

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
) 05 CR 691
) Hon. Amy J. St. Eve
ANTOIN REZKO)

**GOVERNMENT’S MOTION FOR ADMISSION
OF OTHER ACTS EVIDENCE**

The UNITED STATES OF AMERICA, by its attorney, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, moves to introduce evidence of defendants conduct, under the Inextricably Intertwined Doctrine or federal Rule of Evidence 404(b). The Government hereby files this Motion for Admission of Other Acts Evidence.

1. LEGAL BACKGROUND

A. Inextricably Intertwined Doctrine

The Seventh Circuit has a well-established line of precedent that allows evidence of uncharged acts to be introduced if the evidence is intricately or inextricably related to the acts charged in the indictment. *See United States v. Spaeni*, 60 F.3d 313, 316 (7th Cir. 1995). The purpose of the rule is to:

“[p]rovide the jury with a complete story of the crime on trial, to complete what would otherwise be a chronological or conceptual void in the story of the crime, or to explain the circumstances surrounding the charged crime.”

Id.

Under the “intricately related” or “inextricably intertwined” doctrine, evidence of other acts is admissible if it “arose out of the same transaction or series of transactions as the charged offense, if it [is] inextricably intertwined with the evidence regarding the charged offense, or it is necessary to complete the story of the crime [on] trial.” *United States v. Roberts*, 933 F.2d 517, 520 (7th Cir.

1991) (citation omitted). Evidence of uncharged criminal activity is admissible, “if that evidence is ‘intricately related to the facts of the case’ before the court.” *United States v. Ramirez*, 45 F.3d 1096, 1102 (7th Cir. 1995). The evidence may be presented when it provides the jury with either a “complete story of the crime [on] trial,” *Roberts*, 933 F.2d at 520, or when it is “‘so blended or connected’ that it incidentally involves, explains the circumstances surrounding, or tends to prove any element of, the charged crime,” *United States v. Bucey*, 876 F.2d 1297, 1315 (7th Cir. 1987), or when its absence would create a “chronological or conceptual void” in the account of the crime. *United States v. Ojomo*, 332 F.3d 485, 488 (7th Cir. 2003); *United States v. Hattaway*, 740 F.2d 1419, 1424-25 (7th Cir. 1984); *see also Ramirez*, 45 F.3d at 1102.

Evidence that is inextricably related to the facts of the case is admissible without reference to Rule 404(b) of the Federal Rules of Evidence, so long as the evidence’s probative value is not *substantially* outweighed by the danger of unfair prejudice from its admission. *United States v. Elder*, 16 F.3d 733,737 (7th Cir. 1994); *United States v. Hilgeford*, 7 F.3d 1340, 1345 (7th Cir. 1993); *United States v. Hargrove*, 929 F.2d 316, 320 (7th Cir. 1991). “[A]cts ‘concerning the chronological unfolding of events that led to an indictment or other circumstances surrounding the crime, [are] not evidence of ‘other acts’ within the meaning of Fed. R. Evid. 404(b).’” *United States v. Senffner*, 280 F.3d 755, 764 (7th Cir 2002) (*quoting Ramirez*, 45 F.3d at 1102 (citing cases)). Provided that the acts meet the requirements of Rule 403, they may be admitted in evidence at trial. *See id.* (*citing Hargrove*, 929 F.2d at 320); *United States v. Gibson*, 170 F.3d 673, 680-82 (7th Cir. 1999).

With regard to the Rule 403 balancing test—whether the probative value of the evidence is substantially outweighed by the danger of unfair prejudice—this Circuit has repeatedly “emphasized that most relevant evidence is, by its very nature, prejudicial, and that evidence must be *unfairly* prejudicial to be excluded.” *United States v. Curry*, 79 F.3d 1489, 1496 (7th Cir. 1996) (emphasis

in original; internal quotation marks omitted). Special deference is given “to the district court’s assessment of the balance between probative value and prejudice because that court is in the best position to make such assessments.” *United States v. Hale*, 448 F.3d 971, 985 (7th Cir. 2006).

B. Evidence Admissible Pursuant To Rule 404(b)

Evidence is admissible pursuant to Rule 404(b) of the Federal Rules of Evidence to show intent, motive, knowledge, opportunity, identity and/or absence of mistake, with respect to the charged offenses. Rule 404(b) provides:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.
Fed. R. Evid. 404(b).

Under the Seventh Circuit’s “broad admissibility” approach to Rule 404(b), evidence of prior crimes, wrongs, or acts may be admitted for any relevant purpose other than to show a defendant’s criminal propensity. *See United States v. Manso-Portes*, 867 F.2d 422, 426 (7th Cir. 1989)¹. Accordingly, Rule 404(b) permits the introduction of “extrinsic acts” evidence that “bears upon a relevant issue in the case such as motive, opportunity, or knowledge.” *Huddleston v. United States*, 485 U.S 681, 685 (1988). “Extrinsic acts evidence may be critical to the establishment of the truth as to a disputed issue, especially when that issue involves the actor’s state of mind and the only means of ascertaining that mental state is by drawing inferences from conduct.” *Id.* Moreover, the government is entitled to introduce Rule 404(b) evidence on the issue of intent, regardless of

¹ The drafters of Rule 404(b) intended for it to be a rule of inclusion, not exclusion. *United States v. Jordan*, 722 F.2d 353, 356 (7th Cir. 1983). Indeed, the intent of the rule is to emphasize the admissibility of “other crime” evidence. *Id.* The statutory list of permissible purposes for which evidence may be admitted under the rule is not exhaustive but is illustrative, and emphasizes admissibility. *See United States v. Manso-Portes*, 867 F.2d 422, 426 (7th Cir. 1989).

whether the defendant places his or her intent at issue. *United States v. Briscoe*, 896 F.2d 1476, 1499 (7th Cir. 1989).

Evidence offered pursuant to Rule 404(b) must pass a four-part test in this circuit. *See Levy*, 955 F.2d at 1102 (*quoting United States v. Zapata*, 871 F.2d 616, 620 (7th Cir. 1989)). Under this test, the evidence must: (1) be directed toward establishing a matter in issue other than the defendant's propensity to commit the crime charged; (2) show that the other act is similar enough and close enough in time to be relevant to the matter in issue; (3) be sufficient to support a jury finding that the defendant committed the similar act; and (4) have probative value which is not substantially outweighed by the danger of unfair prejudice. *See United States v. Kreiser*, 15 F.3d 635, 640 (7th Cir.1994); *United States v. Leahy*, 464 F.3d 773, 797 (7th Cir.2006).

The jury's improper use of "other acts" evidence can be minimized by appropriate limiting instructions. *See United States v. James*, 464 F.3d 699, 711 (7th Cir. 2006); *United States v. Souffront*, 338 F.3d 809, 834-35 (7th Cir. 2003); *Zafiro v. United States*, 506 U.S. 534, 540-41 (1993) (juries are presumed to follow limiting instructions).

II. PROFFERED ACTS

[THIS SECTION HAS BEEN FILED UNDER SEAL]

III. CONCLUSION

For the foregoing reasons, the government respectfully requests that this Court allow the admission of the above-described “other acts” evidence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned Assistant United States Attorney hereby certifies that the following documents:

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were served on January 10, 2008, in accordance with FED. R. CRIM. P. 49, FED. R. CIV. P. 5, LR 5.5, and the General Order on Electronic Case Filing (ECF) pursuant to the district court's system as to ECF filers.

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