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 IN LIMINE ADDRESSING THE ADMISSIBILITY OF EDWARDS' EXHIBIT 132

Plaintiff/Counter-Defendant, Jeffrey Epstein ("Epstein"), opposes the Motion in Limine filed by Defendant/Counter-Plaintiff, Bradley J. Edwards ("Edwards"), regarding the admissibility of Edwards' Trial Exhibit #132 (D.E. 1151), and states:

BACKGROUND

In support of his malicious prosecution Counterclaim, Edwards plans to introduce into evidence Edwards' Exhibit #132, a *New York Post* article entitled: "Billionaire Jeffrey Epstein: I'm a sex offender, not a predator, February 25, 2011." A copy of the *New York Post* article is attached as **Exhibit "A."**

In the article, Epstein is allegedly quoted as saying:

> "I'm not a sexual predator, I'm an offender. It's the difference between a murderer and a person who steals a bagel."

> "The crime that was supposedly committed in Florida is not a crime in New York."

At the December 5, 2017 hearing, Epstein voiced multiple objections to the admissibility of Exhibit #132:

> We raised relevance. We raised probative value substantially outweighed by the danger or unfair prejudice, confusion, misleading the jury, as well as hearsay and authenticity.
>
> This is a very good example of an inflammatory exhibit by Mr. Edwards, and it seeks to try to prove, I guess, that [Epstein] is a bad person or bad character evidence under 90.404. This is hearsay and it should not be admitted. It would be inflammatory and very prejudicial to [Epstein].

(12/5/17 Tr. ~~232:5-~~235:10-22).[1]

The Court deferred ruling on the admissibility of the exhibit. (12/5/17 Tr. 234:21-24, 235:5-9).

INTRODUCTION

This case is not about Epstein's plea deal nearly a decade ago in an entirely separate criminal matter. This is not a case about whether Epstein actually made the statements attributed to him. Rather, this is a case about the economic windfall that Edwards seeks for his alleged "daily anxiety" and "emotional distress" that he suffered as a result of Epstein's filing of a Complaint against him eight years ago. Interestingly, Alan Dershowitz countersued Edwards for making false statements against him, yet that lawsuit does not seem to have caused Edwards any anxiety or emotional distress.

Epstein has tried to focus this case on the publicly available information about Rothstein, the Ponzi scheme, the use of Edwards' clients' cases against Epstein in the Ponzi scheme and the

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[1] Excerpts of the December 5, 2017, hearing transcript are attached as **Exhibit B**.

excessive and unorthodox litigation practices engaged in by Edwards while holding himself out as a partner of Rothstein, Rosenfeldt & Adler. Unfortunately, Edwards has been relentless with his attempts to inject irrelevant, highly prejudicial and inflammatory evidence into the trial which evidence has no bearing on the issues at bar, and which can only result in unfair prejudice to Epstein, confusion of the jury, and unfortunately, a second trial of this case.

ARGUMENT

Edwards argues that Exhibit #132 is relevant, not unfairly prejudicial, and not barred by the hearsay rule. His main contention is that the article is relevant to the punitive damages claim, in that it tends to prove Epstein's lack of remorse. Maybe Edwards believes he is entitled to punitive damages for any alleged lack of remorse by Epstein even if totally unrelated to Epstein's 2009 lawsuit against Edwards. Edwards' arguments are all meritless and unfounded, and his Mmotion in lLimine should be denied. Epstein requests that this Court sustain the objections raised by Epstein in his Objections to Edwards' Trial Exhibits (D.E. 1058; 1120) and at the pretrial hearing cited aboveDecember 5, 2017, hearing, and consider the additional arguments made herein.

Exhibit #132 Constitutes Inadmissible Hearsay

First and foremost, Exhibit #132 contains inadmissible hearsay to which no exception applies. Hearsay is a statement, other than one made by the declarant while testifying at trial or hearing, offered to prove the truth of the matter asserted. *See* § 90.801(1)(c), Fla. Stat. (2017).

Edwards argues the exhibit is not hearsay because he will not introduce it to prove that unlawful sexual conduct with children is the equivalent of stealing a bagel. The "bagel" remark, however, would have no context without the preceding statement. Again, the article quotes Epstein as saying:

> "I'm not a sexual predator, I'm an offender. It's the difference between a murderer and a person who steals a bagel."

> "The crime that was supposedly committed in Florida is not a crime in New York."

As discussed below, ~~*infra* (pp. 5-9)~~, in addition to being classic hearsay, any reference to Epstein's criminal sexual conduct is irrelevant, unfairly prejudicial, and improper impeachment evidence. Therefore, the above statements purportedly made by Epstein to the *New York Post* cannot come in.

Alternatively, Edwards argues the statements are admissions of a party opponent and thus admissible as an exception to the hearsay rule. (Mot. at ¶ 14). This argument fails, too. *See Dollar v. State*, 685 So. 2d 901, 902 (Fla. 5th DCA 1996) (newspaper article containing defendant's statements to reporter excluded as hearsay without trial testimony of reporter, because "[t]he defendant was denied any opportunity for cross examination"). Just like in *Dollar*:

> The problem in this case is that the reporter [will] not testify at trial as to what [Epstein allegedly] said to [her]. Clearly, this would [be] the best evidence of what [Epstein] had said and such live testimony would . . . afford[] [Epstein] an opportunity to cross-examine the reporter as to the reporter's accuracy and recollection as well as other relevant matters. Instead, [Edwards] simply [seeks to] introduce[] an out of court writing generated by the reporter recounting what [Epstein] had told [her].

Id. at 902-03. This denial of any opportunity for Epstein to cross examine the *New York Post* reporter mandates a ruling that the article is inadmissible. *See id*. at 903.

Furthermore, any argument that the contents of the article are admissible because a newspaper is self-authenticating "misses the mark." *Dollar*, 685 So. 2d at 903. "Authentication relates to the genuineness *vel non* of a document. No one here seriously disputes the fact that the article in question was published in a [known] newspaper . . . Authentication, however, does not

mean that the article is insulated from other rules of evidence governing admissibility." *Id.* (internal citations omitted).

In short, the newspaper article is inadmissible hearsay to which no exception applies. Thus, it cannot come in.

Epstein's Purported Statements Do Not Reflect Lack of Remorse. Rather, They Constitute Statements of Fact Reflecting Differences Between Florida and New York Law

Edwards' "lack of remorse" argument is equally unavailing. Again, in the article, Epstein is allegedly quoted as saying:

> "I'm not a sexual predator, I'm an offender. It's the difference between a murderer and a person who steals a bagel."
>
> "The crime that was supposedly committed in Florida is not a crime in New York."

Even if Epstein made these statements — which Epstein in no way concedes — the statements reflect not a lack of remorse, but factual differences at the time between New York and Florida law regarding solicitation of a minor for prostitution. In Florida, the crime was a felony, while only a *misdemeanor* offense in New York.

In Florida, when the subject article was written, procuring for prostitution, or causing to be prostituted, a person under age 18, was a second-degree felony. § 796.03, Fla. Stat. (2011). In New York, solicitation of a prostitute age 16 or older constituted "patronizing a person for prostitution in the third degree," a class A misdemeanor. *See* [redacted]. Penal Law §§ 230.02, 230.04. For point of reference, other class A misdemeanors in New York include: petty larceny (§ 155.25), criminal trespass in the second degree (§ 140.15), and possession of burglar's tools (§ 140.35). Thus, despite the way it sounds, solicitation of a minor prostitute in New York was the same level of offense as stealing a bagel, and punishable to the same degree.

Furthermore, in Florida there are two types of registration – a "sexual predator" (§ 775.21, Fla. Stat.) or a "sexual offender" (§§ 943.0435, 944.607 or 985.481, Fla. Stat.). Sexual predators in Florida are those who have been convicted of a first-degree felony sex crime or multiple second-degree felony sex crimes. This simply does not apply to Epstein. Rather, Epstein is a registered "sexual offender" as the article provides.

In short, when taken in context, Epstein's purported statements do not reflect a lack of remorse. Rather, they constitute statements of fact reflecting differences between Florida and New York law.

Still, there are additional arguments which are equally persuasive. They are set forth below.

Exhibit #132 is Irrelevant

———Edwards argues the newspaper article is relevant to the punitive damages claim because it "tends to prove that Epstein lacked remorse for the underlying crimes," and that, "even after pleading guilty to criminal charges Epstein continues to publicly deny his guilt." (Mot. at ¶ 6) (emphasis added). But criminal conduct is not at issue in this civil case! Rather, the purported wrongful conduct alleged by Edwards in his Counterclaim is malicious prosecution. –If this Court concludes that the newspaper article shows a lack of remorse to what is the lack of remorse directed to? Edwards? NO! Epstein is not quoted as saying, "If I had only brought my lawsuit against Rothstein and Edwards in New York – I could not have been sued for malicious prosecution" then, if admissible at all, potentially could be relevant to show a lack of remorse.

"To be relevant, evidence must tend to prove or disprove a material fact." *Thigpen v. United Parcel Servs., Inc.*, 990 So. 2d 639, 646 (Fla. 4th DCA 2008). Epstein's guilty plea from

nearly a decade ago, or his purported denial of guilt after entering a plea has no bearing on any of the issues for trial as framed by the pleadings in this lawsuit. The pleadings in this lawsuit include: (1) Epstein's Complaint for damages against Defendant Scott Rothstein and (2) Edwards' Counterclaim for malicious prosecution against Epstein.

Furthermore, the cases cited by Edwards are completely inapposite and do not support his position. First, Edwards cites to the dissenting opinion in a tobacco case, *R.J. Reynolds Tobacco Co. v. Calloway*, 201 So. 3d 753, 768 (Fla. 4th DCA 2016) (Taylor, J., dissenting). Not only does Edwards cite to the dissenting opinion in *Calloway*, but the proposition he cites to comes from a Texas case. *See id*. (citing *Ellis Cty. State Bank v. Keever*, 936 S.W. 2d 683, 688–89 (Tex. App. 1996) for the proposition that, "whether the defendant showed remorse is a factor in determining an appropriate punitive damages award"). Notably, the majority opinion in *Calloway* favors Epstein's position. *See id*. at 760 (emphasis added) ("Despite plaintiff's assertion to the contrary, an argument that the jury should punish a defendant for defending itself at trial or failing to admit responsibility is well outside the bounds of proper advocacy.").

Next, Edwards cites an inapposite asbestos case, *Johns-Manville Sales Corp. v. Janssens*, 463 So. 2d 242 (Fla. 1st DCA 1984). *Johns-Manville Sales Corp.* lists several factors (taken from another dissenting opinion[2]) and then remarks that the "factors *appear to be reasonable considerations* in aggravation or mitigation of punitive damages and, *in most respects, are consistent* with existing Florida decisions on punitive damages." *Id*. at 248 (emphasis added). These factors, which concern manufacturers and marketing misconduct, are clearly inapplicable to the case at bar and should not be considered by this Court:

> (1) The amount of the plaintiff's litigation expenses; (2) the seriousness of the hazard to the public, (3) the profitability of the

[2] *Wackenhut Corp. v. Canty*, 359 So. 2d 430, 445 n.14 (Fla. 1978) (Smith, J. dissenting).

> marketing misconduct (increased by an appropriate multiple); (4) the attitude and conduct of the enterprise upon discovery of the misconduct; (5) the degree of the manufacturer's awareness of the hazard and of its excessiveness; (6) the number and level of employees involved in causing or covering up the marketing misconduct; (7) the duration of both the improper marketing behavior and its cover-up; (8) the financial condition of the enterprise and the probable effect thereon of a particular judgment; and (9) the total punishment the enterprise will probably receive from other sources.

Id. Edwards' attempt to apply these factors to the instant case is nonsensical.

Exhibit #132 is Unfairly Prejudicial

Even if the *New York Post* article were relevant to proving a material fact at trial, "[r]elevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, [or] misleading the jury." § 90.403, Fla. Stat. (2017). Whatever probative value the article could possibly have is substantially outweighed by the danger of unfair prejudice to Epstein, as well as the likelihood that it would confuse the true issues in this lawsuit and mislead the jury as to the subject of the claims being tried. *See State v. Page*, 449 So. 2d 813, 816 (Fla. 1984) ("[S]ection 90.403 of the evidence code enables the trial court to exclude evidence of prior convictions, even though relevant, if the probative value is substantially outweighed by the danger of unfair prejudice."). *See also Kelley v. Mutnich*, 481 So. 2d 999, 1001 (Fla. 4th DCA 1986) (generally, "evidence of prior convictions, acquittals or arrest is irrelevant in a civil action and thus inadmissible," except where "[the defendant] himself had already inserted this subject into the proceedings by testifying that he had been found not guilty of the criminal [ ] charges against him and that the case had been dismissed").

Undue delay is also possible, as the introduction of the newspaper article may lead to a trial within a trial. *See Slocum v. State*, 757 So. 2d 1246, 1251 (Fla. 4th DCA 2000) ("To open the door to evidence about an unrelated case was to create a trial within a trial; there was a risk

that the trial would be needlessly lengthened and that the additional evidence would obscure the discovery of the truth.").

Finally, Edwards contends that Epstein's alleged and unconfirmed comparison of sexual misconduct with children to "stealing a bagel," and Epstein's alleged questioning of the illegality of such conduct "evinc[e] a total lack of remorse on the part of Epstein." (Mot. at ¶ 12). Again, remorse or alleged lack thereof for any criminal conduct purportedly committed by Epstein is wholly irrelevant to the claims being tried.

Exhibit #132 is Improper Character Evidence

Additionally, the newspaper article is inadmissible under sections 90.404 and 90.405, Florida Statutes, because its only purpose is to disparage Epstein's character. Florida law is clear that "[e]vidence of a person's character or a trait of character is inadmissible to prove action in conformity with it on a particular occasion" except under certain limited circumstances not present here. § 90.404(1), Fla. Stat. (2017); *see also* § 90.405(2), Fla. Stat. (2017) ("When character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may be made of specific instances of that person's conduct.") (emphasis added). Here, Epstein's purported statements to the *New York Post* are irrelevant to the issues at trial and would serve only to portray him in a negative light.

Exhibit #132 Contains Improper Impeachment Evidence

References to Epstein being a "sexual offender," and to his commission of a sexual "crime" are also inadmissible under sections 90.609 and 90.610, Florida Statutes. Such references are inadmissible as they are irrelevant to Epstein's truthfulness and go far beyond the

bare fact he entered a plea agreement.[3] *See* § 90.609, Fla. Stat. (2017) (character evidence used to impeach a witness "may refer only to character relating to truthfulness").

While section 90.610 permits a party to impeach a witness by evidence if the witness was convicted of a felony or a crime involving dishonesty, Epstein's designation as a sexual offender falls outside this narrow category of impeachment evidence by addressing the nature of his crime (a sexual offense). Impeachment under section 90.610 is strictly limited to the fact the witness was convicted of a felony or crime involving dishonesty, and the number of convictions. Further details, including the nature of the crime, are off limits. *See Rogers v. State*, 964 So. 2d 221, 222-23 (Fla. 4th DCA 2007) ("[I]mpeachment by prior convictions is restricted to determining if the witness has previously been convicted of a crime, and if so, how many times.") (citation and internal quotation marks omitted); *Botte v. Pomeroy*, 497 So. 2d 1275, 1280 (Fla. 4th DCA 1986) ("[Q]uestioning is limited to whether the witness has ever been convicted of a felony or a crime involving dishonesty. . . . The witness may be required to give the number of convictions, but if he answers truthfully, no further questions may be asked. In particular, the nature of the crimes may not be elicited.") (emphasis added; internal citations omitted); *Reeser v. Boats Unlimited, Inc.*, 432 So. 2d 1346, 1349 (Fla. 4th DCA 1983) ("Neither statute [including § 90.610] permits the elicitation of the nature of the crime, because any additional light on his credibility would not compensate for the possible prejudicial effect on the minds of the jurors.") (emphasis added).

CONCLUSION

For the plethora of reasons set forth in this response, Epstein respectfully requests that Edwards' Motion in Limine Addressing the Admissibility of Edwards' Trial Exhibit # 132 be denied.

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[3] Even the fact that Epstein entered a plea agreement is irrelevant, as there are often reasons other than guilt which prompt an accused person to enter a guilty plea.

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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