

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 19-20693-CR-SEITZ**

UNITED STATES OF AMERICA

v.

PETER SOTIS and
EMILIE VOISSEM,

Defendants.

**ORDER DENYING MOTION FOR NEW TRIAL
AND MOTION FOR SUBPOENA DUCES TECUM**

This matter is before the Court on two defense motions. The first is Defendants Peter Sotis and Emilie Voissem’s Joint Motion for a New Trial [DE 115]. The second is their Joint Motion for Subpoena and Preservation of Evidence [DE 116]. Defendants move for a new trial pursuant to Federal Rule of Criminal Procedure 33, which provides that a court may “grant a new trial if the interest of justice so requires.” Their second motion seeks to preserve Shawn Robotka’s computer to obtain a forensic analysis of it. Because Defendants cannot establish a basis for a new trial, their Motion for a New Trial is DENIED. Because of the strained relevancy of a computer analysis to the charged offenses, and its focus on impeaching Robotka’s testimony, the Motion for Subpoena and Preservation of Evidence is DENIED.

This case arises out of the attempted export in 2016 of four rebreathers to Libya. Rebreathers, which have a dual civilian and military function, enable divers to operate underwater for extended periods of time without detection. On October

21, 2021, a jury convicted both Defendants of three counts: Count 1 – conspiracy to export items in violation of the International Emergency Economic Powers Act (“IEEPA”), pursuant to 18 U.S.C. § 371; Count 2 – attempted export of goods in violation of IEEPA, pursuant to 50 U.S.C. §§ 1705(a) and (c); and Count 3 – smuggling of goods, pursuant to 18 U.S.C. § 554(a) [DE 3, 102, 103]. The jury found Defendant Voissem not guilty of Count 4 – making a false statement pursuant to 18 U.S.C. § 1001(a)(2).

I. Motion for New Trial

Defendants contend that the evidence was insufficient to prove guilt beyond a reasonable doubt, the verdict was contrary to the evidence, the Court erred in certain rulings, and the interests of justice require a new trial. Most of Defendants’ contentions relate to the testimony of Shawn Robotka. A court shall not disturb a verdict and grant a new trial unless the evidence weighs heavily against the verdict, which will occur only in exceptional cases. *United States v. Martinez*, 763 F.2d 1297, 1312-13 (11th Cir. 1985). For the reasons stated below, Defendants’ arguments do not support the grant of a new trial.

A. Robotka’s Calendar Printouts

Defendants argue that on the Government’s redirect examination of Robotka, the Court erred in admitting into evidence printouts of portions of Robotka’s electronic calendars offered, pursuant to Fed. R. Evid. 801(d)(1)(B)(ii), to rehabilitate his attacked memory. Defendants acknowledge that Robotka’s memory loss and inconsistent recall due to military service had been called into question but assert that the relevant testimony highlighted short-term memory issues instead of

long-term issues. As a result, Defendants conclude the admitted calendar printout evidence was “impermissible bolstering” of Robotka’s credibility under Rule 801(d)(1)(B) because his credibility as to the incidents of this case had not been implicated.

As the Government’s Response indicates, the admission of prior consistent statements is permitted for reasons other than suspected fabrication, and the Defendants do not dispute as much. Instead, Defendants focus on the short-term/long-term memory issue, stating that Robotka’s long-term memory was never “seriously challenged.” Defendants, however, split hairs without legal support. Robotka’s testimony revealed memory issues, which the Government sought to rehabilitate on redirect examination. The Court is not well-situated to make a medical determination about recall of which incidents in the witness’s past are affected by Robotka’s mental challenges. Moreover, given Robotka’s entire testimony, there was evidence from which a reasonable juror could conclude that his memory issues might have some effect on his recall of events in the relevant timeframe.

As for the reliability of the calendar printouts based on their metadata, Defendants cite no legal authority that conditions admission on a review of metadata to guarantee authenticity of records in these circumstances. As the Government notes, the Court afforded defense counsel ample opportunity to examine the witness’s claims about the calendars so that the jury had the opportunity to assess the witness’s credibility. Thus, regardless whether any metadata might be

dispositive of entry creation dates, Defendants were not prejudiced by the printouts as they were able to impeach the witness's credibility about them. Thus, Defendant's Motion is denied on this issue.

B. Evidence of Sotis's Threats Against Robotka

Before trial, Defendants moved to exclude any evidence of threats by Sotis against Robotka due to their potentially highly prejudicial effect in the minds of jurors. As the Court stated at the Pretrial Conference held on September 21, 2021, the case law on this subject acknowledges the highly prejudicial nature of such threats but also holds them admissible when they are probative of a consciousness of guilt in the matter at issue. *See United States v. Gonzales*, 703 F.2d 1222, 1223 (11th Cir. 1983). The Court found that, while the statements were prejudicial, they were also highly probative of the issue of Sotis's consciousness of guilt or any claim of absence of mistake in committing the crimes charged because the threats directly related to anyone's efforts to aid the government in their investigation of the attempted exportation at issue. The Court concluded that the prejudicial nature of the statements was outweighed by their probative value, and the jury remained positioned to assess Robotka's credibility in claiming such threats. Additionally, as the Government notes, the Court instructed the jury to use this evidence for the "limited purpose of whether it shows consciousness of guilt or lack of mistake" [DE 101 at 8]. As a result, Defendants' Motion is denied in that respect.

C. Cross-Examination of Robotka on Prior Business Relationships

Defendants take issue with the extent they were permitted to cross-examine Shawn Robotka about business relationships unrelated to this case. Defendants argue that such testimony would have been admissible as similar conduct testimony under Federal Rule of Evidence 404(b) to show motive and a pattern of behavior. In short, defense counsel wished to establish that Robotka used criminal allegations to establish influence in civil litigation with other former business partners.

In response, the Government asserts that “motive,” as contemplated by Rule 404(b), is that to commit the crime charged, not to testify falsely, as is at issue here. Moreover, while Defendants claim that such testimony would establish a pattern, it is, in fact, character evidence, which is inadmissible. Finally, the limited probative value of the evidence would be outweighed by potentially confusing the jury with a collateral, unrelated issue.

The Court finds the Government’s position is well-taken. In particular, the proffered evidence as to Robotka’s prior business dealings in the other instance revealed significant differences with the current case, which undermines any conclusion of a pattern. In addition, the factual and procedural complexities of the prior dealings risked confusing the jury, more than offering any probative value on the criminal issues to be decided in this case. Thus, the Motion is denied in this respect as well.

D. Sufficiency Issues

Defendants claim that the verdict was contrary to the greater weight of the evidence and that it was insufficient to support the convictions, but they fail to explain further the grounds for their claims, beyond those discussed above. As the Government details in its Response, the evidence was more than sufficient. Notably, the evidence was clear that an export license would likely be required to be legal, yet Defendants withheld from Ramas LLC, the Virginia-based shippers, that fact and their ongoing legality concerns reflected in the emails among themselves and discussions with Special Agent Wagner. Defendants do not address this evidence in their Motions or Replies.

In fact, the Defendants' sole focus is on the credibility of Shawn Robotka's testimony, claiming that it was a "cornerstone" of the Government's case. His testimony, however, was subject to impeachment, of which defense counsel took full advantage. Moreover, defense counsel seized the opportunity during its arguments to the jury to highlight biases and credibility issues in the testimony of the Government's witnesses, including that of Shawn Robotka. Such credibility determinations lie in the domain of the jury, as the jury instructions further clarified, and the Court will not disturb those findings on the record before it.

Finally, on a review of the whole record, the Court finds no cumulative effect of Defendants' cited injustices that together necessitate a new trial. Most of the argued errors relate to the credibility of Shawn Robotka's testimony, and, as discussed in above, the credibility issues are for the jury to determine.

II. Motion for Subpoena and Preservation of Evidence

In a separate but related Motion [DE 116], Defendants move for authorization of a subpoena under Rule 17 of the Federal Rules of Criminal Procedure for production of Shawn Robotka's computer, and a related order requiring the preservation of its contents. Defendants seek a forensic analysis of the computer to determine when the calendar entries discussed above were created. Without an analysis, they argue, the entries lack indicia of authenticity for prior consistent statements, and amount to little more than a demonstrative aid. Defendants state that it would put the question of the entries' authenticity to rest, once and for all.

In opposition, the Government contends that the proposed authorization for subpoena does not meet the standard for relevancy, admissibility, and specificity set forth by *United States v. Nixon*, 418 U.S. 683, 699 (1974). The Government argues that a Rule 17 subpoena cannot simply be for purposes of impeachment and must contain evidence admissible with respect to the charged offenses.

While Defendants suggest other post-trial purposes for this proposed subpoena, their primary purpose is quite clear: impeachment of Shawn Robotka. As discussed above, defense counsel were afforded an opportunity to exam Robotka on the authenticity of the calendar entries. Review of the entries' metadata might confirm the entries' creation date, but the law does not require such certainty. While such a review might satisfy Defendants' curiosity, it was not required to adequately challenge Robotka. Moreover, the strained relevancy of the entries – not

directly related to the charged offenses – further weaken any justification for a post-trial subpoena. As a result, the Court does not find justified authorization for the subpoena and the request to preserve evidence. Therefore, it is

ORDERED THAT

1. Defendants Peter Sotis and Emilie Voissem’s Joint Motion for a New Trial [DE 115] is DENIED.

2. Defendants Peter Sotis and Emilie Voissem’s Joint Motion for Authorization [DE 116] is DENIED.

DONE AND ORDERED in Miami, Florida, this 9th day of December, 2021.



PATRICIA A. SEITZ
UNITED STATES SENIOR DISTRICT JUDGE