

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE FOURTH JUDICIAL CIRCUIT
JACKSON COUNTY

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

Nos. 20003171 FH, 20003172 FH,
20003173 FH

PAUL EDWARD BELLAR,
JOSEPH MATTHEW MORRISON,
PETE MUSICO

HON. THOMAS WILSON

Defendants.

Sunita Doddamani (P67459)
William Rollstin (P40771)
John Pallas (P42512)
Philip Jacques (P73754)
Attorneys for Plaintiff
Michigan Department of Attorney General
Criminal Trials and Appeals Division
525 W. Ottawa Street
P.O. Box 30217
Lansing, MI 48909
(517) 335-7650

Andrew P. Kirkpatrick (P66842)
Attorney for Defendant Bellar
503 South Jackson Street
Jackson, MI 49203
(517) 783-3500

Nicholas Somberg (P80416)
Attorney for Defendant Morrison
31700 Telegraph Road, Ste 210
Bingham Farms, MI 480205
(248) 270-5979

Kareem Johnson (P71988)
Attorney for Defendant Musico
505 South Jackson Street
Jackson, MI 49203
(517) 768-6883

**THE PEOPLE'S MOTION IN LIMINE TO PRECLUDE INADMISSIBLE
IMPEACHMENT EVIDENCE ABOUT FBI AGENTS**

Motion

NOW COMES the People of the State of Michigan, by and through Dana Nessel, Attorney General, and Assistant Attorneys General Sunita Doddamani, William Rollstin, John Pallas, and Philip Jacques, and move this Court in limine to preclude any attempts by defendants to introduce evidence of FBI Special Agent Jayson Chambers involvement with Exeintel, FBI Special Agent Richard Trask's domestic violence conviction, and SA Trask's negative Facebook post about the former President.

Brief in Support of Motion

Facts

This Court is very familiar with the facts of this case, having already ruled on motions to quash the information by the defendants following bind over to this Court, a *Goecke* motion by the People (here represented by the Michigan Attorney General), and motions to dismiss based on purported entrapment. As such, the People are not going to repeat the substantive facts of this case other than to state that each defendant is currently charged by the People with being a member of a gang that that did commit or attempt to commit the felony of providing material support for acts of terrorism, contrary to MCL 750.411u; providing material support or resources to a terrorist organization, contrary to MCL 750.543k(1)(b); and possession of a firearm during the commission of a felony (felony-firearm), contrary to MCL 750.227b, and to the summarize the inadmissible evidence as follows:

A. Special Agent Chambers and Exeintel

SA Chambers is one of many federal, state, and local law enforcement officers who worked on this case. While investigating this case, he explored the idea of leaving the FBI and pursuing a private security consulting business venture, Exeintel. SA Chambers made a proposal to an existing security company for Exeintel to be a sub-contractor with the intent that it would evolve into a full scale business. SA Chambers included his resume with his proposal.

His resume is a fairly plain summary of his work experience with very basic information about the kind of work he's been doing. The resume does not list anything about this case or even reference this case. In pursuing his business efforts, SA Chambers took steps to ensure the FBI's work would not be disrupted by his departure. Ultimately, SA Chambers decided to remain with the FBI, and left the Exeintel project without ever making a deal with a client or deriving any financial benefit. An internet news website, reported that SA Chambers incorporated a security consulting firm ("Exeintel") and someone connected to Exeintel had posted "enigmatic tweets" about the pending arrests in this case (the source for this article is unknown). The People do not intend to call SA Chambers as a witness in their case in chief at trial.

Based on questioning at the related federal case, the People have reason to believe that defendants' will seek to impugn the integrity of the investigation at trial by introducing evidence of SA Chamber's attempted business venture to at least imply that he attempted to use this case for his own personal gain.

B. Special Agent Trask

Like SA Chambers, SA Trask is one of numerous law enforcement officials who worked on this case. Subsequent to the arrest and arraignment of the defendants on the related federal case, SA Trask was arrested for domestic violence, based upon the accusation that he assaulted his wife. As a result, SA Trask pled no contest to misdemeanor aggravated assault and the FBI terminated his employment. Additionally, in a context entirely unrelated to this case, SA Trask posted a negative message about the former President Trump on Facebook. For the same reasons as those stated for SA Chambers, the People have reason to believe that the defendants will seek to introduce evidence of SA Trask's domestic violence case and Facebook post to cast the FBI in a bad light. The People also do not intend to call SA Trask as a witness in their case in chief at trial.

Argument

As a matter of law, defendants should not be permitted to introduce this evidence at trial. Overall, the relevance of this evidence is miniscule, if any. The potential of unfair prejudice, confusion of the issues, and misleading the jury substantially outweighs whatever evidentiary value it might have.

MRE 402 creates a general rule of admissibility for relevant evidence. Evidence is relevant under MRE 401 if it is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Even relevant evidence of any type must still be excluded under MRE 403 "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the

issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.”

Under MRE 607, “the credibility of a witness may be attacked by any party, including the party calling the witness.” The People’s concern is that even though the People do not intend to call SA Chambers and SA Trask at trial, the defense may call them as witnesses simply to impeach them or impugn the integrity of the investigation with this evidence.

The Exeintel evidence is not relevant in this case. Exeintel never actually performed any work for a client; SA Chambers did not receive a financial benefit from Exeintel; and most importantly, the Exeintel business idea is not related to any of these defendants or the charges in this case. As a result, this evidence does not have a tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

“Unfair prejudice occurs ‘when there is a tendency that the evidence will be given undue or preemptive weight by the jury, or when it is inequitable to allow use of the evidence.’” *People v Waclawski*, 286 Mich App 634, 672 (2009). The introduction of this evidence would allow the defense to imply that SA Chambers used this case to his advantage with Exeintel, without facts to support the allegation. That unsupported implication would allow the jury to give the evidence undue weight and be inequitable, because responding to the introduction of the evidence at trial would require the People to fully present the Exeintel evidence to

the jury, further confusing the issues and misleading the jury. Given that the evidence presents little to no probative value and there is a significant danger of unfair prejudice, confusion of the issues, and misleading the jury, any probative value is substantially outweighed by that danger.

The only possible relevance for the evidence of SA Trask's domestic violence case is to infer the bad character of agent SA Trask, which would render the evidence inadmissible under MRE 404(a), which generally excludes character evidence, unless it would be admissible under MRE 608 or 609. Under MRE 608, a witness may be impeached by opinion, reputation, or specific acts evidence regarding the witness's untruthfulness. Under MRE 609, a witness may be impeached by a conviction for dishonesty, false statement, or theft. SA Trask's domestic violence case and Facebook post have no bearing on his truthfulness, and the conviction is not one of dishonesty, false statement, or theft. And thus, the evidence is inadmissible under MRE 608 and 609.

As to SA Trask's Facebook post, the People anticipate defendants using that evidence to argue that the FBI is a "deep state" organization and out to get perceived political opponents. There is no evidence that political beliefs for or against any party or politician effected this investigation. Without that link connecting SA Trask's alleged political beliefs to his conduct during this investigation, the evidence is not relevant. Of course, introduction of this evidence at trial would create a monumental distraction from the real issues, whether defendants committed the charged offenses. And realistically, there is no evidence

that the People could introduce to rebut the implication of political bias, because the injection of political beliefs into a trial is likely to improperly cause strong feelings amongst the jurors.

The jury would undoubtedly give undue weight to that evidence. The admission of such evidence invites the jury to acquit on an improper basis. A defendant is not entitled to present evidence based on jury nullification. *People v Demers*, 195 Mich App 205 (1992). The introduction of this evidence would create a substantial danger of unfair prejudice, confusion of the issues, or misleading the jury, and any probative value is substantially outweighed by the danger.

Conclusion and Relief Requested

For the foregoing reasons, the government requests the Court in limine, exclude evidence relating to Special Agent Jayson Chambers' connection with Exeintel, former Special Agent Richard Trask's assault conviction, and Trask's alleged social media posts if defendants attempt to offer such evidence during the trial in this case.

Respectfully submitted,

Dana Nessel
Attorney General



Sunita Doddamani (P67459)
William Rollstin (P40771)
John Pallas (P42512)
Philip Jacques (P73754)
Attorneys for Plaintiff
Michigan Department of Attorney
General
Criminal Trials and Appeals Division
525 W. Ottawa Street
P.O. Box 30217
Lansing, MI 48909
(517) 335-7650

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