IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	
	)	
v.	)	Case No. 1:21-cr-00729-RBW
	)	
BRENT JOHN HOLDRIDGE	)	

DEFENDANT'S OPPOSITION TO GOVERNMENTS' NOTICE OF FED. R. EVID. 404(b) AND 609 EVIDENCE

a. Rule 404(b) Evidence

The government seeks to introduce testimony that Mr. Holdridge requested permission to travel to Louisiana from his supervising county probation officer, Officer Medley, in late 2020 but failed to request permission to attend the January 6, 2021, events at the Capitol as evidence of Mr. Holdridge's criminal "intent, plan, knowledge, and absence of mistake." Fed. R. Evid. 404(b)(2). The testimony should be excluded because the testimony, when viewed in full context, is not relevant to intent, plan, knowledge, or absence of mistake; and the testimony, which is impermissible propensity evidence, is more prejudicial than probative.

The government's argument that Mr. Holdridge's failure to request permission to travel is relevant to his intent, plan, knowledge, and absence of mistake is undermined by the greater context. "A proper analysis under Rule 404(b) begins with the question of relevance: is the other crime or act relevant and, if so, relevant to something other than the defendant's character or propensity?" *United States v. Bowie,* 232 F.3d 923, 930 (D.C. Cir. 2000). According to an FBI interview of Officer

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA UNITED STATES OF AMERICA)) v.) Case No. 1:21-cr-00729-RBW) BRENT JOHN HOLDRIDGE) DEFENDANT'S OPPOSITION TO GOVERNMENTS' NOTICE OF FED. R. EVID. 404(b) AND 609 EVIDENCE a. Rule 404(b) Evidence The government seeks to introduce testimony that Mr. Holdridge requested permission to travel to Louisiana from his supervising county probation officer, Officer Medley, in late 2020 but failed to request permission to attend the January 6, 2021, events at the Capitol as evidence of Mr. Holdridge's criminal "intent, plan, knowledge, and absence of mistake." Fed. R. Evid. 404(b)(2). The testimony should be excluded because the testimony, when viewed in full context, is not relevant to intent, plan, knowledge, or absence of mistake; and the testimony, which is impermissible propensity evidence, is more prejudicial than probative. The government's argument that Mr. Holdridge's failure to request permission to travel is relevant to his intent, plan, knowledge, and absence of mistake is undermined by the greater context. "A proper analysis under Rule 404(b) begins with the question of relevance: is the other crime or act relevant and, if so, relevant to something other than the defendant's character or propensity?" United States v. Bowie, 232 F.3d 923, 930 (D.C. Cir. 2000). According to an FBI interview of Officer 1 Medley (filed as Exhibit A with this motion), Mr. Holdridge knew that he had an outstanding warrant which resulted from his failure to present himself to jail in Humboldt County on December 5, 2020, so the likely reason for his not requesting permission to travel was that he was already in violation of the terms of supervision and did not wish to draw further attention to himself or his whereabouts. This interpretation is supported by Officer Medley's recollection that, six months later, Mr. Holdridge voluntarily disclosed that he had been at the Capitol on January 6, 2021 ("On July 28, 2021… Holdridge admitted to Medley he was at the U.S. Capitol in Washington, D.C. on January 6, 2021."). Had Mr. Holdridge made careful plans to avoid detection of his activities on January 6 because he planned and intended to break the law, it is unlikely that he would have casually disclosed his presence to a law enforcement officer six months later. The government's proposed testimony is not relevant to Mr. Holdridge's intent, plan, knowledge, or absence of mistake and should be excluded under Rule 404(b). Even if the Court determines that the proposed testimony is probative of a material issue other than character, the proposed testimony is far more prejudicial than probative and should be excluded under Rule 403. "Evidence is unfairly prejudicial if it prejudices a defendant's case for reasons other than its probative value, such as by creating 'an undue tendency to suggest decision on an improper basis.'" United States v. Wilkins, 538 F. Supp. 3d 49, 70 (D.D.C. 2021) (internal citations omitted). Here, the proposed testimony rests on Mr. Holdridge's supervision status, and the defense's necessary counterargument on Mr. Holdridge having absconded from supervision. The jury's takeaway from this testimony will certainly be that Mr. Holdridge is a lawbreaker and a criminal, who committed crimes and then absconded from supervision, and that he allegedly broke the law on January 6, 2021, because he acted in conformity with his lawless character. But this is exactly the sort of propensity evidence that Rule 404(b) forbids and, even if relevant for another purpose, that Rule 403 deems unfairly prejudicial. The proposed testimony is also of limited probative value. Even taken at face value, evidence that "Mr. Holdridge requested and received permission from his probation officer to travel from California to Louisiana to visit his ailing mother in late 2020" but did not request permission to travel to Washington, D.C. on January 6, 2021, hardly establishes "that he was fully aware that he lacked authority to enter the Capitol Building and Grounds on January 6, 2021, but that he intended and planned to do so." Docket 37 at 2. Because the probative value is minimal and the prejudicial effect of allowing the jury to learn that Mr. Holdridge is a convicted felon who absconded from supervision shortly before the events in this case is unfairly prejudicial, the Court should exclude the government's proposed 404(b) evidence. b. Rule 609 Evidence In the event that Mr. Holdridge testifies, the government seeks impeach him with evidence of seven prior felony convictions. The Court should exclude the convictions because they are more prejudicial than probative and because introducing six convictions for the same type of offense is needlessly cumulative. Fed. R. Evid. 3 403. "Among the factors pertinent to an inquiry into whether the probative value of the prior conviction outweighs its prejudicial effects are the nature of the crime, the time of the conviction, the similarity of the past crime to the charged crime, the importance of the defendant's testimony, and the degree to which the defendant's credibility is central to the case." United States v. Jackson, 627 F.2d 1198, 1209 (D.C. Cir. 1980). Here, six of the seven convictions the government seeks to introduce are for drug sales, and one is for possession of a firearm by a felon. The nature of the crimes does not bear on Mr. Holdridge's truthfulness which makes them less probative. Three of the prior convictions are over ten years old and four are more recent. The crimes bear no immediate resemblance to the current offense, and while that may somewhat mitigate the danger of their use for a propensity purpose, the current charges center around a defendant's willingness to ignore the rule of law and the sheer number of convictions would prejudice Mr. Holdridge. Finally, because the case turns on Mr. Holdridge's intent and knowledge, his testimony and credibility could be critical. The prior convictions are more prejudicial than probative and should be excluded. Even if the Court is inclined to admit some of the prior convictions, admitting six prior convictions for drug sales is needlessly cumulative. Admitting Mr. Holdridge's most recent conviction would allow the government to impeach him while not unfairly prejudicing him or wasting time. 4 Dated: July 1, 2022 Respectfully submitted, JODI LINKER Federal Public Defender /S WHAYEUN (CHLOE) KIM GABRIELA BISCHOF Assistant Federal Public Defenders 5

absconded from supervision. The jury's takeaway from this testimony will certainly be that Mr. Holdridge is a lawbreaker and a criminal, who committed crimes and then absconded from supervision, and that he allegedly broke the law on January 6, 2021, because he acted in conformity with his lawless character. But this is exactly the sort of propensity evidence that Rule 404(b) forbids and, even if relevant for another purpose, that Rule 403 deems unfairly prejudicial.

The proposed testimony is also of limited probative value. Even taken at face value, evidence that "Mr. Holdridge requested and received permission from his probation officer to travel from California to Louisiana to visit his ailing mother in late 2020" but did not request permission to travel to Washington D.C. on January 6, 2021, hardly establishes "that he was fully aware that he lacked authority to enter the Capitol Building and Grounds on January 6, 2021, but that he intended and planned to do so." Docket 37 at 2. Because the probative value is minimal and the prejudicial effect of allowing the jury to learn that Mr. Holdridge is a convicted felon who absconded from supervision shortly before the events in this case is unfairly prejudicial, the Court should exclude the government's proposed 404(b) evidence.

b. Rule 609 Evidence

In the event that Mr. Holdridge testifies, the government seeks impeach him with evidence of seven prior felony convictions. The Court should exclude the convictions because they are more prejudicial than probative and because introducing six convictions for the same type of offense is needlessly cumulative. Fed. R. Evid.

403. "Among the factors pertinent to an inquiry into whether the probative value of the prior conviction outweighs its prejudicial effects are the nature of the crime, the time of the conviction, the similarity of the past crime to the charged crime, the importance of the defendant's testimony, and the degree to which the defendant's credibility is central to the case." *United States v. Jackson*, 627 F.2d 1198, 1209 (D.C. Cir. 1980). Here, six of the seven convictions the government seeks to introduce are for drug sales, and one is for possession of a firearm by a felon. The nature of the crimes does not bear on Mr. Holdridge's truthfulness which makes them less probative. Three of the prior convictions are over ten years old and four are more recent. The crimes bear no immediate resemblance to the current offense, and while that may somewhat mitigate the danger of their use for a propensity purpose, the current charges center around a defendant's willingness to ignore the rule of law and the sheer number of convictions would prejudice Mr. Holdridge. Finally, because the case turns on Mr. Holdridge's intent and knowledge, his testimony and credibility could be critical. The prior convictions are more prejudicial than probative and should be excluded. Even if the Court is inclined to admit some of the prior convictions, admitting six prior convictions for drug sales is needlessly cumulative. Admitting Mr. Holdridge's most recent conviction would allow the government to impeach him while not unfairly prejudicing him or wasting time.

Dated: July 1, 2022

Respectfully submitted,

JODI LINKER
Federal Public Defender
Northern District of California

/S
WHAYEUN (CHLOE) KIM
GABRIELA BISCHOF
Assistant Federal Public Defenders