IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

UNITED STATES OF AMERICA

v. CRIMINAL NO.: 3:21-cr-130-HTW-ASH

RUDOLPH M. WARNOCK, JR., and
CLEVELAND ANDERSON

GOVERNMENT'S MOTION IN LIMINE TO EXCLUDE INADMISSIBLE EVIDENCE

The United States, by its undersigned attorneys, hereby submits a motion in limine to (1) exclude evidence of Andrew Grant's prior conviction, (2) exclude evidence of Alphonso Michael Espy's indictment and underlying conduct for which he was acquitted, and (3) exclude opinion testimony about the legality of the vote to remove Defendant Anderson from the Canton Municipal Utility ("CMU") Board of Commissioners. These pieces of evidence run afoul of the Federal Rules of Evidence and should be excluded.

I. PROCEDURAL AND FACTUAL BACKGROUND

On December 8, 2021, a federal grand jury in this district returned a four-count indictment charging Rudolph M. Warnock, Cleveland Anderson, Andrew Grant, and Eric Gilkey with public corruption crimes stemming from a years-long effort by Defendant Warnock to offer and provide bribes to public officials in Canton, Mississippi. ECF No. 3. As alleged in the indictment, Defendant Anderson, as a Commissioner on the CMU Board of Commissioners, along with Defendants Grant and Gilkey, as Aldermen for the city of Canton, Mississippi, conspired to use their powers as public officials to repeatedly perform official acts meant to benefit Defendant Warnock and his companies, including by voting to appoint Defendant Warnock to be the official CMU Engineer and to award Defendant Warnock lucrative government contracts. *See id.* The public official defendants solicited and accepted bribes from Defendant Warnock in exchange for

their official acts. *See id*. For example, Defendant Anderson solicited a $200,000 bribe and accepted thousands of dollars in cash and expensive gifts from Defendant Warnock. Between 2016 and 2017, Defendant Warnock bribed the public official defendants with both money and lavish gifts, including Beyoncé concert tickets, skybox tickets to a New Orleans Saints game, private jet trips, expensive dinners, and more. *See id*.

The grand jury charged all four defendants with conspiracy to commit federal program bribery (Count 1) and conspiracy to violate the Travel Act (Count 2). *Id*. The grand jury also charged Defendants Warnock, Grant, and Gilkey with conspiracy to commit honest services wire fraud (Count 3) and honest services wire fraud (Count 4). *Id*. On November 21, 2022, Grant and Gilkey each pleaded guilty to Count 1 of the indictment. ECF Nos. 26, 28. Trial against Defendants Warnock and Anderson is currently scheduled for the December 2024 trial term.

II. ARGUMENT

A. Exclude evidence of Andrew Grant's prior conviction

The government moves to exclude evidence of a state court conviction for conspiracy to commit vote fraud committed by potential government witness Andrew Grant. The conviction does not bear on Grant's truthfulness, and its probative value is substantially outweighed by the danger of unfair prejudice.

1. Pertinent Facts

In August 2019, Andrew Grant pleaded guilty in state court to conspiracy to commit vote fraud, in violation of Mississippi Code sections 97-1-1 and 23-15-753. Section 97-1-1 makes it a crime for two or more people to conspire to commit a crime. Miss. Code Ann. § 97-1-1. Section 23-15-753 states,

> Any person who willfully, unlawfully and feloniously procures, seeks to procure, or seeks to influence the vote of any person voting by absentee ballot, by the

> payment of money, the promise of payment of money, or by the delivery of any other item of value or promise to give the voter any item of value, or by promising or giving the voter any favor or reward in an effort to influence his vote, or any person who aids, abets, assists, encourages, helps, or causes any person voting an absentee ballot to violate any provision of law pertaining to absentee voting, or any person who sells his vote for money, favor, or reward, has been paid or promised money, a reward, a favor or favors, or any other item of value, or any person who fraudulently requests or submits an absentee ballot application for any voter, or any person who shall willfully swear falsely to any affidavit provided for in Sections 23-15-621 through 23-15-735, shall be guilty of the crime of "vote fraud"

Miss. Code Ann. § 23-15-753. Conspiring to commit vote fraud has a maximum penalty of five years imprisonment. Miss. Code Ann. § 97-1-1(h).

Grant's conviction stemmed from his conspiring with at least one other public official to influence the vote of at least one individual during the 2017 election cycle. Grant's conviction resulted in a five-year suspended sentence with five years of supervised release. Grant's indictment and conviction received significant local media coverage. *See* <https://www.wlbt.com/2019/08/05/alderman-andrew-grant-pleads-guilty-canton-voter-fraud-case/> (last visited Aug. 30, 2024).

As the Court is undoubtedly aware, the aftermath of the 2020 U.S. Presidential Election put allegations of voter fraud top of mind for many Americans. *See* <https://electioninnovation.org/research/dec-2022-election-integrity-survey/> (last visited Aug. 30, 2024). In Mississippi, the state government has passed multiple voting and election-related bills since 2020. *See, e.g.*, <https://www.wlbt.com/2022/04/03/gov-signs-bill-banning-use-private-money-elections/> (last visited Aug. 30, 2024); <https://www.mpbonline.org/blogs/news/mississippi-erases-some-restrictions-on-absentee-voting-help-for-people-with-disabilities/> (last visited Aug. 30, 2024). And Mississippi public officials have made public comments about "bad actors" engaged in voter fraud. *See, e.g.*, <https://www.facebook.com/tatereeves/videos/2371476916362508/> (last visited Aug. 30, 2024).

2. Legal Argument

Federal Rule of Evidence 609 requires courts to permit impeachment of a witness through introduction of a past conviction if (1) the conviction required proof of a dishonest act or false statement or (2) the conviction is punishable by more than one year in prison and survives a Rule 403 balancing test. Fed. R. Evid. 609(a). Rule 403 permits the exclusion of evidence when its probative value is substantially outweighed by the danger of unfair prejudice. Fed. R. Evid. 403. A prior conviction is not subject to Rule 403 only when the elements of the crime require proof of a dishonest act or false statement. *See Dotson v. Price*, No. CV 17-14063, 2019 WL 2869076, at *2 (E.D. La. July 3, 2019). When a conviction does not require proof of a dishonest act or false statement, Rule 403 may preclude admission of the prior conviction. *See United States v. Williams*, No. CR 14-153, 2016 WL 6520135, at *2 (E.D. La. Nov. 3, 2016).

The Fifth Circuit has not ruled on whether Mississippi state vote fraud is a crime that requires proof of a dishonest act or false statement. However, the plain language of the statute makes clear that the statute can be violated without proof of dishonesty or falsehoods by, for example, paying somebody to vote for a particular candidate. *See* Miss. Code Ann. § 23-15-753. As such, Grant's conviction is only admissible for impeachment purposes if it survives a Rule 403 balancing test. *See* Fed. R. Evid. 609(a)(1)(A). But Grant's conviction should be excluded under application of Rule 403. The probative value of the conviction is extraordinarily low. The conviction has nothing to do with Grant's role in the conspiracies at issue in this case nor does the conviction have anything to do with Grant's truthfulness. The conspiracies in this case were nearly complete by the time Grant's vote fraud conspiracy began. And none of the other conspirators in this case were a part of the vote fraud case.

Conversely, the prejudicial impact of permitting the defendants to introduce Grant's conviction would be exceedingly high and unfair to the government. It is highly likely that every juror in the venire will be aware of allegations of voter fraud made in conjunction with the 2020 U.S. Presidential Election. While Grant's conviction has nothing to do with the 2020 election, the plain fact that his conviction is for conspiracy to commit "vote fraud" will undoubtedly evoke strong feelings about election integrity from some jurors. This will create unfair prejudice to the government because a key government witness may be automatically discredited due to juror emotion about national politics rather than a calculated and rational consideration of Grant's credibility in this case. By excluding this evidence, the Court will protect this trial from becoming mired in unnecessary political discourse. The Court should exercise its discretion and exclude the conviction.

B. Exclude evidence of Alphonso Michael Espy's indictment and underlying conduct for which he was acquitted

The government moves to exclude evidence of an indictment, and the underlying factual allegations, that charged likely government witness Alphonso Michael Espy with various public corruption crimes. Espy was acquitted after trial. The acquitted conduct is irrelevant, prejudicial, and would be improper character evidence.

1. Pertinent Facts

Espy, a former Congressman and United States Secretary of Agriculture, was indicted in 1997 on federal corruption charges. *See generally United States v. Espy*, 989 F. Supp. 17, 21–25 (D.D.C. 1997) (describing factual allegations in indictment). Specifically, the federal grand jury charged Espy with thirty-nine counts centering around his acceptance of gifts and things of value from companies that had business before the Department of Agriculture while Espy served as Secretary. Espy was charged with multiple counts of wire fraud, mail fraud, accepting illegal

gratuities, violating the Meat Inspection Act, violating the Travel Act, and false statements, along with a single count of obstruction of justice. Espy was ultimately tried on thirty counts. The jury acquitted Espy of all charges.

The government anticipates calling Espy as an eyewitness to Defendant Warnock's corruption in this case. Espy saw Warnock purchase expensive items for Grant and Gilkey during a trip. Espy, who served as the CMU attorney during the period pertinent to the indictment, may also testify about nonprivileged emails he received and conversations he had regarding Canton's sewer problems and the proposed solutions.

2. Legal Argument

Only relevant evidence is admissible. Fed. R. Evid. 402. Evidence is relevant if it makes a fact in issue more or less likely. Fed. R. Evid. 401. Even relevant evidence can be excluded if its probative value is substantially outweighed by the danger of unfair prejudice to the opposing party or the risk of wasting the jury's time. Fed. R. Evid. 403.

Additionally, Rule 608(b) prohibits attacking a witness's credibility through inquiry into specific instances of a witness's conduct unless those instances are probative of the witness's character for truthfulness. Fed. R. Evid. 608(b). Even when the specific instances are probative of truthfulness, the inquiring party is not permitted to use extrinsic evidence to prove that those specific instances of conduct occurred. *Id.* The Fifth Circuit has been clear that the existence of an arrest or indictment is not, by itself, probative of truthfulness, and thus, may not be inquired into during cross-examination under Rule 608(b). *See, e.g.*, *United States v. Abadie*, 879 F.2d 1260, 1267 (5th Cir. 1989) ("Inquiry into the mere existence of an arrest or indictment is not admissible to impeach [a witness's] credibility under Fed. R. Evid. 608(b)."); *United States v. Newman*, 849 F.2d 156, 161 (5th Cir. 1988) ("Because neither of the arrests resulted in a conviction

. . . [Rule 608(b)] prevents [the defendant] from inquiring into these arrests as past bad acts to impeach."); *United States v. Labarbera*, 581 F.2d 107, 108–09 (5th Cir. 1978) ("[T]he mere existence of an arrest is not admissible to impeach the defendant's credibility."). Courts have routinely held that if a prior specific instance of conduct is unsubstantiated, its admission can run afoul of Rule 403 regardless of Rule 608(b)'s applicability. *See, e.g.*, *United States v. Johnson*, 195 F. App'x 52, 62 (3d Cir. 2006) ("Even if it were admissible under Rule 608(b), . . . it would not be admissible under Rule 403 because its probative value would be substantially outweighed by the danger of unfair prejudice due to the fact that allegations . . . have never been substantiated."); *United States v. Randle*, No. 3:22-CR-20-TSL-LGI, 2022 WL 17494787, at *1 (S.D. Miss. Sep. 12, 2022) (disallowing inquiry on cross-examination into "unsubstantiated allegations" under Rule 403 when the allegations, if actually true, would have implicated witness's truthfulness); *Dicks v. United States*, No. CR 03-266, 2010 WL 11484356, at *6 (E.D. Pa. Sep. 8, 2010) (noting the admission of "unproven allegations" to prove that officers were untruthful "would have redirected the focus of . . . trial, creating several mini-trials exploring the allegations and conduct[.] Such evidence is plainly inadmissible and would have been distracting and confusing to the jury.").

Espy's acquitted conduct is inadmissible. The conduct for which Espy was charged and acquitted occurred thirty years ago. It has nothing to do with Espy's role at CMU nor with his eyewitness account of Defendant Warnock's criminal conduct. Even though some of the allegations in Espy's indictment allege that he was untruthful, the subsequent acquittal for the conduct and the lapse in time between the alleged conduct and his testimony in this case warrant exclusion under Rule 403. Given the lapse in time and Espy's undoubted denial of being untruthful, the probative value of the alleged conduct is extremely low. But if the defendant is

permitted to inquire into these acquitted instances of conduct, it will force the government to engage in a mini trial regarding thirty-year-old conduct that has nothing to do with the core allegations in this Indictment. The Court should exclude evidence of Espy's indictment and the underlying factual allegations.

C. Exclude opinion testimony about the legality of the vote to remove Defendant Anderson from the CMU Board of Commissioners

The government moves to exclude any opinion evidence about the legality of the Canton BOA voting to remove Defendant Anderon from the CMU Board of Commissioners. Such evidence is irrelevant and would be an improper legal opinion.

1. Pertinent Facts

By the middle of December 2016, the corrupt relationship between Defendant Warnock and Defendant Anderson had soured, in part, because Defendant Warnock had not acquiesced to Defendant Anderson's solicitation of a $200,000 bribe. On or about December 21, 2016, Grant and another Canton Board of Aldermen ("BOA") member called for a Special Meeting of the BOA to occur the next morning. That same day, Defendant Warnock emailed Grant and Gilkey with proposed language for a resolution that would remove Defendant Anderson from the CMU Board of Commissioners. At the Special Meeting, Grant and Gilkey, in exchange for the stream of benefits from Defendant Warnock, voted to remove Defendant Anderson from the CMU Board of Commissioners.

During the Special Meeting, there was a dispute concerning whether the vote to remove Defendant Anderson was legal. Specifically, the BOA was advised that it did not have a quorum and therefore could not proceed with the vote. The vote went forward anyway. In the days that followed, there continued to be disagreement between Defendant Anderson and other members of the CMU Board of Commissioners concerning the legality of Defendant Anderson's removal.

2. Legal Argument

Only relevant evidence is admissible. Fed. R. Evid. 402. Evidence is relevant if it makes a fact in issue more or less likely. Fed. R. Evid. 401. Even relevant evidence can be excluded if its probative value is substantially outweighed by the danger of unfair prejudice to the opposing party or the risk of wasting the jury's time. Fed. R. Evid. 403.

In the context of opinion testimony, Rule 701 permits a witness to testify to a relevant opinion if that opinion is based on the witness's rationally-based perceptions and does not require any "scientific, technical, or other specialized knowledge[.]" Fed. R. Evid. 701. Consistent with Rule 701's requirements, "[i]t is . . . generally prohibited for a lay witness to interpret statutes and to give legal opinions." *United States v. El-Mezain*, 664 F.3d 467, 511 (5th Cir. 2011). In *United States v. Griffin*, 324 F.3d 330 (5th Cir. 2003), the Fifth Circuit found it was error under Rule 701 for the district court to permit a witness to testify to her "interpretation of the law" through answering hypothetical questions about the applicability of state statutes to particular facts. *Id.* at 347–48.

Here, evidence about the legality of the vote to remove Defendant Anderson is inadmissible for two reasons. First, it is irrelevant. A public official's actual ability to legally perform an official act is of no consequence in a bribery case. *See United States v. Grace*, 568 F. App'x 344, 350 (5th Cir. 2014) (noting that the Fifth Circuit has "interpreted § 666 to mean that a public official can be guilty of bribery 'even if he has no intention of actually fulfilling his end of the bargain.'" (quoting *United States v. Valle*, 538 F.3d 341, 347 (5th Cir. 2008)); *United States v. Shields,* 999 F.2d 1090, 1096 (7th Cir. 1993) (holding "issuing a judgment compelled or supported by law is no defense to taking a bribe."); *United States v. Quinn*, 359 F.3d 666, 675 (4th Cir. 2004) ("It is not necessary for conviction under § 201(b) that the official act offered in exchange for the

bribe be harmful to the government or inconsistent with the official's legal obligations."). Because the legality of Grant's and Gilkey's vote to remove Defendant Anderson does not vitiate their intent, or Defendant Warnock's intent, to engage in a corrupt quid pro quo, the legality of the vote is irrelevant. It does not make any fact of consequence more or less likely. In other words, even if the government conceded that the vote to remove Defendant Anderson was impermissible under local ordinance or state law, Defendant Warnock could still be found guilty of conspiracy, bribery, and honest services wire fraud involving bribery. Because the evidence is irrelevant, the Court should exclude it.

But the evidence is also inadmissible as an improper legal opinion under Rule 701. For a witness to opine on whether the BOA was permitted to hold a vote to remove a CMU Commissioner with the number of Aldermen present is a question of statutory interpretation. It would require the witness to interpret local Canton, Mississippi ordinances and assess whether the facts as applied to those ordinances made the vote legal or illegal. Such testimony would be an inadmissible legal opinion. As neither defendant has provided notice of intent to call an expert witness, this testimony is inadmissible under Rule 701. The Court should exclude it.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that this day, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification to all ECF participant(s) of this record.

DATED Friday, October 04, 2024.

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