

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 1:19-cr-20693-UU

UNITED STATES OF AMERICA

Plaintiff,

v.

PETER SOTIS and
EMILIE VOISSEM,

Defendants.

**DEFENDANTS' JOINT MOTION FOR A NEW TRIAL
AND INCORPORATED MEMORANDUM OF LAW**

COMES NOW, Defendants PETER SOTIS and EMILIE VOISSEM, by and through their respective attorneys, pursuant to FED.R.CRIM.P. 33(b) and move the Court to vacate the verdicts rendered by the jury on October 21, 2021 as to Counts One, Two and Three of the Indictment and order a new trial, and in support thereof state:

1. The evidence adduced by the government was insufficient to constitute proof of either defendant's guilt beyond a reasonable doubt as to any count alleged in the indictment.
2. The verdict was contrary to the weight of the evidence.
3. The Court erred in its rulings as described below.
4. For the reasons set forth below, the interest of justice requires the relief sought by this motion.

BACKGROUND

5. Peter Sotis and Emilie Voissem were charged under 18 U.S.C. § 371 with conspiracy to export items in violation of IEEPA (Count One), export and attempted export of goods in violation of IEEPA in violation of 50 U.S.C. §§ 1705(a) & (c) (Count Two), and smuggling of goods in violation of 18 U.S.C. § 554(a) (Count Three). Emilie Voissem was charged

with an additional count of making a false statement in violation of 18 U.S.C. § 1001(a)(2) (Count Four).

6. The trial commenced on October 13, 2021. The jury returned its verdict on October 21, 2021 after 12 hours of deliberation.

7. Both defendants were convicted of Counts One, Two and Three. Ms. Voissem was acquitted of Count Four.

8. Rule 33 states, in pertinent part, that a motion for a new trial based on any ground other than newly discovered evidence shall be made within 14 days of the verdict. The trial of this cause concluded on October 21, with entry of the jury's verdict. Thus, this motion is timely.

9. In addition to the general grounds asserted above, defendants Sotis and Voissem submit that a new trial is warranted because of errors that occurred before and during the trial proceedings. Specifically, the undersigned assert that the Court erred by:

a) admitting evidence that defendant Sotis threatened the life of government witness Shawn Robotka;

b) charging the jury that it could consider intentional threats by defendant Sotis to Shawn Robotka in determining Mr. Sotis' guilt or innocence;

c) admitting printouts of the electronic calendars allegedly made by Robotka at the time of the dates indicated on the calendars to bolster his testimony during the government's re-direct examination of that witness;

d) denying the defendants the opportunity to cross-examine Robotka about a pending lawsuit brought by him against a prior employer in which, like his conduct in the instant case, he attempted to advance his civil cause of action by making multiple criminal complaints against his prior business associates -- the people he was and continues to be suing.

10. This motion is made in good faith and not for purposes of delay.
11. Further arguments to be made *ore tenus*.

MEMORANDUM OF LAW

The specific errors set forth above should not be construed as an abandonment or waiver of those motions and/or objections made during the course of the trial, which have not been specifically enumerated in this motion. A defendant is entitled to a fair and impartial trial and due process of law as guaranteed by the United States Constitution. The above and foregoing errors, briefed and/or argued prior to and during trial, denied Mr. Sotis and Ms. Voissem constitutional rights to a fair and impartial trial and due process of law. As set forth in Rule 33, a new trial is required “in the interest of justice.” Moreover, the cumulative effect of the various errors listed above warrant reversal of the convictions of Mr. Sotis and Ms. Voissem. *See, United States v. Pearson*, 746 F.2d 787, 796 (11th Cir. 1984) (“Even if we were to find any of the above errors, standing alone, to be harmless, their cumulative effect ...was clearly prejudicial and combined to deprive [the defendant] of a fair trial.”).

I. The New Trial Standard

New trials should be granted to avoid a miscarriage of justice. *United States v. Martinez*, 763 F.2d 1297, 1313 (11th Cir. 1985). Unlike a Rule 29 motion, this Court need not view the evidence in the light most favorable to the verdict winner, and can make its own credibility determinations. *Id.* at 1312. A new trial is warranted if the verdict is against the weight of the evidence and can be granted *even if this Court concludes that the evidence is sufficient to convict*. *Id.* Accordingly, Defendant incorporates his Rule 29 sufficiency challenges into this new trial motion, but this Court can grant a new trial even if it deems the evidence sufficient on any count. Finally, while each of the issues raised support the grant of a new trial, their cumulative impact makes the justness of this result clear.

II. Issues Related to the Credibility of Shawn Robotka

The issue in this case, as to Peter Sotis, came down to what Peter Sotis knew about Agent Wagner's instruction regarding the exportation of the rebreathers at issue in this case and when he knew it. The issue as to Ms. Voissem was more nuanced. That issue was, did she believe that Wagner had informed her that *export to Libya* was prohibited pending further research by the Department of Commerce and notice by Wagner to Add Helium regarding the results of that research, or did she believe they were under orders not to release the rebreathers to anyone under any circumstances? Ms. Voissem testified she interpreted Wagner's statements to be the former. Wagner and Robotka testified Wagner's instructions were clearly the latter.

As to Mr. Sotis, the government's evidence was clear that, contrary to the allegation in paragraph 8 on page 7 of the indictment, Sotis was not present at the Wagner meeting at Add Helium on August 4, 2016. Thus, up until Robotka (the government's final witness) took the stand, there was no evidence whatsoever presented by the government in its case that Mr. Sotis was made aware that Wagner had left instructions that the rebreathers were not to leave the premises until Wagner got back to them.

Robotka, proved to be a witness that, for numerous reasons, had a strong bias against Mr. Sotis and later, formed a strong bias against Ms. Voissem as well, one who was more than willing to fill in the gaps in the government's case. Indeed, he was so motivated to see them convicted of crimes related to this transaction, he sought to have himself "wired up" and engaged in undercover recorded conversations with Mr. Sotis and Ms. Voissem on December 13, and December 16, 2016, respectively, all the while pretending to be Ms. Voissem's friend and confidant. Of course, the evidence showed that Mr. Wagner was only too eager to send Robotka in to record a conversation with Mr. Sotis once Robotka had made allegations to Agent Wagner that Mr. Sotis had threatened his life if he continued to talk to investigators. Tellingly, this conversation with Mr. Sotis was

never presented to the jury because, we submit, it failed to reveal any evidence whatsoever that might have corroborated Robotka's spurious allegations about Mr. Sotis.

A. The Court Erred in Admitting Robotka's Calendars¹

Because Robotka's testimony was so essential to the government's case, particularly as to Mr. Sotis, it is clear that his credibility as a witness was a cornerstone of their case. In an effort to bolster the testimony of its last witness, the government, on re-direct examination, offered a final set of exhibits -- printouts of Robotka's electronic calendars as "prior consistent statements" of his version of events to which he had testified. When the defense protested that it had not sought to impeach Robotka with prior inconsistent statements, the government cited to two decisions from other circuits in which those courts had permitted prior consistent statements to be admitted where the defendant on trial had challenged the credibility of a witness on grounds other than a prior inconsistent statement. The government conceded at trial that there is no authority for such type of witness rehabilitation in the caselaw of the Eleventh Circuit. Moreover, unlike all the other printed evidence produced by the government at trial that was reprinted from electronically stored information (emails), these printed calendars contained no meta data which would have revealed the time those entries were created, altered or deleted. Nevertheless, the Court permitted these documents to be the last exhibits to be admitted in evidence in the government's case. Because Robotka's credibility was so much at issue and his testimony so prejudicial, particularly as to his claim that he was threatened multiple times with his life for cooperating with the government, and

¹ Under separate cover, the undersigned are moving that government witness Shawn Robotka be required to maintain the integrity of the personal computer used by him to print the calendars that were placed in evidence by the government during its re-direct examination of him as Government Exhibits 22A through G and that the Court authorize a subpoena *duces tecum* for the production of his personal computer so that the defense can have that computer analyzed by a forensic examiner to determine the dates the electronic entries on the calendars were created.

given the fact that these calendars were not supported with any meta data to ensure their trustworthiness and were of doubtful admissibility under Eleventh Circuit precedent, the Court erred in admitting these exhibits (Government's Exhibits 22A through 22G) into evidence.

B. The Court Erred in Admitting Evidence of Threats by Defendant Sotis and in Instructing the Jury that it Could Consider Sotis' Alleged Threats in Determining his Guilt or Innocence

On June 26, 2020, the undersigned moved *in limine* to exclude evidence of threats the government claimed had been made by Mr. Sotis to witness Shawn Robotka to demonstrate a "consciousness of guilt" on the grounds that any possible probative value such evidence might have would be outweighed by its gross prejudicial effect under Fed.R.Evid. 403. While under certain circumstances, threats to a witness can be admitted, "[b]ecause the potential prejudice from death threats may be great, [cit. omitted] the government must have an important purpose for introducing the evidence in order to satisfy the balancing test of Rule 403." *United States v. Gonzales*, 703 F.2d. 1222, 1223 (11th Cir. 1983). It cannot be overstated that there is a substantial likelihood that these highly-charged allegations contributed to the verdicts against Mr. Sotis and had a negative spillover effect as to Ms. Voissem as well, since she was alleged to be a co-conspirator of his. For the same reasons, it was error to instruct the jury that they could consider intentional threats in determining Mr. Sotis' guilt or innocence.

C. The Court Erred in Denying Defendants the Opportunity to Cross-Examine Witness Robotka as to his Similar Conduct in Another Matter to Show Pattern and Motive

On October 18, 2021, the final day of its case-in-chief, the government called Shawn Robotka, Mr. Sotis' former business partner and an adversary in civil matters that were litigated in the Broward Circuit Court. During cross-examination, counsel for Mr. Sotis attempted to establish similar conduct testimony under Fed.R.Evid. 404(b) to show motive and pattern in making allegations of criminal conduct to law enforcement authorities to advance his litigation

against his former business associates. Counsel for Mr. Sotis argued that Robotka's complaints to federal law enforcement authorities that his would-be partners in the company he had worked at just prior to his coming to Add Helium (Ocean Divers) had committed identity theft against him and that one of their employees had committed the offense of rape against another of their employees, reveal a strategic pattern to accuse former business associates of criminal conduct prior to filing a lawsuit against them. This strategy was strikingly similar to the actions of Robotka in making numerous criminal accusations against Mr. Sotis to Wagner prior to filing a lawsuit against his partner (Mr. Sotis) on December 22, 2016. The defense argued that this evidence showed that, more than just a bias against Mr. Sotis, Robotka had established a pattern of using the criminal justice system to advance his lawsuits against past business partners – exactly what the defense contended was his motivation in his active hounding of Agent Wagner to push for the indictment and prosecution of this case. Indeed, Robotka conceded that he might well have reached out to Agent Wagner over 35 times by email between August 2016 and August, 2017, inquiring about the status of the investigation and offering other tidbits of information that might prove helpful in Agent Wagner's investigation. On at least one occasion, Robotka admitted that, in his frustration over the delay of the prosecution of this case, he accused Agent Wagner of being dishonest with him. The fact that this critical witness was pursuing this prosecution with such zeal, all the while he was litigating a lawsuit against Mr. Sotis, is precisely what Robotka attempted to do in his lawsuit against Ocean Divers and their principals, after he had reported those individuals to law enforcement alleging they and their employee were guilty of criminal conduct prior to suing them. This was evidence of pattern and motive that was clearly relevant to Robotka's credibility, an issue critical to the defense of both Mr. Sotis and Ms. Voissem. Precluding them from exposing this pattern of deceit to the jury, improperly tied the defense's hands in its ability to challenge Robotka's credibility.

CONCLUSION

WHEREFORE, for the reasons set forth herein, the undersigned attorneys respectfully request that this Honorable Court grant the foregoing motion and vacate the verdicts rendered by the jury on October 21, 2021 as to Counts One, Two and Three of the Indictment, order a new trial, and grant any and all further relief deemed just and proper under the circumstances.

Dated: November 3, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically using the Court's CM/ECF system on this 3rd day of November, 2021 and was served electronically to all counsel of record.

By: Bruce Udolf