

**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 ON PRETRIAL CONFERENCE
AND PARTIES' MOTIONS IN LIMINE**

This matter is before the Court on the pretrial conference held in person in Courtroom 11-4 on Tuesday, September 21, 2021, at 10:30 A.M., in preparation for the trial set for Tuesday, October 12, 2021. The Court heard argument on several matters during the pretrial conference, including the parties' motions in limine [DE 35, 39]. In addition to other matters ruled upon at the pretrial conference, for the reasons stated below and at the pretrial conference, the Court ruled as follows.

A. Parties' Motions in Limine – Evidence of Threats and Concealment

1. Parties' Positions¹

The Government's Motion in Limine [DE 35] seeks, among other matters, to admit into evidence certain statements made by Defendant Sotis to potential witness Shawn Robotka. Specifically, according to Robotka, Sotis threatened Robotka (and anyone else) with physical harm if Robotka (or another person)

¹ Defendant Voissem has not filed a motion in limine and has not objected to the Government's Motion.

cooperated with federal investigators who were inquiring about the illegal export alleged in this case. The Government intends to introduce evidence of three threats by Defendant Sotis, which occurred on November 25, 2016, December 14, 2016, and December 21, 2016, as described in the October 12, 2017, Affidavit of Shawn Robotka in this case. The Government argues that evidence of these statements is admissible at trial because it demonstrates consciousness of guilt.

In Defendant Sotis's Motion,² he states that these statements should not be admitted because their prejudicial value outweighs their probative value. He acknowledges that the Eleventh Circuit allows evidence of death threats against witnesses to show a defendant's consciousness of guilt, under *United States v. Gonzalez*, 703 F.2d 1222, 1223 (11th Cir. 1983). Alternatively, Sotis asks the Court to defer judgment until after the Court has heard the Government's other evidence and made a credibility assessment of Robotka, and to keep such claims out of the Government's opening statement.

2. Legal Standard and Basis of Court's Decision

Federal Rule of Evidence 403 states that a court "may exclude relevant evidence if its probative value is substantially outweighed by a danger of...unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." "The major function of Rule 403 is 'limited to excluding matter of scant or cumulative probative force, dragged in by the heels for the sake of its prejudicial effect.'" *U.S. v. King*, 713 F.2d 627, 631 (11th

² Defendant Sotis's Motion is, in substance, a response to the Government's Motion.

Cir. 1983) (citation omitted). In a criminal trial, relevant evidence is often prejudicial. Rule 403 is triggered, however, “when *unfair* prejudice *substantially* outweighs probative value.” *Id.* (emphasis in original) (citation omitted).

Under Federal Rule of Evidence 404(b), evidence of a defendant’s other wrongs or acts is not admissible to prove character, but is admissible for “another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.” As Sotis acknowledges, “Courts may consider evidence of threats to witnesses as relevant in showing consciousness of guilt.” *Gonzalez*, 703 F.2d at 1223. Because of the highly prejudicial nature of a death threat, the Government must have an important purpose in order to satisfy Rule 403 balancing. *Id.* at 1221.

Here, the alleged threats made by Sotis and statements of his efforts to conceal evidence relevant to the investigation are proper Rule 404(b) evidence and will be admitted. The evidence does not merely go to Defendant’s character. Instead, it tends to show that Sotis sought to take action to conceal his guilt of the crimes alleged here. Relatedly, it could be used to counter any argument that Sotis did not have intent or knowledge to do the acts, or had made a mistake in committing the acts. The alleged death threats and efforts to conceal were made in connection with others’ potential efforts to aid the investigation of the crimes at issue in this case.

While such evidence is admittedly highly prejudicial under Rule 403, the prejudice is not unfair – it operates directly on the relevant allegations. Moreover,

it does not substantially outweigh the highly probative nature of the evidence. The Government's purpose to show intent to commit the alleged crimes is central to its task. Finally, the credibility of Robotka's testimony (or that of any related witness) is one for the jury to weigh, and the Court will not do so as a prerequisite to admitting any statement.

This ruling is made with leave for Defendant Sotis to renew his objections prior to any such evidence being introduced. Thus, no reference to the alleged threats or concealment shall be made during opening statements, and the Government shall alert the Court before eliciting evidence related to the statements. The Government also may seek to introduce prior statements consistent with the threats, if appropriate.

Evidence of these statements, however, will be accompanied by a proper instruction to the jury. In addition, the Government shall not present any evidence of a statement made by Sotis that inculcates Defendant Voissem, in order to avoid any issues associated with *Bruton v. United States*, 391 U.S. 123 (1968).

B. Parties' Motions in Limine – Other Matters

The parties' Motions show agreement on other matters. First, neither party shall introduce any statement made by either Defendant to Robotka in December 2016 when he was recording statements surreptitiously, apparently on behalf of a government agency. Second, the parties shall not introduce into evidence any statement by a Defendant that violates the precepts of *Bruton*, in addition to any made in connection to the statements of threats or concealment discussed above.

Finally, evidence of Robotka and Sotis's criminal records, as described in their Motions, shall not be introduced at trial.

C. Other Pretrial Matters

The Court also ruled on the following matters at the pretrial conference or recognized the parties' positions:

- The parties shall consult on the Government's exhibit list to resolve any admissibility disagreements. Following consultation, the Government shall file **on or before Monday, October 4, 2021**, an updated exhibit list, with any items intended for rebuttal listed at the end. The Government shall identify any exhibits whose admissibility is still in contention with a summary of any disagreements, not to exceed one page.
- **At the start of trial**, the Government shall mark all trial exhibits with the exhibit numbers set forth in the updated exhibit list, and shall provide copies of the exhibits to the Court in a three-ring binder, with numbered tabs corresponding to the exhibit number. The Government shall also prepare binders with copies of all exhibits for each selected juror.
- The Government shall provide **on or before Friday, October 8, 2021**, a simple list of witnesses, with titles, for jurors to review.
- Both Defendants waived jury determination of any forfeiture action.
- Neither Defendant intends to introduce any exhibits or examine any witness not listed in the Government's exhibit and witness lists, respectively.

Therefore, it is

ORDERED THAT

1. Government's Motion in Limine [DE 35] is GRANTED, IN PART, AND DENIED IN PART, as described in this Order.
2. Defendant Peter Sotis's Motion in Limine [DE 39] is GRANTED, IN PART, AND DENIED IN PART, as described in this Order.
3. **On or before Monday, October 4, 2021**, the Government shall file an updated exhibit list, as specified in this Order.
5. **At the start of trial**, the Government shall provide to Court and each selected juror a three-ring binder containing copies of the exhibits, as specified in this Order.
6. The Government shall provide **on or before Friday, October 8, 2021**, a simple list of witnesses, with titles, for jurors to review.

DONE AND ORDERED in Miami, Florida, this 21st day of September, 2021.



PATRICIA A. SEITZ
UNITED STATES SENIOR DISTRICT JUDGE