

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

Case No. 50-2009CA040800XXXXMBAG

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

v.

SCOTT ROTHSTEIN, individually, and  
BRADLEY J. EDWARDS, individually,

Defendants/Counter-Plaintiff.

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**PLAINTIFF/COUNTER-DEFENDANT'S OPPOSITION TO  
DEFENDANT/COUNTER-PLAINTIFF'S MOTION IN LIMINE  
ADDRESSING SCOPE OF ADMISSIBLE EVIDENCE**

Plaintiff/Counter-Defendant Jeffrey Epstein ("Epstein") opposes Defendant/Counter-Plaintiff Bradley J. Edwards' ("Edwards") Motion in Limine Addressing Scope of Admissible Evidence and states:

**INTRODUCTION**

Edwards seeks to try either a criminal case against Epstein or Epstein's 2009 lawsuit against Edwards filed by Attorney Robert Critton, which was dismissed five years ago in 2012. However, the actual case to be tried is nothing more than a malicious prosecution claim. The "fabrication" allegations referred to in Edwards' Motion relate to Rothstein and his undisclosed co-conspirators' efforts to "gin up" the value of the three real 2008 lawsuits for which Edwards was the lead attorney, along with some 50 other non-existent cases.

Any evidence concerning Epstein's physical contact with the three former plaintiffs Edwards previously represented – let alone any others – has zero relevance whatsoever to

Edwards' malicious prosecution claim. Edwards must prove Epstein's lack of probable cause at the time he commenced the civil proceeding against Edwards and he cannot do so with highly prejudicial attempts to establish Epstein's culpability in prior criminal or civil proceedings which have long been terminated. Importantly, Epstein's defense does not require him to prove and win the 2009 lawsuit filed by Attorney Critton against Rothstein and Edwards. Even a favorable determination regarding Edwards' motives and the propriety of his actions would have no bearing on the issue of Epstein's probable cause to bring suit. Plausible post-filing explanations for Edwards' behavior in litigating the cases against Epstein while Edwards held himself out as a partner at Rothstein Rosenfeldt and Adler do not alter Epstein's perception of that behavior at the time he filed suit and do not preclude a finding that, regardless of any prior liability by Epstein, Epstein had a reasonable suspicion of Edwards' wrongdoing, even if that suspicion would eventually be proven wrong.

**We have given Your Honor reams of paper. However, if you read nothing other than this, you will have a synopsis of the entire case:**

This case, in its most basic form, requires the answer to only one question: whether a reasonably cautious person - when viewing all of the information available in December 2009 along with the logical inferences drawn from that information - would have felt comfortable that Edwards was or could have been connected in some way to Rothstein's efforts to fabricate the amount of money that Epstein was willing to pay for the Rothstein pending lawsuits. As Edwards most recently admitted under oath at his November 10, 2017 deposition, what Epstein suspected was, in fact, true: "It's pretty obvious or clear from this that what Rothstein was doing was using the...real legitimate cases against Epstein...to...concoct a story about some other

situation, and ask investors to buy into some made up fictitious story.” (Tr. 160-61.) In fact, Edwards admitted that “[Rothstein] used actual evidence to support a fabricated story.” (Tr. 164.)

Edwards needs no other witnesses because he admitted under oath that Epstein’s suspicions were correct and Rothstein was concocting and fabricating stories about Epstein to continue to fund the Ponzi scheme?

### **ARGUMENT**

To prove his Counterclaim, Edwards should be focused on whether a reasonably cautious person would have felt comfortable filing the civil proceeding against Edwards. Lacking any admissible evidence about Epstein’s state of mind, Edwards is trying to create a three-ring circus. Epstein’s sexual contact with minors is not relevant to whether Epstein had probable cause to commence a civil proceeding against Edwards. We understand Edwards’ desire to obfuscate these issues because as a malicious prosecution plaintiff, he has the “onerous” burden of establishing, by the greater weight of the evidence, that the defendant commenced and continued a judicial proceeding without probable cause. *See Burns v. GCC Beverages Inc.*, 502 So. 2d 1217, 1219 (Fla. 1986); *Endacott v. Int’l Hospitality, Inc.*, 910 So. 2d 915, 923 (Fla. 3d DCA 2005) (“plaintiff must show that probable cause was lacking at all stages of the underlying proceeding.”). A civil litigant has probable cause to bring a suit when he has “a reasonable belief, based on facts and circumstances known to him, in the validity of the claim.” *Wright v. Yurko*, 446 So. 2d 1162, 1166 (Fla. 5th DCA 1984) (citations omitted). Thus, the facts that are relevant to the question of whether Epstein had probable cause are those that were known to Epstein when he commenced his proceeding against Edwards and that bear upon the reasonableness of his belief in the validity of his claims. Evidence of Epstein’s sexual contact with minors—Edwards’ clients or otherwise—is not relevant because it has no bearing on whether Epstein’s claims were valid or whether he reasonably believed them to be valid. In

other words, if in fact Epstein had touched over 100 million underage women before December 2009 how does that testimony or evidence help the jury decide if Epstein reasonably believed that Rothstein and his litigation team were using the three 2008 cases to lure investors into the Ponzi scheme.

## **I. THE EVIDENCE IS NOT RELEVANT TO MALICE**

Evidence of Epstein’s sexual contact with minors also is not relevant to whether Epstein acted with malice towards Edwards. Importantly, if there was probable cause, the existence of malice does not matter. There are two types of malice, either of which is sufficient for purposes of establishing a malicious prosecution defendant’s liability: legal malice and actual malice. *Wilson v. O’Neal*, 118 So. 2d 101, 105 (Fla. 1st DCA 1960). Legal malice “requires proof of an intentional act performed without justification or excuse.” *Olson v. Johnson*, 961 So. 2d 356, 359 (Fla. 2d DCA 2007) (citations omitted). Actual malice means an intentional wrong, actual malevolence, or a corrupt design. *Wilson*, 118 So. 2d at 105. Evidence of Epstein’s sexual contact with minors—Edwards’ clients or otherwise—is not relevant to whether Epstein acted intentionally and without justification or excuse with respect to Edwards or whether he committed an intentional wrong, showed actual malevolence towards, or carried out a corrupt design with respect to Edwards. Evidence of Epstein’s sexual contact with minors is not relevant.

## **II. THE EVIDENCE IS INADMISSIBLE UNDER SECTION 90.404, FLORIDA STATUTES AND MUST BE EXCLUDED UNDER SECTION 90.403, FLORIDA STATUTES**

Section 90.404(2)(a), Florida Statutes plainly states that “[s]imilar fact evidence of other crimes, wrongs, or acts is admissible when relevant to prove a material fact in issue” but is “inadmissible when the evidence is relevant solely to prove bad character or propensity.” “To determine whether the evidence should be admitted under section 90.404(2)(a), counsel must

identify the fact or issue that the evidence is being offered to prove. If that fact or issue is not of consequence to the action, it is not material to the case and the evidence will not be admissible to prove it under section 90.404(2).” C. Ehrhardt, Florida Evidence § 404.9 (2014 ed.)(citing *inter alia*, *Castro v. State*, 547 So. 2d 111, 115 (Fla. 1989). Edwards’ intended evidence of an “extensive pattern of victimization of minor females,” is inadmissible under section 90.404(2), Florida Statutes. Additionally, this evidence must be precluded under section 90.403, Florida Statutes, because any probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury.

“[E]ven if relevant, a trial court may not permit [] collateral crime evidence to become an impermissible feature of the trial. Collateral crime evidence becomes an impermissible feature of the trial when inquiry into the crimes transcend[s] the bounds of relevancy to the charge being tried and the prosecution ‘devolves from development of facts pertinent to the main issue of guilt or innocence into an assault on the character of the defendant.’ *Durousseau v. State*, 55 So. 3d 543, 551 (Fla. 2010) (citation omitted). *See also* C. Ehrhardt, Florida Evidence § 404.9 (2014 ed.) (“This feature limitation is a specific application of the § 90.403 balancing requirement.”) (citations omitted). Similar fact evidence may become an impermissible feature of the trial when it “consume[s] more trial time and space than the evidence of the actual crime charged.” *Sutherland v. State*, 849 So. 2d 1107, 1109 (Fla. 4th DCA 2003). But similar fact evidence may also become an impermissible feature of the trial when the testimony in question is brief but “more detailed” than the testimony concerning the claim at issue and is emphasized at key moments. *See Seavey v. State*, 8 So. 3d 1175, 1177–78 (Fla. 2d DCA 2009) (brief collateral crimes testimony became feature of the trial because it was more detailed and emphasized in opening and closing arguments).

Edwards plainly intends to make his similar fact evidence concerning Epstein's sexual contact with minors the central feature of the trial. His Motion in Limine indicates that he intends to call fifteen women to testify regarding sexual contact Epstein had with them, all but guaranteeing that the litigation of molestation claims against Epstein will consume more trial time and space than the evidence concerning Edwards' malicious prosecution claim. (Motion in Limine Exhibit, D.E. 1051.) If his briefing is any indication, Edwards is also bound to emphasize the sexual battery claims at key moments, keeping the focus on them and not his own malicious prosecution claim. Evidence of Epstein's sexual contact with minors must therefore be excluded under the "feature" limitation. *See, e.g., Sutherland*, 849 So. 2d at 1109.

Any testimony concerning Epstein's sexual contact with minors must also be excluded because any remote or minimal probative value is clearly outweighed by the danger of unfair prejudice, confusion of issues, and the risks of misleading the jury. *See Fla. Stat. § 90.403*. "In weighing the probative value against the unfair prejudice, it is proper for the court to consider the need for the evidence; the tendency of the evidence to suggest an improper basis to the jury for resolving the matter, e.g., an emotional basis; the chain of inference necessary to establish the material fact; and the effectiveness of a limiting instruction." *Jones v. Alayon*, 162 So. 3d 360, 365 (Fla. 4th DCA 2015) (citations omitted). In *Jones*, the Fourth District Court of Appeal held that evidence of the defendant's post-accident bad acts could have inflamed the jury and caused them to award damages to the plaintiff out of a desire to punish the defendant. *Id.* at 366. *See also Wright v. State*, 19 So. 3d 277, 296 (Fla. 2009) ("Unfair prejudice has been described as an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one. . . . This rule of exclusion is directed at evidence which inflames the jury or appeals improperly to the jury's emotions.") (citations omitted); *Stewart v. Draleaus*, 226 So. 3d

990, 996 (Fla. 4th DCA 2017) (recognizing the inflammatory effects of evidence of a party's alcohol use in the context of an action arising from a car accident, and holding such evidence inadmissible as unduly prejudicial where liability is admitted) (citing *Neering v. Johnson*, 390 So. 2d 742, 744 (Fla. 4th DCA 1980)); *Datus v. State*, 126 So. 3d 363, 365 (Fla. 4th DCA 2013) (explaining “[t]estimony which evokes sympathy for a victim may be inadmissible on the ground that its probative value is substantially outweighed by the risk of unfair prejudice.”).

Any mention of or use of information from any case other than this malicious prosecution action is absolutely improper, and is unfairly prejudicial. *See, e.g., Long Term Care Found., Inc. v. Martin*, 778 So. 2d 1100, 1102–03 (Fla. 5th DCA 2001) (allegations in a different lawsuit against defendant were not relevant and were highly prejudicial since “under section 90.403, Florida Statutes, any relevance the complaint might have had was outweighed by the unfair prejudice against the [defendant]”). “It is inconsistent with the notions of fair trial for the state to force a defendant to resurrect a prior defense against a crime for which the defendant is not on trial.” *Jacobs v. Atl. Coast Ref., Inc.*, 165 So. 3d 714 (Fla. 4th DCA 2015) (finding that “because the prior case was settled, none of the allegations therein were proven”).

Edwards unapologetically plans to exploit irrelevant information from other cases to inflame the jury, appeal to the jury's emotions, and prove Epstein's bad character. (Supplement to Motion in Limine, D.E. 1077 at 10) (“Because Epstein really did molest all those young, innocent children, heinous crimes that he has callously compared to ‘stealing a bagel.’”). “If the introduction of the evidence tends in actual operation to produce a confusion in the minds of the jurors in excess of the legitimate probative effect of such evidence, if it tends to obscure rather than illuminate the true issue before the jury then such evidence should be excluded.” *City of Miami v. Calandro*, 376 So. 2d 271, 272 (Fla. 3d DCA 1979) (citing *Perper v. Edell*, 44 So. 2d

78 (Fla. 1949)); *Maldonado v. Allstate Ins. Co.*, 789 So. 2d 464 (Fla. 2d DCA 2001) (probative value of bicyclist's status as an illegal alien was outweighed by unfair prejudice, confusion of the issues and misleading of the jury, as the evidence and instruction concerning status as an illegal alien improperly changed the focus of the jury's attention).

The evidence Edwards intends to introduce concerning Epstein's sexual contact with minors should be excluded pursuant to section 90.403, Florida Statutes

**CONCLUSION**

Jeffrey Epstein respectfully requests that this Court enter an Order denying Bradley J. Edwards' Motion in Limine Addressing Scope of Admissible Evidence and excludes evidence of Epstein's sexual contact with minors.

**CERTIFICATE OF SERVICE**

I certify that the foregoing document has been furnished to the attorneys listed on the Service List below on November 22, 2017, through the Court's e-filing portal pursuant to Florida Rule of Judicial Administration 2.516(b)(1).

LINK & ROCKENBACH, PA  
1555 Palm Beach Lakes Boulevard, Suite 301  
West Palm Beach, Florida 33401  
(561) 727-3600; (561) 727-3601 [fax]

By: /s/ Scott J. Link

Scott J. Link (FBN 602991)  
Kara Berard Rockenbach (FBN 44903)  
Angela M. Many (FBN 26680)  
Primary: [REDACTED]  
Primary: [REDACTED]  
Primary: [REDACTED]  
Secondary: [REDACTED]  
Secondary: [REDACTED]  
Secondary: [REDACTED]  
Secondary: [REDACTED]

*Trial Counsel for Plaintiff/Counter-Defendant  
Jeffrey Epstein*

**SERVICE LIST**

<p>Jack Scarola Searcy, Denny, Scarola, Barnhart &amp; Shipley, █. 2139 Palm Beach Lakes Boulevard West Palm Beach, FL 33409 █ █ █ <i>Co-Counsel for Defendant/Counter-Plaintiff Bradley J. Edwards</i></p>	<p>Nichole J. Segal Burlington &amp; Rockenbach, █. Courthouse Commons, Suite 350 444 West Railroad Avenue West Palm Beach, FL 33401 █ █ <i>Co-Counsel for Defendant/Counter-Plaintiff Bradley J. Edwards</i></p>
<p>Bradley J. Edwards Edwards Pottinger LLC 425 N. Andrews Avenue, Suite 2 Fort Lauderdale, FL 33301-3268 █ █ <i>Co-Counsel for Defendant/Counter-Plaintiff Bradley J. Edwards</i></p>	<p>Marc S. Nurik Law Offices of Marc S. Nurik One E. Broward Boulevard, Suite 700 Ft. Lauderdale, FL 33301 █ <i>Counsel for Defendant Scott Rothstein</i></p>
<p>Jack A. Goldberger Atterbury, Goldberger &amp; Weiss, █. 250 Australian Avenue S., Suite 1400 West Palm Beach, FL 33401 █ █ <i>Co-Counsel for Plaintiff/Counter-Defendant Jeffrey Epstein</i></p>	