

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 10-CR-117-BDB
	)	
JEFF M. HENDERSON and	)	
WILLIAM A. YELTON	)	

SECOND RULE 404(b) NOTICE AS TO  
DEFENDANT JEFF HENDERSON  
(Other Non-Charged Citizen Encounters Between  
Defendant Henderson and Various Individuals)

Comes now the United States of America, by and through counsel, Jane W. Duke, Patrick Harris, and Patricia S. Harris, Special Assistant United States Attorneys, and provides the following second notification of Rule 404(b) evidence it intends to present at trial.

1. Pursuant to this Court’s pretrial scheduling order, the United States is required to file its notice of intent to introduce Rule 404(b) evidence no less than ten (10) working days prior to trial. The trial of this matter is currently scheduled to commence August 1, 2011. Thus, the United States’ Rule 404(b) notice as to defendant Jeff Henderson is timely.

2. Rule 404(b) provides, in pertinent part:

(b) Other crimes, wrongs, or acts. 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.

3. The requirements in the Tenth Circuit for admissibility are: (1) the evidence is offered for a proper purpose; (2) the evidence is relevant; (3) the trial court determines under Fed.R.Evid. 403 that the probative value of the evidence is not substantially outweighed by its potential for unfair prejudice; and (4) the trial court gives the jury proper limiting instructions

upon request. *Huddleston v. United States*, 485 U.S. 681, 691-92, 108 S.Ct. 1496, 1502, 99 L.Ed.2d 771 (1988); *United States v. Rackstraw*, 7 F.3d 1476 (10th Cir.1993). Indeed, the rule is one of inclusion, rather than exclusion. *United States v. Segien*, 114 F.3d 1014 (10<sup>th</sup> Cir. 1997); *United States v. Cuch*, 842 F.2d 1173 (10th Cir.1988). Because all four criteria are satisfied with respect to the evidence designated herein, the proposed Rule 404(b) evidence should be deemed admissible at trial as to defendant Jeff Henderson.

4. Government witnesses will testify at the trial of this matter regarding certain non-charged police/citizen encounters between defendant Jeff Henderson (acting in his capacity as a Tulsa Police Department officer) and various private individuals. During these encounters, defendant Henderson was verbally and/or physically abusive of the individuals and their civil rights. These incidents will be used to prove motive, intent, and absence of mistake or accident on the part of defendant Henderson as to the charged offenses.

5. Many of the incidents referred to in the preceding paragraph are reflected in the Internal Affairs (IA) files of defendant Henderson, which have been provided to the defense in discovery. In fact, since 1998, defendant Henderson has been the subject of thirty-three (33) separate IA complaints. Through the testimony of Sergeant Gary Meek of the Tulsa Police Department Internal Affairs Division, the United States seeks to admit testimony regarding these 33 separate IA complaints.

6. In addition to the actual IA complaints that have been filed against defendant Henderson, Government witness Brandon McFadden will testify as to a specific instance in which he personally observed defendant Henderson (acting as a Tulsa Police officer) violate two individuals' civil rights through the use of excessive force. McFadden will testify that he was

present at the execution of a search warrant at the home of Fred Shields on August 16, 2007.

According to TPD records, a search warrant was executed on that date at Shields' house at 1102 East 26<sup>th</sup> Place North in Tulsa, Oklahoma. Defendants Yelton and Henderson were both present,<sup>1</sup> as were TPD officers Frank Khalil, Gene Watkins, and others. McFadden will testify that initially Shields attempted to flee the residence and resisted arrest. Shields was ultimately apprehended and handcuffed in the backyard. McFadden will testify that defendants Henderson and Yelton beat and kicked Shields after he was placed in handcuffs. McFadden will also testify that a third person (one whose identity McFadden did not know) was present at Shields' house that day. McFadden observed defendant Henderson strike that individual with a radio, resulting in a laceration to the individual's scalp. According to McFadden, this individual was then taken into the garage by Henderson, Yelton, and Khalil. McFadden will testify that he observed Henderson and Yelton lower the pants of this third person and spray pepper spray on the individual's genitals and anus. (See BATE 33786).

7. McFadden will also testify regarding one of defendant Henderson's IA incidents. This incident occurred on March 27, 2008, and involved Ms. LaShawnda Denise Todd and Mr. Jermaine Lucas. This incident is detailed in IA Complaint File 08-087 and, as noted, has been provided to defense counsel in discovery. McFadden was present during the event that led to the filing of this citizen complaint against Henderson. McFadden will testify as to Henderson's illegal entry into the home of Ms. Todd and Mr. Lucas and other illegal and improper acts taken by Henderson that day. McFadden will also testify that he was interviewed by TPD officials

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<sup>1</sup>The United States is separately submitting a Rule 404(b) Notice as to defendant Yelton on this same incident.

regarding Henderson's conduct relative to the Todd/Lucas incident and lied in order to protect Henderson.

8. Based on the foregoing, the United States respectfully requests that this Court admit the 404(b) evidence outlined above in the United States's case-in-chief with an appropriate limiting instruction.

WHEREFORE, the United States submits this Second Rule 404(b) notice as to separate defendant Jeff Henderson.

Respectfully submitted,

*/s/ Jane W. Duke*

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#### **CERTIFICATE OF SERVICE**

I hereby certify that on July 18, 2011, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing. By e-mail transmittal this same date, an electronic copy has been sent to all counsel of record.

*/s/ Jane W. Duke*

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Jane W. Duke