SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 59

THE PEOPLE OF THE STATE OF NEW YORK - against - DONALD J. TRUMP, Defendant.	DECISION AND ORDER ON DEFENDANT'S MOTIONS *IN LIMINE* Ind. No. 71543/2023

HON. JUAN M. MERCHAN A.J.S.C.:

Defendant's motions *in limine* are decided as follows:

DEFENDANT'S A: THE TESTIMONY OF MICHAEL COHEN

Defendant moves to preclude the testimony of Michael Cohen ("Cohen") on the alleged grounds that "Michael Cohen is a liar. He recently committed perjury, on the stand and under oath, at a civil trial involving President Trump. If his public statements are any indication, he plans to do so again at this criminal trial." Defendant's Memo at pg. 4. Defendant submits that Cohen should be precluded from testifying "in order to protect the integrity of this Court and the process of justice." Defendant's Memo at pg. 4. Put differently, Cohen should not be allowed to testify because his past actions *suggest* that he will commit perjury.

The Court is unaware of any perjured testimony that Cohen has provided in the instant matter. Defendant provides examples of situations where Cohen's credibility has been called into question. However, he offers no proof of perjury in the case at bar.

This Court has been unable to locate any treatise, statute, or holding from courts in this jurisdiction, or others, that support Defendant's rationale that a prosecution witness should be kept off the witness stand because his credibility has been previously called into question. The cases relied upon by Defendant are unavailing and inapplicable to the current matter. For example, *People v. Savvides*, 1 NY2d 554, 557 [1956], involved a co-defendant/cooperator who, while testifying before a jury, denied their cooperation agreement with the district attorney. This was an omission that went uncorrected by the prosecutor. *People v. Waters*, 35 Misc3d 855, 859 [Sup. Ct. Bronx Cnty. 2012],

involved an important prosecution witness who changed key testimony about the *underlying criminal matter* while on the stand. Further, the prosecutor in *Waters* had known about this change in testimony in the weeks leading up to trial but said nothing to the defense. *Id.*

The Court appreciates Defendant's interest in protecting the process of justice and the integrity of this Court, but his motion is **DENIED**.

DEFENDANT'S B: THE COURT SHOULD PRECLUDE THE PEOPLE FROM ARGUING THAT PRESIDENT TRUMP SOUGHT TO IMPROPERLY INFLUENCE THE 2016 ELECTION;
DEFENDANT'S C: THE COURT SHOULD PRECLUDE IMPROPER ARGUMENTS ON THE ELEMENT OF INTENT TO DEFRAUD;
DEFENDANT'S D: THE COURT SHOULD PRECLUDE EVIDENCE AND ARGUMENT CONCERNING THE SO-CALLED CATCH AND KILL SCHEME

The purpose of a motion *in limine* is to seek a ruling from the court, prior to trial, about *evidentiary* issues that the parties expect to arise at trial. *State v. Metz*, 241 AD2d 192, 198 [1st Dept 1998]. Though not a statutory creation, motions *in limine* are commonly filed and are left to the trial court's sound discretion. *People v. Michael M.*, 162 Misc2d 803 [Sup Ct, Kings Cnty 1994]. A motion *in limine* "is to prevent the introduction" of anticipated inadmissible, immaterial, or prejudicial evidence to the trier of fact, or to limit its use. *State v. Metz*, 241 AD2d 192 [1st Dept 1998]. However, rather than availing himself of the opportunity, Defendant has instead chosen to reargue issues already ruled upon by the Court. See this Court's Decision on Omnibus Motions rendered February 15, 2024 (hereinafter "Omnibus Decision"). Defendant's B, C, and D are nothing more than a motion to reargue disguised as a motion *in limine*. A motion to reargue must be brought in a procedurally proper manner. *See People v. Defreitas*, 48 Misc3d 569 [Crim Ct, NY County 2015]. Rearguing this Court's prior rulings in this manner is procedurally and professionally inappropriate and a waste of this Court's valuable resources.

In Point D, Defendant seeks to preclude all evidence pertaining to the 2015 Trump Tower meeting between Pecker, Cohen, and Defendant. As discussed in greater detail *infra*, evidence surrounding the details of this meeting are relevant to the instant matter and therefore not precluded.

Defendant's B, C and D are **DENIED**.

DEFENDANT'S E, F, AND G: THE COURT SHOULD PRECLUDE TESTIMONY FROM, OR REGARDING DINO SAJUDIN, KAREN MCDOUGAL, AND STEPHANIE CLIFFORD[1]

Defendant's motions are denied with certain limited instructions.

Defendant seeks to preclude *all* testimony from, or regarding, Dino Sajudin, Karen McDougal, and Stephanie Clifford (aka Stormy Daniels, hereinafter "Daniels"). As a threshold matter, Defendant's E, F and G are denied in so far as they seek preclusion of "any" evidence about the aforementioned three individuals. Such an application is much too broad and unsupported.

It is well-settled that "evidence of uncharged crimes is inadmissible if such evidence is offered solely to show a criminal disposition or propensity and, therefore, that the defendant is likely to have committed the crime at issue." *People v. Ventimiglia*, 52 NY2d 350 [1981]; *People v. Molineux*, 168 NY 264 [1901]. When evidence of other wrongs or acts committed by a person is offered for the purpose of raising an inference that the person is likely to have committed the act in issue, the evidence is inadmissible. Guide to N.Y. Evid., Molineux: Evidence of Crimes and Wrongs, § 4.38, Note pg. 1. However, there are exceptions to this general rule. In *Molineux*, the Court of Appeals enumerated five categories of uncharged crimes which may be introduced in the People's direct case at trial: (1) to establish defendant's motive; (2) to show lack of mistake or accident in the commission of the crime; (3) to establish defendant's intent or knowledge; (4) to demonstrate a common scheme or plan; and (5) to establish the identity of the person charged with the crime. The five general categories are illustrative and not exhaustive. *People v. Santarelli*, 49 NY2d 241 [1980]. Reference to an uncharged crime may be proper if the uncharged crime is inextricably intertwined with and is highly probative of the crime charged. *People v. Vails*, 43 NY2d 364 [1977]; or where a narrative description of the crimes charged necessitates mention of the uncharged criminal conduct. *People v. Gantz*, 104 AD2d 692 [3d Dept 1984].

Admissibility of such evidence is subject to a two-part inquiry: First, the proponent of the evidence must identify some issue, other than mere propensity, why the evidence is relevant. *People v. Vargas*, 88 NY2d 856 [1996]. This first requirement is a question of law, not discretion. *People v. Alvino*, 71 NY2d 233 [1987]. The proposed evidence should not be admitted if it is merely cumulative and no pressing need for its introduction is demonstrated. *Ventimiglia*, 52 NY2D 350. Once such a showing is made, the court, before admitting the evidence, must determine whether the probative value of the evidence exceeds the potential for prejudice to the defendant. *People v. Hurdy*, 73 NY2d 40 [1988].

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[1] This issue is also addressed in the Court's Decision on the People's Motions *in limine* at Pgs. 9-13

"Since the admissibility of evidence of other criminal conduct depends on the facts of each case, no infallible tests answer the questions of admissibility." Jerome Prince, Richardson on Evidence §4-502 [Farrell 11th ed 1995]. If a court determines that such evidence is admissible, a cautionary instruction outlining the limited use of such evidence must be given to the jury. *People v. Satiro* 72 NY2d 821 [1988].

In the instant matter, testimony from, or regarding Sajudin, McDougal, and Daniels may be introduced. The probative value of the evidence is evident. For example, the actions of the three individuals allegedly flow directly from the 2015 meeting at Trump Tower where Pecker, Cohen, and Defendant were present. Their testimony qualifies under several of the *Molineux* exceptions. The steps taken to secure the stories of Sajudin and McDougal complete the narrative of the agreement that was reached at the meeting. To wit, stemming the flow of negative information that could circulate about Defendant before it reaches the public eye. Locating and purchasing the information from Daniels not only completes the narrative of events that precipitated the falsification of business records but is also probative of the Defendant's intent. Further, the evidence and testimony surrounding these individuals is inextricably intertwined with the narrative of events and is necessary background for the jury.

However, when carefully balancing the probative value of the testimony against the potential for undue prejudice, the Court believes that the testimony from or about Sajudin and McDougal must come with some limitations. Unless the People provide a satisfactory offer of proof, the testimony by or about Sajudin and McDougal, will be limited to "the fact of"[2] and may not explore the underlying details of what allegedly transpired between those individuals and the Defendant.

Defendant's E, F and G are **DENIED.** Finally, Defendants motion to preclude the results of any polygraph tests taken by Daniels is **GRANTED**.

DEFENDANT'S H: THE COURT SHOULD PRECLUDE EVIDENCE REGARDING THE SO-CALLED ACCESS HOLLYWOOD TAPE[3]

Defendant's motion to preclude is **DENIED** subject to strict limitations as more fully discussed in this Court's Decision on the People's motions *in limine*.

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[2] The exact limitations of this testimony will be discussed in court prior to jury selection.

[3] The Court notes that this topic is also discussed in the Court's Decision on the People's Motions *in Limine*. Decision at pgs. 10-13

DEFENDANT'S I: THE COURT SHOULD PRECLUDE THE PEOPLE FROM PRESENTING MERITLESS ARGUMENTS CONCERNING FECA'S AMBIT

Defendant previously made this same application and it was denied. It is now denied once again. Defendant argued unsuccessfully in his omnibus motions that federal crimes cannot serve as object offenses for purposes of PL § 175.10. Defendant's Omnibus Memo at pg. 15. Now, in a newly repackaged version of the same argument, Defendant claims that "(1) the alleged payments to McDougal and Clifford did not, as a matter of law, violate FECA and (2) arguments about the People's alleged erroneous interpretations of FECA should be Precluded." These issues have already been decided by this Court and this argument will not be entertained again.

Defendant's I is **DENIED**.

DEFENDANT'S J: THE COURT SHOULD PRECLUDE EVIDENCE OF THIRD PARTIES' ADMISSIONS OF FECA VIOLATIONS

Defendant seeks to preclude evidence pertaining to Cohen's "federal guilty plea to a FECA violation." The Defendant also seeks preclusion of AMI's "non-prosecution agreement with the U.S. Attorney's Office for the Southern District of New York, the FEC's 'Factual and Legal Analysis regarding AMI, and the FEC's Conciliation Agreement with AMI." Defendant's Memo at pg. 30. The Defendant concedes that a co-defendant's guilty plea could be admissible on the question of credibility. Defendant's Memo at pgs. 30-31; *People v. Wright*, 41 NY2d 172 [1976]; Jerome Prince, Richardson on Evidence §6-409 [Farrell 11th ed 1995]. Though the general rule is that a codefendant's guilty plea has no probative value as to defendant's guilt, the Court of Appeals has "stated that evidence of a testifying codefendant's plea 'would be admissible on general grounds as to credibility of the witness himself.'" People's Opposition at pg. 17; *Wright*, 41 NY2d at 176; *People v. Colascione*, 22 NY2d 65, 73 [1968].

Defendant's motion is granted to the extent that the People are precluded from arguing that Cohen's guilty plea to FECA violations is probative of Defendant's guilt in the instant matter. However, testimony about the underlying facts of the guilty plea are admissible provided the proper foundation is laid. Further, Cohen may be asked whether there was a criminal proceeding related to his actions with respect to the FECA violation. Of course, the Court can revisit this ruling if either side opens the door in a way that warrants this Court's reconsideration. *People v. Clementi*, 82 AD3d 574 [1st Dept 2011] ("The court properly modified its pretrial ruling to permit introduction of an uncharged crime or bad act.").

Turning next to Defendant's arguments regarding the FEC's Conciliation Agreements with AMI. Defendant argues that these agreements are inadmissible because they would violate the Confrontation Clause. Defendant's Memo at pg. 31. However, as noted by the People, Pecker, who was "AMI's Chairman, President, and CEO at the relevant times" will be the "appropriate witness to be cross-examined regarding the company's criminal exposure." People's Opposition at pg. 22. The People will be allowed to elicit testimony pertaining to AMI's agreements but they are precluded from arguing that the mere fact there was an agreement is probative of Defendant's guilt. This ruling does not limit the People from eliciting testimony from Cohen, Pecker, Howard, or any other witnesses with first-hand knowledge of the underlying facts related to the guilty pleas entered into by Cohen and AMI.

If requested, the Court can give the jury a limiting instruction explaining the purpose for which evidence of Cohen's plea and AMI's conciliation agreement may and may not be considered.

DEFENDANT'S K: THE COURT SHOULD PRECLUDE EVIDENCE CONCERNING AMI'S BOOKS AND RECORDS

Defendant seeks preclusion of AMI's accounting records that purport to show that payments to McDougal were classified as "promotional expenses" rather than "editorial expenses." Defendant also seeks to preclude testimony from Pecker to the same. Defendant's Memo at pg. 32-33. Defendant is correct, that this Court did rule in its Omnibus Decision that the People are precluded from arguing this "fourth theory to the jury." However, evidence from that theory may be admissible where it advances the other three theories this Court has allowed. Omnibus Decision at pg. 21-22. As such, this aspect of Defendant's motion is **DENIED**

DEFENDANT'S L: THE COURT SHOULD PRECLUDE EVIDENCE AND ARGUMENT THAT PRESIDENT TRUMP OR HIS TRUST IS THE PL § 175.10 "ENTERPRISE"

Defendant inappropriately uses this opportunity to *again* attack the legal sufficiency of the charges. See Defendant's Memo at pg. 33-34 and Defendant's Omnibus Memo pg. 13, Footnote 4.

This Court held in its February Omnibus Decision that "Defendant and the Trump Organization are intertwined to such a degree, that it is of no legal relevance that some of the moneys paid to Cohen came from Defendant's personal funds." Omnibus Decision at pg. 11.

Defendant's L is **DENIED** and he is cautioned not to raise this argument again to the jury.

DEFENDANT'S M: THE COURT SHOULD PRECLUDE THE ALLEGED NOTES BY ALLEN WEISSELBERG

Defendant seeks to preclude the People from offering as evidence, purported handwritten notes of Allen Weisselberg, on the grounds that they constitute inadmissible hearsay. Defendant's Memo at pg. 35-36; *See also* Grand Jury Exhibits 5 and 8. In support of this argument, Defendant misrepresents the record when he claims that McConney was the only grand jury witness to be questioned about the Weisselberg notes. Defendant's Memo at pg. 35. This Court calls attention to the fact that Cohen was specifically asked in the grand jury about the notes. "Do you see two types of handwriting at the bottom of the page" in reference to Grand Jury Exhibit 5, i.e. the Weisselberg notes. Cohen responded, "Yes, that's Allen Weisselberg." Grand Jury Minutes pg. 884. The People also represent that McConney further testified that he recognized Weissleberg's handwriting on the bank statement. People's Opposition at pg. 26. The People argue that these notes should come in at trial as a business record provided the proper foundation is laid. *Id.* "While the person or persons involved in the preparation of the record is not required to be called, the witness must have personal knowledge of the record keeping practices of the business. See *Bank of N.Y. Mellon v. Gordon*, 171 AD3d 197, 208-210 [2d Dept 2019]." Guide to N.Y. Evid., Business Records § 8.08.

The documents in question may be admissible under the business records exception provided the People lay the proper foundation. As such, decision on Defendant's M is **RESERVED**. *Clementi*, 82 AD3d at 574.

DEFENDANT'S N: THE COURT SHOULD PRECLUDE EVIDENCE CONCERNING MAYOR RUDOLPH GIULIANI

The People do not seek to introduce these statements into evidence in their case in chief. People's Opposition pg. 27. Therefore, the issue is moot and this Court does not need to rule on it.

DEFENDANT'S O: ABSENT AN OFFER OF PROOF, THE PEOPLE SHOULD BE PRECLUDED FROM INTRODUCING THE NEARLY 100 STATEMENTS THEY SEEK TO ATTRIBUTE TO PRESIDENT TRUMP

Defendant argues that the People should be required to make a pre-trial offer of proof regarding the admissibility of statements attributable to the Defendant on the grounds that they are

irrelevant, stale and cumulative. The People argue that the statements are at least in part the admissions of a party and thus constitute competent evidence. *Reed v. McCord*, 160 NY 330 [1899]; *People v. Caban*, 5 NY3d 143 [2005]. The People also argue that Defendant's own statements are admissible unless irrelevant or otherwise excludable. *People v. Lewis*, 69 NY2d 321 [1987]. "An admission is an act or declaration by the accused from which, either alone or with other evidence, guilt may be inferred." Jerome Prince, Richardson on Evidence §8-251 [Farrell 11th ed 1995]. An admission is an exception to the hearsay rule. *Id.*

Defendant's motion for a pre-trial hearing to determine the admissibility of each of the statements in question is denied. Like all evidence, the People will be required to lay a proper foundation for their introduction. For example, if the statement is offered as an admission, the People should be prepared to demonstrate why it is an admission, *if it is not apparent on its face.* Defendant is of course permitted to make good faith objections at the appropriate time

Defendant's O is **DENIED**.

DEFENDANT'S P: THE COURT SHOULD REQUIRE THE PEOPLE TO DISCLOSE A REALISTIC EXHIBIT LIST

Defendant asks this Court to order disclosure of a "realistic" version of the People's exhibit list as the current version is in a "state of disarray." Defendant's Memo at pg. 43. This Court previously held that "Given the rapidly approaching trial date, the sheer amount of discovery produced thus far and as required by CPL § 245.20(1)(o), the People are hereby directed to identify the remaining exhibits, if any, that will be offered into evidence in their case in chief by March 15, 2024." Omnibus Decision at pg. 28. In their opposition, the People represented that they have fulfilled their obligation and that the exhibit list they provided was not in a state of disarray. Rather, the People suggest that whatever disorganization there may appear to be is of Defendant's own doing or due to Defendant's failure to properly navigate the evidence and the list. This Court accepts the People's representations and directs the People to continue, as they have done so, to update the Defendant on any changes made to their exhibit list and to fully comply with their discovery obligations pursuant to CPL § 245.20(1)(o)[4].

[4] On March 12, 2024, the People filed a premotion letter asking the Court to extend their deadline from March 15, 2024, to March 25, 2024. The Defense opposed the motion. The Court granted the request in a Letter Decision and Order dated March 15, 2024.

The foregoing constitutes the Decision and Order of this Court.

March 18, 2024
New York, New York

MAR 18 2024

Juan M. Merchan
Acting Justice of the Supreme Court
Judge of the Court of Claims

HON. J. MERCHAN