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

Response in Opposition to Defendant's Motion to Dismiss [208]

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 Response in Opposition to Defendant's Motion to Dismiss.

Defendant has moved to dismiss Counts 2 and 3 of the Third Superseding Indictment as duplicitous. Because these Counts clearly only charge Defendant with one crime each—wire fraud based on his submission of fraudulent tax returns to the IRS—Defendant's Motion to Dismiss (Doc. 208) should be denied.[1]

1. Background

Counts 2 and 3 of the Third Superseding Indictment charge Defendant with "devis[ing], intend[ing] to devise, and participat[ing] in a scheme and artifice to defraud the United States Department of the Treasury, Internal Revenue Service

[1] The Court has denied this motion by docket entry, but indicated that it will address the matter further at the start of trial. The Government files this response to have its position on the record.

('IRS'), and to obtain money from the IRS by means of materially false and fraudulent pretenses, representations, and promises, and by the omission of material facts." (Doc. 198 ¶¶ 14–21). Specifically, Count 2 charges wire fraud based on Defendant's February 13, 2021 "[e]lectronic filing of a 2020 U.S. individual income tax return (Form 1040), in the name of Carl Torjagbo, which fraudulently claimed a refund in the amount of $3,373,441.00[.]" (*Id.* ¶ 21). Count 3 charges wire fraud based on Defendant's February 13, 2021 "[e]lectronic filing of a 2020 U.S. individual income tax return (Form 1040), in the name of Carl Torjagbo, which fraudulently claimed a refund in the amount of $3,015,573.00[.]" (*Id.*). The "manner and means" section explains, among other things, that "[o]n one of the fraudulent tax returns, Defendant Torjagbo used a Social Security Number (SSN) that was associated with a date of birth in 1979" and "[o]n the other fraudulent tax return, Defendant Torjagbo used a different SSN that was associated with a date of birth in 1975[.]" (*Id.* ¶¶ 19–20).

Defendant claims in his Motion to Dismiss that because the Third Superseding Indictment makes reference to the use of two SSNs, Counts 2 and 3 are duplicitous and thus subject to dismissal. Defendant is incorrect.

2. Argument

"A count in an indictment is duplicitous if it charges two or more separate and distinct offenses." *United States v. Seher*, 562 F.3d 1344, 1360 (11th Cir. 2009). A count is not duplicitous merely because it describes factual matter that could constitute another criminal offense. *See United States v. Buckingham*, No. 4:18-CR-00376-RDP-JEO-2, 2018 WL 6570874, at *3 (N.D. Ala. Dec. 13, 2018) ("A duplicitous count is one that charges two or more separate *offenses*, not one that merely describes factual matter relevant to proving more than one criminal offense." (emphasis in original)); *United States v. Atl. Comm'n Co.*, 45 F. Supp. 187, 193 (E.D.N.C. 1942) ("An indictment charging only one offense is not duplicitous merely because it discloses in its relevant facts that the defendants have committed an additional offense.").

Here, Defendant complains that he "worries he may be convicted by a non-unanimous jury, with some convicting him for fraud on the Social Security Administration and others convicting him for wire fraud upon the IRS, the charged offense." (Doc. 208 at 3–4). "He also worries the allegations of this separate crime 'muddies the water' and perhaps makes it easier for the government to introduce otherwise inadmissible prior bad acts." (*Id.* at 4).[2] These concerns are unfounded. The Third Superseding Indictment could not be clearer that Defendant is only charged with defrauding the IRS in Counts 2 and 3. To the extent there are any concerns about jury confusion, these can easily be cured with a limiting instruction. Accordingly, Counts 2 and 3 are not duplicitous, and the Motion to Dismiss should be denied.

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[2] Defendant "also worries about subsequent prosecutions in Florida, Texas or even the Northern District of Georgia for fraud upon the Social Security Administration[.]" (Doc. 208 at 4). However, he fails to explain why this "worry" somehow entitles him to the dismissal of his charges for defrauding the *IRS*.

3. Conclusion

For the reasons set forth above, Defendant's Motion to Dismiss (Doc. 208) should be denied.

Respectfully submitted,

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July 14, 2025

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