IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	**CRIMINAL NO.: 16-089 (EGS)**
	:	
	:	
v.	:	
	:	
JOAO MANUEL PEREIRA DA FONSECA,	:	
	:	
Defendant.	:	

GOVERNMENT'S MOTION AND NOTICE OF INTENTION TO INTRODUCE EVIDENCE OF PRIOR BAD ACTS

The United States, by and through its attorney, the United States Attorney for the District of Columbia, respectfully provides notice to the Court and defendant that the government may seek to introduce certain evidence of prior bad acts against the defendant, pursuant to Rule 404(b), Fed. R. Evid., and moves this Court to admit such evidence. In particular, the government seeks to introduce proof that defendant Fonseca previously traveled to Iran to install German-origin equipment purchased by Firstfield Engineering on behalf of an Iranian company, and also provided technical assistance and training to the Iranians regarding that German-origin equipment. Such evidence is admissible under Rule 404(b) to show the defendant's knowledge, intent, motive, and lack of mistake or accident relating to his participation in a conspiracy to violate the International Emergency Economic Powers Act (IEEPA) and the Iranian Transactions and Sanctions Regulations (ITSR), in violation of 18 U.S.C. § 371; 50 U.S.C. § 1705; and 31 C.F.R. Part 560.

THE CHARGED OFFENSE

The conspiracy Fonseca took part in essentially worked as follows. Reza Rejali, an Iranian national who worked for an Iranian company called KSPT Management ("KSPT")

received bids from Iranian customers to obtain products for those Iranian customers. Rejali used Paulo Vicente and his Portuguese engineering company, Firstfield Engineering, to purchase products from European and U.S. companies for Rejali. Rejali used Firstfield as a front company to place orders because European and U.S. companies often would not sell directly to an Iranian company because of various laws prohibiting or restricting transactions with Iran.

The government alleges that beginning in or around October 2014, and continuing through in or around April 2016, defendant Fonseca and various co-conspirators (including Rejali, KSPT, Vicente and Firstfield) conspired to export certain goods, technology, and services from the United States to Iran, without first obtaining a license from the Office of Foreign Assets Control ("OFAC"), as required by federal laws. At Rejali's request, Firstfield purchased precision lens equipment from Moore Nanotech, in New Hampshire, and an inertial guidance system test table from Ideal Aerosmith, in North Dakota.

Fonseca played a critical role in the conspiracy to purchase the U.S. made equipment and export it to Iran. Fonseca was sent to the United States on two occasions to inspect, test and train to use precision lens equipment and the inertial guidance system test table, both of which have military and non-military applications. The co-conspirators intended that Fonseca would complete his training, and then Firstfield would accept delivery of the equipment in Portugal before subsequent export of the equipment to Iran. Thereafter, Fonseca would travel to Iran to train the Iranian end users to use the equipment, as well as consult with the Iranians while he was in Portugal. Federal law prohibits Fonseca or any other individual from exporting or facilitating the export of U.S.-origin goods, technology, and services to Iran without first obtaining licensing from OFAC.

THE PRIOR BAD ACTS EVIDENCE

The government's proof regarding what Fonseca and his co-conspirators planned to do with the equipment purchased from the U.S. companies is based, in part, on what Fonseca and his co-conspirators did when they purchased certain equipment from two German companies, Optotech and Luphoscan.

Accordingly, the government intends to introduce evidence that Rejali purchased precision lens equipment from Optotech in Germany, through Firstfield and a Turkish company, and that Fonseca thereafter traveled to Iran to assist the Iranians in installing and using the Optotech equipment. Similarly, Rejali purchased lens measuring equipment from Luphoscan in Germany, through Firstfield and a Turkish company, and Fonseca thereafter assisted the Iranians in using that equipment. Fonseca also received training in Germany and Portugal on how to use the Optotech and Luphoscan equipment.

At trial, the government will seek to introduce evidence related to the purchase of the equipment from Optotech and Luphoscan, and Fonseca's role in assisting the Iranian customers to use that equipment. Demonstrating what happened with the Optotech and Luphoscan equipment will help demonstrate what Fonseca and his co-conspirators intended to happen with the Moore Nanotech and Ideal Aerosmith equipment. In other words, the evidence of the Optotech and Luphoscan transactions help prove: that Rejali's Iranian customers were the intended end users and destination for the U.S. made equipment; Fonseca knew that the U.S. made equipment was destined to be delivered to Iran; and Fonseca knew that the training he received regarding the U.S. made equipment was going to be used for the benefit of the Iranian customers.

The purchase of the equipment from Moore Nanotech and Ideal Aerosmith was simply part of the ongoing scheme to purchase sophisticated technology for the Iranians because they could not have purchased the equipment directly from the U.S. companies. Fonseca was not acting by mistake or accident when he engaged in this conspiracy. Instead, he was motivated by the common goal of being compensated monetarily to assist the Iranian customers. Fonseca and his co-conspirators voluntarily and knowingly engaged in this conspiracy to violate U.S. export control laws by attempting to obtain the U.S. made equipment for Iran, without having a license from OFAC.

ARGUMENT

When the government proposes to introduce evidence under Rule 404(b), it must proceed through a two-step process. *See United States v. Cassell*, 292 F.3d 788, 795–96 (D.C. Cir. 2002) (citing *United States v. Washington*, 969 F.2d 1073, 1080 (D.C. Cir. 1992), cert. denied, 507 U.S. 992 (1993)). First, it must demonstrate that the proffered evidence will be used solely for a legitimate purpose. *See Cassell*, 292 F.3d at 795–96. Second, the government must show that the evidence meets the balancing test laid out in Rule 403—that is, that the evidence is more probative than prejudicial. *See id*. (citing U*nited States v. Miller*, 895 F.2d 1431, 1435 (1990)). In this case, the evidence that the government proposes to introduce meets both standards, and should be admitted at trial.

I. Proof of the Co-Conspirators' Prior Bad Acts Is Admissible Under Rule 404(b) to Demonstrate Their Knowledge, Motive, Intent, and Lack of Accident or Mistake.

Federal Rule of Evidence 404(b) permits the government to offer proof of a defendant's other crimes, wrongs, or acts so long as the evidence is probative of a material issue other than character. *See Huddleston v. United States*, 485 U.S. 681, 686 (1988); s*ee also Miller*, 895 F.2d

at 1435. Therefore, "although the first sentence of Rule 404(b) is framed restrictively, the rule itself is quite permissive, prohibiting the admission of other crimes evidence in but one circumstance: for the purpose of proving that a person's actions conformed to his character." *United States v. Bowie*, 232 F.3d 923, 929–30 (D.C. Cir. 2000) (internal quotations omitted) (quoting *United States v. Crowder*, 141 F.3d 1202, 1206 (D.C. Cir. 1998) (Crowder II) (*en banc*) (quoting *United States v. Jenkins*, 928 F.2d 1175, 1180 (D.C. Cir. 1991)), cert. denied, 525 U.S. 1149 (1999)). Rule 404(b) lists numerous areas where use of other crimes evidence is appropriate: to prove motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident; however, this list is not exhaustive. *See Miller*, 895 F.2d at 1435.

Evidence showing that the defendant is familiar with a particular illegal activity or has previously committed a similar bad act can be used to show the defendant's knowledge and intent. *See United States v. Rogers*, 918 F.2d 207, 210 (D.C. Cir. 1990); *see also United States v. Moore*, 732 F.2d 983, 987–82 (D.C. Cir. 1984) (prior pattern of drug dealing similar to offenses charged was relevant to show intent and admitted over Rule 404(b) challenge). Engaging in a particular act on prior occasions is also relevant because it decreases the likelihood that the defendant accidentally or mistakenly committed the crime. *See Bowie*, 232 F.3d at 930. The evidence the government is seeking to introduce in this case will serve a legitimate purpose under Rule 404(b).

When Firstfield purchased the German equipment from Optotech and Luphoscan for Rejali and his Iranian customers, Fonseca received training from those German companies and then helped the Iranian customers use the equipment. This evidence will help prove that Fonseca and various co-conspirators were following the same pattern, or modus operandi, with the purchases of the equipment from Moore Nanotech and Ideal Aerosmith.

For example, Fonseca traveled to the U.S. to train on the both the Moore Nanotech and Ideal Aerosmith equipment that Firstfield purchased for Rejali and his Iranian customers. Fonseca planned to travel to Iran to assist Rejali and his customers in using the U.S. made equipment. Fonseca's repeated actions related to the purchases of the equipment from the German companies, and then Moore Nanotech and Ideal Aerosmith, demonstrate that he was following the same pattern. Thus, the evidence regarding the German made equipment is probative of, and relevant to, determining whether Fonseca knew the U.S. made equipment would be exported to Iran and whether he intended to assist the Iranians use that equipment. .

Accordingly, the evidence of the German transactions should be admitted at trial.

II. The Rule 403 Balancing Test Strongly Favors Admission of the Government's Proposed Rule 404(b) Evidence.

The balancing test under Rule 403 strongly favors the admission of the government's proposed evidence. *See* Fed. R. Evid. 403. Once the government has demonstrated that it is offering other crimes or prior bad acts evidence for a legitimate purpose under Rule 404(b), the government also must show that the evidence meets the balancing test of Rule 403. *See United States v. Clarke*, 24 F.3d 257, 264 (D.C. Cir. 1994). Especially when there is a close relationship between evidence of prior bad acts and the offense charged, the scale should weigh in favor of admitting the evidence. *See United States v. Harrison*, 679 F.2d 942, 948 (D.C. Cir. 1982) (citing *United States v. Day*, 591 F.2d 861, 878 (D.C. Cir. 1978)). Additionally, only "unfair prejudice" renders evidence inadmissible under Rule 403. *See United States v. Gartmon*, 146 F.3d 1015, 1021 (D.C. Cir. 1998). Prejudice resulting solely from the fact that the evidence is inculpatory is not unfair and may be admitted. *See id*. "For evidence to be unfairly prejudicial within the meaning of Rule 403, it must have an undue tendency to suggest decision on an

improper basis, . . . [often] an emotional one." *See Old Chief v. United States*, 519 U.S. 172, 180 (1997) (internal quotations omitted).

Here, prior bad act evidence involves Fonseca's previous actions with Firstfield Engineering's purchase of German-origin equipment on behalf of KSPT's Iranian clients. Namely, the evidence being offered includes the fact that Firstfield purchased equipment for KSPT; Fonseca received training to use the German equipment; Fonseca traveled to Iran to assist the Iranians set up and use the equipment; and Fonseca assisted the Iranians regarding the German equipment even when he was in Portugal rather than Iran.

This evidence is not inflammatory. Instead, it is rather bland evidence of financial transactions and the assistance that Fonseca provided. Moreover, the evidence will largely consist of statements made by the co-conspirators in emails and text messages. In short, the proposed bad acts evidence is not prejudicial under Rule 403, and it should be admitted at trial.

CONCLUSION

Wherefore, the government respectfully provides notice that it intends to introduce prior bad acts evidence, and moves the Court to grant it permission to introduce evidence regarding the defendant's prior bad acts.

Respectfully submitted,

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