UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 11 CR 820
v.	)	
	)	Hon. Harry D. Leinenweber
SHARON ANZALDI,	)	
PHILLIP DESALVO, and	)	
STEVEN LATIN	)	

GOVERNMENT'S NOTICE OF INTENT TO OFFER
RULE 404(b)EVIDENCE

The United States of America, by GARY S. SHAPIRO, United States Attorney for the Northern District of Illinois, respectfully files this notice of its intent to introduce "other act" evidence pursuant to Rule 404(b) of the Federal Rules of Evidence. Admission of this evidence is consistent with Seventh Circuit precedent, will not lengthen the trial to any significant degree, and will assist the jury in properly determining the guilt or innocence of defendant Sharon Anzaldi.

I. Background

A. The Anticipated Trial Evidence.

Defendants have been charged with conspiring to defraud the Department of the Treasury by filing false claims, namely, tax returns, in violation of Title 18, United States Code, Section 286. The defendants have also been charged with filing false tax returns, in violation of Title 18, United States Code, Section 287. Specifically, the indictment alleges that the defendants participated in a scheme in which they gathered taxpayers' mortgage and debt information, falsely claimed the taxpayers' total debt amount as both 1099 OID interest income and tax withholdings, and thereby sought

falsely inflated refunds. In all, the defendants have been charged with preparing and filing fourteen fraudulent returns that sought a total of $8,497,161 in refunds. Of the fourteen refunds defendants sought, the IRS issued five, totaling $1,252,030.

At trial, the government's evidence will establish that defendants Anzaldi, DeSalvo, and Latin assisted one another in filing fraudulent returns, shared information and tax forms they thought would allow them to successfully file fraudulent returns, and traded information about how to avoid detection and arrest by law enforcement. In addition, the evidence will show that defendants Anzaldi and DeSalvo worked together to assist Robert Anzaldi Jr. in filing a fraudulent tax return, defendant DeSalvo assisted an individual named Frank Mazziotta in filing a fraudulent return, and defendant Anzaldi assisted seven other individuals in filing fraudulent returns.

B. The Proposed 404(b) Evidence.

All of the 404(b) evidence the government seeks to admit involves defendant Sharon Anzaldi and her actions in (1) misusing the financial and personal identifying information of certain individuals for whom she prepared and filed fraudulent tax returns; and (2) structuring the payment of her "fees" for such work in amounts under $10,000 so as to avoid the creation of certain reports required by law.

Regarding the misuse of her "clients'" financial and personal identifying information, the government expects the evidence at trial will show, through the testimony of Lawrence Noesen, that in the course of assisting the Noesens prepare and file a fraudulent tax return, defendant Anzaldi asked the Noesens to provide her with

their financial information, including credit card information. Noesen will testify that after providing Anzaldi with their financial information, the Noesens discovered that Anzaldi had charged one of her cellular telephone bills to the Noesens' credit card without their authorization. The Noesens also discovered that Anzaldi had purchased several credit reports and paid for them using the Noesens' credit card, again without their authorization.

The government also expects the evidence will show, through the testimony of Alicia Anzaldi, that in the course of assisting Alicia Anzaldi prepare and file a fraudulent tax return, Sharon Anzaldi directed Alicia to provide Sharon with all of Alicia's financial information. During a meeting at Alicia's house on February 12, 2009, Alicia was surprised to discover that Sharon had brought along a copy of Alicia's credit report, which Sharon had obtained without Alicia's authorization.

Regarding the structuring of Anzaldi's "fee" payments, the government expects the evidence to show that defendant Anzaldi asked several individuals for whom she prepared and filed fraudulent tax returns to structure the payment of her fee into multiple checks in amounts less than $10,000. Specifically, Lawrence Noesen will testify that after the Noesens obtained a $305,000 tax refund, he provided Anzaldi with a check in the amount of $25,000 as payment for her fee (an 8% commission). Several days later, Anzaldi returned that check to the Noesens and asked that the Noesens write her three checks in the amounts of $9,000, $9,000, and $7,000. Anzaldi stated that it would be a "red flag" if she received a check in an amount over $10,000. Anzaldi further stated that she believed the FBI was watching her.

Anzaldi also asked Mark Josyln, another individual she assisted in preparing and filing a fraudulent tax return, to pay her fee (10% of any refund received) in four separate checks, and to make the amount of each check less than $10,000. Joslyn subsequently gave Anzaldi four blank checks; however, because Joslyn ultimately did not receive a refund, Anzaldi never cashed them. Similarly, Anzaldi sought a $30,000 fee from Caryn Mazzulo in return for her tax preparation and filing services, and requested that the fee be paid in four separate checks in the amount of $7,500 each.

As will be discussed in more detail below, evidence of Anzaldi's actions in (1) misusing others' financial and personal identifying information, and (2) structuring the payment of her fees, is admissible pursuant to Rule 404(b). Specifically, evidence of Anzaldi's misuse of others' financial and personal identifying information demonstrates both her fraudulent intent in committing the charged offenses, and her knowledge, preparation, plan, and absence of mistake. To the extent Anzaldi intends to argue that she genuinely believed in the lawfulness of the returns she filed, and to the extent that she intends to claim she did nothing illegal when preparing the returns as she did, the fact that she misappropriated the financial and personal identifying information her "clients" provided her demonstrates just the opposite – that her intentions in gathering their debt information and filing their returns were not "pure," but fraudulent. In short, the evidence will show that Anzaldi did not gather her clients' financial information and file their returns in "good faith."

Such evidence also demonstrates that, as part of defendant Anzaldi's financial motive to commit the charged crimes, she obtained others' financial information to

make unauthorized purchases for her own benefit. The evidence also demonstrates defendant Anzaldi's knowledge, preparation, plan, and absence of mistake, in that part of defendant's method in filing the charged fraudulent returns involved gathering her "clients'" debt and financial information, information which could be found from running their credit reports.

Regarding Anzaldi's actions in structuring the payment of her fees, these actions are also admissible as proof of her fraudulent intent to commit the charged crimes, as well as her preparation, plan, knowledge, and absence of mistake. Specifically, as set forth above, Anzaldi asked for her fee to be structured so as to avoid "flagging" herself for the FBI; such evidence refutes any good faith defense.

II. The Seventh Circuit Requires District Courts to Analyze the Proposed Evidence under Federal Rule of Evidence 404(b).

The government moves *in limine* to introduce evidence of defendant Anzaldi's other acts in misusing her "clients'" personal financial and identifying information and in structuring the payment of her fees. As discussed below, the proposed evidence is admissible under Federal Rule of Evidence 404(b) because the evidence is offered for relevant, non-propensity purposes. Before explaining the non-propensity use of this evidence, the government sets forth the governing law, which requires that the evidence be analyzed under Rule 404(b).

A. Applicable Law.

Rule 404(b) provides a non-exhaustive list of purposes for which evidence of other crimes is admissible:

> Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

Fed. R. Evid. 404(b). The Seventh Circuit has repeatedly instructed that, under Rule 404(b), evidence of other bad acts is admissible so long as the evidence is not introduced to show the defendant's bad character. *See, e.g., United States v. Taylor*, 522 F.3d 731, 734-36 (7th Cir. 2008) (among other examples, prior drug sales admissible to explain coded term); *United States v. Canady*, 578 F.3d 665, 671-72 (7th Cir. 2009) (prior criminal uses of firearm admissible to show possession of the same firearm); *United States v. Cox*, 577 F.3d 833, 838-39 (7th Cir. 2009) (credit card fraud involved in renting hotel rooms admissible to show defendant could pay for prostitution parties and to rebut defense that defendant was not wealthy); *United States v. Ellis*, 548 F.3d 539, 544 (7th Cir. 2008) (prior tax violations admissible to show wilfulness and to rebut forgetfulness defense).

In explaining the scope of Rule 404(b), the Seventh Circuit has emphasized that Rule 404(b)'s purpose "is simply to keep from the jury evidence that the defendant is prone to commit crimes or is otherwise a bad person . . . . No other use of prior crimes or other bad acts is forbidden by the rule, and the draftsmen did not try to list every possible other use." *Taylor*, 522 F.3d at 735-36. Thus, Rule 404(b) permits evidence of other crimes to be introduced not only for the explicitly-listed purposes set forth in the Rule, but also for any other relevant purpose, such as "the need to avoid confusing

the jury." *Id.* at 736. For example, in a drug case, "the fact that a defendant's buyers had dealt with him previously could explain how they were able to identify him, why they picked him for the controlled buy, and why he was willing to deal with them." *Id.* at 734. The examples set forth above illustrate the breadth of the purposes for which the government may offer evidence under Rule 404(b).[1]

The Seventh Circuit has established a four-part test for determining whether evidence is admissible under Rule 404(b). *See, e.g., Ellis,* 548 F.3d at 544. *First*, the evidence must be directed toward establishing a matter in issue other than the defendant's propensity to commit the act charged. *Second*, the other act must be similar enough and close enough in time to be relevant to the matter in issue. *Third*, the evidence must be sufficient to support a jury finding that the defendant committed the similar acts. *Finally*, the proponent of the evidence must show that the probative value of the evidence is not substantially outweighed by any unfair prejudicial effect. *Id*. As the Supreme Court has explained, the admission of extrinsic evidence under Rule 404(b) "may be critical to the establishment of the truth as to a disputed issue,

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[1]Furthermore, although the Seventh Circuit has now overruled the "inextricably intertwined" doctrine as a basis for admitting evidence of other crimes, *United States v. Gorman*, 613 F.3d 711 (7th Cir. 2010), the Court has also held, at the same time, that "[a]lmost all evidence admissible under the 'inextricably interwoven' doctrine is admissible under one of the specific exceptions in Rule 404(b), or under the judge-made 'no confusion' exception . . . ." *Taylor*, 522 F.3d at 735; *Canady*, 578 F.3d at 672 ("almost all evidence that is admissible under this doctrine would fall within one of the exceptions in Rule 404(b), and this case is no different"). Rather than invoke a non-Rule based doctrine, applying Rule 404(b) has the virtue of focusing the analysis on non-propensity purposes and avoids the vice of the jury considering the other-crimes evidence without a proper limiting instruction. *Conner*, 583 F.3d at 1024. But evidence that would have been formerly admissible under the "inextricably intertwined" doctrine will almost always serve a non-propensity purpose and be admissible under Rule 404(b).

especially when that issue involves the actor's state of mind . . . ." *Huddleston v. United States*, 485 U.S. 681, 685 (1988).

B. The Proposed Evidence is Offered for Non-Propensity Purposes and is Admissible under Rule 404(b).

Evidence of Anzaldi's misuse of her clients' personal financial and identifying information and fee structuring should be admitted under the Seventh Circuit's four-part Rule 404(b) test as evidence of defendant Anzaldi's fraudulent intent, motive, preparation, plan, knowledge, and absence of mistake in committing the charged offenses.

The first prong of the Seventh Circuit's test is that the "other act" evidence must be offered for a purpose other than to show the defendant's propensity to commit the charged crime. As to the evidence of Anzaldi's misuse of others' personal financial and identifying information, it is first offered for the non-propensity purpose of showing fraudulent intent and absence of mistake. It is expected that defendant will attempt to argue that she lacked fraudulent intent when filing the charged returns, and instead possessed a good faith belief in the lawfulness of the returns she prepared. Proof that she was misappropriating her clients' financial and identifying information, however, demonstrates just the opposite – that she was not acting as her clients' trusted fiduciary to prepare and file lawful returns, but was instead stealing their personal financial and identifying information for her own gain. Such actions and intent are inconsistent with a "good faith" defense.

This evidence also demonstrates one of Anzaldi's motivations to commit the

charged offenses, namely, her personal financial gain.[2] The government expects the evidence to show that at the time defendant Anzaldi prepared and filed the charged fraudulent returns, she was in dire financial straits. Misappropriating her clients' financial information fulfilled her need for money, as did preparing and filing fraudulent tax returns that sought outrageously high refund amounts, and for which she charged a (structured) fee on a percentage basis of several thousand dollars. The proposed evidence is thus not offered to show that Anzaldi had a propensity to commit tax fraud, but rather to show that she had the intent and motive to commit tax fraud.

Lastly, the evidence demonstrates Anzaldi's knowledge, preparation, plan, and absence of mistake. As part of her "method" for seeking fraudulent and grossly inflated refunds, defendant asked her "clients" to provide her with evidence of their past and current debts. Defendant then entered her clients' debt information into Schedule B of their returns. The type of information found on her clients' credit reports was directly relevant to the information she entered into their tax returns. That defendant ran her clients' credit reports without their authorization, and purchased certain clients' credit reports with other clients' credit card information, is evidence of her knowledge, preparation, plan and absence of mistake in preparing the returns in the manner that she did.

As to the evidence of Anzaldi's efforts to structure the payment of fees in amounts under $10,000, that evidence is also not being offered to show the defendant's

[2] The government has filed a separate motion *in limine* on this subject.

propensity to commit the offenses charged in the indictment.[3] Rather, that evidence is again offered to show Anzaldi's intent to commit a fraud, her knowledge that the tax returns she had prepared and filed for others were in fact fraudulent, her absence of a mistake regarding the legality of such filings, and her preparation and planning to avoid law enforcement detection. These are permissible reasons to introduce this evidence.

With respect to the second prong of the test, the evidence of both Anzaldi's misuse of others' financial information and her fee structuring is similar enough and close enough in time to be relevant to the trial of this matter. As to the similarity, both the proposed and charged evidence involve fraudulent actions designed to obtain money under the guise of obtaining tax refunds for clients. *See United States v. Holt*, 817 F.2d 1264, 1271 (7th Cir. 1987) (finding that defendant's prior conduct involving theft of checks was sufficiently similar in nature to the charged bank robbery because "[b]oth involved illegal acts to obtain money.").[4]

As for the temporal element of this prong, both Anzaldi's misuse of others' financial information and fee structuring occurred contemporaneous with the charged

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[3] Indeed, the government does not intend to argue in closing, for example, that defendant Anzaldi is guilty of the "crime" of structuring. The government will simply define through a witness what structuring is.

[4] Although there is similarity, the government is not required to prove similarity when the "other act" evidence is offered to establish a motive for the crime. *See United States v. Shriver*, 842 F.2d 968, 974 (7th Cir. 1988) ("[I]n cases where the 'bad acts' evidence is introduced to show the defendant's motive for committing the charged offense, we have concluded that similarity is not an appropriate requirement.")

conspiracy, and in the course of filing the charged fraudulent tax returns. This temporal link is more than sufficient. *See, e.g., United States v. Tringali*, 71 F.3d 1375, 1379 (7th Cir. 1995) (evidence of defendant's conviction for cocaine conspiracy nine years earlier was similar in time and manner to show knowledge and intent to distribute cocaine).

There is also sufficient evidence of these additional acts to support a jury finding that defendant Anzaldi committed them, and thus the third prong of the test is met. As to the evidence of Anzaldi's misuse of her clients' financial information, the government expects that, as detailed above, Lawrence Noesen and Alicia Anzaldi will testify about defendant Anzaldi's actions in misusing their personal financial and identifying information and obtaining their and others' credit reports. The testimony of witnesses with first-hand knowledge of a defendant's "other acts" is sufficient to satisfy this prong of the test. *See United States v. Lee*, 558 F.3d 638, 647 (7th Cir. 2009).

As to the evidence of Anzaldi's fee structuring, the government again expects that witnesses with first-hand knowledge of Anzaldi's statements and directions to them relating to the structuring of her fees, including Lawrence Noesen, Mark Joslyn, and Caryn Mazzulo, will testify at trial regarding those statements and directions. In addition, the government intends to introduce some of the checks that were written to Anzaldi for payment of her fees, including checks written by Lawrence Noesen to Anzaldi in the amounts of $9,000, $9,000, and $7,000.

Finally, as to the fourth prong of the test, there is no danger of undue prejudice

from the admission of the offered uncharged acts. "[R]elevant evidence is, by its very nature, prejudicial, and that evidence must be unfairly prejudicial to be excluded. Evidence is unfairly prejudicial only if it will induce the jury to decide the case on an improper basis, commonly an emotional one, rather than on the evidence presented." *United States v. Denberg*, 212 F.3d 987, 994 (7th Cir. 2000). Here, the evidence of both Anzaldi's misuse of others' financial information and fee structuring is not inherently inflammatory, nor does it invite an irrational emotional response. The evidence is, on the other hand, highly probative to show that defendant Anzaldi had the requisite fraudulent intent and motive (namely her own financial gain), to show her knowledge and absence of mistake, and her preparation and planning to commit the charged crimes, and to avoid law enforcement's detection of her involvement in the filing of the charged fraudulent tax returns. Furthermore, a limiting instruction from the Court regarding the limited purpose for which the Rule 404(b) evidence is offered would eliminate any possibility of unfair prejudice. *See United States v. Vaughn*, 267 F.3d 653, 660 (7th Cir. 2001) ("We have held many times that limiting instructions are effective and proper in reducing or eliminating any possible unfair prejudice from the introduction of Rule 404(b) evidence.").

III. Conclusion

For the foregoing reasons, the evidence outlined above should properly be admitted at the upcoming trial in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned Assistant United States Attorney hereby certifies that in accordance with FED. R. CRIM. P. 49, FED. R. CIV. P. 5, LR5.5, and the General Order on Electronic Case Filing (ECF), the following document:

GOVERNMENT'S NOTICE OF INTENT TO OFFER RULE 404(b) EVIDENCE

was served pursuant to the district court's ECF system as to ECF filers, if any, and was sent by first-class mail on APRIL 8, 2013, to the following non-ECF filers:

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