

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

CASE NO. 24-80103-CR-CANNON

UNITED STATES OF AMERICA

v.

DUSTIN SEAN McCABE,

Defendant.

JOINT NOTICE REGARDING PRE-TRIAL MATTERS

The United States of America and Defendant Dustin Sean McCabe, by and through their undersigned counsel (collectively, the “Parties”), respectfully submit this Joint Notice Regarding Pre-Trial Matters in compliance with the Court’s February 18 order requiring the parties to confer “regarding any preadmitted exhibits, stipulations, use of exhibits/presentations during opening statements, any witness asserting the Fifth Amendment’s right against self-incrimination, and any evidence regarding the victim’s alleged ingestion of ‘edibles’ prior to the alleged manslaughter.” DE 56. The Parties will also here advise the Court as to its question at calendar call regarding whether the Eleventh Circuit has revised its O51 Wire Fraud pattern instruction after it decided *United States v. Takhalov*, 827 F.3d 1307, 1312 (11th Cir. 2016), with the answer to that question being that it was last revised in 2019, three years after *Takhalov*.

1. Pre-Admitted Exhibits.

The Parties have conferred regarding the Government’s proposed exhibits and agree as follows: the Government will be filing an updated exhibit list that removes seven proposed crime scene photos of M.C.G.F. and exhibits that are inconsistent with the Court’s evidentiary rulings, and the defense has agreed to stipulate to the admission of all exhibits except for the Exhibit 109

series of autopsy photos. The defense objects to these photos on Federal Rule of Evidence 403 grounds, and the Government responds that the photos will be used by its medical examiner witness and does not anticipate that the photos will feature in the trial beyond that.¹

2. Stipulations.

After further conferral and considering the defense's proposed jury instructions, the Parties anticipate stipulating as to Mr. McCabe being the captain and owner of the M/V SOUTHERN COMFORT and to the interstate aspect of Mr. McCabe's Paycheck Protection Program loan applications and forgiveness applications. The draft stipulation to which the Parties have agreed is attached as **Attachment A**.

3. Use of Exhibits/Presentations During Opening Statements.

The Parties have agreed that they may use any of the preadmitted exhibits described in Section 1 above. Specifically, the Government has indicated that it intends to make use of up to three photographic exhibits, and the defense has no objection. The defense has indicated that it does not currently anticipate using any exhibits during opening statement but reserves the option to utilize Government exhibits as provided here.

4. Any Witness Asserting the Fifth Amendment Right Against Self-Incrimination.

The Parties have conferred with each other and with J.M.'s attorney and have determined that neither side will be calling J.M. to trial due to his exercise of his Fifth Amendment rights.

5. Evidence Regarding the Victim's Alleged Ingestion of "Edibles" Prior to the Alleged Manslaughter.

The Parties have agreed that neither side will be introducing evidence pertaining to M.C.G.F.'s alleged ingestion of "edibles" prior to the alleged manslaughter or her toxicology

¹ In addition to the preadmission of the Government's exhibits, the defense disclosed a list of 14 proposed exhibits on February 20 about which the parties are still conferring.

report more generally, agreeing that it is not relevant.

6. The Eleventh Circuit's O51 Wire Fraud Pattern Instruction and *Takhalov*.

The Parties agree that the Eleventh Circuit has revised its wire fraud instruction, O51, after it decided *Takhalov* in 2016. Specifically, as provided on page 4 of the Eleventh Circuit's Preamble to Pattern Jury Instructions,² the Eleventh Circuit's O51 pattern instruction was last amended on January 24, 2019.

CONCLUSION

Having thus advised the Court, the Parties respectfully submit that they will be prepared for trial on February 24, 2025.

Dated: February 21, 2025

Respectfully submitted,

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UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 21, 2025, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

/s/ Zachary A. Keller
ZACHARY A. KELLER
Assistant United States Attorney

² The Eleventh Circuit's Preamble to Pattern Jury Instructions is available online at <https://www.ca11.uscourts.gov/sites/default/files/courtdocs/clk/FormCriminalPatternJuryInstructionsRevisedAPR2024.pdf>.