

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

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UNITED STATES OF AMERICA,

CR 18-50166

Plaintiff,

DEFENDANT’S THIRD  
MOTION IN LIMINE

vs.

WELDON TWO BULLS,

Defendant.

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Defendant Weldon Two Bulls, by his attorney, Assistant Federal Public Defender Jennifer Albertson, respectfully moves the court for its order in limine prohibiting the United States and any of its witnesses from testifying, mentioning, or referring at trial of this matter to the following matters, absent a prior evidentiary determination by the court permitting the testimony:

Presentation of testimony and evidence by the United States that does not directly pertain to the two offenses in the United States’ superseding indictment with which Mr. Two Bulls has been charged, namely: (1) being an accessory after the fact respecting an alleged assault on Sheena Between Lodges and (2) making a false statement about his lack of knowledge of the purported assault. 18 U.S.C. §§ 3, 101(a)(2). (DCD 26.) The United States agrees that to convict Mr. Two Bulls of these charges it must prove beyond a reasonable doubt (a) an assault was committed, (b) Mr. Two Bulls knew of the assault and who committed it, (c) Mr. Two Bulls thereafter “helped, received, relieved, comforted, or assisted” the persons he knew had committed the assault “to prevent their arrest, trial or punishment” and Mr. Two Bulls

“knowingly, voluntarily and intentionally made a [material] false statement or representation to Bureau of Indian Affairs Special Agents, that he had no knowledge of an assault . . .”. (DCD 35, pp. 3, 4.)

The United States, however, has not convicted anyone of assaulting Ms. Between Lodges as the United States contends occurred apparently between November 2 and November 9, 2018. (*See*, superseding indictment, DCD 26.) Nor to the best of Mr. Two Bulls’ knowledge has the United States indicted any person or persons for assaulting Ms. Between Lodges as the United States avers occurred in this matter. The United States does not allege Mr. Two Bulls himself assaulted or played a role in any assault of Ms. Between Lodges. The United States does not allege Mr. Two Bulls himself assaulted or played a role in any assault of Ms. Between Lodges. To prevent serious unfair prejudice to Mr. Two Bulls, therefore, the court should exercise its evidentiary discretion under Rule 403 of the Federal Rules of Evidence and limit the United States’ presentation of excessive and cumulative evidence respecting any claimed assault of Ms. Between Lodges. This evidence will undoubtedly carry a high potential in the best of circumstances of misleading and confusing the jury.

Mr. Two Bulls, therefore, will be placed in the highly prejudicial position at trial of this matter of having to defend himself not only against the charges in the United States’ superseding indictment but to contend as well with the United States expected proof of an assault upon Ms. Between Lodges which the United States itself agrees Mr. Two Bulls did not commit. Nonetheless, Mr. Two Bulls cannot allow the United States’ evidence of an alleged assault go entirely uncontested by him as to do so will only confuse and mislead the jury and present

Mr. Two Bulls to the jury as a bad person deserving of conviction irrespective of the actual charges against him. *United States v. Chavez*, 204 F.3d 1305, 1317 (11th Cir. 2000) (“ . . . evidence of Chavez's prior assaults on his wife was offered to demonstrate bad character, and should, therefore, not have been admitted.”).

In this prosecution, the United States has essentially placed the proverbial cart before the horse – seeking to convict Mr. Two Bulls of being an accessory after the fact to an assault the United States has not proven occurred. To remedy this problem, the United States proposes to have a trial within a trial. Mr. Two Bulls respectfully submits allowing the United States to proceed in this manner will cause him significant unfair prejudice and mislead and confuse the jury resulting in a devastatingly prejudicial impact against Mr. Two Bulls in the minds of the jury who will be asked at all time to separate the assault, Ms. Between Lodges injuries and medical condition, and the United States evidence offered to prove it, from the United States’ assertion of Mr. Two Bulls’ actions subsequent to its claimed assault. *United States v. Mothershed*, 859 F.2d 585, 590 (8th Cir. 1988) (reversible error to admit evidence having a devastatingly prejudicial impact of in the minds of the jury). The court, therefore, should substantially limit at trial the presentation of evidence to show its contention Ms. Between Lodges was assaulted by persons other than Mr. Two Bulls. *Gregg v. United States*, 683 F.3d 941, 945 (8th Cir. 2012) (“Rule 403 imposes a balancing test, permitting a trial judge to exclude relevant evidence ‘if its probative value is substantially outweighed by a danger of . . . unfair prejudice.’ ”).

WHEREFORE, Defendant Weldon Two Bulls requests the court enter an order in limine to exclude and prohibit admission of excessive and cumulative evidence of an assault against Ms. Sheena Between Lodges.

Dated this 9th day of March, 2019.

Respectfully submitted,

NEIL FULTON  
Federal Public Defender  
By:

*/s/ Jennifer Albertson*

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