

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

No. 1:19-CR-117

v.

Hon. Robert J. Jonker
Chief U.S. District Judge

LARRY CHARLES INMAN,

Defendant.

**GOVERNMENT’S BRIEF IN SUPPORT OF ITS MOTION IN LIMINE TO
ADMIT TEXT MESSAGES BETWEEN INMAN AND THE IBEW**

INTRODUCTION

The indictment charges Defendant Larry Inman with attempting to unlawfully extort and corruptly soliciting money from the Michigan Regional Council of Carpenters and Millwrights (“MRCCM”) in a series of text messages on June 3, 4, and 5, 2018, with respect to the petition initiative to repeal Michigan’s prevailing wage law. Inman similarly attempted to obtain money from the International Brotherhood of Electrical Workers (“IBEW”) in a series of text messages on June 1, 2018. The Government seeks to admit the June 1 text messages as evidence at trial because they are inextricably intertwined with the charged offenses, provide necessary context for Inman’s unlawful acts, and will assist the jury with understanding the other text message evidence in the case. Alternatively, Inman’s attempt to obtain money from the IBEW by sending those text messages constitutes “other acts” that are admissible under Federal Rule of Evidence 404(b) to prove his intent and absence of mistake with respect to the charged offenses.

RELEVANT BACKGROUND

A. The Charged Offenses

The Indictment charges Inman with attempted extortion under color of official right (count 1), solicitation of a bribe (count 2), and making a false statement to the Federal Bureau of Investigation (count 3). (R.1: Indictment, PageID.2-3.) Counts 1 and 2 relate to actions taken by Inman that culminated in a series of text messages he sent to MRCCM representatives between June 3, 2018, and June 5, 2018. Those text messages illustrate that Inman offered to vote “No” on the proposed repeal of the prevailing wage initiative if the MRCCM provided him with more campaign contributions and if other trade associations contributed \$30,000 to his campaign. Those text messages also are evidence that Inman knowingly and willfully lied to the FBI when he was asked whether he communicated with MRCCM to solicit campaign contributions before his vote on the prevailing wage initiative petition.

B. Text Messages with the IBEW

Merely two days before Inman corruptly solicited the MRCCM in text messages, he exchanged text messages with a representative of the IBEW regarding the proposed repeal of the prevailing wage law. (Proposed Trial Ex. 11). Specifically, Inman sent a text to the union representative stating: “If i take the vote no to send it to the ballott, I am going to need alot help and a ton of campaign money, Larry.” (Proposed Trial Ex. 11, text no. 2) (errors in original). After the union representative responded indicating “[W]hat is the number and I will see what I can do,” Inman replied, “[I]t will have to come from all the trade unions associations, they told me \$30,000. I got \$5,000. :) Larry.” (Proposed Trial Ex. 11, text no. 4).

At the initial pretrial conference, the United States notified Inman of its intent to offer these text messages as evidence at trial (R.8: Initial Pretrial Conf. Stmt., PageID.17) and produced the text messages to Inman on June 6, 2019, as part of its second discovery production.

LEGAL ARGUMENT

A. The Text Messages Between Inman and the IBEW are Inextricably Intertwined with and Necessary Background to the Charged Conduct.

As the Sixth Circuit has “held time and again,” background evidence concerning the charged crimes is admissible in a criminal case and “does not implicate Rule 404(b).” *United States v. Lamar*, 466 F. App'x 495, 499 (6th Cir. 2012) (citing *United States v. Hardy*, 228 F.3d 745, 748 (6th Cir. 2000)). Such evidence “consists of those other acts that are inextricably intertwined with the charged offense or those acts, the telling of which is necessary to complete the story of the charged offense.” *Hardy*, 228 F.3d at 748. The evidence “typically provides context for the jury, either because it is directly probative, acts as a prelude to the offense or arises from the same events, forms an integral part of a witness’s testimony, or completes the story of the offense.” *United States v. De Oleo*, 697 F.3d 338, 344 (6th Cir. 2012).

The jury is entitled to know the “setting” of a case, including the “time, place and circumstances of the acts which form the basis of the charge.” *United States v. Roberts*, 548 F.2d 665, 667 (6th Cir. 1977), cert. denied, 431 U.S. 931 (1977). The Sixth Circuit “has consistently held that other acts, which are themselves part of the ‘setting’ of a case, are admissible.” *United States v. Davis*, No. 93-5984, 1994 WL 362061, *4 (6th Cir. 1994) (citations omitted). *See also United States v. Frederick*, 406 F.3d 754, 761 (6th Cir. 2005). Such evidence does not fall within the scope of Rule 404(b). *United States v. Barnes*, 49 F.3d 1144, 1149 (6th Cir. 1995). “Rule 404(b) does not apply where the challenged evidence is ‘inextricably intertwined’ with evidence of the crime charged in the indictment.” *Id.* (citing *United States v. Torres*, 685 F.2d 921, 924 (5th Cir. 1982) (per curiam)). The Sixth Circuit “allow[s] the trial court to admit evidence regarding a defendant’s unindicted criminal activity

when that activity is ‘intrinsic’ or ‘inextricably intertwined’ with charges named in the indictment.” *United States v. Churn*, 800 F.3d 768, 779 (6th Cir. 2015) (quoting *United States v. Potts*, No. 97-6000, 1999 WL 96756, *9 (6th Cir. 1999)).

The facts of this case involve evidence beyond the text messages Inman sent to the MRCCM that are identified in the indictment. At trial, the government will introduce evidence that trade associations, including the MRCCM and the IBEW, sought to identify legislators who might be persuaded to vote against the proposed repeal of the prevailing wage law. Those trade associations met with and contributed to the campaigns of several legislators, including Inman, months prior to the Michigan Board of State Canvassers’ certification of the prevailing wage initiative petition on June 1, 2018. The evidence will demonstrate that Inman believed he would face a hotly-contested race for his 2018 re-election and decided to use the prevailing wage initiative petition to unlawfully leverage his vote to raise additional campaign contributions from the trade associations. Inman’s text messages to the MRCCM set forth in the indictment made clear his intent to use his vote to obtain additional campaign contributions from not only MRCCM, but all of the trades: “. . . We all need more help! Carpenters have been good to me, where are the rest of the trades on checks?” (R.1: Indictment, PageID.2, ¶ 6.)

The jury is entitled to hear that the IBEW was one of the other trades involved in Inman’s extortion scheme. The text messages between Inman and the IBEW complete the story for the jury by making clear that Inman not only attempted to receive more contributions from the MRCCM, but also intended to leverage his vote to unlawfully obtain money from as many of the other trades as possible. He made that known to both the MRCCM and the IBEW only two days apart. Thus, Inman’s texts with the IBEW demonstrate that they are inextricably intertwined with the charged conduct because, like the text messages referenced in the indictment, the

messages Inman sent to the IBEW made clear that he intended to obtain funds from multiple trade associations: “It [the money] will have to come from all the trade unions associations, they told me \$30,000. I got \$5,000. :) . . .” (Proposed Trial Ex. 11, text no. 4.) Admission of the subject text messages will give the jury the proper background and setting for the case and provide appropriate context for evaluating the text messages he sent to MRCCM in his attempted extortion of that union.

For all of those reasons, the government respectfully requests that this Court issue a pretrial ruling that the June 1 text messages between Inman and the IBEW representative are admissible at trial as proper background or intrinsic evidence not subject to or barred by Rule 404(b).

B. Alternatively, the IBEW Text Messages are Admissible Under Rule 404(b) as Evidence of Other Acts to Prove Intent and Absence of Mistake.

The Federal Rules of Evidence provide that “[e]vidence of a crime, wrong, or other act is not admissible to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character,” but such “evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, [and] identity” Fed. R. Evid. 404(b). Application of Rule 404(b) involves a three-step process:

the district court must: (1) make a preliminary finding as to whether sufficient evidence exists that the prior act occurred; (2) determine whether the other act is admissible for one of the proper purposes outlined in Rule 404(b); and (3) apply Rule 403 balancing to determine whether the evidence’s probative value is substantially outweighed by the danger of unfair prejudice or the other concerns embodied in Rule 403.

United States v. Allen, 619 F.3d 518, 523 (6th Cir. 2010) (citing *United States v. Mack*, 258 F.3d 548, 553 (6th Cir. 2001)). The Sixth Circuit has repeatedly noted that Rule 404(b) is “a

rule of inclusion rather than exclusion.” *United States v. Blankenship*, 775 F.2d 735, 739 (6th Cir. 1985); *United States v. Myers*, 102 F.3d 227, 234 (6th Cir. 1996).

Here, sufficient evidence exists that Inman attempted to trade his “No” vote on the prevailing wage initiative petition for money from the IBEW. The text messages to the IBEW seized from Inman’s phone will be offered as evidence at trial. Moreover, the IBEW representative will testify as to his discussions with Inman, the receipt of the text messages, and his interpretation of the messages. This is more than sufficient to support a finding that the prior acts – Inman’s sending of the messages – actually occurred. *See United States v. Sandoval*, 460 F. App’x 552, 562 (6th Cir. 2012) (quoting *United States v. Johnson*, 458 F. App’x 464, 470 (6th Cir. 2012)) (“the testimony of a single witness is sufficient for a reasonable jury to conclude that the defendant committed the prior acts, even where the witness is less than completely reliable.”)

The second step (the proper-purpose analysis) is dependent upon what issues are contested in a particular case. “Evidence of other acts is probative of a material issue other than character if (1) the evidence is offered for an admissible purpose, (2) the purpose for which the evidence is offered is material or ‘in issue,’ and (3) the evidence is probative with regard to the purpose for which it is offered.” *United States v. Bell*, 516 F.3d 432, 441-42 (6th Cir. 2008) (quoting *United States v. Rayborn*, 495 F.3d 328, 342 (6th Cir. 2007)). Here, the “other acts” evidence is relevant to Inman’s intent and the absence of mistake. A detailed discussion of the elements of the offenses set forth in counts 1 and 2 was previously provided in the Government’s Response to the Court’s Briefing Order Dated June 29, 2019. (R.19: PageID.93-99.) Both counts set forth general intent crimes. (*Id.*) The Hobbs Act offense charged in count 1 requires the government to prove

that Inman knowingly engaged in a quid pro quo, offering to engage in an official act (here, the agreement to vote “No”) in exchange for money. (*Id.*, PageID.94, citing *Evans v. United States*, 504 U.S. 255, 268 (1992)). Similarly, the § 666 offense in count 2 requires the government to prove that Inman “corruptly solicited” something of value intending to be influenced with respect to an official act. (*Id.*, PageID.97, citing *United States v. Abbey*, 560 F.3d 513, 521 (6th Cir. 2009)).

Regarding the proper purpose of “intent,” courts look to “whether the evidence relates to conduct that is substantially similar and reasonably near in time to the specific intent offense at issue.” *United States v. Haywood*, 280 F.3d 715, 721 (6th Cir. 2002). Here, there is no question that Inman engaged in substantially similar conduct. In fact, his conduct on June 1, 2018, with the IBEW and memorialized in his text messages is nearly identical to the text messages that form the charged conduct. And, those text messages were sent within days of the text messages identified in the indictment that support the charged offenses. Given this context, the IBEW text messages are directly relevant to the jury’s assessment of whether Inman acted with the requisite intent two days later when he attempted to extort money from the MRCCM in exchange for his vote on the same issue.

The Sixth Circuit has approved of such other acts evidence in public corruption cases for the purpose of showing intent. For example, in *United States v. Davis*, 707 F.2d 880 (6th Cir. 1983), a Hobbs Act prosecution of a sheriff for extorting personal services from deputies who performed work at his home, the court approved of testimony by a deputy who previously performed work at the sheriff’s home before the charged conduct as probative of the sheriff’s intent to extort personal services as charged in the indictment. And, in *United States v. Benton*, 852 F.2d 1456, 1467-68 (6th Cir. 1988), the Sixth Circuit found that

evidence of other bribes or payoffs by defendant was admissible to show that the defendant possessed criminal intent with respect to the conduct charged as extortion under color of official right under the Hobbs Act. The *Benton* court noted that “[O]ther circuits have also held that evidence of prior bribes or payoffs is admissible to prove criminal intent relating to charges of extortion under color of official right under the Hobbs Act.” *Id.*, citing *United States v. Price*, 617 F.2d 455, 459-70 (7th Cir. 1979); *see also United States v. Smith*, 804 F.3d 724, 736 (5th Cir. 2015) (finding evidence of an uncharged bribe was admissible under Fed. R. Evid. 404(b) because it required the same intent as the charged bribe and thus “lessens the likelihood that the defendant committed the charged offense with innocent intent”); *United States v. Shields*, 999 F.2d 1090, 1099-1100 (7th Cir. 1993) (affirming the admission under Rule 404(b) of evidence of bribes the defendant paid to other public officials where he contested his corrupt intent in giving money to the public official who was his co-defendant).

Similarly, absence of mistake or accident is one of the permissible purposes listed in 404(b). To properly offer evidence of absence of mistake or accident “the government’s purpose in introducing the evidence must be to prove a fact that the defendant has placed, or conceivably will place, in issue” *Bell*, 516 F.3d at 442 (quoting *United States v. Merriweather*, 78 F.3d 1070, 1076 (6th Cir. 1996)). At trial, the government expects that Inman will claim that the government has misinterpreted the language of his text messages with the MRCCM, as he has previously stated in several interviews with the media subsequent to his indictment. According to Inman, text messages can be “taken out of context” and “misinterpreted,” and he clearly could have done a “better job” in stating what he truly intended. Given this likely position at trial, the jury is entitled to consider the IBEW text messages he sent only two days before he solicited the MRCCM. Those text

messages are highly probative of whether Inman's messages to the MRCCM between June 3-5 conveyed a meaning that Inman truly intended, and not one that was misinterpreted or a matter of a mistake or an accident. And all of the text messages were sent by Inman within one week of his June 6 vote on the prevailing wage repeal.

Under the third step of the 404(b) analysis, the Rule 403 balancing, courts "look at the evidence in a light most favorable to its proponent, maximizing its probative value and minimizing its prejudicial effect." *United States v. Perry*, 438 F.3d 642, 648 (6th Cir. 2006) (quotations omitted). "[A] district court should exclude evidence pursuant to Rule 403 only where the probative value of the relevant evidence is substantially outweighed by the danger of unfair prejudice" *Id.*; see also *Mack*, 258 F.3d at 555. Finally, a district court can effectively ameliorate any risk of unfair prejudice by issuing a limiting instruction establishing the basis for the inclusion of the Rule 404(b) evidence. See *Allen*, 619 F.3d at 525. "[L]imiting instructions go a long way to reducing any possible prejudice from Rule 404(b) evidence." *United States v. Washam*, 468 F. App'x 568, 573 (6th Cir. 2012) (citing *United States v. Lattner*, 385 F.3d 947, 958 (6th Cir. 2004)).

Here, the probative value of Inman's text messages with the IBEW are not outweighed, much less substantially outweighed, by their prejudicial effect. The text messages are highly probative of whether Inman sent the text messages to the MRCCM with the intent to extort money and with corrupt intent, and whether the words he chose conveyed a message by mistake or accident. "On the other side, the extrinsic offenses [are] not so heinous that the jury would be likely to convict [Inman] for the extrinsic offenses rather than the charged ones" *United States v. Hicks*, 798 F.2d 446, 451-52 (11th Cir. 1986). With an appropriate limiting instruction, the jury will understand that the IBEW text messages provide appropriate context and another

piece of the puzzle for it to consider when evaluating Inman's intent and meaning when sending the text messages to the MRCCM, and not an independent basis upon which to possibly convict. The admission of the June 1 text messages may be damaging to Inman's position – they appear to show a concerted effort to extort money from any trade union willing to pay for a “No” vote – but this does not render them inadmissible. *See United States v. Bilderbeck*, 163 F.3d 971, 978 (6th Cir. 1999) (affirming the admission of “highly probative” evidence and stating that “though the evidence was highly prejudicial to defendant, it cannot be said to have been unfairly prejudicial”).

CONCLUSION

For the reasons set forth above, the United States respectfully requests that this Court issue a pretrial order authorizing the admission of Inman's text messages with the IBEW at trial, with an appropriate limiting instruction.

Respectfully submitted,

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United States Attorney

Dated: August 1, 2019

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PROPOSED TRIAL EXHIBIT 11

Dave Fashbaugh

Number	Date/Time	From	To	Text Message Content
1	06/01/2018 3:54 p.m.	D. Fashbaugh	L. Inman	Hi Larry, hope you are well, I was wondering if there was any information I could get for you about the prevailing wage issue that you may be interested in reading about? I think I forwarded the study that was done about the wage repeal in Indiana and how it didn't effect the total cost of any or very few of the public projects after it was repealed. To me, if it didn't lower the cost of the projects I guess I would ask where did the money go that was supposed to be saved? I do know that it didn't go to the health insurance or retirement plans of middle class workers that will now end up on a dreaded social program or nothing. Both options end up with more cost to a tax payer and the middle man reaping the benefits of what should go to cover those needed items. It robs Peter to pay Paul. If you would like, I could show you our health plan and retirement plan costs and how efficient they are for the cost. All Building Trades labor unions have these and most workers will not have to rely on social programs because of them. Call

Number	Date/Time	From	To	Text Message Content
				any time, David Fashbaugh, IBEW Local 498. Traverse City MI.
2	06/01/2018 5:46 p.m.	L. Inman	D. Fashbaugh	Thanks , looks like we are going to get hit with Prevailing wage next week, I have whiped undecided. The ABC are all over me. If i take the vote no to send it to the ballott, I am going to need alot help and a ton of campaign money, Larry
3	06/01/2018 5:48 p.m.	D. Fashbaugh	L. Inman	What is the number and I will see what I can do,
4	06/01/2018 5:51 p.m.	L. Inman	D. Fashbaugh	It will have to come from all the trade unions associations, they told me \$30,000. I got \$5,000. :) Larry
5	06/01/2018 5:52 p.m.	L. Inman	D. Fashbaugh	Mostly from Lisa Canada from Carpenters , L
6	06/01/2018 5:55 p.m.	D. Fashbaugh	L. Inman	I am on it as we speak ah text.

Number	Date/Time	From	To	Text Message Content
7	06/01/2018 5:58 p.m.	D. Fashbaugh	L. Inman	Not sure if I will gear back tonight, I will try and let u know by Monday.
8	06/01/2018 6:00 p.m.	L. Inman	D. Fashbaugh	Thanks , we are barely keeping 12 no votes to kill it, but people are going to go threw hell, Lisa Canada has the 12 names of the dirty dozen, but the R party will be all over my ass. Me I need money , and then help with votes! Larry
9	06/01/2018 6:09 p.m.	D. Fashbaugh	L. Inman	I know mostly what we can provide is boots on the ground, a lot of my membership votes Republican. I know if you support us we will support you. That was stated by our international president that we will support the politicians that support us, either side of the isle.
10	06/01/2018 6:21 p.m.	L. Inman	D. Fashbaugh	Good to know ! Especially in the General , all the Dems have vote for me as Rep as Republican:) Larry