

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 19-20693-CR-UNGARO**

**UNITED STATES OF AMERICA,**

v.

**PETER SOTIS and  
EMILIE VOISSEM,**

**Defendants.**

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**GOVERNMENT’S TRIAL BRIEF AND MOTION IN LIMINE**

The United States of America, by and through its undersigned Assistant United States Attorney, hereby files this trial brief and motion in limine in advance of the trial scheduled in this matter for the two-week trial period beginning July 20, 2020. Through this filing, the Government provides a summary of the law and facts of the case and seeks to (1) admit evidence at trial of threats that defendant Peter Sotis made to a witness in this case and Sotis’s admission of concealing and directing others to destroy evidence; (2) exclude inadmissible Bruton/hearsay statements made by the defendants; and (3) confirm the inadmissibility of certain older convictions and arrests.

**I. LEGAL BACKGROUND**

The charges against defendants Peter Sotis (“SOTIS”) and Emilie Voissem (“VOISSEM”) stem from their conspiracy and attempt to illegally export, or transfer for export, rebreather diving equipment to Libya in August 2016. Rebreathers enable a diver to operate undetected for long periods of time underwater by producing no bubbles and by efficiently re-circulating the diver’s own breath after replacing its carbon dioxide with oxygen. Because of these enhanced capabilities, rebreathers have a dual use, with both civilian and military applications, and are specifically included on the Commerce Control List, which is the list of dual use items that are export

controlled and licensed by the U.S. Department of Commerce. Such restricted items require a Commerce Department license if the rebreathers are to be exported to any countries with national security concerns, such as Libya. It is a criminal violation under the International Emergency Economic Powers Act (“IEEPA”) and the Export Administration Regulations (“EAR”) to willfully violate the laws and regulations concerning the export of items on the Commerce Control List. The defendants in this case were warned that it was illegal to export the items to Libya without a Commerce Department license and they willfully attempted to export those items after receiving an instruction from a Department of Commerce special agent that such items were detained and not to be exported while a license determination was pending.

As a result, a Federal Grand Jury in the Southern District of Florida returned an indictment against the defendants charging them with conspiracy to violate IEEPA and the EAR, in violation of Title 18, United States Code, Section 371 (Count 1); attempted export of a Commerce Control List item to Libya, without a Commerce license, in violation of Title 50, United States Code, Sections 1705 and 2 and Title 15, Code of Federal Regulations, Part 764.2 (Count 2); and smuggling, in violation of Title 18, United States Code, Sections 554(a) and 2 (Count 3). Additionally, VOISSEM was charged with making a materially false statement to a federal agent, in violation of Title 18, United States Code, Section 1001 (Count 4).

**Conspiracy and attempt to violate export control laws.**

For Counts 1 and 2, which charge the conspiracy and attempt to violate the IEEPA and EAR, “the government must prove that a conspirator actually ‘knew that it was unlawful to export the [items]’ and ‘intentionally violated [the] known legal duty not to export [them].’). *United States v. Wenxia Man*, 891 F.3d 1253, 1267-69 (11<sup>th</sup> Cir. 2018) (quoting *United States v. Adames*, 878

F.2d 1374, 1377 (11th Cir. 1989). The government is not required to demonstrate the defendants' awareness of the specific statutes or regulations to show their specific intent with respect to the conspiracy and substantive violation charged. *See United States v. Zambrano*, 752 Fed. Appx. 775, 789, 2018 U.S. App. LEXIS 28399, \*32 (11th Cir. October 9, 2018); *Bryan v. United States*, 524 U.S. 184, 189, 191-193 (1998) (finding that a law that punishes individuals who "willfully engag[e] in the business of dealing in firearms [without a license]" does not require the government to prove that the defendant "was aware of the federal law.").

Nor does the government need to show that the defendants were the ones who shipped the items to prove a criminal violation. Pursuant to the EAR, which is quoted in the Indictment, "No person may order, buy, remove, conceal, store, use, sell, loan, dispose of, **transfer**, transport, finance, **forward**, or **otherwise service**, in whole or in part, any item exported or to be exported from the United States, or that is otherwise subject to the EAR, with knowledge that a violation of the EAA, the EAR, or any order, license or authorization issued thereunder, has occurred, is about to occur, or is intended to occur in connection with the item." Title 15, Code of Federal Regulations, Part 764.2(e) (emphasis added). Thus, if the defendants willfully transferred, forwarded, or even serviced an item on the Commerce Control List knowing that an export violation was about to occur, they would be guilty of the export violations charged in this case. Moreover, in Count 2, the Indictment specifies that aiding and abetting the attempted export is charged as well.

### **Smuggling**

For the smuggling count, the Government has to show that the defendants fraudulently or knowingly exported or sent from the United States, or attempted to export or send from the United

States, or aided or abetted any such export, any merchandise, article, or object contrary to any law or regulation of the United States. See 18 U.S.C. § 554(a). Knowledge, under Count 4, may also be proven through a showing of willful blindness if the facts support an inference that the defendants were aware of a high probability of the existence of a fact in question. *United States v. Steed*, 548 F.3d 961, 977 (11th Cir. 2008); *United States v. Joseph*, 2020 U.S. App. LEXIS 11169, \*6-7 (11<sup>th</sup> Cir. April 9, 2020).

**False statement**

Finally, for the false statement count against VOISSEM, the government must show that the defendant made a false statement; the falsity concerned a material matter; the defendant acted willfully; and the false statement was made for a matter within the jurisdiction of a department or agency of the United States. See Eleventh Circuit Pattern Jury Instruction No. 36. The Government needs to show that the false statement was capable of influencing the exercise of government function, not that in actuality it deed affect government function. See *United States v. Fern*, 696 F.2d 1269, 1273 (11<sup>th</sup> Cir. 1983).

**II. FACTUAL BACKGROUND**

SOTIS was the majority owner (80%) and VOISSEM the manager of Add Helium LLC, a Fort Lauderdale company that sold, exported, and trained on the use of diving equipment. In the spring of 2016, Osama Bensadik, a Virginia resident, contacted Add Helium to purchase over \$100,000 of rebreathers and other diving equipment that SOTIS and VOISSEM were to ship to a third-party entity in Libya. Bensadik requested that the order be coordinated through Mohammad and Diana Zaghab, who owned Ramas LLC, an exporting company in Virginia.

In July 2016, Add Helium's shipping company, Global Forwarding, informed VOISSEM

they would not ship to Libya because Add Helium likely needed a license from the Department of Commerce to ship such restricted items.

On July 28, 2016, VOISSEM emailed SOTIS and informed him that their contact at Global Forward had warned that there were “red flags” with their shipment to Libya, that “it is our [Add Helium’s] responsibility to clear the items with the Department of Commerce,” that “there was a change in the state of the government and concern for terrorism,” and “there was a potential hold with the Department of Commerce.” That same day, SOTIS responded, “Go ahead and look into the department of commerce requirements and see how time consuming it might be. Then we can make a determination.”

Shawn Robotka (“Robokta”), a 20% owner of Kaizen LLC (parent company for Add Helium LLC), learned in July 2016 that the shipment was going to Libya and told VOISSEM and SOTIS that such shipments to Libya were illegal and that they should not do it. Robotka informed VOISSEM that rebreathers have a military application and that the U.S. government considers them dual use equipment.

On July 29, 2016, VOISSEM e-mailed SOTIS, copying Robotka, and stated that she had spoken over the phone with a representative from the Department of Commerce who said that “shipping to Libya was probably not going to happen because of how volatile it still is,” and that “Shawn [Robotka] also found a document that was issued in April by the President basically banning export goods and stopping travel from the US” to Libya. Attached to this email was Executive Order 13726 of April 19, 2016, titled “Blocking Property and Suspending Entry Into

the United States of Persons Contributing to the Situation in Libya.”<sup>1</sup>

On or about July 30, 2016, SOTIS e-mailed VOISSEM and copied Robotka and stated: “Ok, if the president has banned all shipments to Libya, they are going to have to find another route or handle it from here. We do not need trouble from the government for making illegal shipment. I think its[sic] time Osama [Bensadik] and Mohammed [Zaghab] manage this problem and let us know how they intend to receive their goods as we can’t ship to Libya.” VOISSEM then communicated with Mohammad and Diana Zaghab to take over the shipment to Libya. When Diana Zaghab asked whether any of the items in the shipment needed an export license or were considered dual use, VOISSEM did not respond to the question and instead proceeded to coordinate with the Zaghab’s about their picking up the shipment to send to Libya.

**August 4, 2016 meeting with Commerce Department Special Agent Wagner**

On August 4, 2016, Commerce Special Agent Brent Wagner met with VOISSEM, Robotka, and another employee named Deb Wesler at Add Helium and instructed them that the rebreather shipment was detained and could not be sent to Libya until a Commerce license determination was completed. He explained the export controls laws and the licensing process. VOISSEM, who told Special Agent Wagner that she was formerly in law enforcement,<sup>2</sup> indicated that she understood. Shortly after the meeting, Robotka told SOTIS that shipment was detained by Special Agent Wagner and could not go anywhere.

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<sup>1</sup> Although this Executive Order put SOTIS and VOISSEM on notice about possible restrictions of exports to Libya, it should be noted that this Executive Order did not apply to the export of rebreathers to Libya.

<sup>2</sup> VOISSEM had served as a Deputy Sheriff for over 7 years in the San Luis Obispo Sheriff’s Department in California (14 years total in the Sheriff’s Office).

Without involving Robotka, VOISSEM and SOTIS then communicated with Mohammad and Diana Zaghab to take over the shipment to Libya. Neither VOISSEM nor SOTIS ever mentioned to them that the shipment had been detained or that a license determination was pending. Mohammad Zaghab explicitly asked SOTIS about what had occurred with the Commerce agent during the August 4 meeting and SOTIS falsely claimed that “he said nothing.”

VOISSEM coordinated the pick-up of the rebreathers with Diana and Mohammad Zaghab and handled the bill of lading, which indicated that the destination of the shipment was Misurata, Libya. On or about August 9, 2016, a local transportation company picked up the four rebreathers from Add Helium and transported them to Miami, Florida, where they were flown out of the country destined for Libya.

**August 17, 2016 Telephone Call with VOISSEM and SOTIS**

On or about August 17, 2016, Special Agent Wagner, unaware that the rebreathers had already been shipped, spoke by telephone with VOISSEM and SOTIS, who were together on speaker phone. Special Agent Wagner informed VOISSEM and SOTIS that the license determination had been completed and the rebreathers were export-controlled by Commerce and did require a license to export to Libya. Special Agent Wagner requested that VOISSEM forward any documentation she had in reference to this transaction to Special Agent Wagner’s email address. Special Agent Wagner also suggested to VOISSEM and SOTIS that a follow-up meeting be arranged to discuss what to do with the detained shipment and the process to ship the rebreathers in the future. During the call, neither SOTIS nor VOISSEM informed SA Wagner that the rebreathers had already been picked up and were on their way to Libya.

**August 24, 2016 meeting with VOISSEM and SOTIS**

On August 24, 2016, Special Agent Wagner and an FBI agent met with VOISSEM and Robotka at Add Helium. During this meeting, Special Agent Wagner reiterated that the rebreathers required an export license from the Department of Commerce, and explained in detail the licensing process. Before leaving, SOTIS approached Special Agent Wagner and introduced himself as the owner of Add Helium. SA Wagner gave SOTIS a summary of what he discussed with VOISSEM and Robotka. SOTIS claimed he was very concerned with protecting the U.S. and admitted that he knew this kind of technology could be used against it and he did not want that to happen. SOTIS then requested that Special Agent Wagner and VOISSEM go into his office to discuss the Libyan export.

SOTIS then informed Special Agent Wagner that the shipment had already been picked up and was en route to Libya. SA Wagner told SOTIS that he needed to contact the shippers and have the shipment returned because Add Helium had violated U.S. laws and they knew the items had been detained. SOTIS claimed that he did not ship the items and that their customer had somebody retrieve the dive gear and rebreathers from Add Helium. Special Agent Wagner instructed VOISSEM to contact the freight forwarder and find out where the shipment was. VOISSEM said that she understood.

As Special Agent Wagner exited the office of Add Helium, SOTIS followed him. Once outside, SOTIS defiantly asked if Special Agent Wagner told VOISSEM to contact the freight forwarder to stop the shipment. SA Wagner stated that he did. SOTIS responded that Add Helium could not stop the shipment because it had been scheduled by the company in Libya.

Special Agent Wagner told SOTIS, “if I had violated U.S. laws, I would call whomever I could to try.” SOTIS responded, “[T]hat may be true, but there is nothing we can do.”

On or about August 25, 2016, SA Wagner provided Shipco Transport a redelivery letter directing the rebreathers to be returned from outside the United States. The rebreathers were returned to Shipco Transport on September 1, 2016. On October 25, 2016, U.S. Customs and Border Patrol seized the rebreathers and currently have custody of them.

### **SOTIS’s Obstruction and Concealment of Evidence**

In late August 2016, Robotka went to SOTIS and asked him why he had gone through with the shipment to Libya after Roboka had warned him that it was illegal. SOTIS asked Robotka why he cared and said that “we got all the money and we will get all the gear back to sell again, this is great.” When Robokta pressed the issue and stated that Special Agent Wagner had specifically told them that Add Helium was not supposed to release or ship the equipment, SOTIS stated: “they have to prove it and it will take years.” A few days later, SOTIS told Robokta that no one was to speak to Special Agent Wagner without his approval. He further stated that Robokta had nothing to be concerned about because neither his nor SOTIS’s signatures were on the shipping manifest and that “they cannot tie this to us.”

On September 13, 2016, Ken Wesler, the Administrative Director of Add Helium, provided to Special Agent Wagner an incomplete response to the Administrative Subpoena previously served. Mr. Wesler admitted to Robotka later that he would “fall on his sword” regarding these missing documents. The initial response failed to include email communications between any parties within Add Helium and Bensadik, Mohammad Zaghab, or Ramas LLC.

In November 2016 and December 2016, SOTIS threatened Robokta not to talk to anyone

about the Libya shipment. SOTIS said that “anyone who talks to the investigators will get fired” and “it will get bloody and I will personally put you in the ground.” SOTIS again asked Robotka why he was so concerned about Libya and stated, “You don’t get it. Our signatures are not on the documents. I ran everything through Emilie [Voissem]. She will take the fall for everything. I had Ken [Wesler] delete all the files on the server which we will blame on Emilie as a disgruntled employee.”<sup>3</sup> SOTIS then stated to Robotka, “We can always throw them Ken for destroying documents.”

In a text message to Special Agent Wagner on December 9, 2016, Robotka indicated he was “being threatened” and that SOTIS had told him that he “better not say a word to anyone about anything or it would be bloody.” SOTIS later in December told Robotka that “you’re a dead man. I’m going to kill you” and “I told you this would get bloody. I’m going to put you in the ground.”

#### **Civil Lawsuit between Robotka and SOTIS**

In December 2016, Robotka, through a civil attorney, filed a lawsuit against Peter SOTIS and Kaizen International LLC (the parent company of Add Helium LLC), in Broward Circuit Court (case number 2016-023011), seeking damages for, among other things, SOTIS’s criminal acts in this case that harmed the Add Helium business. SOTIS countersued Robotka. Both Robotka and SOTIS testified at hearings in the civil case in 2017. In denying SOTIS’s motion for temporary injunction against Robotka, the Broward Circuit Court judge found that SOTIS “was not credible”

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<sup>3</sup> The references to Emilie VOISSEM and her involvement in the conspiracy likely would be excludable under *Bruton v. United States*, 391 U.S. 123 (1968). Therefore, while the Government will mention at trial SOTIS’s statements about directing Wesler to delete files and the fact that SOTIS felt he could escape law enforcement detection because his signatures were not on certain documents, the Government will not elicit, and the defense should be precluded from eliciting, the statements regarding VOISSEM unless SOTIS testifies.

and that Robotka's testimony "was credible" when they testified regarding the facts of the Libya shipment at issue in this case. See June 30, 2017 Order on Defendant's Motion for Temporary Injunction at 6 ("Plaintiffs solicited testimony from Mr. Sotis regarding his shipment of professional grade dive equipment to a Libyan militant in contravention of U.S. trade and embargo laws as well as testimony regarding a dive trip that Mr. Sotis attended. One of the divers died while using equipment provided by Add Helium<sup>4</sup> . . . The Court did not find the testimony of Mr. Sotis to be credible.").

### **VOISSEM's False Statements at Debrief**

The Government sent VOISSEM a target letter in mid-2018. Since she could not afford an attorney, the court appointed an attorney for her. With her attorney present, the government scheduled a debriefing with VOISSEM on March 27, 2019 at the U.S. Attorney's Office with agents from the Commerce Department and Homeland Security Investigations also present. At the debriefing, VOISSEM was warned of the consequences of not telling the truth. Nevertheless, VOISSEM falsely claimed that Special Agent Wagner never said during the August 4, 2016 meeting at Add Helium that the rebreathers had to remain there and not be shipped while a license determination was pending. VOISSEM also claimed that the decision to ship the items after the meeting with Special Agent Wagner was a joint decision that she had made with Peter SOTIS.<sup>5</sup>

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<sup>4</sup> This refers to the death of Canadian documentary filmmaker Rob Stewart in January 2017 while diving with Peter Sotis. Mr. Stewart's family has filed a wrongful death suit against, among others, Add Helium, SOTIS, and SOTIS's wife, which has been mentioned in several news articles. The Government does not intend on mentioning or alluding to this incident at trial.

<sup>5</sup> This last statement about the joint decision to ship with SOTIS would be inadmissible under *Bruton* and, accordingly, the government will not seek to admit this statement unless VOISSEM testifies.

### III. ARGUMENT

#### A. Evidence of threats and obstruction of justice are admissible.

SOTIS's threats to Robotka to not speak with investigators and others regarding the facts of this case are admissible at trial because they demonstrate SOTIS's consciousness of guilt. *See, e.g., United States v. Gonzales*, 703 F.2d 1222, 1223 (11<sup>th</sup> Cir. 1983) ("Courts may consider evidence of threats to witnesses as relevant in showing consciousness of guilt.").

Additionally, SOTIS's admissions to Robotka that he directed an Add Helium employee to conceal and destroy evidence related to this case is admissible under well-established precedent. *See United States v. Abbell*, 271 F.3d 1286, 1297 (11<sup>th</sup> Cir. 2001), quoting *United States v. Mastropieri*, 685 F.2d 776, 790-91 (2<sup>d</sup> Cir. 1982) ("There can be no doubt that an attempt to suppress material records permits an inference of consciousness of guilt and therefore of guilt itself.") and *United States v. Hughes*, 716 F.2d 234, 240-41 (4<sup>th</sup> Cir. 1983) ("Fabrication of evidence by a defendant ... [is] clearly admissible to prove his guilty state of mind.")).

#### B. Inadmissible hearsay/Bruton statements

In its case in chief, the government will not elicit the statements made by VOISSEM or SOTIS during recorded meetings with Robotka in December 2016. Commerce and Homeland Security agents supplied the recording device and requested that Robotka make the recordings. In its original discovery, the Government provided the defense copies of both the audio recordings and transcripts of the recorded meetings. Statements made by VOISSEM or SOTIS during the recorded statements are hearsay if the defense seeks to admit them and, as such, are inadmissible. However, if VOISSEM or SOTIS testifies, the government can refer to these recorded statements

to cross examine them to the extent they testify in a manner inconsistent with their content.

Additionally, VOISSEM's whispered statement to Robokta during the August 24, 2016 meeting with Special Agent Wagner that SOTIS had made her ship the items is also inadmissible. Similarly, after the conspiracy ended, VOISSEM sent a text message to Robokta that stated: "If it comes in Peter knew what was said and he was the one that made the decision to ship or let them send their shippers. It's on him." This statement and similar statements referred to above in this Motion in which one defendant admitted to a non-conspirator that the co-defendant was culpable in the shipment to Libya, are inadmissible hearsay and in contravention of *Bruton*. Under *Bruton v. United States*, 391 U.S. 123 (1968), the Supreme Court held that a defendant was deprived of his rights under the Confrontation Clause if an extrajudicial confession by his codefendant inculcating the defendant was introduced in their joint trial.

Moreover, the defense should not be permitted to elicit the defendant's self-serving out of court statements that do not fall within any hearsay exception. Federal Rule of Evidence 801(d)(2)(A) provides that "[a] statement is not hearsay if . . . [t]he statement is offered against a party and is . . . the party's own statement." Fed. R. Evid. 801(d)(2)(A). For a defendant's statement to be admissible, it has to be [1] the defendant's own statement and [2] offered against the defendant by the government. A defendant's statement is admissible, in other words, if it is offered against him or her by the Government; if the defendant offers his or her own statement, it is not admissible under Rule 801(d)(2)(A).

The Eleventh Circuit has said so in *United States v. Willis*, 759 F.2d 1486 (11th Cir. 1985). In that case, the defendant, during the cross-examination of an FBI agent government witness, sought to elicit his "allegedly exculpatory statements at the time of his arrest." *Id.* at 1501. The

district court prohibited the defendant from eliciting his own exculpatory statement on cross-examination, and the Eleventh Circuit affirmed. The Court recognized what the defendant was trying to do: “Obviously, the defense sought to place [the defendant’s] remarks before the jury without subjecting [him] to cross-examination.” *Id.* The Court emphasized that “[t]his is precisely what is forbidden by the hearsay rule.” *Id.* The defendant, accordingly, was forbidden from eliciting his hearsay statement from a government witness.

**C. Credibility Finding by Circuit Court Judge**

The Government will not seek to use the adverse credibility finding against SOTIS by the Broward Circuit Court judge in its case in chief, in cross examination of SOTIS if he testifies, or in rebuttal.

**D. Prior convictions or arrests**

SOTIS has a prior federal conviction from the Middle District of Florida (case number 91-104-CR-FTM-17) for Hobbs Act robbery for robbing a jewelry store with other co-conspirators at gunpoint, a conviction for which he served three years in the 1990s. However, given the length of time that has passed since the conviction, the government will not elicit or allude to this fact at trial.

Robotka was previously arrested for DUI and for a misdemeanor charge, now expunged, involving violation of a restraining order. Both arrests occurred over 15 years ago. The defense should not be able to question or allude to these arrests at trial in light of the length of time that has passed since it occurred. *See* Federal Rule of Evidence 609 (convictions older than 10 years are inadmissible to impeach a witness). Nor do these arrests bear on Robotka’s character for truthfulness. *See* Federal Rule of Evidence 608. Finally, such non-probative evidence would only

confuse the jury, and serve to unfairly prejudice the Government. *See* Federal Rule of Evidence 403. This Court should therefore exclude any such evidence of Robotka's prior record.

#### IV. CONCLUSION

For all the reasons stated above, this court should grant the Government's motion in limine. The Government has conferred with defense counsel regarding this Motion: defense counsel for SOTIS opposes it, and defense counsel for VOISSEM does not oppose it.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 29, 2020, I electronically filed the foregoing document with the Clerk of Court using CM/ECF.