

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

UNITED STATES OF AMERICA,

PLAINTIFF,

V.

CASE NO.: 2:24-cr-00192

KISHA SUTTON,

DEFENDANT.

DEFENDANT KISHA SUTTON'S MOTION TO CONTINUE TRIAL

NOW COMES the Defendant, Kisha Sutton, by and through counsel, Connor Robertson, and respectfully moves the Court to Continue the trial in this matter so that the parties can litigate 404(b) issues not previously applicable due to the Government's Second Superseding Indictment. In support thereof, the Defendant states as follows:

1. On June 6, 2025, the Court granted *Defendant Shamise Wright's Second Motion to Continue Pretrial and Trial Dates* (ECF 209) by *Order* (ECF 225) rescheduling the trial of this matter to July 14, 2025 at 9:00 a.m. The Court also set a Pre-trial Motion Deadline of June 23, 2025.
2. Since the time of that Order, the Government secured a *Second Superseding Indictment* (ECF 246) which significantly altered the scope of the case as to Kisha Sutton. Most importantly, the Government removed the previously charged Conspiracy to Commit Bank Fraud count and all but 1 of the actual Bank Fraud counts. They then added a Money Laundering count. Therefore, as it stands now, Ms. Sutton faces one count of aiding and abetting Bank Fraud and one count of

aiding and abetting Money Laundering with the only remaining co-defendant being Shamise Wright.

3. The Counts of Conspiracy and Bank Fraud as to Cylena Sutton and Rahmel Meekins were dismissed by *Nolle Prosequi* (ECF 243 & 244) on June 9, 2025, one day before the issuance of the Second Superseding Indictment. It is believed that all the other co-defendants have already pleaded guilty.
4. On June 16, 2025, the Government served its *Second Supplemental Response of the United States of America to Defendant's Standard Discovery Requests and Request of the United States for Reciprocal Discovery* (ECF 258) on Defendant, which now listed all of the applicable loan documents, IP address documents, IRS documents, Verizon subscriber information documents, etc. from the now removed co-defendants as being 404(b) evidence the Government intends to use against the Defendant at trial. The documents would have previously been substantive as to the particular bank fraud counts between Ms. Sutton and her co-defendants, but now that they have been removed from the Indictment, it appears the Government will present them as 404(b).
5. Defendant Sutton has significant challenges to this 404(b) evidence that need to be litigated. A *Motion in Limine* is being filed along with this Motion to Continue, to challenge the 404(b) evidence. First, the Government's 404(b) Notice is insufficient to properly advise the Defendant of the proper uses of the 404(b) evidence. Second, because the Notice is insufficient, Defendant cannot properly articulate the challenge to the 404(b) disclosure. For example, without knowing the precise purpose, as is required by Fed. R. Evid. 404(b)(3), of particular 404(b) documents,

the Defendant is incapable of knowing whether the 404(b) purpose is being contested as an issue in the case. In other words, there are portions of this case the Defendant does not dispute, and it is very likely that the proposed 404(b) evidence would be objectionable due to its redundancy. But again, without knowing the purpose, the Defendant cannot articulate a response. Finally, the Defendant intends to challenge the 404(b) evidence as not being relevant to any issue in dispute and that the evidence violates Rule 403 because its probative value is outweighed by substantial prejudice.

6. This 404(b) issue needs to be litigated and the Defense requests a 404(b) pre-trial hearing on the matter in order to, at a minimum, create a proper record, a pre-trial ruling by the Court, and time to understand the Court's ruling prior to trial.¹
7. The Defendant's 404(b) Motion, along with this Motion, is being filed according to the Pre-Trial Motions deadline - June 23, 2025. The Government is entitled to file a Response and the Defendant is entitled to a Reply. Presumably then, this Court, or the Magistrate Court, will hold a pre-trial hearing on the matter and issue a ruling, which could then be subject to further objections and a decision by this Court. None of these procedures can be carried out prior to the July 14, 2025 trial date.
8. As articulated in the *Motion for Reconsideration of Trial Dates* (ECF 237), undersign counsel is unavailable from June 27, 2025 through July 13, 2025 and cannot meaningfully participate prior to trial.
9. This Motion is not being filed out of bad faith, nor is it an attempt to frivolously buy more time. It is just the opposite. Undersigned counsel was ready for trial prior to

¹ Counsel is also filing a new Venue challenge which needs to be separately litigated.

the last continuance. It was the Government who significantly changed the scope of the case and its strategy since the last continuance. It would be patently unfair to not allow the Defense the proper procedure and time to mount an effective defense.

10. 404(b) issues are commonly decided by pre-trial hearings where the Defense can challenge the issues and the Court can make a ruling. This allows for judicial efficiency during trial and the Defense to properly preserve the record. This is one of those times where a pre-trial hearing is necessary, because the Defense has not been properly advised of alleged 404(b) evidence.

11. Due to undersigned counsel's unavailability until July 13, 2025, the Defense is asking for a briefing schedule that allows counsel time to return to work, file any reply to the Government's Response to the 404(b) and a hearing to be held by either the Magistrate or this Court, with time for objections to be filed if the proceedings are performed by the Magistrate.

12. Undersigned counsel believes a continuance of the trial of approximately 45 days could accomplish this goal.

13. The Government, nor the co-defendant, Shamise Wright, are prejudiced by this request. However, Defendant Sutton will be significantly prejudiced and denied Due Process, should she not have the opportunity to mount a defense against the Government's last minute change in position and newly disclosed evidence. Ms. Sutton would also be denied the opportunity to properly develop the record.

WHEREFORE, the Defendant respectfully requests this Court continue the trial in this matter, issue a briefing and pre-trial hearing schedule that accommodates previously

paid for and non-refundable schedule, contact all counsel prior to setting dates to ensure availability so that further Motions do not need to be filed, and for other such relief as is necessary and proper.

Respectfully submitted,
By Counsel

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CASE NO.: 2:24-CR-000192-01

KISHA SUTTON,

DEFENDANT.

CERTIFICATE OF SERVICE

I, Connor Robertson, certify that on the 23rd day of June, 2025, a copy of the foregoing motion was served on the United States by ECF, to Jonathan Storage, Assistant United States Attorney to the following:

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