

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Hon. Katharine S. Hayden
v. : Crim. No. 19-
GENE SHILMAN : 18 U.S.C. § 371

I N F O R M A T I O N

The defendant having waived in open court prosecution by indictment, the United States Attorney for the District of New Jersey charges:

Introduction

1. At various times relevant to this Information:

The Defendant and Other Parties

a. Defendant Gene Shilman (“SHILMAN”) was a resident of Middlesex County, New Jersey, a United States citizen, and a native of the Soviet Union.

b. Co-conspirator One (“CC-1”) was a resident of Ukraine.

The Statutory Authority

c. The export of articles affecting the national security of the United States was governed by two independent regulatory schemes. The Arms Export Control Act and its attendant regulations, the International Traffic in Arms Regulations (“ITAR”) (22 C.F.R. §§ 120-130), required a person to apply

for and obtain an export license from the Department of State, Directorate of Defense Trade Controls (“DDTC”), before exporting arms, ammunition, or articles of war, which are all classified as defense articles, from the United States (22 U.S.C. §§ 2778(b)(2) and 2794(3), and 22 C.F.R. § 120.1). It was a violation for anyone to willfully violate any provision of 22 U.S.C. § 2778 or any rule or regulation issued under that section. *See* 22 U.S.C. § 2778(c).

Specifically, it was a crime for any exporter to willfully fail to obtain an export license before exporting a defense article to another country. *See* 22 U.S.C. § 2778(c) and 22 C.F.R. § 127.1(a)(1). Pursuant to the ITAR, it was a violation for a person to conspire to export or to cause to be exported any defense article without a license. *See* 22 C.F.R. § 127.1. It was also unlawful for any person to “knowingly or willfully attempt, solicit, cause, or aid, abet, counsel, demand, induce, procure, or permit the commission of any act prohibited by 22 U.S.C. § 2778,” or any regulation issued there under. 22 C.F.R. § 127.1(e).

d. In the application for an export license, an exporter was required to state, among other things, the nature of the defense article to be exported, the end recipient of the defense article, and the purpose for which the defense article was intended. The DDTC considered these factors in determining whether the export of the defense article would further the security and foreign policy interests of the United States, or would otherwise affect world peace.

e. A defense article was defined as any item on the United States Munitions List (“USML”) of Section 121.1 of the ITAR. The DDTC

determined the content of the USML, with the concurrence of the United States Department of Defense. 22 U.S.C. § 2778(a)(1); 22 C.F.R. § 120.2. The USML set forth twenty-one categories of defense articles that were subject to export licensing controls by the DDTC. 22 C.F.R. § 121.1. As relevant here, Category I(a) of the USML included non-automatic and semi-automatic firearms. Category I(g) of the USML included barrels, cylinders, receivers (frames) or complete breech mechanisms for firearms in Category I(a). Category I(h) of the USML included components, parts, accessories, and attachments for defense articles in the preceding categories.

f. The second independent regulatory scheme related to the export of articles affecting the national security of the United States pertained to the export of so-called “commerce controlled” items as regulated by the U.S. Department of Commerce (“DOC”). Pursuant to the International Emergency Economic Powers Act (“IEEPA”), 50 U.S.C. §§ 1701 – 1707, the President of the United States had the authority to deal with unusual and extraordinary threats to the national security, foreign policy, and economy of the United States. Under IEEPA, the President could declare a national emergency through Executive Orders that had the full force and effect of law.

g. IEEPA empowered the DOC to issue regulations governing exports. Initially, the Export Administration Act (“EAA”), 50 App. U.S.C. §§ 2401-2420, regulated the export of goods, technology, and software from the United States. Pursuant to the provisions of the EAA, the DOC promulgated the Export Administration Regulations (“EAR”), 15 C.F.R. §§ 730-774, which

contained additional restrictions on the export of goods outside of the United States, consistent with the policies and provisions of the EAA. *See* 15 C.F.R. § 730.02. Although the EAA lapsed on August 17, 2001, the President issued Executive Order 13222 pursuant to his authority under IEEPA, declaring the expiration of the EAA a national emergency because of the unusual and extraordinary threat it posed to the national security, foreign policy, and economy of the United States. Accordingly, pursuant to IEEPA, the President ordered that the EAR's provisions remained in full force and effect despite the expiration of the EAA. Presidents have repeatedly signed renewals of the national emergency with respect to the EAA's expiration. The President issued the most recent "Continuation of the National Emergency with Respect to Export Control Regulations" on August 8, 2018. *See* 83 Fed. Reg. 39,871 (Aug. 8, 2018). Under IEEPA, it was a crime to willfully violate any regulation promulgated thereunder, including the EAR. *See* 50 U.S.C. § 1705.

h. Pursuant to its authority under IEEPA, the DOC regulated the export of certain goods and technology from the United States to foreign countries. In particular, the DOC placed restrictions on the export of goods and technology that it determined could make a significant contribution to the military potential of other nations or that could be detrimental to the foreign policy or national security of the United States. The most sensitive items subject to EAR controls were identified on the Commerce Control List, or "CCL," published at 15 C.F.R. § 774, Supp. No. 1. Items on the CCL were categorized by an Export Control Classification Number (ECCN), each of which

was regulated based on the final country of destination as well as the ultimate end use and end user.

i. It was a crime under IEEPA and the EAR to willfully export, or attempt or conspire to export, from the United States any item subject to the EAR that requires an export license without first obtaining an export license from the DOC. *See* 50 U.S.C. § 1705(c); 15 C.F.R. § 764.2.

j. On August 13, 2018, the President signed into law the National Defense Authorization Act of 2019, which included provisions on export controls, entitled the Export Control Reform Act of 2018 (“ECRA”), Pub. L. No. 115-232, tit. 17, subtitle B, 132 Stat. 2208 (2018). In part, the ECRA provided permanent statutory authority for the EAR. Accordingly, ECRA was the controlling statute (as the authority to promulgate export control regulations) for conduct occurring after August 13, 2018, and IEEPA was the controlling statute (as the authority to promulgate export control regulations) for conduct occurring before August 13, 2018.

The Conspiracy

2. From in or around May 2014 through in or around October 2018, in Middlesex County, in the District of New Jersey, and elsewhere, the defendant,

GENE SHILMAN,

did knowingly and intentionally conspire and agree with others, including CC-1, to commit offenses against the United States, namely:

- a) to willfully export defense articles regulated by the Arms Export Control Act (“AECA”), without first having obtained a license to do so from the United States Department of State, contrary to Title 22, United States Code, Section 2778;
- b) to willfully export from the United States to Russia and Ukraine, items on the commerce control list, without first having obtained a license to do so from the United States Department of Commerce, contrary to Title 50, United States Code, Section 1705(a); and
- c) to willfully export defense articles and dual-use items subject to the Export Control Reform Act (“ECRA”), without first having obtained a license to do so from the United States Department of Commerce, contrary to Pub. L. No. 115-232, tit. 17, subtitle B, 132 Stat. 2208.

The Object of the Conspiracy

3. It was the object of the conspiracy that SHILMAN exported arms, ammunition, articles of war, and certain commerce-controlled goods and technology, from the United States, to CC-1 and others, who were located in Russia and Ukraine.

The Manner and Means of the Conspiracy

4. It was part of the conspiracy that defendant SHILMAN, CC-1, and other individuals overseas using SHILMAN's email accounts, ordered firearms components and parts as well as ammunition from various vendors/firearms dealers in the United States.

5. It was further part of the conspiracy that defendant SHILMAN, CC-1, and other individuals overseas using SHILMAN's email accounts, ordered night-vision goggles and bulletproof vests from various vendors/firearms dealers in the United States.

6. It was further the part of the conspiracy that defendant SHILMAN received numerous wire transfers from overseas locations, including Ukraine and Russia, to pay for the purchases of firearms components and parts, ammunition, night-vision goggles and bulletproof vests.

7. It was further the part of the conspiracy that defendant SHILMAN willfully shipped and caused to be shipped the firearms components

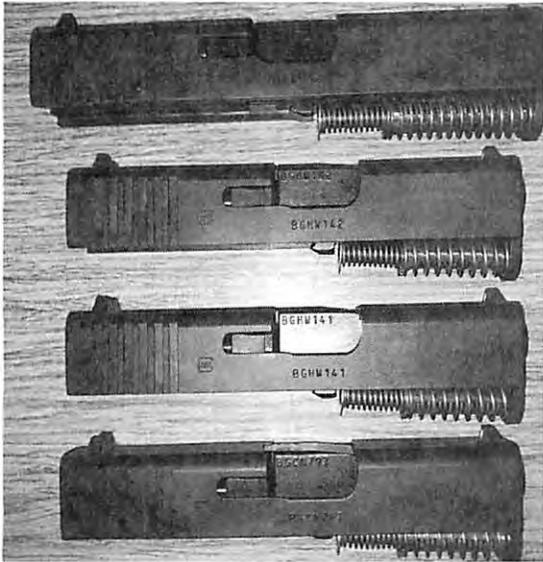
and parts, ammunition, night-vision goggles and bulletproof vests to overseas locations without first obtaining the required export licenses.

Overt Acts

8. In furtherance of the conspiracy and to effect the illegal object thereof, the following acts, among others, were committed in the District of New Jersey and elsewhere:

a. On or about September 26, 2018, in Menlo Park, New Jersey, defendant SHILMAN completed a United States Postal Service Form 2976-A, Customs Declaration, that falsely represented that the parcel contained one quantity of tools (approximately five pounds), valued at approximately \$139 and two cartridges (approximately two pounds), valued at approximately \$18. In fact, the inspection of the parcel revealed that it contained, contrary to the representations made on the Customs Declaration, the following items: (1) four complete upper receivers for a Glock 43 9mm pistol; (2) two magazines for a Glock handgun; (3) two threaded Glock barrels for a handgun; and (4) a set of front and rear sights for a Glock handgun (collectively the “September 2018 Glock Components”). Defendant SHILMAN acted willfully in falsely representing the contents of the package. Some of the items contained in the parcel are depicted below:

Upper Receivers w/ Sights



Threaded Barrels



b. On or about September 26, 2018, in Menlo Park, New Jersey, defendant SHILMAN used a debit card to pay for the cost of shipping a parcel to CC-1 in Ukraine containing export controlled items.

c. The United States Department of State had neither received an export application from SHILMAN nor granted such a license to SHILMAN related to the September 2018 Glock Components.

All in violation of Title 18, United States Code, Section 371.

FORFEITURE ALLEGATION

1. Upon conviction of the offense in violation of 18 U.S.C. § 371 alleged in this Information, defendant SHILMAN shall forfeit to the United States:

a. pursuant to Title 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, any and all property constituting or derived from any proceeds obtained directly or indirectly as a result of the commission of the conspiracy offense charged in this Information; and

b. pursuant to 22 U.S.C. § 401 and 28 U.S.C. § 2461(c), all of his right, title, and interest in any and all arms and munitions of war and other articles intended to be or that have been exported or removed from the United States in connection with the offense charged in this Information, and any and all vessels, vehicles, and aircraft containing such property, or which has been or used in exporting or attempting to export such arms or munitions of war or other articles.

SUBSTITUTE ASSETS PROVISION

2. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty;

the United States shall be entitled, pursuant to 21 U.S.C. § 853(p) (as incorporated by 28 U.S.C. § 2461(c), and 18 U.S.C. § 982(b)), to forfeiture of any other property of the defendant up to the value of the above-described forfeitable property.



CRAIG CARPENITO
United States Attorney

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INFORMATION FOR

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CRAIG CARPENITO
UNITED STATES ATTORNEY
NEWARK, NEW JERSEY

THOMAS S. KEARNEY
ASSISTANT U.S. ATTORNEY
(973) 297-2019

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