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

Reply to Defendant's Response to Government's Fed. R. Evid. 404(b) Notice

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 Reply to Defendant's Response and Supplement to the Government's Notice of Intent to Use Evidence Under Fed. R. Evid. 404(b). (Docs. 204, 209).

On June 30, 2025, the United States filed notice of its intent to rely on evidence at trial that Defendant obtained two social security numbers (SSNs) using two different birthdates. One SSN (ending 6010) was obtained in 1997 using a 1975 birthdate; the other (ending 0540) was obtained in 2005 using a 1979 birthdate.[1] Defense counsel opposes the use of this evidence.

Defendant is charged with two counts of wire fraud, based on his submissions of two fraudulent tax returns (Form 1040s) to the United States

[1] Defendant's initial response incorrectly stated that the month and day of birth were the same, (Doc. 204 at 8), but he later filed a supplement that corrected this misunderstanding, (Doc. 209 at 2-3).

Department of the Treasury, Internal Revenue Service (IRS). One fraudulent return was submitted using one SSN and birthdate, and the other fraudulent tax return was submitted using the other SSN and birthdate. The fact that Defendant had two SSNs, each associated with a different birthdate, "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 United States v. Williford*, 764 F.2d 1493, 1499 (11th Cir. 1985). Specifically, the government anticipates that the evidence will show that Defendant could not have submitted two fraudulent tax returns using the same SSN because IRS would have rejected the second return as a duplicate. Defendant's acquisition of two SSNs using two different dates of birth explains how Defendant was able to commit his crimes.

While Defendant is correct that the Form 1040s he submitted do not themselves contain dates of birth, Defendant did use one birthdate in connection with one fraudulent return, and the other birthdate in connection with the other fraudulent return, and these two different birthdates were part of what was transmitted to the IRS.[2] As Defendant acknowledges, "[t]he government must prove the identity of the filer or the filers of each return." (Doc. 204 at 8). Showing that the two birthdates associated with the fraudulent returns and fraudulent SSNs were both birthdates that Defendant in fact used (including on government identification documents) will provide key identity evidence to show that Defendant was behind the submission of both fraudulent returns.

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[2] Defendant has had documents that reflect this for months. *See* Bates Nos. IRS-000096 and IRS-000113.

Indeed, that Defendant transmitted the 1975 birthdate to the IRS in connection with the tax return associated with the SSN ending 6010, and the 1979 birthdate to the IRS in connection with the tax return associated with the SSN ending 0540 provides strong evidence that it was Defendant who filed both returns. It is unlikely that anyone else would know that there were different birthdates associated with the different SSNs.

Additionally, the fraudulent tax return associated with the 1975 birthdate listed an address in Houston, Texas. Certified Texas driver's license records for Defendant show the same Houston address and reflect the same birthdate in 1975. The fraudulent tax return associated with the 1979 birthdate listed an address in Douglasville, Georgia. One of the two Georgia driver's licenses that Defendant had when he was arrested shows the same Douglasville address and the 1979 birthdate. Both records also include driver's license photographs. This evidence helps prove that Defendant was behind both fraudulent tax returns.

Defendant contends that there is an innocent explanation for having two SSNs: "the original SSN, issued in 1997, reflected a typographical error, a 1975 date of birth. When a replacement SSN was issued in 2005, the error was corrected to reflect the true date of birth in 1979." (Doc. 204 at 2). This explanation is implausible given that, in addition to submitting different birthdates when applying for two SSNs, Defendant also submitted different names for his mother, claimed to have been born in two different cities, and checked a box on his second SSN application indicating that he had not previously filed for or received a SSN card. Moreover, Defendant used the 1975 birthdate not just in his application for a SSN, but also on driver's licenses from Florida and Texas. While Defendant is welcome to offer his purportedly innocent explanation at trial, his attorney proffering such an explanation does not mean that evidence to the contrary should be excluded. Even if there was an innocent explanation for Defendant having two SSNs, it would still be important for the jury to understand that he did in fact have and use two SSNs in order for it to understand how he was able to file two different fraudulent tax returns.

Finally, Defendant argues that the evidence is more unfairly prejudicial than probative under Federal Rule of Evidence 403, which provides that the "court may exclude relevant evidence if its probative value is substantially outweighed by a danger of . . . unfair prejudice[.]" "Rule 403 is an extraordinary remedy that must be used sparingly because it results in the exclusion of concededly probative evidence." *United States v. US Infrastructure, Inc.*, 576 F.3d 1195, 1211 (11th Cir. 2009). Defendant fails to meaningfully explain why the evidence is *unfairly* prejudicial or how this purported prejudice *substantially* outweighs the evidence's probative value. Accordingly, the evidence should not be excluded under Rule 403.

For the reasons set forth above and in the Government's 404(b) Notice (Doc. 196), 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

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July 16, 2025

/s/ Nicholas L. Evert
Nicholas L. Evert
Assistant United States Attorney