UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA **v.** **PAUL J. MANAFORT, JR.**, **Defendant.**	**Crim. No. 17-cr-201-1 (ABJ)**

GOVERNMENT'S MOTION IN LIMINE TO ADMIT EVIDENCE THE DEFENDANT FAILED TO REPORT FOREIGN BANK ACCOUNTS FOR HIS BUSINESSES

The United States of America, by and through Special Counsel Robert S. Mueller, III, hereby files this motion *in limine* regarding the admissibility of evidence that two businesses owned and controlled by defendant Paul J. Manafort, Jr. ("Manafort") failed to disclose foreign bank accounts, including foreign bank reports ("FBARs") for various foreign bank accounts. Specifically, the government seeks to admit evidence that two U.S. businesses, Davis Manafort Partners, Inc. ("DMP") and DMP International, LLC ("DMI"), never filed FBARs or otherwise reported the foreign bank accounts identified in the superseding indictment. In the Eastern District of Virginia, the defendant contended that the foreign accounts were DMP and/or DMI accounts and that Manafort had no obligation to report these accounts on his personal returns or to file an FBAR. Evidence that DMP and DMI also did not disclose the accounts thus undermines this contention, and also serves to establish that Manafort's failure to report the accounts was no accident. For these reasons, the district court in the Eastern District of Virginia permitted the introduction of this evidence.

The government also seeks leave to file this motion, as the necessity for it became apparent from the trial in the Eastern District of Virginia.

A. Background

On June 8, 2018, a grand jury in this district returned a superseding seven-count indictment against the defendant. *See* Doc. 318. Specifically, the superseding indictment charges Manafort with, among other things, conspiring to knowingly fail to disclose on his tax returns, and failing to file an FBAR disclosing, a financial interest in, and signature and other authority over, a bank, securities, and other financial account in a foreign country, which had an aggregate value of more than $10,000 in a 12-month period (Count One).

In his upcoming trial in this matter, the government seeks to offer evidence that, in addition to Manafort personally failing to file FBARs, DMP and DMI did not file FBARs or report foreign bank accounts for foreign bank accounts that received tens of millions in payments for Manafort's Ukraine activities. These bank accounts include accounts in the names of, *inter alia*, Leviathan Advisors Limited, Black Sea View Limited, Lucicle Consultants Limited, Marziola Holdings Limited, Peranova Holdings Limited, Olivenia Trading Limited, Global Endeavour Inc., Jeunet Limited, Yiakora Ventures Limited, Actinet Trading Limited, Bletilla Ventures Limited, Loav Advisors Limited, Black Sea View Limited, and Global Highway Limited. The evidence will show that, for the operative years in question, no FBAR was ever filed for these accounts by Manafort, DMP, or DMI.

B. Discussion

The indictment alleges that from approximately 2006 to 2015, while the defendant "was generating tens of millions of dollars in income from his Ukraine activities," the defendant avoided paying taxes in part by funneling "millions of dollars in payments into numerous foreign nominee companies and bank accounts." (Doc. 318, ¶¶ 2–3). The foreign bank accounts were personally

controlled by Manafort. None of these accounts were disclosed on tax returns or in FBAR filings, allowing the defendant to use the accounts to hide his substantial income from U.S. tax authorities.

Manafort's scheme required he refrain from filing FBARs or disclosing the existence of the accounts on his tax returns. Truthful answers about the existence of the accounts would have pointed to the millions of dollars that the defendant was funneling into the country to pay for a wide variety of personal expenses, tax free.[1] Manafort's similar failure to report these accounts on behalf of either DMP or DMI is admissible as evidence "of an act that is part of the charged offenses, [and] it is properly considered intrinsic." *United States v. Bowie*, 232 F.3d 923, 929 (D.C. Cir. 2000). Similarly, the failure by Manafort to file FBARs on behalf of these corporations which he controlled constitutes an "uncharged act[] performed contemporaneously with the charged [tax-related] crime" and therefore is intrinsic because it "facilitate[s] the commission of the charged crime." *Id.*; *see also United States v. Badru*, 97 F.3d 1471, 1475 (D.C. Cir. 1996) ("In cases where the incident offered is a part of the conspiracy alleged in the indictment, the evidence is admissible under Rule 404(b) because it is not an "other" crime." (internal citations and quotations omitted)).

Manafort's failure to disclose these accounts for his U.S. businesses is relevant to prove the "absence of mistake" and "lack of accident." Fed. R. Evid. 404(b)(2). As this Court has noted, Count One requires the government to prove the defendant agreed to willfully and knowingly fail to file an FBAR with the Treasury Department. *United States v. Manafort*, 313 F. Supp. 3d 213, 235 (D.D.C. 2018) (noting "both FBAR and FARA violations require evidence of willful

[1] Likewise, Manafort's FBAR violations and FARA violations were inextricably linked: if he reported any of his foreign bank accounts—directly or indirectly controlled—the totality of his conduct on behalf of foreign governments and foreign political parties (including his unregistered actions inside the United States) risked coming to light, as the payments to U.S. lobbyists came through these accounts.

conduct"). The government is entitled to present evidence that the defendant's failure to disclose his foreign bank accounts was intentional, rather than the result of confusion or misunderstanding. Here, evidence that no FBARs were filed—whether by him personally or on behalf of his companies—shows that Manafort's failure to disclose his foreign bank accounts did not stem from a misunderstanding about whose responsibility it was to file the FBARs, or whether the percentage ownership of the companies negated the requirement to file. The probative value is even clearer if one considers the significance if the facts were reversed: had these companies filed FBARs, Manafort would rightly seek to elicit that fact to support a good faith defense against charges that Manafort had knowingly tried to hide the accounts. A jury can reasonably infer that the complete failure to file FBARs was the result of a conscious effort to hide the accounts from U.S. authorities.

The relevance of such evidence is exemplified by the trial in the Eastern District of Virginia. *United States v. Manafort*, No. 1:18-cr-00083 (E.D. Va.). During his opening statement, defense counsel asserted that "the tax code and the FBAR regulations are complicated. And so the law requires that an individual must know what the law is and then intentionally and purposely violate the law." (EDVA Trial Tr., 7/31/18, at 44).[2] The defense also implied repeatedly that the defendant did not personally file an FBAR because the bank accounts belonged to the corporate entities. In summation, counsel argued:

> [I]t's been agreed that these [foreign bank accounts] are DMP International's accounts. That's an important issue. Because that – that defines how you determine what Mr. Manafort's filing requirement would be. That's a question to ask – be answered, and you're going to get an instruction on it. But let me draw your attention back to the issue. It's not a cut-and-dry issue. It's not a

[2] Likewise, during trial, defense counsel asked multiple questions about FBAR requirements for U.S. corporations. For example, counsel asked one witness: "So in terms of a corporation's filing requirements, and an individual who owns a corporation, what is the rule in terms of ownership of the corporation in order to require the filing of an FBAR?" (EDVA Trial Tr., 8/6/18, at 1084). Excerpts of the relevant trial transcripts are attached as Exhibit A.

> simple issue. It's an issue that you would go to an accountant, you would talk to them about, you'd have to go through the rules and try to figure it out. The idea that Mr. Manafort could have the specific intent, the knowledge of whether or not he would have to file a form is belied by the evidence and is belied by the accountants that testified here.

(EDVA Trial Tr., 8/15/18, at 2479).[3] The argument was that the defendant could have understood he did not need to file personally because his companies had the obligation and would take care of it. That argument is belied by the fact that no such FBAR was filed by either company. *See United States v. Brown*, 597 F.3d 399, 402 (D.C. Cir. 2010) (admitting, in a fraud trial, evidence pursuant to Rule 404(b) of "other occasions when Brown used fictitious financial documents in attempts to obtain something of value" to rebut good faith defense).[4]

In light of these arguments, the district court in Virginia concluded that evidence of the total failure to file an FBAR "is relevant to the intent issue, to the willfulness issue." (EDVA Trial Tr., 8/13/18, at 2287).[5] The district court permitted the government to present evidence that neither DMP nor DMI filed an FBAR for these accounts, for the limited purpose of proving intent:

> I'm going to instruct the jury that the jury, of course, may not convict Mr. Manafort for any offense not charged in the indictment, and that the indictment does not charge any of the entities, Davis Manafort Partners and DMP International, with violating the FBAR requirement, which it could, but it doesn't, and Mr. Manafort cannot be convicted for the failure of those entities to file.
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> But they may consider the evidence that would be presented for the limited purpose of helping them decide whether Mr. Manafort had the requisite intent of willfulness, which means that the jury must decide whether the Government has proved beyond a reasonable

[3] The August 15, 2018 Eastern District of Virginia trial transcript is attached as Exhibit B.

[4] In *Brown*, the Court concluded that "[e]vidence of Brown's intent, as demonstrated by extrinsic evidence of his knowledge, motive, and the absence of mistake or accident, was relevant to show his specific intent to defraud, and his lack of a good faith belief that the "bills of exchange" he tried to deposit at the credit union were legitimate and valuable." *United States v. Brown*, 597 F.3d 399, 404 (D.C. Cir. 2010) (internal citation omitted).

[5] The August 13, 2018 Eastern District of Virginia trial transcript is attached as Exhibit C.

> doubt that Mr. Manafort knew what the law required and deliberately did not comply with it.

(EDVA Trial Tr., 8/13/18, at 2290).

The danger of unfair prejudice does not substantially outweigh the probative value of the evidence. Manafort is already charged with failing—and the jury will see evidence of his failure—to file FBARs; that he failed to file additional FBARs is not plausibly likely to lead the jury to convict based on a character assessment, as opposed to as part of an intentional scheme. *See United States v. Queen*, 132 F.3d 991, 997 (4th Cir. 1997) (evidence of prior acts is admissible under Rules 404(b) and 403 if the evidence is (1) relevant to an issue other than the general character of the defendant, (2) necessary, and (3) reliable, and (4) if the probative value of the evidence is not substantially outweighed by its prejudicial effect). Any such risk can be minimized through a limiting instruction. *See id*. (noting limiting jury instruction explaining purpose for admitting evidence of prior acts provides additional protection to defendants).

CONCLUSION

For the foregoing reasons, the government requests that the Court permit the government to present evidence that Manafort failed to disclose foreign bank accounts for his U.S. businesses—specifically DMP and DMI.

Respectfully submitted,

ROBERT S. MUELLER, III
Special Counsel

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By: */s/ Andrew Weissmann*

Andrew Weissmann
Jeannie S. Rhee (D.D.C. Bar No. 464127)
Greg D. Andres (D.D.C. Bar No. 459221)
U.S. Department of Justice
Special Counsel's Office
950 Pennsylvania Avenue NW
Washington, D.C. 20530
Telephone: (202) 616-0800