 Mr. Scarola brought up a lot of things.
2 I am going to start with the fact that he
3 did state -- and I quote, Even if
4 Mr. Epstein mistakenly believes the
5 allegations were true. I think that's the
6 only crux of this issue. There's a lot of
7 conversation about malice. We filed a
8 summary judgment on the issue of probable
9 cause. The threshold of what Mr. Epstein
10 believed at the time he filed suit is like
11 reasonable suspicion to arrest someone:
12 there's probable and there's false arrest.
13 There's two different levels that must be
14 met at different levels of litigation. At
15 the time Mr. Epstein filed suit -- if the
16 Court will indulge me, I would like to read
17 to you a summary of the action in the
18 complaint that was filed.

19 "Attorney Scott Rothstein, aided by
20 other lawyers and employees of the firm for
21 Rothstein, Rosenfeldt & Adler, PA for
22 personal greed and enrichment in betrayal of
23 the ethical, legal and fiduciary duties to
24 their own clients, the professional
25 obligations to the administration of

1 justice, deliberately engaged in a pattern
2 of racketeering that involved a staggering
3 series of greatly serious obstruction of
4 justice and actionable frauds."

5 Specifically relating to this case, it
6 states, "Marketing of non-existing Epstein
7 settlements --" and this Court may remember,
8 they settled for \$3 million. That's never
9 been alleged by anybody in this case.

10 "-- in the sanctioning of a series of
11 depositions that were unrelated to any
12 principle litigation purpose for Epstein
13 cases, but instead were designed to discover
14 extraneous private information about Epstein
15 or his personal and business associates,
16 including well-known public figures, in
17 order to defraud investors and support
18 extortion and demands for payment from
19 Epstein.

20 "This misconduct featured the filing of
21 legal motions and the pursuit of a civil
22 litigation strategy. It was unrelated to
23 the merits or the value of their clients'
24 cases."

25 Nowhere has Mr. Epstein ever once

1 stated that they filed false cases. Instead
2 he alleged in his cases against Mr. Edwards,
3 Mr. Rothstein and LM that they were ginned
4 up, as this Court correctly points out. He
5 specifically points to the conduct engaged
6 in the discovery, the pleadings, the other
7 things that were filed in this case.

8 And again, this is all the suspicion
9 Mr. Epstein had at the time. All of this
10 after-the-fact information, while it might
11 be well intended, that's what discovery is
12 for. That's why discovery exists after you
13 file suit.

14 At the time --

15 THE COURT: I am not certain that
16 that's true. In other words, what I believe
17 one of the central holdings were of Fischer
18 was that there must be grounded allegations
19 that form the basis of a claim, and that to
20 shotgun allegations as a matter of course
21 would be ill-advised from the standpoint of
22 facing, then, the potential malicious
23 prosecution action and then longer within
24 the confines of a lawsuit, as Wolfe
25 provided, are those actions going to be

1 necessarily tolerated as a matter of law.

2 So, the way I look at it is this --

3 Let me let you finish, because I think
4 I'm ready to rule whenever you are finished
5 with your argument, please.

6 MS. HADDAD COLEMAN: Judge, Mr. Epstein
7 filed an abuse of process claim against
8 Mr. Edwards. At the end of the day, both
9 sides amended complaints several times.
10 Areas of the case had changed. At the end
11 of the day, Mr. Epstein had an abuse of
12 process claim against Mr. Edwards alleging
13 specifically that he did abuse process in
14 the cases he was prosecuting when he worked
15 at RRA as a partner at RRA against
16 Mr. Epstein.

17 To allege now, all of these years later
18 that Mr. Epstein at the time had no basis in
19 fact for that, the facts are delineated in
20 nine pages of our motion. It's supported by
21 uncontroverted testimony.

22 While we're on the subject of
23 uncontroverted testimony, I would like to be
24 provided a little bit of indulgence, as the
25 Court gave Mr. Scarola, reading from

1 Mr. Epstein's -- one of his depositions.

2 THE COURT: Of course. Take your time.

3 MS. HADDAD COLEMAN: Mr. Edwards was
4 deposed twice. Again, this motion is now
5 pending before the court. It's a motion to
6 compel Mr. Edwards to answer questions.

7 Now this motion was filed before
8 summary judgment was granted. The parties
9 all agreed Mr. Edwards' deposition could
10 continue. The summary judgment was granted,
11 so this is still an issue for the Court.

12 Mr. Scarola. Questions were posed to
13 Mr. Edwards --

14 THE COURT: Can you slow down for our
15 court reporter?

16 MS. HADDAD COLEMAN: Question: "Have
17 you directed -- did you ever direct that the
18 investigators -- during the time you were at
19 RRA, did you direct them to work on Epstein
20 files?"

21 Mr. Scarola: "We're claiming the
22 privilege with respect to any action taken
23 by Mr. Edwards or at Mr. Edwards' direction
24 in connection with the investigation to
25 prosecuting claims against Mr. Epstein."

1 Another question is posed.

2 Mr. Scarola: "Mr. Edwards will not answer
3 any questions regarding what he did or
4 didn't do."

5 These are all direct questions related
6 to what he did in the Epstein case, as well
7 as at RRA.

8 THE COURT: I understand. I will
9 ultimately rule on those issues once they're
10 in front of me.

11 MS. HADDAD COLEMAN: What I'm saying to
12 the Court is, if you are considering what
13 Mr. Epstein said after the fact as a basis
14 for whether or not he had probable cause at
15 the time he filed suit for these issues, and
16 Mr. Scarola is trying to make an issue of
17 the fact that -- how Edwards had this good
18 faith basis the whole time, they have
19 provided no evidence to dispute the facts we
20 present in our motion for summary judgment.
21 Not one. And if this affidavit for
22 Mr. Edwards lays out allegedly what he did
23 in this case -- this is his direct testimony
24 when he turned to the Epstein 2009 cases,
25 when he was prosecuting them at RRA.

1 "Mr. Edwards, were you involved in a
2 discussions regarding the deposing of any of
3 the people -- the individuals -- Mr. Trump
4 or any -- with any of the lawyers in your
5 firm, including Scott Rothstein?"

6 "Objection."

7 "Did you ever discuss with
8 Mr. Rothstein or anyone on his behalf the
9 value of taking the depositions of Donald
10 Trump, Alan Dershowitz, former President
11 Clinton, David Copperfield, Leslie Wexner,
12 as an inducement to get Mr. Epstein to
13 settle his lawsuits?"

14 Mr. Scarola again -- none of these
15 questions are answered. So at the risk of
16 pointing this out to the Court -- because
17 it's not in our motion for summary judgment
18 and I believe it's related to the issue of
19 what Mr. Epstein had in his mind at the
20 time, there's no evidence in this case to
21 controvert what Mr. Epstein had available to
22 him at the time he filed suit upon which he
23 relied, and the good faith basis he had to
24 file a lawsuit that was filed by a
25 respectable law firm in this town.

1 All of the case law upon which we
2 relied to discuss the low threshold of
3 probable cause and what -- how it relates to
4 the evidence to this court is in our motion.
5 And for the reasons we write therein, Judge,
6 we request that this court grants the motion
7 for summary judgment.

8 THE COURT: All right. Thank you to
9 each of the attorneys who provided not only
10 excellent oral argument, but also I
11 appreciate the written presentations as
12 well.

13 Let me start by saying that the motion
14 is denied for two principle reasons. One, I
15 do find that, based upon the Fourth District
16 Court of Appeal's opinion -- and for the
17 record, that opinion is that 178 So.3rd 942
18 in Edwards versus Epstein -- the second
19 paragraph -- which again, I will not belabor
20 since we have already read that into the
21 record on two occasions -- does in this
22 Court's respectful view constitute law of
23 the case. And hence, it does procedurally
24 foreclose Mr. Epstein's motion.

25 And again, respectfully it was the

1 insistence of Mr. Epstein through counsel
2 based upon the uncontroverted procedural
3 history provided by Mr. Burlington in front
4 of the Fourth District Court of Appeal that
5 the Fourth decided, through Judge Warner's
6 opinion, to address the Topsy Coachman
7 issue, address it they did, and they did not
8 disturb the trial court's findings.

9 Although, as I did indicate earlier,
10 the focus was certainly on Wolfe and the
11 facts and circumstances in Wolfe were
12 inexplicably tied, in my respectful view, to
13 facts of this case.

14 Irrespective of that, and in
15 recognition that the court did not have the
16 Fischer case at its disposal when this court
17 made its ruling, and then ultimately the
18 Florida Supreme Court decided that Fischer
19 would be the applicable law on the subject,
20 we are now back again here today.

21 The second reason -- again, just in
22 case there's some discrepancy or suggestion
23 that that language may have constituted
24 dicta -- which I don't believe it did -- I
25 believe it was a pronouncement and a finding

1 by the court specifically in upholding that
2 aspect of this court's decision.

3 My denial is also based upon what I
4 perceive to be abundant factual issues
5 pertaining to the probable cause issue.

6 As I indicated earlier, the facts are
7 by no means clearcut here, as they are in
8 most false arrest cases. Mindset of both
9 Mr. Epstein and Mr. Edwards are going to be
10 critical in a fact finder's analysis as it
11 relates to probable cause.

12 The reason and rationale behind
13 Mr. Epstein's decision to go forward in the
14 first place, the reasons behind Mr. Edwards
15 filing of the federal court case,
16 Mr. Epstein's conclusions, right or wrong,
17 at the time he made the decision to go
18 forward in the prosecution of the claim,
19 inclusive of whether or not he himself
20 suffered any damages as a result of what I
21 will term Rothstein -- or the Rothstein
22 entity's or entities' actions are all
23 subject to resolution by the finder of fact.

24 So again, with my thanks I will go
25 ahead and denied that motion for the reasons

1 stated on the record, and we will proceed
2 on, once we get back from the lunch break,
3 with the next motion.

4 What motion would you like to hear
5 next? Let me hear from Mr. Epstein's
6 counsel, and then I will hear from
7 Mr. Edwards' counsel.

8 MS. HADDAD COLEMAN: Judge, I would
9 like to address all of my motions to compel
10 discovery responses for Mr. Edwards since we
11 kind of left off with that with our last
12 argument for summary judgment.

13 THE COURT: Okay. Mr. Scarola, the
14 principle motions this afternoon are -- from
15 your standpoint are what?

16 MR. SCAROLA: Your Honor, I would
17 assume that the Court has not yet reached
18 the argument with regard to the implications
19 of Mr. Epstein's assertion of Fifth
20 Amendment privilege.

21 THE COURT: Correct. Let me just
22 add -- there was one thing I wanted to add.
23 Forgive me for interrupting.

24 But I am going to find that Edwards'
25 motion in limine to strike the June 30th

1 affidavit of Epstein is moot based upon the
2 Court's initial finding as the law of the
3 case and otherwise moot based upon the
4 Court's denial of the motion for the reasons
5 that I have stated on the record, thus not
6 necessitating my ruling on the issue at this
7 time, that being the motion for the
8 affidavit.

9 MR. SCAROLA: Thank you, Your Honor.
10 That's the clarification that I was
11 requesting.

12 In light of that, I don't know whether
13 Your Honor chooses to reach the defense's
14 omnibus motion in limine which includes a
15 lot of arguments that are based upon the
16 Fifth Amendment privilege.

17 THE COURT: The only reason I'm
18 concerned -- again, I made myself clear to
19 counsel for Mr. Epstein that I will not
20 accept, respectfully, the excuse that there
21 is insufficient representation or that
22 there's not enough time.

23 Having been an attorney or litigator
24 for the better part of 17 years prior to
25 being on the bench and now as a judge for

1 the better part of 18 years, I think I have
2 a pretty good handle, based upon that
3 combined 35 years of experience on what is
4 necessary to properly defend and prosecute
5 civil cases.

6 And this is a major undertaking from
7 both sides, and also a major undertaking
8 from the Court. I harken back to a case
9 yesterday on a very complex business matter
10 where one of the attorneys was a clerk for
11 Judge Middlebrooks, federal court. And he
12 gave somewhat of a wry smile when he stated
13 that our trial courts here in the state of
14 Florida are not afforded with the same
15 support as our federal judges and our
16 appellate court judges.

17 And while I am not complaining, it's a
18 reality. But I spend as much time as I can
19 to prepare myself and to read the materials.
20 And if help is an absolute requirement, we
21 seek it out through our trial clerks, who,
22 while they do an exceptional job, are
23 themselves busy, because I think there's
24 about nine of them assigned to somewhere
25 around 50 judges in the main courthouse, one

1 up in South County -- one down in South
2 County, one up in North County. So they're
3 stretched, so we don't have that same
4 luxury. The litigants do.

5 And I want to make clear that if help
6 is needed, make sure you get it, because,
7 again, this is complex. These are multitude
8 issues, they're involved, and I want to give
9 fair warning that the lack of time for solo
10 practitioners -- while, again I'm empathetic
11 to it, while I understand, it's not going to
12 suffice here.

13 So whatever the proper support -- help
14 may be required -- I am giving you fair
15 warning now, a couple months before trial,
16 that it be secured.

17 All right, so again, I don't want to
18 overstate the situation, or -- it is not
19 being critical of anyone. It's just that
20 based upon the time and experience that I
21 have had in dealing with cases of this
22 type -- not so much these issues, but
23 certainly of the magnitude that you are
24 dealing with. I recognize that there will
25 be support -- help required. And perhaps

1 that has to be emphasized today so that we
2 are not going to be running into this issue
3 in the future.

4 And again, that has nothing to do with
5 the holidays. I don't want it to be
6 misconstrued. It has nothing to do with
7 anything that may have transpired as a
8 result of the recent hurricane. It's only
9 as a matter of observation, and, again,
10 replying on what was brought up by
11 Ms. Haddad Coleman at the inception of the
12 hearing today, as far as time constraints.

13 So what I am saying is, for today --
14 because of the magnitude of the issue and
15 based upon the fact that perhaps the
16 deadlines were not accommodated to a certain
17 degree -- I will hold off on ruling on this
18 Fifth Amendment privilege, because I think
19 it really does require exhaustive briefing
20 and discussion.

21 Since, I believe, Ms. Haddad Coleman,
22 you indicated to me that you have not yet
23 finished that aspect of your briefing,
24 correct?

25 MS. HADDAD COLEMAN: No, Judge, I have

1 not, because I received it on the 25th and
2 you had us turn it in on the 28th.

3 THE COURT: And that's understandable.
4 Again, no matter what level of support you
5 may have had -- and I can still remember as
6 a young associate staying until midnight
7 trying to finish stuff at the last minute
8 because of potentially unreasonable
9 deadlines.

10 MR. GOLDBERGER: That's because of who
11 your boss was, Judge.

12 THE COURT: May be some truth to that.
13 What I'm getting to is, because of the
14 significance of the issue, I don't want to
15 preclude anyone from having sufficient time
16 to finish the brief. So I think that's not
17 unreasonable at all under these
18 circumstances.

19 Is there anything else we can get to
20 besides the motions in limine, other than
21 the motions to compel?

22 MR. SCAROLA: Your Honor, the motion in
23 limine includes many issues that are not
24 tied to the Fifth Amendment privilege. And
25 dealing with the motion in limine I suggest

1 will help to define the issues and provide
2 guidance to both sides with regard to our
3 motions to compel discovery.

4 With regard to the motions to compel
5 discovery, there are motions to compel
6 discovery on both sides. I would simply ask
7 that we alternate. The defense can pick
8 one, we will deal with that. They can go
9 first, we will go next, and we will
10 alternate dealing with discovery motions to
11 the extent that Your Honor has time to
12 accommodate us on those.

13 MR. BREWER: Your Honor, it really is a
14 disadvantage to chop up that motion limine.

15 THE COURT: I agree. I think that my
16 better judgment would be to defer on the
17 motion in limine until such time as
18 Ms.Haddad and her cohorts or her co-counsel
19 have had the opportunity to brief the issue
20 conclusively and exhaustively.

21 In this particular instance,
22 Mr. Scarola, I will also allow a reply
23 brief, once she has had an the opportunity,
24 because of the significance of the issue and
25 the fact that much of what is going to

1 transpire at the presumptive trial will be
2 matters that are going to be addressed at
3 the motion in limine. And these are
4 critical issues that are going to impact the
5 way the trial is going to go forward.

6 MR. SCAROLA: Your Honor, with respect
7 to the motion in limine, that was an Epstein
8 motion to which Edwards has replied, so
9 that's been fully briefed in accordance with
10 the earlier order.

11 The motion that I think Your Honor is
12 referring to is our motion to strike the
13 affidavit of Mr. Epstein, which goes beyond
14 simply striking his affidavit and asks to
15 preclude any evidence as to which he has
16 previously denied discovery through
17 assertion of the Fifth Amendment privilege.

18 So with regard to that motion, we have
19 filed our motion. They have not yet filed a
20 response. I understand Your Honor is
21 permitting them to do that, and we
22 appreciate the opportunity to be able to
23 reply after they do.

24 I would request that specific time
25 limitations be set so that, again, this does

1 not drag on to a point where there's any
2 possibility of it interfering with our
3 scheduled trial.

4 THE COURT: All right. Let's go
5 ahead -- what we are going to have to do is
6 confer on those time issues while we are
7 away so that I can get a better feel for
8 where you are if I have to make a decision
9 if you can't otherwise agree. Hopefully you
10 will.

11 MR. SCAROLA: May I submit an order to
12 the Court on the summary judgment motion
13 which simply says said motion is denied for
14 the reasons expressed on the record?

15 THE COURT: That's fine. Thank you.

16 I am going to return the summary
17 judgment material to you through our deputy.
18 Thank you, sir.

19 And again, thank you all for your
20 excellent presentations. Thank you to our
21 court reporter as well.

22 What time will we reconvene? We will
23 reconvene assembled at 1:25. Thank you very
24 much. See you guys at that time.

25 (A recess was had 12:10 p.m. - 1:32 p.m.)