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November 29, 2024

The Honorable George L. Russell, III
Chief United States District Judge
United States District Court for the District of Maryland
101 W. Lombard Street
Baltimore, Maryland 21201

Re: *United States v. Ryan E. Dales*, Criminal Number: GLR-23-026
Omnibus Response to Defendant Ryan Dales' Motions in Limine

Dear Judge Russell:

The United States of America respectfully submits this Response to Defendant Ryan E. Dales' (1) Corrected Motion in Limine to Exclude Portions of Keith Sokolowski's Testimony (ECF No. 94) and (2) Motion in Limine to Exclude Portions of Hongde Pan's Testimony (ECF No. 93).

First, Defendant moves to preclude TFO Keith Sokolowski, the Government's proposed drug trafficking expert, from testifying about heroin, arguing that the bulk of the drug evidence recovered in this case was fentanyl, not heroin, and therefore any testimony regarding heroin should be barred on simple relevance grounds. (Sokolowski Mot. at 2, ECF No. 94). Specifically, Defendant highlights certain portions of TFO Sokolowski's Expert Designation, which he contends improperly discusses heroin. (*See* Sokolowski Mot., Exhibit 1 at 1–4, ECF No. 94-1).

The Government notes that it does not intend to question TFO Sokolowski substantively about heroin. As such, the Government does not oppose Defendant's objections as to the following portions of TFO Sokolowski's Expert Designation:

> Heroin is a highly addictive drug, and it is a rapidly acting opioid. It is an opiate (narcotic) drug processed from morphine and extracted from certain poppy plants. Heroin comes in a white or brownish powder, or a black sticky substance known as "black tar heroin."
> . . . .
> Although in the past heroin mixtures were sold to end users without other controlled substances, in recent years fentanyl . . . has increasingly been found in heroin seizures. In recent years, it has been rare to seize heroin without fentanyl contained in it and more

> common to seize fentanyl mixtures that are sold to customers who once exclusively bought heroin mixtures.

Nonetheless, the Government opposes portions of Defendant's Motion. Defendant seeks to preclude TFO Sokolowski from testifying about the potency of fentanyl, objecting in particular to a line in TFO Sokolowski's Expert Designation that reads, "[Fentanyl] is approximately 100 times more potent than morphine and 50 times more potent than heroin as an analgesic." (Sokolowski Mot., Exhibit 1 at 1). The Government objects to any such limitation. Such testimony is not intended to substantively discuss heroin, or morphine, for that matter. Instead, the references to these other drugs are intended to simply contextualize the potency of fentanyl, which the Government alleges Defendant possessed with the intent to distribute, for the jury. Such contextualization is relevant, factual, and not unfairly prejudicial.

Defendant also seeks to exclude testimony regarding the following portion of TFO Sokolowski's Expert Designation:

> Similarly, it is becoming increasingly common for drug traffickers in China to create laboratories where they can produce fentanyl cheaply and in bulk. After the bulk quantities of fentanyl and heroin are produced, the product is then transported to various bulk drug traffickers that operate in the United States.

(Sokolowski Mot., Exhibit 1 at 2). The Government again opposes such a limitation. The Government can proffer to the Court that the evidence will show that Defendant purchased and attempted to purchase fentanyl from producers in China. Indeed, in Telegram chats recovered from Defendant's phone, he and others discuss the purchase of fentanyl and other drugs from China. Again, the Government does not intend to substantively introduce evidence regarding the purchase of heroin from China. However, Defendant's objection to such testimony is overly broad—evidence regarding bulk purchases of fentanyl is particularly relevant here and should not be excluded.

Finally, the Government opposes a blanket restriction on the use of the word "heroin" at all during the trial. As explained above, heroin may be incidentally referenced to contextualize the evidence germane to the case here. Moreover, heroin may be mentioned during TFO Sokolowski's testimony to the extent he offers an explanation of the drugs that he has previously investigated during his law enforcement career. As such, a broad prohibition of *any* reference to heroin is overly restrictive.

Next, Defendant moves to exclude portions of Hongde Pan's Testimony. (*See* Pan Mot., ECF No. 93). Hongde Pan is the chemist who tested all items of suspected CDS seized from Dales' apartment. Defendant specifically seeks to preclude Mr. Pan from testifying about his analysis related to cocaine recovered at Dales' apartment as irrelevant, noting that it was under possession with the intent to distribute quantities. The Government opposes.

The Government does not allege that Defendant possessed with the intent to distribute cocaine. Still, the Government contends that evidence related to the cocaine is relevant—the drugs were found at Dales' apartment, seized by FBI, and tested by Mr. Pan. Further, the Government

proffers that the evidence will show that Dales' apartment contained substantial packaging materials, scales, tools used to cut drugs, ammunition, and two firearms. The cocaine recovered is relevant within the broader context of Defendant's trafficking scheme.

Additionally, although Defendant does not raise Rule 404(b) in his Motion, the Government contends that the cocaine is admissible as intrinsic to the crimes charged. "The majority of circuits have held that Rule 404(b) applies only to limits on the admission of other acts extrinsic to the one charged. Under that rule, acts intrinsic to the alleged crime do not fall under Rule 404(b)'s limitations on admissible evidence." *United States v. Chin*, 83 F.3d 83, 87–88 (4th Cir. 1996). "The United States Court of Appeals for the Fourth Circuit has consistently held that acts intrinsic to the alleged crime do not fall under Rule 404(b)'s limitations on admissible evidence." *United States v. Myrick*, 663 F.Supp.3d 499, 505 (E.D.Va. 2023) (cleaned up). "Other criminal acts are intrinsic when they are inextricably intertwined or both acts are part of a single criminal episode or the other acts were necessary preliminaries to the crime charged." *Chin*, 83 F.3d at 88. Evidence is also intrinsic when it "serve[s] to complete the story of the crime on trial." *Id.* "Evidence is inextricably intertwined with the evidence regarding the charged offense if it forms an integral and natural part of the witness's accounts of the circumstances surrounding the offenses for which the defendant was indicted." *Myrick*, 663 F.Supp.3d at 505.

Such is the case here. SA Patrick Fong, the seizing agent during the execution of the search warrant at Dales' apartment, packaged any suspected CDS found at Dales' apartment for assessment by the lab. The cocaine was part of that seizure, was transported to the lab, and was assessed by Mr. Pan for its chemical composition. It was further found within an apartment that contained a substantial amount of fentanyl, the drug charged, as well as significant items related to the packaging and distribution of illegal drugs. Accordingly, the cocaine is "an integral and natural part of the witness's accounts of the circumstances" surrounding Dales' charges. It is a part of the immediate context of the same criminal episode, and should not be excluded on relevance or 404(b) grounds.[1]

Very truly yours,

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cc: Richard Bardos, Esq.

[1] *See, e.g.*, *United States v. Thompson*, No. 23-CR-00358(1) (JMB/TNL), 2024 WL 4407004, at *2 (D.Minn. Oct. 5, 2024) (denying defendant's motion in limine seeking to exclude evidence of uncharged drugs found in defendant's possession as intrinsic to the defendant's underlying possession of fentanyl with intent to distribute, felon in possession of a firearm, and possession of a firearm in furtherance of drug trafficking offenses).