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 FILED FEBRUARY 6, 2018

Plaintiff/Counter-Defendant, Jeffrey Epstein ("Epstein"), opposes the Motion in Limine filed by Defendant/Counter-Plaintiff, Bradley J. Edwards ("Edwards"), on February 6, 2018, [D.E. 1189] and states:

BACKGROUND

In yet another Motion in Limine, Edwards seeks to prohibit Epstein from making any logical and common-sense comparison between the settlement amounts of Edwards' three clients (L.M., E.W. and Jane Doe), and Edwards' claimed damages in his malicious prosecution Counterclaim.

Edwards contends that his three clients (L.M., E.W. and Jane Doe) are not named parties to and have asserted no claims in this lawsuit. (Mot. at ¶7). Despite this position here, Edwards identified L.M., E.W. and Jane Doe as witnesses in support of his Counterclaim. [D.E. 1042].

Further, the parties have stipulated that Epstein settled the claims of Edwards' three clients in July 2010. *See* Joint Pretrial Stipulation at ¶33. [D.E. 1132.]

Finally, Edwards also has suggested that the amount(s) of his three clients' settlements are relevant to show that Epstein lacked probable cause (because Edwards' cases against Epstein were not fabricated):

> [Q] So, are you telling this jury that the three clients that you represented, the settlements that you obtained for them were somehow impacted by your inability to fulfill your professional obligations as a result of this counterclaim -- this lawsuit being filed against you?
> A No. I'm telling you that's what Jeffrey Epstein wanted to happen, but I didn't let happen.
> Q He failed; is that right?
> **A Look at the numbers. He said it was a fabricated case. He paid millions of dollars for these allegedly fabricated cases. It was all a big, fat lie that he put in that complaint, which the jury is going to get to hear about.**
> Q So his intent was to shut you down and make you not settle the cases, or to somehow give them away. He failed, because you, on behalf of your clients, got every single penny they deserved, didn't you?
> A I did well for them.

(Edwards' 11/10/17 Depo. 204:14-18).[1]

> Q We talked earlier about the settlement with the three clients that you represented when you were at Rothstein, and I think the number was 5.2 million --
> A **It was 5.5 million**. It settled in July of 2010 . . . .

(Edwards' 11/10/17 Depo. 304:23-25, 305:2-3.)

[1] Excerpts of Edwards' 11/10/17 deposition transcript are attached as **Exhibit A**.

Thus, Edwards has placed the settlement amount(s) of Edwards' clients' cases at issue and advanced its admissibility at every turn. Therefore, any comparison between the amount(s) and Edwards' own alleged damages will be a fair comment on the evidence.

INTRODUCTION

In Edwards' Motion in Limine, Edwards requests an order precluding Epstein from making any reference in front of the jury to the following: (1) a comparison between the settlement amounts of L.M., E.W. and Jane Doe and the damages sought by Edwards (which he deems a "comparative verdict" argument); (2) that Edwards is "forcing" his clients to testify for selfish motivations; and (3) the fact that Edwards' three clients will not be awarded any portion of any damages award against Epstein.

Edwards contends that all of these remarks are irrelevant, highly prejudicial, intentioned to mislead and confuse the jury, and that a "comparative verdict" argument is barred by black-letter Florida law. Edwards' Motion should be denied for the following reasons.

First, the above remarks, if made at all, will be fair commentary on the evidence. *Second*, Edwards' "comparative verdict" cases are inapposite and distinguishable on their facts. *Third,* the arguments are relevant to Edwards' credibility as to his malicious prosecution Counterclaim and alleged damages.

ARGUMENT

A. The Subject Comments are Not Improper as They Will be Fair Commentary on the Evidence, and Relevant to Edwards' Credibility.

1. Fair Comment on the Evidence is Permissible

"Judges have discretion to allow attorneys wide latitude in making legitimate arguments to the jury, including assertions of logical inferences." *Reyes v. State*, 700 So. 2d 458, 460 (Fla. 4th DCA 1997). "Merely arguing a conclusion that can be drawn from the evidence is

permissible fair comment." *Mann v. State*, 603 So. 2d 1141, 1143 (Fla. 1992). During closing argument, for example, it is proper "to review the evidence and to explicate those inferences which may reasonably be drawn from the evidence." *Frazier v. State*, 970 So. 2d 929, 930 (Fla. 4th DCA 2008) (quoting *Bertolotti v. State*, 476 So. 2d 130, 134 (Fla. 1985)). "It is [even] permissible for counsel to argue, based on the record, that one witness should be believed and another should not." *Covington v. State*, 842 So. 2d 170, 172 (Fla. 3d DCA 2003).

Edwards first takes issue with Epstein arguing to the jury that "Edwards now seeks tens of millions of dollars more for his claimed 'emotional distress' than he recovered collectively for all three of his clients combined." (Mot. at ¶1.) But, as a result of Edwards' litigation strategy, this will be a fair comment on the evidence. Edwards has identified his three clients as witnesses, the parties have stipulated that Edwards' three clients settled with Epstein in 2010, and Edwards has indicated he will introduce the amount(s) of his three clients' settlements to show that his cases against Epstein were not fabricated. In fact, Edwards has argued in Court that Epstein filed his original civil proceeding (lacking in probable cause) because of the threat of Edwards' clients and all the other Plaintiffs who Edwards now claims to have been the lead lawyer for. Thus, any statement that Edwards is seeking millions of dollars more for his purported damages than he recovered for all three of his clients combined will be a fair comment on the evidence—or one that may be reasonably inferred from the evidence.

Edwards also takes issue with the comments that he, "for his own financial gain, plans to have [his three clients] testify about their intensely personal claims," and that Edwards' three clients "have no interest in and will receive no benefit from the outcome of this litigation and, in fact, released their claims against Epstein in July 2010." These comments are not intended to "demonize" Edwards, as he alleges, but are fair comments on the evidence, too. Edwards plans

to call his three clients as witnesses, to support his burden of proof that Epstein lacked probable cause to file his lawsuit. These individuals have settled their claims with Epstein, are not parties to this suit, and thus, it is fair to say that their "forced" involvement is solely for Edwards' financial gain (i.e., a damages award). This will be obvious to the jury, even if Epstein does not make the challenged remarks.

2. Edwards' "Comparative Verdict" Cases are Inapposite

Contrary to Edwards' assertion, a comment that Edwards seeks "millions more" than he recovered for his clients is not a comparative verdict argument intended to "cap" Edwards' damages. A comparative verdict argument occurs in personal injury cases when *plaintiff's* counsel "suggest[s] to the jury that [his or her client] is no less entitled to recovery of a verdict than other injured plaintiffs." *Div. of Corr. v. Wynn*, 438 So. 2d 446, 449 (Fla. 1st DCA 1983). This is not Epstein's potential fair comment on the evidence whatsoever.

In *Wynn*, for example, the First District Court of Appeal found it was improper jury argument for plaintiff's counsel to "name[] two successful plaintiffs (Carol Burnett and 'Miss Wyoming') who won large recoveries in recent and widely publicized damage suits." *Id.* at 449. The First District Court of Appeal declined to reverse, however, as the error was unpreserved, and the comments did not rise to the level of fundamental error. *Id.*

Wright & Ford Millworks, Inc. v. Long, 412 So. 2d 892 (Fla. 5th DCA 1982), also cited by Edwards, is distinguishable, too. In *Long*, plaintiffs' counsel stated in closing that Carol Burnett had recently recovered $1.5 million for slander; counsel then stated his clients were entitled to "[no] less than anyone else." *Id.* at 892 (Fla. 5th DCA 1982). In reversing based upon this "comparative verdict" argument, the Fifth District Court of Appeal concluded there was "[no] logical connection between Carol Burnett's punitive damage award against a national

magazine for slander and a compensatory damage award to [Long]" for his foot injury. *Id.* at 893-94.

Here, in contrast to *Wynn* and *Wright*, no jury awards or *verdicts* are being compared. Nor is Epstein arguing that Edwards' damages should be capped at $5.5 million. (Mot. at ¶5). Rather, the statement(s) at issue will be fair commentary on the evidence, and thus, bear a "logical connection" to the facts in this case. Edwards will have the opportunity to present evidence of the full extent of his damages. He will not be prejudiced.

3. <u>The Comments Speak to Edwards' Credibility</u>

As noted above, "It is . . . permissible for counsel to argue, based on the record, that one witness should be believed and another should not." *Covington*, 842 So. 2d at 172. Here, the fact that Edwards is seeking millions more in damages than he recovered for his three clients combined—alleged victims of *sexual molestation as children* by Epstein—is relevant to Edwards' credibility.

Edwards suggests that Epstein is merely trying to portray him in a bad light, and that this is impermissible bad character evidence. Not so. Epstein recognizes – and has attempted to prevent Edwards from so arguing - that in a civil case, evidence of a person's conduct is never admissible to prove that the person acted in conformity with that character trait. Here, however, Epstein is not trying to show Edwards is a bad guy, but to impeach Edwards' credibility as to the exorbitant amount of damages he is claiming for his alleged excessive anxiety that he has suffered every single day from December 2009 through today.

CONCLUSION

Epstein respectfully requests this Court to deny Edwards' Motion in Limine filed February 6, 2018.

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to the attorneys listed on the Service List below on February 21, 2018, through the Court's e-filing portal pursuant to Florida Rule of Judicial Administration 2.516(b)(1).

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EXHIBIT A

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JEFFREY EPSTEIN,

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SCOTT ROTHSTEIN, individually;
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Defendants/Counter-Plaintiffs.
_____/

VOLUME I

VIDEOTAPED DEPOSITION

OF

BRADLEY EDWARDS

Taken on Behalf of Plaintiff

Friday, November 10th, 2017
10:02 a.m. - 6:16 p.m.
2139 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33409

Examination of the witness taken before

Sonja D. Hall
Palm Beach Reporting Service, Inc.
1665 Palm Beach Lakes Boulevard, Suite 1001
West Palm Beach, FL 33401
(561) 471-2995

now being served with by Mr. Epstein.

Q Did I interrupt you?

A No. I will finish right there.

Q Good. I didn't want to interrupt you.

So, are you telling this jury that the three clients that you represented, the settlements that you obtained for them were somehow impacted by your inability to fulfill your professional obligations as a result of this counterclaim -- this lawsuit being filed against you?

A No. I'm telling you that's what Jeffrey Epstein wanted to happen, but I didn't let happen.

Q He failed; is that right?

A Look at the numbers. He said it was a fabricated case. He paid millions of dollars for these allegedly fabricated cases. It was all a big, fat lie that he put in that complaint, which the jury is going to get to hear about.

Q So his intent was to shut you down and make you not settle the cases, or to somehow give them away. He failed, because you, on behalf of your clients, got every single penny they deserved, didn't you?

A I did well for them.

Q You wouldn't have settled them if you

Q Worked at the Rothstein firm?
A Yes.
Q And did he join the firm that you guys set up, Farmer --
A No.
Q Tell me the name of the firm again.
A Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman.
Q Did not join them?
A No.
Q Did you work with him while he was at Rothstein when you were employed there?
A We were both employed there.
Q Did you work with him on any of the Epstein files?
A No. He didn't work on Epstein files. He was an IT guy.
Q I understand.
Did you use him for any part of the Epstein cases?
A I don't think he worked on any -- we didn't have any IT needs, I don't believe.
Q We talked earlier about the settlement with the three clients that you represented when you were at Rothstein, and I think the number was

5.2 million --

A It was 5.5 million. It settled in July of 2010, not while I was at Rothstein.

Q No, I understand. They were the three -- same three clients you represented while you were at Rothstein's, right?

A Yes.

Q Can you tell me, of the 5.5, how much did the three collectively collect from that?

A I don't remember that.

Q You didn't take those cases on a pro bono basis, did you?

A No. It was a contingency arrangement, similar to my arrangement with Mr. Scarola in this case.

Q Okay. I understand. I understand.

So that contingency, do you remember what percentage the contingency was?

A I don't.

Q Was it a third, 40 percent?

A Probably -- I don't know. But the standard is between zero and a million, 40 percent if it's in litigation; 1 to $2 million, 30 percent; and then over $2 million, 20 percent or something. There's a sliding scale. That's probably what was used.