

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.

**DEFENDANT PETER SOTIS' REPLY TO GOVERNMENT'S
RESPONSE IN OPPOSITION TO HIS MOTION IN LIMINE**

COMES NOW, the Defendant PETER SOTIS, by and through the undersigned attorney, and hereby submits this Reply to Government's Response in Opposition to his Motion in Limine (DE 62) and in support thereof states as follows:

1. On May 29, 2020, Mr. Sotis was served with a copy of the Government's Trial Brief and Motion in Limine (DE 35) by which the government notified him for the first time of its intent to introduce evidence of alleged efforts by him to obstruct justice through threats to Shawn Robotka, Mr. Sotis' then business partner. The sole evidence of such "threats" is expected to be the testimony of Robotka himself. It is anticipated that the credibility of Robotka will be one of the principal issues at dispute in the trial of this cause.

2. With respect to the conclusions regarding the government's assessment about the inadmissibility of hearsay/Bruton statements, the credibility finding by a Broward Circuit Court Judge in a related civil case, and prior convictions or arrests discussed in paragraphs B, C, and D, respectively, in the government's argument beginning at page 12 of the Government's Trial Brief

and Motion in Limine, Mr. Sotis has no dispute with the government's positions. However, the evidence the government has stated it intends to offer as to threats and obstruction of justice is an entirely different matter. Those allegations are far more egregious than the technical offenses described in the indictment. Indeed, threatening to murder a potential witness, if true, so undermines the integrity of the judicial process, the underlying charges in this case pale by comparison. It is entirely plausible that even if the jury were to entertain significant doubts as to the culpability of Mr. Sotis with regard to the acts charged in the indictment, there is real danger that it might convict him based upon allegations of such threats, notwithstanding a paucity of credible evidence as to the charged offenses or any cautionary instruction that the Court might give, given the chilling allegations made by Robotka.

3. For that reason, on June 26, 2020, in an abundance of caution, Defendant Sotis filed his own Motion in Limine in response to the government's motion (DE 39), objecting to any evidence of threats, obstruction of justice or efforts to conceal or destroy evidence on the grounds that the probative value of any such evidence whether offered to prove intent or consciousness of guilt would be outweighed by its gross prejudicial effect under FED R. EVID. 403.

ARGUMENT

The government complains in its response (DE 62) that Mr. Sotis did not address the cases relied upon by the government in its own motion in limine. Yet, Mr. Sotis does not dispute that under certain circumstances, threats to a witness can be admitted under *United States v. Gonzales*, 703 F.2d 1222 (11th Cir. 1983). However, as the court in *Gonzales* noted, "[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. *Id.* at 1223. Moreover, since an appellate court may only reverse a trial judge for abuse of discretion in

admitting such evidence, *United States v. Terebecki*, 692 F.2d 1345, 1350 (11th Cir. 1982), it would seem that the Court ought to reserve ruling on such matter until it has heard the evidence in the case and assessed the necessity of this testimony and has had the opportunity to make its own assessment of Robotka's credibility before allowing the highly charged allegations to be revealed to the jury in opening statements.

If, in fact, the Government does have a strong case without such evidence, then the prejudice to Mr. Sotis will arguably outweigh its marginally-probative value, and the Government should therefore not be permitted to introduce it at trial. In *United States v. Johnson*, 2014 WL 2573286 at *1-2(N.D. Fla. 2014), the defendant was indicted for possession of a firearm by a convicted felon, and the Government announced its intention to introduce 404(b) evidence consisting of a State-court conviction for the same charge. The District Court was skeptical about allowing the Government to introduce such evidence at trial given the fact that it had eyewitness testimony and the defendant's confession. *Id.* at *3. Nevertheless, the Court denied the defendant's motion to prevent the introduction of 404(b) evidence at his trial because it was uncertain whether the probative value of such evidence was substantially outweighed by the risk of undue prejudice and also because of its belief that providing the jury with a limiting instruction might mitigate the prejudicial effect of the 404(b) evidence. *Id.* Nevertheless, the Court realized that it would be in a better position to assess the Government's need for using the 404(b) evidence after it had seen the Government's other evidence at trial. *Id.* Therefore, it denied the defendant's motion without prejudice to his raising it again during trial. *Id.*

In Mr. Sotis' case, the Court does not, at this stage in the proceedings, know with certainty how strong the Government's case is without the obstruction related evidence that it seeks to introduce at trial. Therefore, if the Court does not sustain Mr. Sotis's objection pretrial regarding

the Government introducing such evidence, then he requests that the Court defer ruling on his objection until after the Government has introduced its other evidence at trial. Mr. Sotis also requests that the Government not be allowed to mention any such evidence in its opening statement to the jury since that event will occur prior to the Government presenting its evidence during its case-in-chief.

WHEREFORE, for the reasons set forth herein, the undersigned attorney respectfully requests that this Honorable Court grant Mr. Sotis' Motion in Limine, or, alternatively, defer ruling thereon until the Court has had the opportunity to assess the strength of the government's case, the credibility of Robotka and the need for his testimony concerning his allegations concerning evidence of obstruction.

Dated: June 6, 2021

Respectfully submitted,

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By: /s/ Bruce L. Udolf
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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 6th day of June, 2021 and was served electronically to all counsel of record.

By: Bruce Udolf