IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA *v.* CARL DELANO TORJAGBO A/K/A KARL LUCIUS DELANO	Criminal Action No. 1:22-CR-171-MLB-RDC

Notice of Intent to Use Evidence Under Fed. R. Evid. 404(b)

The United States of America, by Theodore S. Hertzberg, United States Attorney, and Kelly K. Connors and Nicholas L. Evert, Assistant United States Attorneys for the Northern District of Georgia, files this Notice of Intent to Use Evidence Under Fed. R. Evid. 404(b).

Please take notice that the Government believes that the evidence identified below is admissible as "inextricably intertwined with the evidence regarding the charged offense[s]." *United States v. Ramsdale*, 61 F.3d 825, 829 (11th Cir. 1995). Such "[e]vidence, not part of the crime[s] charged but pertaining to the chain of events explaining the context, motive and set-up of the crime[s], is properly admitted if linked in time and circumstances with the charged crime[s], or forms an integral and natural part of an account of the crime, or is necessary to complete the story of the crime for the jury." *United States v. Williford*, 764 F.2d 1493, 1499 (11th Cir. 1985). Accordingly, the Government believes this evidence is admissible regardless of whether it may be also admissible under Federal Rule of Evidence 404(b). But if the evidence is not otherwise admissible, its admission will be sought under Rule 404(b) and the Government reserves the right to present said evidence during its case-in chief, in cross-examination, and in rebuttal.

1. Background

Defendant is charged with two counts of wire fraud, based on his submission of two fraudulent tax returns to the United States Department of the Treasury, Internal Revenue Service. Specifically, on or about February 13, 2021, Defendant electronically filed two fraudulent U.S. individual income tax returns for tax year 2020, both of which reported fictitious wages, withholdings, and nonpassive losses from his bogus company, Kremkov Industries. Both of the fraudulent tax returns were submitted in the name of Defendant, Carl Torjagbo, but one was submitted with a social security number ("SSN") ending 6010 and a birthdate in 1975, and the other was submitted with a SSN ending 0540 and a different birthdate in 1979.[1]

2. Proposed Other Crimes, Wrongs or Acts

The Government anticipates that a witness from the Social Security Administration ("SSA") will testify that Defendant obtained *two* social security numbers. He obtained the SSN ending 6010 in 1997 using the 1975 birthdate. Several years later, in 2005, he obtained the second SSN, ending 0540, using different identifying information, including the 1979 birthdate. Because one

[1] The Second Superseding Indictment mistakenly describes one of the SSNs as an Individual Taxpayer Identification Number ("ITIN"). Both numbers were SSNs. The Government will supersede to correct this mistake.

person cannot have two birthdates, the implication of this testimony is that at least one of Defendant's SSNs must have been obtained using false or fraudulent information.

The Government also anticipates showing that Defendant *used* both of these identities. Specifically, based on queries of law enforcement databases, Defendant obtained driver's licenses in Florida and Texas using the 1975 birthdate; however, he obtained a driver's license in Georgia using the 1979 birthdate. The law enforcement queries associate photographs of Defendant with the Florida and Texas driver's licenses and the 1975 birthdate, and with the Georgia driver's license and the 1979 birthdate. The Government has requested certified copies of these driver's license records.

3. Intrinsic Evidence

The evidence above "forms an integral and natural part of an account of the crime, [and] is necessary to complete the story of the crime for the jury." *See Williford*, 764 F.2d at 1499. Specifically, the evidence explains how Defendant was able to submit two individual tax returns at the same time. Evidence concerning the issuance of these two SSNs and Defendant's prior use of both SSNs with the respective birthdates provides this explanation. Without this evidence, a jury would likely be confused as to how these two tax returns could have been submitted by one person, given that almost everyone only has one SSN, and nobody has multiple dates of birth. Moreover, the use of two different sets of birthdates and SSNs is an integral part of the crime, which involved submitting two different tax returns that reported false information in an effort to obtain over $3 million from each fraudulent return. Accordingly, Defendant's use of both birthdates and acquisition of both social security numbers in the tax returns are inextricably intertwined with the wire fraud counts charged in this case. *Cf. United States v. Castro*, 626 F. Supp. 3d 1186, 1191 (D. Nev. 2022) (finding that prior conviction was "inextricably intertwined with the charged offenses" where defendant used the same false identity in connection with both crimes).

4. Federal Rule of Evidence 404(b)

Although the evidence should be admitted as intrinsic evidence, it is also admissible under Federal Rule of Evidence 404(b) as evidence of identity, intent, and knowledge. Rule 404(b), which governs the admissibility at trial of evidence of other crimes, wrongs, or acts, provides that "[e]vidence of a crime, wrong, or other act …. may be admissible for … proving motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, or lack of accident." Fed. R. Evid. 404(b).

Rule 404(b) evidence is admissible at trial if: (1) the evidence is relevant to an issue other than the defendant's character; (2) the act is established by sufficient proof to permit the jury to conclude that the defendant committed the act; and (3) the probative value of the evidence is not substantially outweighed by the risk of undue prejudice. *United States v. Ellisor*, 522 F.3d 1255, 1267 (11th Cir. 2008).

Here, the evidence of Defendant's use of the two birthdates and acquisition of the two SSNs is directly relevant to identity and intent. First, the evidence, which would be presented through competent witness testimony, helps prove that it was indeed Defendant who submitted both fraudulent tax returns. Second, the evidence demonstrates Defendant's intent to defraud the IRS by submitting two different tax returns that included false information. The highly probative value of this evidence would not be outweighed by the risk of undue prejudice. The jury will necessarily see that Defendant used different SSNs and birthdates in connection with two returns he filed on the same day. The evidence provides substantial clarity and proof of identity related to these two tax returns, and the risk of *undue* prejudice is low.

This evidence is also probative of knowledge and intent concerning Defendant changing his name from Carl Torjagbo to Karl Delano. When interviewed by law enforcement, Defendant claimed that he changed his name "because [his old] last name was hard to pronounce." (Doc. 145 at 28). The Government contends that he changed his name in an effort to conceal his fraudulent acquisition of millions of dollars. Defendant previously shifted his identity by obtaining a new SSN based on a different date of birth. This fact shows that Defendant's intent in changing his name was not as innocuous as he says it was, but rather was designed to conceal his fraud schemes. *See Castro*, 626 F. Supp. 3d at 1191 ("in cases involving crimes of deceit, such as mail fraud, courts allow evidence of prior acts of fraud to demonstrate intent or knowledge, such as evidence of a defendant's use of a false identity").

5. Conclusion

For the reasons set forth above, the evidence should be admissible both as intrinsic evidence and Rule 404(b) evidence.

Respectfully submitted,

THEODORE S. HERTZBERG
United States Attorney

/s/KELLY K. CONNORS
Assistant United States Attorney
Georgia Bar No. 504787
Kelly.Connors@usdoj.gov

/s/NICHOLAS L. EVERT
Assistant United States Attorney
Georgia Bar No. 693062
Nicholas.Evert@usdoj.gov
600 U.S. Courthouse
75 Ted Turner Drive S.W.
Atlanta, GA 30303
Tel: (404) 581-6000; Fax: (404) 581-6181

Certificate of Service

The United States Attorney's Office served this document today by filing it using the Court's CM/ECF system, which automatically notifies the parties and counsel of record.

June 30, 2025

/s/ NICHOLAS L. EVERT
NICHOLAS L. EVERT
Assistant United States Attorney