

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.

**PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S
RESPONSE IN OPPOSITION TO DEFENDANT/COUNTER-PLAINTIFF
BRADLEY EDWARDS' MOTION FOR PROTECTIVE ORDER RELATING TO [REDACTED]'S
DEPOSITION AND MOTION TO COMPEL
[REDACTED] TO ANSWER QUESTIONS RELATING TO THE
CRIMES VICTIMS' RIGHTS ACT AND TO REOPEN DEPOSITION**

Plaintiff/Counter-Defendant, Jeffrey Epstein ("Epstein"), responds in opposition to the Motion for Protective Order [D.E. 1026] filed by Defendant/Counter-Plaintiff, Bradley Edwards ("Edwards"), relating to the deposition of [REDACTED].¹ [D.E. 1027], and moves to compel her to answer questions relating to the Crimes Victims' Rights Act ("CVRA") and to reopen her deposition, and in support states:

BACKGROUND

In support of his malicious prosecution Counterclaim, Edwards plans to call as witnesses his three clients – [REDACTED], [REDACTED] and Jane Doe. [REDACTED] was a plaintiff in a lawsuit she brought against Epstein until she settled her claims in 2010. She currently is a plaintiff in the CVRA action against

¹ Although Edwards' counsel claimed that Edwards' clients wished to remain anonymous, Edwards identified [REDACTED]'s name in his Motion and filed her deposition testimony with the Court.

the federal government. [REDACTED] is not a plaintiff in this litigation. She, in fact, has released Epstein from any and all claims. Importantly, only Edwards is seeking to recover money from Epstein in this lawsuit.

INTRODUCTION

[REDACTED] is a client of Edwards who asserted tort claims against Epstein. Those claims were resolved through a confidential settlement agreement between [REDACTED] and Epstein in July 2010. [REDACTED] also brought a Crimes Victims' Rights Act action against the United States Government. The CVRA action is ongoing and, in that action, [REDACTED] is attempting to set aside a Non-Prosecution Agreement ("NPA") Epstein entered into with the United States Government.

Edwards has informed the Court that in order to establish his burden of proof he will, among other things:

[Establish] Epstein's motive to target Bradley Edwards for extortionist purposes, [and] prove the leadership role Bradley Edwards had in the joint prosecution effort of the multiple civil claims being prosecuted against Epstein with their attendant punitive damage exposure *as well as the Crime Victim's Rights Act case challenging Epstein's Non-Prosecution Agreement, which was spearheaded by Bradley Edwards and exposes Epstein to lengthy incarceration for his extensive history of child molestations.*

(11/22/17, Edwards' Response in Opposition to Epstein's Revised Omnibus Motion in Limine, e.s.) [D.E. 1089.]

Edwards intends to prove that Epstein's motive for filing this action was to, among other things, force Edwards to abandon his efforts to set aside the NPA through the CVRA action:

10 And we intend to prove that Jeffrey
11 Epstein's motive in filing these knowingly
12 false claims against Brad Edwards - **his**
13 **motive** was to extort Bradley Edwards into
14 abandoning or cheaply compromising the
15 rights of his clients, **and abandoning his**
16 **efforts through the Crime Victims' Rights**

17 **Act case to set aside the non-prosecution**
18 **agreement.**

(11/29/17 Tr. 106:10-18, e.s.)

3 And Mr. Epstein clearly knows that
4 Mr. Edwards is lead counsel in this Crime
5 Victims' Rights Act case. He clearly knows,
6 because he's a participant in that case. He
7 has intervened in the case. He knows that
8 the consequences of that Crime Victims'
9 Rights Act case could be that he loses the
10 immunity that he negotiated with the U.S.
11 Attorney's Office.
12 So being able to push Brad Edwards
13 aside as the primary moving force in the
14 Crime Victims' Rights Act case is obviously
15 a reasonable conclusion from those
16 circumstances.

(11/29/17 Tr. 112:3-16.)

Edwards has argued that the jury must be informed about both the NPA and the CVRA:

13 MR. SCAROLA: Your Honor, I believe
14 that it is unavoidable that the jury be
15 informed as to what the non-prosecution
16 agreement is. It would be our intention to
17 enter it into evidence. They need to
18 understand what the Crime Victims' Rights
19 Act is.

(11/29/17 Tr. 110:13-19.)

Edwards has identified ██████ on his Witness List. [D.E. 1042, ¶ 15.] Edwards has also designated and cross designated portions of ██████'s testimony to be used at the trial of this matter. [D.E. 1022; D.E. 1130.] Because ██████ is incarcerated, the parties can only rely on her deposition testimony at trial.

The Court has made it clear that it intends to allow Edwards to present evidence and testimony concerning Edwards' representation of his three clients (█████, ██████, and Jane Doe) of claims they brought against Epstein:

24 THE COURT: The only thing I would say
25 to that, Mr. Scarola, is I don't want to mix
1 apples and oranges. And that is, I don't
2 want to place the Court's incriminator [sic] on
3 getting too far afield and turning this into
4 a case about alleged sexual exploitation,
5 particularly of others, outside of
6 Mr. Edwards' representation. That would
7 serve only to inflame the jury, and, again,
8 would cause the playing field to become
9 unlevelled, because the defense to the
10 malicious prosecution claim, i.e., Epstein
11 and his attorneys, would have to be fighting
12 claims that they may not even know about
13 much, much less the ones that they do.
14 **So again, I want to center on those**
15 **three claims that were brought by**
16 **Mr. Edwards on behalf of his clients,** and
17 center on those aspects that would be
18 relevant to the malicious prosecution claim
19 and the alleged ginning up of those claims,
20 the alleged attempt to align himself with
21 Rothstein, the alleged attempt to factor
22 these cases, potentially Mr. Edwards'
23 conduct as it related to those factoring
24 matters.

(12/5/17 Tr. 79:24-80:24, e.s.)

The Court has also recognized that the NPA and the CVRA action are going to become a part of the trial:

3 there is no way around the fact that the NPA
4 is going to become a part of this trial.

(11/29/17 Tr. 108:3-4.)

11 THE COURT: The NPA, I have already
12 indicated that the inclination would be -
13 if properly predicated - would be allowed.

(11/29/17 Tr. 167:11-13.)

9 Pleadings of Jane Doe 1 and 2 vs. US
10 case.
11 MR. SCAROLA: That's the CVRA case,

12 Your Honor.
13 THE COURT: That will likely be
14 discussed - obviously, it will be
15 discussed. How much of the pleadings that
16 need to be addressed will be a matter of the
17 Court's consideration later.

(12/5/17 Tr. 215:9-17.)

OCTOBER 12, 2017, DEPOSITION

On October 12, 2017, Epstein's counsel took the deposition of [REDACTED] at the Gadsden Correctional Facility where [REDACTED] is incarcerated until April 2018. Although [REDACTED] was represented by Edwards himself during her deposition, Edwards' counsel (who was not representing [REDACTED]) instructed her not to answer questions that related to the CVRA action because he claimed they were not relevant and because [REDACTED] did not have the opportunity to prepare for that line of questioning. Specifically, Edwards' counsel asserted:

6 MR. SCAROLA: Excuse me, [REDACTED] going to
7 interrupt for just a moment. Do you have other
8 questions relating to the Crime Victims' Rights Act
9 case?
10 MR. GOLDBERGER: I do.
11 MR. SCAROLA: Okay. I am going to object to
12 your examination of [REDACTED.] on issues relating to
13 another case. **Those matters don't have any relevance**
14 **or materiality to this lawsuit in which she is being**
15 **deposed;** her counsel has not had an opportunity to
16 prepare her for a deposition in the Crime Victims'
17 Rights Act case. I am going to instruct her not to
18 answer any additional questions regarding the Crime
19 Victims' Rights Act case. You may proffer the
20 additional questions that [REDACTED] like to ask for the
21 record, but she will not answer those pending our
22 ability to obtain a protective order.
23 MR. GOLDBERGER: Well, we have lots of
24 questions that we intend to ask about the Crime
25 Victims' Rights Act, **and based on your cause of action**

1 **and your theory that you've explained to the court as**
2 **to why Mr. Epstein filed a claim against your client,**
3 **it is relevant** and I recognize that you are advising
4 the client not to answer the question or -

5 MR. SCAROLA: She's not my client, this is a
6 witness.
7 MR. GOLDBERGER: And you're instructing --
8 MR. SCAROLA: And I am instructing her -- **I**
9 **am informing you that additional questions relating to**
10 **the Crime Victims' Rights Act case, beyond those that**
11 **have already been asked and answered, are not relevant**
12 **or material, or reasonably calculated to lead to**
13 **relevant and material information.**

(████. 10/12/17 Tr. 74:6-75:13, e.s.) [D.E. 1027.]

6 MR. SCAROLA: Yes. The questions are
7 irrelevant, immaterial, not reasonably calculated to
8 lead to the discovery of relevant and material
9 information in this lawsuit.

11 MR. SCAROLA: In addition to that, this
12 witness was not noticed as being deposed in a separate
13 CVRA action. Her counsel, with regard to the separate
14 CVRA action were not noticed, therefore her counsel
15 have not had an opportunity to consult with her
16 regarding giving testimony in the separate CVRA -

18 MR. SCAROLA: -- action. So those are the
19 objections that were previously raised, in addition to
20 others stated as to specific questions, they are of
21 the objections that I will incorporate simply by
22 saying "same objection, same instruction," for
23 purposes of not burdening the record with repetition
24 of the same objection and same instructions.

(████. 10/12/17 Tr. 97:6-24.) [D.E. 1027.]

Edwards' counsel suggested that questions to █████ be proffered on the record and he would raise the appropriate objections and move for a protective order. (████. 10/12/17 Tr. 76:24-77:8.) [D.E. 1027.]

The following questions were posed to █████ to which she was instructed not to answer based on these objections:

- At any time did the FBI agents -- did any FBI agents tell you that Mr. Epstein was pleading guilty in state court to avoid federal prosecution?
- Did you ask the FBI at any time to speak to prosecutors prior to Mr. Epstein entering into his guilty plea?
- Did you have the prosecutor's phone number so you could call her?
- Did you, in fact, receive a victims' notification letter?
- And on that letter, did it not have the prosecutor's direct-dial number?
- And did the prosecutor, in fact, tell you in person that you could call her at any time to discuss this matter?
- Do you recall receiving a letter from Ms. Villafania when you met with the FBI at Publix in 2007?
- Do you deny that you had Ms. Villafania's direct phone number to call her if you so decided?
- Do you know whether the non-prosecution agreement made it easier for you to seek damages against Mr. Epstein?
- How many times did you meet with the FBI at Publix to discuss the non-prosecution agreement involving Jeffrey Epstein?
- Do you recall when you did meet with [Special Agent Nesbitt Kuyrkendall], at no time did you ask to confer with anyone from the government about any potential criminal charges, decisions, or about any partial resolution of the matter involving Jeffrey Epstein?
- Is it true that, between the time of that interview in August of 2007, and September of 2007 when Mr. Epstein signed his non-prosecution agreement, you never contacted either Agent Nesbitt Kuyrkendall or her co-agent asking for information about the investigation; or asking to confer with anyone from the government about any potential criminal charges, decisions, or about the resolution of the matter?
- What were your goals as a plaintiff in filing the CVRA case?
- Was one of your goals to invalidate the non-prosecution agreement?
- Have you ever discussed with [REDACTED] the filing of the CVRA lawsuit?

- Have you ever discussed with any non-lawyer, or someone working for a lawyer, the reasons for filing the CVRA case?
- Do you realize that if you prevail on the CVRA case and the non-prosecution agreement is ruled void, any civil settlement that relied on the Civil Victims' Rights Act case could be vacated?
- Are you seeking an apology from the government for the filing of the CVR – by filing the CVRA case? Is that important to you?

(█████. 10/12/17 Tr. 77-82, 98-100.) [D.E. 1027.]

ARGUMENT

In his Complaint, Epstein alleged that, after Edwards joined RRA, he filed a Motion asking the Court to make the NPA public. (D.E. 5, ¶ 42.1.) That motion was filed in May 2009 in one of Edwards' client's individual cases against Epstein, *not* in the CVRA action. (*Jane Doe v. Epstein*, Case No. 08-CV-80893, D.E. 74.) At the time Edwards filed the motion, he and his three clients had the NPA and there was no legitimate purpose for them to make the agreement public. Furthermore, the CVRA court had recently (February 2009) denied Edwards' Motion to Unseal the NPA in that action. (*Jane Doe v. U.S.*, Case No. 08-CV-80736, D.E. 36.)

Edwards wants the Court to believe, however, that Epstein's motive in filing this action was to stop Edwards from *challenging* the non-prosecution agreement through the CVRA action. What Edwards failed to inform the Court about at the recent hearings, however, is that at the time Epstein filed suit against Rothstein and Edwards in December 2009, the CVRA action had been sitting dormant since February 2009 and that he took no further action in that matter until after the Court administratively closed the case in September 2010. Edwards also failed to inform the Court that in August 2008, he advised the CVRA court that he was unsure if the relief he was seeking was in his client's best interest. ("Because of the legal consequences of invalidating the current agreement, it is likely not in my clients' best interest to ask for the relief that we initially asked

for.”) (8/4/08 Tr. 4-5) (Ex. A.) It was not until March 21, 2011, about a year after settling her lawsuit with Epstein, when ██████ filed her Motion for Summary Judgment for Finding Violations of the NPA, that it was clear that ██████ was continuing with her efforts to invalidate the NPA.

Epstein should be able to present evidence at trial to show that ██████’s pursuit in invalidating the NPA was not a motive for filing his action against Rothstein and Edwards. The types of questions posed to ██████ during her deposition and the many logical follow-up questions concerning the CVRA action are relevant. They shed light on the timing of the filing of the CVRA action, the lack of prosecution of the case, how the NPA actually benefited ██████ up to the point she settled her case with Epstein, her discussions with third parties, including law enforcement, about the alleged acts and her past recollections and positions. In addition, ██████’s responses to the questions are expected to undermine her credibility because her statements have been inconsistent. Finally, it is believed that ██████’s responses will demonstrate a lack of memory as to events that occurred years ago when the alleged acts occurred. The testimony sought is relevant and will allow the jury to weigh ██████’s testimony and credibility at trial.

On October 26, 2017, Edwards filed a Motion for Protective Order asking that the Court preclude ██████ from responding to those questions proffered on the record with respect to the pending Crimes Victims’ Rights Act. [D.E. 1026.] During the deposition, Edwards’ counsel objected to the line of questioning claiming the information was irrelevant, immaterial, not reasonably calculated to lead to the discovery of relevant and material information in this lawsuit, and because ██████ did not have an opportunity to prepare for that line of questioning. (█████ 10/12/17 Tr. 97:6-24.) [D.E. 1027.] As set forth above, Edwards himself has taken the position that the CVRA action *is relevant* and has made it a central focus of Epstein’s alleged motive for bringing this action. Edwards cannot have it both ways. He cannot instruct ██████ not to answer

questions about the CVRA action, but then argue that the CVRA action is the motive behind Epstein's filing of this case.

Epstein continues to maintain that Edwards' malicious prosecution Counterclaim is limited to an analysis of the civil proceeding filed by Epstein against Edwards, which does not relate to the merits of the cases filed by Edwards' clients against Epstein. The case is not about whether Edwards' clients' tort claims are true but, rather, it is about whether Epstein lacked probable cause to initiate and continue the original proceeding. To prevail on his Counterclaim for malicious prosecution, Edwards must prove that Epstein filed a civil proceeding against him "without probable cause." See *Korman v. Kent*, 821 So. 2d 408, 410 (Fla. 4th DCA 2002). Edwards' burden is "onerous." See *Burns v. GCC Beverages, Inc.*, 502 So. 2d 1217, 1219 (Fla. 1986).

Edwards' trial strategy is to analyze and test the veracity of each of the individual allegations made in the Complaint. (12/5/17 Tr. 85:1-7, 85:19-22, 131:11-12.) In doing so, Edwards plans to call [REDACTED] to testify about her former claims against Epstein, even though those claims were settled in 2010 and [REDACTED] signed a release. While Epstein disagrees that he is required to prove that each allegation of the Complaint is true, he must now be allowed to defend the allegations. Accordingly, he should be allowed to re-open [REDACTED]'s deposition to ask the proffered questions and reasonable follow up about the CVRA action and any other issues that may now be a central focus of this case in light of the Court's recent rulings.

CONCLUSION

Edwards himself has insisted that the CVRA action is relevant to establish Epstein's motive for initiating this proceeding. Accordingly, the Court should deny Edwards' Motion for Protective Order and grant Epstein's request to re-open [REDACTED]'s deposition, both as to the CVRA action and follow up as well as other questions that are relevant to this proceeding. Because [REDACTED] is

incarcerated and will not be released until after the special set trial of this matter, Epstein will be prejudiced if he is not allowed to re-open the deposition.

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to the attorneys listed on the Service List below on January ____, 2018, through the Court’s e-filing portal pursuant to Florida Rule of Judicial Administration 2.516(b)(1).

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