

AB:RB/EMN/MMS  
F.#2007R00730

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - -X

UNITED STATES OF AMERICA

- against -

Cr. No. 08-76 (S-13) (JBW)

CHARLES CARNEGLIA,

Defendant.

- - - - -X

GOVERNMENT'S MOTION IN LIMINE TO INTRODUCE CERTAIN EVIDENCE

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PRELIMINARY STATEMENT

The government submits this motion in limine to admit certain evidence at trial of uncharged crimes and other acts committed by the defendant. As set forth below, the evidence is admissible as direct proof of the structure and organization of the charged racketeering enterprise, the defendant's membership and on-going participation in the enterprise's illegal activities for over 30 years, and the existence, nature and continuity of the charged racketeering conspiracy.

In the alternative, the evidence is admissible as "other crimes, wrongs or acts" under Rule 404(b) of the Federal Rules of Evidence because it tends to establish the defendant's knowledge and intent with respect to the charged crimes and is probative of the issues of planning, preparation and absence of mistake with respect to the conspiracy. The evidence also provides background of the conspiracy, explains how the relationship of trust among the coconspirators developed and enables the jury to understand the complete story of the charged crimes.

Further, the evidence offered to prove the structure and organization of the charged racketeering enterprise, the defendant's membership and on-going participation in the enterprise's illegal activities, and the existence, nature and continuity of the charged racketeering conspiracy is expected to include coconspirator statements, that is, statements made by

members and associates of the enterprise, the Gambino organized crime family of La Cosa Nostra, including cooperating witness testimony, consensually recorded conversations and wiretap recordings of members and associates of the Gambino family and other families in La Cosa Nostra. While the admissibility of coconspirator statements will necessarily depend on the evidence at trial, such statements are properly admitted pursuant to Rule 801(d)(2)(E) of the Federal Rules of Evidence.

For the reasons set forth below, the Court should grant the government's motion.

#### BACKGROUND

The defendant is charged in a superseding indictment with racketeering conspiracy that includes predicate acts of murder/murder conspiracy/attempted murder, narcotics distribution conspiracy, extortion/extortion conspiracy/attempted extortion, extortionate collection of credit/extortionate collection of credit conspiracy, securities fraud conspiracy, kidnaping conspiracy/kidnaping, robbery/robbery conspiracy and extortionate extension of credit conspiracy, as well as substantive counts mirroring certain of those acts.

The defendant is a longstanding soldier in the Gambino organized crime family of La Cosa Nostra (the "Gambino family"). The defendant is charged as part of an organized criminal enterprise -- the Gambino family -- that engaged in a pattern of

racketeering activity involving murder, extortion, drug trafficking, extortionate extension and collection of credit, robbery and kidnaping, among other crimes, from 1975 to 2008.

In order to satisfy the elements of racketeering conspiracy, the government intends to introduce, among other evidence, the testimony of cooperating witnesses who participated in the charged crimes as coconspirators with the defendant in furtherance of the enterprise. The cooperating witnesses are expected to testify in detail about their own criminal backgrounds, their relationship with the defendant and other members and associates of the Gambino family, their own and the defendant's participation in the Gambino family's illegal activities, and the existence, nature and continuity of the racketeering conspiracy.

As part and parcel of their testimony, the cooperating witnesses are expected to testify about their knowledge of and participation in "uncharged crimes" -- i.e., racketeering activity encompassed by Count One's RICO conspiracy charge that is not detailed in the specific racketeering acts in the superseding indictment. These crimes and other acts that the government seeks to introduce at trial include a number of murder conspiracies, assaults, extortions and robberies, as well as instances of drug trafficking, weapons possession and trafficking, obstruction of justice, fraud, illegal gambling, car theft and narcotics possession/use. These crimes and other acts

are set forth below following a brief account of the similar charges detailed in the indictment to provide context.

A. Murder, Murder Conspiracy, Murder Solicitation, Attempted Murder and Accessory to Murder After the Fact

1. Charged Crimes

The defendant is charged with the following murders.

- Murder of Albert Gelb

The defendant is charged with the fatal shooting of Albert Gelb, a Brooklyn criminal court officer, near his home in Queens on March 11, 1976. Gelb was expected to testify against Carneglia at a trial arising from an incident in February 1975 in which Gelb stopped the defendant for possessing a handgun. The defendant killed Gelb four days before Gelb was scheduled to testify against the defendant. During the period between the defendant's arrest and Gelb's murder, Gelb received numerous threats warning him that if he testified against the defendant he would be killed. Following the murder, the defendant bragged about killing Gelb, stating that Gelb got what he deserved for trying to be a hero -- i.e., standing up to an associate in the Gambino family in court.

- Murder of Michael Cotillo

The defendant is also charged with the November 6, 1977 fatal stabbing of Michael Cotillo outside the Blue Fountain Diner in Queens. The defendant stabbed and killed Cotillo due to a dispute concerning one of the defendant's associates. Following

the murder, the Gambino family underboss and powerful members of the defendant's crew protected the defendant from retaliation at the hands of other Gambino family members and associates who were close to Cotillo because of the defendant's value to the family as an associate willing to commit violence, including murder, on command.

- Murder of Salvatore Puma

The defendant is also charged in the fatal stabbing of Gambino family associate Salvatore Puma on a street corner in Queens on July 28, 1983 (Puma died the following day). Following an argument related to one of the defendant's jailed associates, Carneglia stabbed Puma in the chest, resulting in his death the following day at the hospital.

- Murder of Louis DiBono

The defendant is also charged in the murder of Gambino family soldier Louis DiBono. On October 2, 1990, on the orders of John Gotti Sr., the boss of the Gambino family at the time, and John Gotti Jr., a Gambino family captain at the time, the defendant shot and killed DiBono in the parking garage of the World Trade Center in Manhattan, after DiBono had repeatedly disobeyed Gotti Sr.'s orders to meet with him. Former Gambino family associates who are now cooperating witnesses (CW1 and CW2) participated in the DiBono murder conspiracy with the defendant.

- Felony Murder of Jose Delgado-Rivera

The defendant is also charged with the December 14, 1990 felony murder of Jose Delgado-Rivera during the course of robbing an armored truck delivering money to the American Airlines building at John F. Kennedy International Airport. After months of planning and surveillance involving the defendant, CW2 and another former Gambino family associate who is now a cooperating witness (CW3), among others, the defendant, CW2 and an accomplice set out to commit the robbery. During the course of the robbery, the defendant and an accomplice shot and killed Delgado Rivera.

- 2. Uncharged Crimes

The government possesses evidence of the defendant's participation, together with Gambino family members and associates, in the following "uncharged crimes."

- John Gammarano and Danny Marino Murder Conspiracy

In approximately 1992, upon the request of John Gotti Jr., at the time a member of the Gambino family's ruling committee, the defendant and Gambino family soldier Thomas Cacciopoli agreed to murder Gambino family soldiers John Gammarano and Danny Marino. The defendant and Cacciopoli agreed to hide in the bedroom of an apartment with guns drawn while Gotti Jr. and a cooperating witness who is a former Gambino family captain (CW4) met with Gambino family soldiers John

Gammarano and Danny Marino in the living room. Upon a signal from Gotti Jr., the defendant and Cacciopoli were to emerge and kill Gammarano and Marino. Gotti Jr. called the meeting based on his belief that Gammarano and Marino were not properly passing along money related to the Gambino family's extortion of a large construction concern. The murder did not take place because Gotti Jr. learned that his father had provided permission to Gammarano and Marino to keep the money at issue.

- Vito Guzzo Murder Conspiracy

In approximately 1994, the defendant asked Gambino family associates CW1 and CW2, as well as Gambino family associate Michael Finnerty, to help him kill Vito Guzzo, an associate of the Colombo organized crime family of La Cosa Nostra (the "Colombo family"). Thereafter, in various combinations, the defendant, CW1, CW2 and Finnerty drove through Queens, looking for Guzzo to determine a pattern to his day-to-day activities in order to devise a plan to carry out the murder. On at least one of these occasions, the defendant and CW1 were armed and ready to kill Guzzo if the opportunity arose.

- CW3 Murder Conspiracy<sup>1</sup>

In approximately 1995, the defendant asked Gambino family associate CW1 to assist him in a plot to kill Gambino

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<sup>1</sup> The government has advised defense counsel of the identity of CW3, together with all victim information, in a prior communication.



family associate CW3. Specifically, the defendant requested that CW1 lure CW3 to a prearranged location where the defendant would kill him. CW1 did not perform as requested and the murder did not take place. The defendant's decision to kill CW3 stemmed from an ongoing dispute concerning CW3's refusal to repay the defendant for money lost relating to a seized shipment of marijuana.<sup>2</sup>

- Cliffy LNU Murder Solicitation

In approximately 1995, the defendant asked Gambino family associate CW1 to contact Gambino family soldier Ronald Trucchio in order to request permission to kill Cliffy LNU, a Gambino family associate who reported to Trucchio. The defendant told CW1 that he wanted to kill Cliffy LNU because he had shot Joseph Panzarella Jr., a Gambino family associate who reported to the defendant.<sup>3</sup> Trucchio denied the request and the defendant did not kill Cliffy LNU.

- Frank Guidici Murder Conspiracy

In approximately 2000, the defendant provided Gambino family associate CW1 with a gun and directed him to accompany

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<sup>2</sup> The seized shipment is encompassed by the marijuana trafficking charges in Racketeering Act Four. The defendant's extortionate attempt to collect money from CW3 relating to the seized shipment is charged in Racketeering Act Eight.

<sup>3</sup> Joseph Panzarella Jr. is an unnamed coconspirator in Racketeering Acts Seven, Eight, Eleven, Twelve and Eighteen, as well as Counts Two, Five and Six.

Gambino family associate CW2 while CW2 attempted to collect money from Frank Guidici. The defendant had been attempting to collect money from Guidici for his brother, incarcerated Gambino family captain John Carneglia. The defendant instructed CW1 to shoot Guidici upon a signal from CW2, to be given if Guidici did not properly respond to CW2's demands for money.

- John Favara - Accessory to Murder

In 1980, upon the direction of Gambino family soldier Angelo Ruggiero, the defendant disposed of the body of John Favara. John Gotti Sr., a powerful Gambino captain at the time and the future boss, ordered Favara's murder because Favara accidentally struck and killed Gotti Sr.'s son when the boy darted into traffic riding a dirtbike that he had borrowed from CW2.<sup>4</sup> The defendant told Gambino family associates CW2 and CW3 that he disposed of bodies for the Gambino family, and told CW2 that he disposed of Favara's body by placing it in a barrel of acid. In a later discussion concerning his expertise at disposing of bodies for the Gambino family, which included a discussion of a book the defendant was reading on dismemberment, the defendant informed Gambino family associate CW1 that acid was the best method to use to avoid detection. Years later, the defendant asked CW2 to help him move barrels of acid in his

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<sup>4</sup> The defendant informed CW2 that he protected him from retaliation by John Gotti Sr.

basement, and alluded to the fact that the barrels had been used in connection with disposing of a number of bodies, which CW2 understood to be a key component of the defendant's value to the Gambino family.

B. Other Crimes of Violence: Extortions, Assaults, Kidnaping, Armed Robberies and Firearms Possession/Trafficking

1. Charged Crimes

The defendant is charged in the following crimes of violence.

• Extortion of John Doe #1<sup>5</sup>

The defendant is charged in a long-running conspiracy to extort weekly protection and other tribute payments from an individual identified as John Doe #1 in the indictment from approximately January 1991 to May 2005. John Doe #1 paid the defendant \$400 per week for a ten-year period -- resulting in extortion payments totaling more than \$200,000 -- as well as tens of thousands more in tribute and other payments.

• Extortionate Collection of Credit - CW3<sup>6</sup>

The defendant conspired with his brother, Gambino family captain John Carneglia, as well as Gambino family

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<sup>5</sup> The government has advised defense counsel of the identity of John Doe #1, together with all victim information, in a prior communication.

<sup>6</sup> The government has advised defense counsel of the identity of CW3, together with all victim information, in a prior communication.

associates CW2 and Joseph Panzarella Jr. to use extortionate means to collect money relating to a seized shipment of marijuana from Gambino family associate CW3. The defendant and his co-conspirators attempted to collect the money from approximately 1991 to 1994. CW3 eventually paid the defendant a portion of the money the defendant demanded.

- Extortion of John Doe #3<sup>7</sup>

The defendant and his brother, Gambino family captain John Carneglia, conspired to use their positions in the Gambino family to extort money from a Gambino family associate identified in the indictment as John Doe #3 over an approximately 15-year period starting in 1992.

- Extortion of Condominium Owners

From approximately 1999 to 2004, the defendant conspired with Gambino family associates Joseph Panzarella Sr., Glen Bitet, Robert Porto, Allen Meshanski and others to extort money from condominium owners at the time they sold their units by levying fraudulent or inflated charges.

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<sup>7</sup> Defense counsel has been advised of the identity of John Doe #3, together with all victim information, in a prior communication.

- Attempted Extortion of John Doe #10<sup>8</sup>

In 2007, the defendant and Gambino family associate Joseph Panzarella Jr., attempted to extort the owner of a restaurant/nightclub in Westbury, Long Island, identified in the indictment as John Doe #10. John Doe #10 was already being extorted by members of the Colombo family. The defendant's attempted extortion was ultimately unsuccessful.

- Armed Robbery of Sears Department Store

The defendant is also charged in the robbery of a Sears Department Store in Vineland, New Jersey on September 5, 1995. The defendant participated in the robbery conspiracy together with Gambino family associates CW1 and CW2, as well as three other former Gambino family associates who are now cooperating witnesses (CW5, CW6 and CW7).

- Armed Robbery of Papaverio Funeral Home

The defendant is charged in the 1995 armed robbery of the Papaverio Funeral Home in Maspeth, Queens. The defendant participated in the robbery together with Gambino family associates Ray Assante, CW1, CW2, CW5 and CW6.

- Armed Robbery of Armored Truck at J.F.K. Airport

As noted above, the defendant is also charged with the December 14, 1990 felony murder of Jose Delgado-Rivera during the

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<sup>8</sup> The government has advised defense counsel of the identity of John Doe #10, together with all victim information, in a prior communication.

course of robbing an armored truck delivering money to the American Airlines building at John F. Kennedy International Airport. Former Gambino family associates CW2 and CW3 also participated in the robbery conspiracy.

- Kidnaping

The defendant conspired with others to kidnap David D'Arpino, Dennis Cassara and possibly a third individual relating to an incident at the house of the defendant's nephew in approximately the spring or summer of 1994. The individuals were brought to a location controlled by the defendant, where he assaulted them while questioning them about the incident.

2. Uncharged Crimes

The government possesses evidence of the defendant's participation, together with Gambino family members and associates, in the following "uncharged crimes."

- Assault of Carmine Agnello and Andrew Curro

In the late 1970s or early 1980s, the defendant's brother was ordered by John Gotti Sr., to assault Gambino family solidier Carmine Agnello for reasons relating to Agnello's relationship with Gotti Sr.'s daughter, Victoria. John Carneglia, the defendant, CW3, Andrew Curro and another individual found Agnello, whereupon John Carneglia and CW3 fired multiple shots at Agnello, hitting him in the buttocks. They continued to assault Agnello, sending him to the hospital. The defendant later informed CW2 that he shot Agnello because he had

been disrespectful to him and his brother, and informed CW8, a former Gambino family associate who is now a cooperating witness, that he shot Agnello as punishment for dating the daughter of John Gotti Sr.

Shortly after this incident, the defendant, Curro and others were at the Lindenwood Diner. Curro and the defendant had an argument, and the defendant shot Curro in the leg. The defendant later told CW2 that he shot Curro because Curro was being disrespectful to an associate of Agnello during a discussion of the prior shooting.

- Assault of Nicky Pasquale

In the late 1980s, the defendant provided CW1 with a gun and instructed him to shoot Gambino family associate Nicky Pasquale, who had accused the defendant and CW1 of failing to pay a debt related to bribing a witness. CW1 shot Pasquale in the leg multiple times. Pasquale's leg ultimately had to be amputated.

- Assault of Louis Aurrichio

In approximately 1996, the defendant ordered Gambino family associate CW1 to assault Genovese family associate Louis Aurrichio as a favor to a Luchese family associate. CW1 assaulted Aurrichio, who was incarcerated at FCI Fairton at the time, on the defendant's orders.

- Assault of Angelo Ruggiero Jr.

In approximately the late 1990s or early 2000s, the defendant assaulted Gambino family associate Angelo Ruggiero Jr. Ruggiero told CW3 that the defendant assaulted him after the defendant accused him of robbing him. The defendant told CW9 (John Doe #10), a former Gambino associate who is now a cooperating witness, that he assaulted Ruggiero Jr. because he thought he was stealing. The defendant told CW2 about the incident as well. CW3 and CW9 recall that there was a sitdown after the incident mediated by Peter Gotti, who was then either a captain or the acting boss of the Gambino family.

In approximately 2006, CW2 ran into Ruggiero Jr. and asked him why he continued to hang around the defendant given what the defendant had done to him. Ruggiero Jr. responded that the defendant was his "brother" now. (Ruggiero Jr. became a made member of the Gambino family in 2004.)

- Extortion of Gambino Family Associates

The defendant extorted Gambino family associates Michael Reiter, Keith Pellegrino and Joseph Panzarella Jr. requiring them to make regular extortion payments to him over long periods of time, in addition to requiring them to provide the defendant with a percentage of any criminal activity in which they took part.



- Extortion/Attempted Extortion of Businesses

In the late 1990s through 2000, the defendant, together with Gambino captain Salvatore Scala and Gambino family associates Ronald DeConza, Carl Kline, CW2 and others, attempted to extort and extorted two adult entertainment businesses located in Long Island. CW2 pled guilty to this crime and the defendant was convicted of one of the extortions following a jury trial.

From the early 1990s through the mid-2000s, the defendant extorted the owner of Montana's nightclub and Viva Loco restaurant, both in Long Island. CW3 and CW9 learned from the defendant that he frequently visited both establishments and refused to pay for the food and drink he and his associates consumed.

In approximately 1997, the defendant, together with Gambino family soldier Angelo Ruggiero Jr., attempted to extort the owner of a pool building company by threatening him with violence if he did not pay money each week to the defendant. Gambino family associate CW1 prevented the extortion from occurring by informing the defendant that the owner of the company was under his protection.

- Armored Car Robbery

In the early 1990s, the defendant and a number of Gambino family associates, including CW2, took part in the armed robbery of an armored truck in Queens. While CW2 aimed a shotgun at the driver of the truck, others collected approximately

\$150,000 in cash. The defendant kept watch nearby in a "crash car," ready to provide interference to help the robbers escape if the police came.

- Weapons Possession/Trafficking

The defendant provided guns to Gambino family associates CW1 and CW2 on numerous occasions. The defendant provided guns to be used both in the charged and uncharged crimes. The defendant also had CW1 and CW2 hold onto the guns for him. In addition, on various occasions, numerous cooperating witnesses observed the defendant with guns and silencers. Indeed, CW2 will testify that the defendant used a gun with a silencer to kill Louis DiBono, one of the charged crimes noted above.

C. Narcotics Trafficking and Possession

1. Charged Crime

From approximately 1988 to 1991, the defendant and others, including his brother, Gambino family captain John Carneglia, and Gambino family associates CW2 and CW3, conspired to distribute and possessed with intent to distribute marijuana.

2. Uncharged Crimes

The government possesses evidence of the defendant's participation, together with Gambino family members and associates, in the following "uncharged crimes."

- Narcotics Trafficking

From the 1970s through the mid-1990s, the defendant and various Gambino family associates, including CW1, CW2 and CW3, bought and sold marijuana.

- Narcotics Possession

Throughout the period all of the cooperating witnesses knew the defendant, they knew him to possess and use illegal drugs, including cocaine and marijuana, among other drugs. His drug use led to erratic behavior, which impacted his performance in a number of the crimes charged, and made him more talkative, which sometimes led him to discuss of a number of the crimes charged with various cooperating witnesses.

D. Other Crimes: Securities Fraud, Art Fraud, Obstruction of Justice, Illegal Gambling and Car Theft

1. Charged Crime

The defendant is charged with participating in a securities fraud conspiracy with CW9, a former Gambino family associate who was long under his control. The defendant participated in the fraud primarily by protecting the interests of CW9, who ran a boiler room, in disputes that arose concerning the fraud with other members and associates of organized crime.

2. Uncharged Crimes

The government possesses evidence of the defendant's participation, together with Gambino family members and associates, in the following "uncharged crimes."

- Securities Fraud

The defendant participated in a securities fraud conspiracy with Michael Reiter, a former Gambino family associate under his control, by protecting the interests of Reiter in disputes that arose concerning the fraud with other members and associates of organized crime.

- Art Fraud

In the early 2000s, together with Gambino family associates CW2 and Dominic Curra, the defendant participated in a conspiracy to sell forged works of art, acquired as payment for the defendant's assistance in extortionately collecting a debt.

- Obstruction of Justice

In the late 1980s, the defendant and Gambino family associate CW1 paid a police officer \$60,000 in order to prevent the police officer from identifying two Gambino family associates who shot the officer during a dispute in CW1's "after hours" club. The defendant and CW1 entrusted Nicky Pasquale, who ran the club for CW1, to deliver the money to the police officer. A dispute relating to this payment led to the assault of Pasquale noted above.

- Illegal Gambling

The defendant instructed Gambino family associate CW1, who operated an illegal sports betting operation, to "take action" (i.e., take bets) originally placed with Philly LNU, the proprietor of Philly's Bait and Tackle Shop and a Gambino family

associate under the defendant. CW1 agreed to do so on the defendant's orders.

- Car Theft

CW3 will testify that he stole cars for the defendant in the 1970s. The defendant paid cash for stolen cars that were brought to him and made money by "chopping" the cars up and selling the parts or by "tagging" them and selling them under new vehicle identification numbers.

### ARGUMENT

All of the evidence identified above is direct proof of the racketeering enterprise and conspiracy charged in the superseding indictment, which spans 33 years. As such, it does not constitute uncharged crimes or other act evidence under Rule 404(b). Nevertheless, even if it were to constitute such evidence, it is admissible under Rule 404(b) to show knowledge, intent, planning, preparation and the absence of mistake, while also providing background of the conspiracy, explaining the relationship of trust between the coconspirators and completing the story of the charged crimes.

#### I. Legal Standard

##### A. Evidence of Uncharged Crimes and Other Acts Is Admissible to Establish the Charged Conspiracy

The Second Circuit has repeatedly held that evidence of "other" or "uncharged" crimes is admissible to establish the existence of the charged conspiracy in prosecutions for

racketeering offenses. See United States v. Baez, 349 F.3d 90, 93 (2d Cir. 2003). In Baez, the court observed that “[i]t is well-settled that in prosecutions for racketeering offenses, the government may introduce evidence of uncharged offenses to establish the existence of the criminal enterprise.” Id. (upholding the district court’s admission of sixteen uncharged robberies).

Accordingly, such evidence is admissible as direct proof of the crimes charged and need not be admitted as “other act” evidence within the meaning of Rule 404(b) of the Federal Rules of Criminal Procedure. “An act that is alleged to have been done in furtherance of the alleged conspiracy . . . is not an ‘other act’ within the meaning of Rule 404(b); rather, it is part of the very act charged.” United States v. Concepcion, 983 F.2d 369, 392 (2d Cir. 1992). Thus, crimes committed in furtherance of the racketeering enterprise or other conspiracies do not fall within the ambit of Rule 404(b). See United States v. DiNome, 954 F.2d 839, 843 (2d Cir. 1992) (evidence of uncharged murders admissible to prove relationship and continuity of racketeering enterprise’s illegal activities); United States v. Miller, 116 F.3d 641, 682 (2d Cir. 1997) (uncharged murders admissible to prove the existence and the nature of the conspiracy); United States v. Bagaric, 706 F.2d 42, 64 (2d Cir. 1983), abrogated on other grounds by National Organization for Women, Inc. v. Scheidler, 510 U.S. 249 (1994) (evidence of

uncharged crime properly admitted as proof of defendant's membership in criminal racketeering enterprise).

In United States v. Wong, 40 F.3d 1347 (2d Cir. 1994), the Second Circuit held that the district court properly permitted testimony concerning an uncharged shootout between rival gangs. In affirming the court's ruling, the Second Circuit noted that:

[T]he evidence [of uncharged acts] was admissible to prove the existence and nature of the Green Dragons enterprise and the participation of the defendants-appellants in that enterprise, rather than as evidence of other crimes under Rule 404(b). The court determined that although other evidence had been admitted regarding defendants' violent conduct, the challenged evidence was not cumulative because "there is no piece of evidence that the government has proffered that I do not expect will be subject to challenge, if not here during the evidentiary phase of the trial, [then] during the summations of counsel."

Id. at 1378. The Second Circuit added, "this evidence was probative of the existence, organization and nature of the RICO enterprise, a central allegation in the indictment. Accordingly, 'the fact that it may also have been probative of a separate, uncharged crime is irrelevant.'" Id. (quoting United States v. Coiro, 922 F.2d 1008, 1016 (2d Cir. 1991)).

The Second Circuit re-affirmed this principle in United States v. Diaz, 176 F.3d 52 (2d Cir. 1999). In that case, the defendants were charged with racketeering violations based on their participation in the Latin Kings street gang. The

government introduced evidence of many uncharged crimes undertaken in furtherance of that enterprise, including drug trafficking, possession of weapons, assaults in aid of racketeering, robbery and related acts of violence. On appeal, the defendants claimed that the district court erred by admitting such evidence. The Second Circuit rejected that claim, holding that the acts constituted proof of the racketeering enterprise and fell outside Rule 404(b). See id. at 79; see also Miller, 116 F.3d at 682 (upholding the admission of uncharged murders as proof of a racketeering enterprise and conspiracy without regard to Rule 404(b)).

B. Evidence of Uncharged Crimes and Other Acts Is Admissible Under Rule 404(b)

In the alternative, the evidence set forth above is admissible under Rule 404(b). A party must satisfy three requirements in order for evidence of "other crimes, wrongs or acts" to be admitted under Rule 404(b). First, the evidence must be offered for a purpose other than to prove the defendant's bad character or criminal propensity. See United States v. Mickens, 926 F.2d 1323, 1328 (2d Cir. 1991); United States v. Colon, 880 F.2d 650, 656 (2d Cir. 1989). Second, the evidence must be relevant under Rules 401 and 402 and more probative than prejudicial in accordance with Rule 403. See Mickens, 926 F.2d at 1328; United States v. Ortiz, 857 F.2d 900, 903 (2d Cir. 1988); United States v. Levy, 731 F.2d 997, 1002 (2d Cir. 1984);



United States v. Mohel, 604 F.2d 748 (2d Cir. 1979). Third, if the defendant requests that the jury be instructed as to the limited purpose for which the government's evidence is being admitted, the court must furnish such an instruction. See Mickens, 926 F.2d at 1328-29; Levy, 731 F.2d at 1002.

While the government "must explain in detail the purposes for which the evidence is sought to be admitted," the Second Circuit has emphasized that Rule 404(b) is a rule of broad reach and liberal application. Levy, 731 F.2d at 1002 (citing United States v. O'Connor, 580 F.2d 38, 40 (2d Cir. 1978) ("We have adopted the inclusionary or positive approach to [404(b)]; as long as the evidence is not offered to prove propensity, it is admissible.")).<sup>9</sup>

1. Evidence Offered to Show Knowledge, Intent and Lack of Mistake or Accident Is Admissible

The Second Circuit has upheld the admissibility of prior uncharged criminal conduct when the evidence assists the jury in assessing the defendant's intent and knowledge with respect to the crimes charged. For example, in the context of a narcotics trafficking case, when a defendant does not deny his

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<sup>9</sup> Under this framework, subsequent bad acts are not subject to any more of a demanding standard of relevance than prior bad acts. So long as the subsequent bad act is offered for a proper purpose and the evidence of it is such that a jury could reasonably find by a preponderance that the act occurred and that the defendant was the actor, it is relevant as a matter of law. See United States v. Geramosen, 139 F.3d 120, 128 (2d Cir. 1998); United States v. Ramirez, 894 F.2d 565, 568-70 (2d Cir. 1990).

presence at the scene of a drug transaction but claims instead that he had no knowledge or intent with respect to the deal -- a so-called "mere presence" defense -- the Second Circuit has upheld the admission of evidence of prior possession of narcotics, see United States v. Pitre, 960 F.2d 1112, 1119 (2d Cir. 1992); United States v. Bruno, 873 F.2d 555, 561-62 (2d Cir. 1989), prior narcotics negotiations with an undercover agent, see United States v. Fernandez, 829 F.2d 363, 367 (2d Cir. 1987), and prior narcotics-related crimes, see United States v. Tussa, 816 F.2d 58, 68 (2d Cir. 1987); see also United States v. Ciro, 753 F.2d 248, 250 (2d Cir. 1985) (possession of small quantity of cocaine "properly admitted to rebut the impression defense counsel apparently tried to create [during cross-examination] that [the defendant] might not have known that her conversation with [an undercover detective] was about cocaine").

Similarly, evidence of other criminal acts can be used to counter a claim of mistake or accident. See, e.g., United States v. Pelusio, 725 F.2d 161, 167-68 (2d Cir. 1983) (evidence of prior occasions on which defendant had been in car with a shotgun could be used to show that defendant's presence in car with a shotgun in case at bar was intentional and not a mistake or accident); United States v. Gomez, 927 F.2d 1530, 1534 (11th Cir. 1991) (evidence of prior conviction for carrying concealed

weapon properly admitted to rebut defendant's claim that he possessed gun at issue for innocent purpose and that its presence in car was "mere accident or coincidence").

2. Evidence Offered to Explain Background,  
Show Relationships of Trust and Complete  
the Story Is Admissible

The Second Circuit has also approved of introducing evidence under Rule 404(b) to provide background information and enable the jury to understand the complete story of the crime charged. See, e.g., United States v. Skowronski, 968 F.2d 242, 246 (2d Cir. 1992) (collecting cases); Pitre, 960 F.2d at 1119; United States v. Brennan, 798 F.2d 581, 590 (2d Cir. 1986). Such background evidence has been specifically approved when introduced "to furnish an explanation of the understanding or intent with which acts were performed." Skowronski, 968 F.2d at 246.

In Brennan, for example, a former New York State Supreme Court justice was charged with fixing four criminal cases. See Brennan, 798 F.2d at 583. The government's central witness, Anthony Bruno, served as a middleman between the state court defendants and then-Justice Brennan. See id. The contested evidence involved the alleged fixing by Brennan and Bruno of three criminal cases not charged in the indictment. See id. at 589. The Second Circuit affirmed the admission of that evidence, reasoning that it "helped explain to the jury how the illegal relationship between Brennan and Bruno developed . .

. [and] was integral to an understanding of Bruno's and Brennan's involvement in [two of the cases charged in the indictment]." Id. at 590. "Without this evidence," the court added, "the jury would have had a truncated and possibly confusing view . . . of the basis for the trust between Brennan and Bruno." Id.; see also United States v. Kalaydjian, 784 F.2d 53, 56 n.3 (2d Cir. 1986) (affirming admission of "other act" evidence to establish trust relationship between defendant and informant).

Moreover, the Second Circuit has repeatedly and consistently held that evidence of how members of a conspiracy met, committed crimes together and grew to trust each other over time is relevant to explain the relationships between members of the conspiracy. Accordingly, in United States v. Williams, 205 F.3d 23 (2d Cir. 2000), the court upheld the admissibility of evidence relating to the defendant's prior criminal activities -- including marijuana distribution, credit card fraud and filing false charges of assault -- with two coconspirators involved in the charged conspiracy to distribute cocaine. In reaching this conclusion, the Second Circuit held that "evidence of [the defendant's] prior criminal conduct with his coconspirators was relevant to 'inform the jury of the background of the conspiracy charged, to complete the story of the crimes charged, and to help explain to the jury how the illegal relationship between the participants in the crime developed.'" Id. at 33-34 (quoting Pitre, 960 F.2d at 1119); see also Diaz, 176 F.3d at 79-80

(upholding admissibility of evidence of defendant's uncharged drug dealing with coconspirators on the basis that "it informed the jury how the Latin Kings' racketeering and drug conspiracies evolved, and how illegal relationships and mutual trust developed between coconspirators"); United States v. Rosa, 11 F.3d 315, 33-334 (2d Cir. 1993) (holding that co-defendants' relationship over a 14-year period, during which time stolen property and narcotics crimes were committed, "was properly admitted to explain how the illegal relationship between the two [defendants] developed and to explain why [one defendant] . . . appointed [the other defendant] . . . to a leading position in the Organization").

C. Balancing Test Under Rule 403

Evidence of uncharged crimes and other acts is admissible when offered for a proper purpose, so long as the evidence "[does] not involve conduct any more sensational or disturbing than the crime[ ] with which [the defendant has been] charged.'" Pitre, 960 F.2d at 1120 (quoting United States v. Roldan-Zapata, 916 F.2d 795, 804 (2d Cir. 1990)). Thus, where the uncharged crimes are similar in nature to the charged crimes, Rule 404(b) evidence is generally admissible under the Rule 403 balancing test. See United States v. Livoti, 196 F.3d 322, 326 (2d Cir. 1999) (upholding admissibility of evidence that the defendant, a police officer charged with engaging in excessive use of force with arrestee, choked another arrestee on the basis that "the evidence did not involve conduct more inflammatory than

the charged crime, and the district court gave a careful limiting instruction").

Moreover, any potential prejudice may be effectively mitigated by a cautionary instruction limiting the jury's consideration of this evidence to the purpose for which it was admitted. See, e.g., Skowronski, 968 F.2d at 247; Mickens, 926 F.2d at 1328-29; Levy, 731 F.2d at 1002.

D. Admissibility of Coconspirator Statements

Some of the evidence set forth above may be presented at trial through coconspirator statements. To the extent the Court agrees that the evidence is admissible as direct proof of the crimes or, in the alternative, "other crimes, wrongs or acts" under Rule 404(b), the Court must then determine whether such coconspirator statements satisfy the requirements of Rule 801(d)(2)(E) of the Federal Rules of Evidence.

It is well-settled that a statement offered against a party is admissible as non-hearsay if it is made "by a coconspirator of [the] party during the course and in furtherance of the conspiracy." Fed. R. Evid. 801(d)(2)(E). Accordingly, in order to admit a statement under this hearsay exception, the Court must be satisfied by a preponderance of the evidence that a conspiracy existed that included the defendant and the declarant, and that the statement was made during the course of and in

furtherance of that conspiracy. See United States v. Gigante, 166 F.3d 75, 82 (2d Cir. 1999); see also United States v. Orena, 32 F.3d 704, 711 (2d Cir. 1994).

The Second Circuit has explained that the “coconspirator-in-furtherance exception has its roots in the law of agency, . . . [t]hus, when two people enter into a joint venture of a conspiratorial nature, the actions and utterances of either done in furtherance of that conspiracy are deemed authorized by the other.” United States v. Russo, 302 F.3d 37, 45 (2d Cir. 2002).

Importantly, the “objective of the joint venture need not be the crime charged in the indictment.” Id. “Indeed, the objective of the joint venture that justifies the speaker as the agent of the defendant need not be criminal at all,” so long as the statement being offered seeks to advance an objective of a joint venture in which the declarant and the defendant are both engaged. Id. In the context of an organized crime case, the Second Circuit has recognized that “[t]he conspiratorial ingenuity of La Cosa Nostra expands the normal boundaries of a criminal enterprise, and Rule 801(d)(2)(E) must expand accordingly to encompass the full extent of the conspiracy.” Gigante, 166 F.3d at 82.

A statement is in furtherance of the conspiracy if it is intended to prompt the listener, who need not be a coconspirator, to respond in a way that promotes or facilitates

the carrying out of criminal activity. See United States v. Beech-Nut Nutrition Corp., 871 F.2d 1181, 1199 (2d Cir. 1989). Statements that provide reassurance, that seek to induce a coconspirator's assistance, that serve to foster trust and cohesiveness or that inform coconspirators as to the progress or status of the conspiracy are in furtherance of the conspiracy. See, e.g., United States v. Thai, 29 F.3d 785, 814 (2d Cir. 1994); United States v. Rahme, 813 F.2d 31, 35-36 (2d Cir. 1987); United States v. Ammar, 714 F.2d 238, 252 (3d Cir. 1983).

The Second Circuit has repeatedly held that in the context of an organized criminal group, Rule 801(d)(2)(E) must be read to encompass statements made regarding the structure, status, membership and operation of the enterprise. For example, in Orena, the district court admitted certain statements by cooperating witnesses concerning an over-arching conspiracy between the Colombo family and other families represented on the Commission of major organized crime families under Rule 801(d)(2)(E). See Orena, 32 F.3d at 712-714. The district court commented that:

These gangs in order to operate properly must be fully informed of each other's activities. As part of the action in encouraging the interrelationship among the gangs and members of the gangs, a certain amount of this conversation is required. . . . It's very important in keeping up the morale of the group and in insuring that all the members of the group feel important and feel that they're protected in an ongoing conspiracy.



Id. at 713. The defendant objected to the court's comments and to the admission of the statements. On appeal, the Second Circuit affirmed finding that the conspiracy underlying the coconspirator statements need not be identical to the conspiracy charged in the indictment. Id. The court held that there was "ample evidence to support the existence of a conspiracy embracing the Colombo Family and other families represented on the Commission," and that the "Commission superintends and regulates affairs of the five Cosa Nostra families in New York City." Id. Finally, the court found that both the disputed statements and the district court's comments were proper under Rule 801(d)(2)(E) because that rule "encompasses statements that 'serve to foster trust and cohesiveness [among coconspirators], or inform each other as to the progress or status of the conspiracy.'" Id.; see also Russo, 302 F.3d at 46; United States v. Salerno, 868 F.2d 524, 535 (2d Cir. 1989).

This approach to the admissibility of coconspirator statements in the context of organized crime was reaffirmed in Russo. In that case, involving the prosecution of a member of the Colombo family, the court made clear that coconspirator statements are admissible in the organized crime context where the defendant and the declarant were involved in a conspiracy to maintain an organized crime syndicate and the declarant's statement furthered the survival of the syndicate by providing associated persons information about its structure and

membership. "Such an organization [the Colombo family] cannot function properly unless its members and persons who do business with it understand its membership, leadership and structure. The operation of such a syndicate requires that information be passed among interested persons, advising them of the membership and the hierarchy." Russo, 302 F.3d at 46.

Courts applying Russo in organized crime cases demonstrate that statements of members and associates of an organized crime family pertaining to the maintenance and operation of that family are admissible under the coconspirator exception. See, e.g., United States v. Imbrieco, No. 02 CR 47, 2003 WL 1193532 (E.D.N.Y. Jan. 13, 2003). In Imbrieco, the court found that the Genovese family was a conspiracy for purposes of Rule 801(d) (2) (E), explaining:

The members and associates of that enterprise functioned as a continuing unit and the objective of that enterprise was to make money for its members and associates by the commission of a wide variety of crimes. The definition of a conspiracy, namely, an agreement between or among two or more persons to commit a crime, applies precisely to the enterprise alleged in this indictment to be the Genovese organized crime family. The defendants are alleged to be associates of the Genovese family. Having associated themselves with that enterprise, it follows that they agreed to abide by its rules and to participate in its activities and further its objectives. In its essence, this enterprise -- this association of the defendant and the declarants in fact in what is alleged to be

the Genovese family -- is the paradigm of a partnership or joint venture for criminal purposes.

Imbrieco, 2003 WL 1193532, at \*4.

As set forth below, the coconspirator statements the government seeks to offer here fall squarely Rule 801(d)(2)(E).

## II. Evidence of the Defendant's Uncharged Crimes and Other Acts Is Admissible

### A. The Evidence Is Directly Relevant to and Inexorably Intertwined with the Evidence of the Charged Crimes

The testimony of the cooperating witnesses and the other evidence set forth above is direct evidence of the racketeering charges. The evidence of the uncharged crimes and other acts constitute direct proof of the structure, status, membership and operation of the racketeering enterprise and the existence, nature and continuity of the racketeering conspiracy.

The evidence not only is highly probative of the enterprise's organization, but it is significant proof of the defendant's on-going participation in the enterprise's illegal activities. The evidence will help explain how the racketeering conspiracy developed and provide necessary information about the members and associates of the Gambino family and their roles in the racketeering enterprise.

For example, the defendant's solicitation of Gambino family associate CW1 in the plot to kill Gambino family associate CW3 based on a dispute concerning a seized marijuana shipment flows directly out of two charged crimes: the defendant's drug

trafficking with CW3 and his extortionate attempts to collect money from CW3 related to the seized shipment. That evidence is not only inextricably intertwined with the evidence relating to those charged crimes, but it also provides proof concerning the status and operation of the Gambino family, the defendant's place within the family, and his associations, including his criminal associations with the government's cooperating witnesses. Likewise, the defendant's participation in another armored truck robbery -- also with CW2 -- shortly after the charged robbery/felony murder at J.F.K. Airport is indicative of the existence, nature and continuity of the racketeering conspiracy, which involved clear patterns of activity with respect to the defendant's criminal methods and accomplices.

Similarly, the defendant's involvement in the conspiracy to murder Gambino soldiers John Gammarano and Danny Marino, as well as his role in disposing of the body of John Favara and assaulting Carmine Agnello, demonstrate how members and associates of the enterprise are asked and expected to carry out acts of violence, including murder, in furtherance of the goals of the enterprise. In each instance, the defendant received orders to assist in Gambino family murders from a superior in the family -- in the case of Favara and Agnello, from powerful captain and soon-to-be boss John Gotti Sr.; in the case of the plot to kill Gammarano and Marino, from ruling committee member and soon-to-be acting boss John Gotti Jr. -- and acted on

those orders. This evidence also provides proof of the relationship and continuity of the racketeering conspiracy in that a number of the same individuals identified in the Gammarano/Marino and Favara murder conspiracies and Agnello assault also participated in the charged murder of Louis DiBono - a Gambino family murder carried out by the defendant on the orders of boss Gotti Sr., as relayed to him by Gotti Jr.

The same loyalty and willingness to carry out acts of violence are also demonstrated in those murder conspiracies initiated by the defendant. With respect to the conspiracies to kill Vito Guzzo and Frank Guidici, the defendant asked his associates -- a number of whom later became cooperating witnesses -- to participate in the murders. Under Gambino family rules, the defendant expected and received their complete loyalty -- the loyalty the defendant exhibited in the murders noted above -- including the charged DiBono murder -- that he was asked to perform.

Notably, the Gambino family's operation is equally well demonstrated by the defendant's refusal to kill Guidici without the permission of Guidici's superior, Gambino family soldier Ronald Trucchio. In that instance, the defendant's desire for revenge against Guidici for shooting the defendant's close associate Panzarella -- a desire strong enough to kill for -- had to be set aside when the requested permission to kill was denied. This evidence is particularly relevant to the charged murder of

Michael Cotillo, in which multiple cooperating witnesses, including CW3, CW8 and CW10, another former Gambino family associate, will testify that other members and associates of the family sought approval to retaliate against the defendant for murdering Cotillo, an associate under Gambino family associates, and now captains, Nicholas Corozzo and Leonard DiMaria. Gambino family underboss Aniello Dellacroce, however, would not permit the defendant -- a valued member of the enterprise, willing to commit brutal acts of violence on command -- to himself be killed. Based on Dellacroce's orders, those members and associates of the Gambino family seeking to kill the defendant refrained from avenging Cotillo's murder.

Evidence of the other uncharged crimes -- the extortions, assaults, narcotics trafficking, robberies, fraud, obstruction of justice, illegal gambling and car theft -- also provide proof of the existence and nature of the enterprise and the defendant's on-going participation in the Gambino family's illegal activities. These crimes, stretching from the 1970s to the present day, also provide evidence of the formation, development and continuation of the racketeering conspiracy, and of the defendant's particular niche within it.<sup>10</sup> Such evidence

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<sup>10</sup> The 2006 conversation between CW2 and Angelo Ruggiero Jr. noted above concerning Ruggiero Jr.'s decision to forgive the defendant for assaulting him, among other evidence, shows the continuity of the conspiracy and rebuts the defendant's anticipated defense that he withdrew from the conspiracy in 2001.

provides valuable information about the members and associates of the Gambino family and their roles in the racketeering enterprise, including those members and associates who later became cooperating witnesses who participated in the crimes.

The uncharged crimes and other acts provide direct evidence of and are inextricably intertwined with the charged racketeering conspiracy.

B. The Evidence Is Admissible Under Rule 404(b)

In the alternative, the evidence of the uncharged crimes and other acts set forth above is admissible as "other crimes, wrongs or acts" under Rule 404(b).

The evidence of the defendant's illegal activities tends to establish his knowledge and intent with respect to the charged crimes and is probative of the issues of planning, preparation and absence of mistake with respect to the charged racketeering acts. For example, the defendant's participation in the subsequent, uncharged armored truck robbery is probative of the issues of planning and preparation with respect to the defendant's participation in the charged J.F.K. Airport armored truck robbery, which followed a long period of planning and surveillance. Similarly, the defendant's participation in the uncharged extortions of a number of businesses and individuals throughout the 1990s and 2000s tends to establish the defendant's knowledge and intent, and is probative of the absence of mistake, with respect to the defendant's participation in the five

extortions and attempted extortions of businesses and individuals with which he is charged.

The evidence also provides important background of the conspiracy, explains the relationship of trust among coconspirators and enables the jury to understand the complete story of the charged crimes. This is particularly true given the long criminal associations of many of the cooperating witnesses with the defendant. CW2, CW3, CW8, and CW10 have known the defendant -- and known of the defendant's criminal history -- for virtually the entire span of the 33-year racketeering conspiracy. The criminal associations of CW1, CW4 and CW9 with the defendant, too, spanned well over a decade. The story of how the cooperating witnesses came to know the defendant, commit crimes with him and earn his trust such that he would confide in them about his own crimes -- and how the cooperating witnesses came to know and commit crimes with other members and associates of the Gambino family who, too, would confide in them about criminal matters regarding the family, including the defendant's crimes -- cannot be told without testimony about the defendant's uncharged crimes and other acts. The evidence is not being offered to prove the defendant's bad character or criminal propensity; it is relevant because the government must prove that the defendant knowingly and intentionally participated in the conduct of the



affairs of the enterprise through the pattern of racketeering activity charged in the superseding indictment, and the testimony of the defendant's former criminal associates is a key part of the government's proof.

The evidence of uncharged crimes and other acts will tend to prove that the defendant possessed the requisite intent and state of mind during the entire racketeering conspiracy. See United States v. Zackson, 12 F.3d 1178, 1182 (2d Cir. 1993); United States v. Zapata, 139 F.3d 1355, 1358 (11th Cir. 1998) (stating that where the state of mind required for both the "other crime" and the instant offense is the same, the "other crime" is relevant to the charged offense under Rule 404(b)). In light of the uncharged crimes and other acts set forth above, it is less likely that the defendant did not possess the requisite intent and knowledge, or had some other state of mind consistent with innocent association, during his participation in the racketeering conspiracy. See Zackson, 12 F.3d at 1182 (holding that evidence that the defendant had previously engaged in narcotics trafficking with his coconspirator was admissible to rebut the defendant's defense of innocent association). Because the defendant's knowledge and intent are elements of the charged offenses, and thus facts of "consequence" at trial, see Fed. R. Evid. 401, the government should be given the opportunity to prove those elements with relevant evidence, including the evidence of the uncharged crimes and other acts.

Significantly, the evidence of uncharged crimes will help explain the relationship of trust that developed between the defendant, the cooperating witnesses and other members and associates of the Gambino family. It can be inferred, based on common sense, that an individual would not undertake behavior so risky as to expose himself to criminal penalties without having some basis for trusting those who participate in the crimes with him. The fact that the defendant committed crimes with the cooperating witnesses and confided in them about his past criminal activities shows the level and degree of trust the defendant placed in his coconspirators.

The evidence is relevant to the charged racketeering conspiracy and its probative value is not substantially outweighed by the danger of unfair prejudice. As noted, the evidence will come primarily from the testimony of cooperating witnesses. Accordingly, the quality of the evidence is no more prejudicial than that offered with regard to the other charged crimes. See United States v. Mejia-Velez, 855 F. Supp. 607, 611 (E.D.N.Y. 1994) ("If the jury found these witnesses to be credible, the defendant would be convicted even if the accomplices were not permitted to testify about [the uncharged crimes].").

Finally, any potential prejudice to the defendant can be effectively mitigated by a cautionary instruction limiting the jury's consideration of the evidence to the purpose for which it

is offered. See Mickens, 926 F.2d at 1328-29; Levy, 731 F.2d at 1002.

C. The Evidence Is Admissible Under Rule 801(d)(2)(E)

Assuming the Court finds the evidence admissible as direct proof of the charged crimes or, in the alternative, "other crimes, wrongs or acts" under Rule 404(b), to the extent that the evidence consists of coconspirator statements, the evidence satisfies the requirements of Rule 801(d)(2)(E).

As discussed above, this evidence is highly relevant to the crimes charged and is part and parcel of the defendant's participation in the enterprise's illegal activities.

Furthermore, the coconspirator statements -- to take just two examples, Ruggiero Jr.'s conversations with CW2 and CW3 about the assault -- were made in the course of and in furtherance of the racketeering conspiracy. When the cooperating witnesses testify about the uncharged conduct, they are simultaneously testifying about their own criminal involvement in furtherance of the affairs of the same enterprise in which the defendant conspired to participate. Finally, the racketeering conspiracy will be

corroborated by additional evidence at trial, including the evidence set forth above and evidence pertaining to the specific racketeering acts set forth in the superseding indictment.

CONCLUSION

For all of the foregoing reasons, the Court should grant the government's motion in limine to admit certain evidence.

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