

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:24-CR-00192-1

KISHA SUTTON - 1

GOVERNMENT'S RESPONSE TO
DEFENDANT KISHA SUTTON'S MOTION CONTINUE TRIAL

Comes now the United States of America, by Jonathan T. Storage, Assistant United States Attorney for the Southern District of West Virginia, and files its response to defendant Kisha Sutton's motion to continue the trial date. ECF No. 265. For the reasons stated herein, the government respectfully requests that the Court deny the motion.

I. DISCUSSION

The defendant's motion to continue the trial should be denied because the government's Second Superseding Indictment does not implicate any new fact or piece of evidence: the charged conduct arises from the same set of transactions and circumstances as those alleged in the original Indictment filed in November 2024. Even so, the government has satisfied all of the requirements associated with introducing permissible Rule 404(b) evidence, and the defendant's Rule 404(b) challenge is meritless.

A. Same Evidence / Same Issues

The defendant bases her whole argument for a motion to continue on the issue of the government having noticed potential Rule 404(b) evidence. As the government stated in its response to the defendant's motion to exclude Rule 404(b) evidence, the proposed evidence is intrinsic to a common scheme to defraud. See ECF No. 289). When evidence is intrinsic to the crime charged, Rule 404(b) is not implicated. United States v. Grimmond, 137 F.3d 823, 832 (4th Cir. 1998) (deciding that "when 'other crimes, wrongs, or acts' evidence is relevant to establishing an element of the offense, Rule 404(b) is not even implicated").

B. Rule 404(b) Requirements Satisfied

The government has satisfied Rule 404(b)'s requirements, even though Rule 404(b) is likely inapplicable. In its response (ECF No. 289), the government explained how and why the proposed evidence is relevant to an issue not having to do with character, is necessary to the government's case, and is reliable. Moreover, the evidence does not unfairly prejudice the defendant. See United States v. Basham, 561 F.3d 302, 326 (4th Cir. 2009) (recognizing that damage to a defendant's case is not a basis for excluding probative evidence).

As of this writing, the trial is more than 2 weeks away. These issues can be resolved on the filed papers without further delaying

the trial, which as been continued several times already. If anything, the Second Superseding Indictment simplified the case for all involved.

II. CONCLUSION

For the reasons stated herein, the government respectfully requests that the Court deny the defendant's motion to continue the trial. ECF No. 265.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that the foregoing "GOVERNMENT'S RESPONSE TO DEFENDANT KISHA SUTTON'S MOTION CONTINUE TRIAL" has been electronically filed and service has been made on opposing counsel by virtue of electronic mail this the 28th day of June, 2025, to:

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