

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)	

FIRST RULE 404(b) NOTICE AS TO
DEFENDANT JEFF HENDERSON
(Gambling Activities of Defendant Henderson)

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 first 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 (10th 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. Several Government witnesses will testify at the trial of this matter regarding defendant Jeff Henderson's substantial gambling habit. The testimony regarding defendant Henderson's gambling habit will demonstrate that the gambling activity coincided with the time periods charged in the superseding indictment and further that during this time period defendant Henderson periodically incurred substantial gambling losses. The witnesses who will testify as to these matters include former Tulsa Police Department officer John K. ("J.J.") Gray; former Alcohol, Tobacco, Firearms and Explosives Special Agent Brandon McFadden; and Rochelle Martin. The proposed evidence is not directly related to the crimes charged in the superseding indictment. However, as set forth below, such other act evidence is nonetheless admissible under Rule 404(b).

5. The subject evidence is admissible under Rule 404(b) to show defendant Henderson's motive in committing the crimes charged in the superseding indictment. *See United States v. Ellington*, 2009 WL 1309525 (N.D. Ill.)(defendant's gambling activity admissible under Rule 404(b) to establish motive); *United States v. Mobley*, 193 F.3d 492, 495-96 (7th Cir. 1999)(same); *United States v. Morant*, 98 Fed. Appx. 560, 564 (7th Cir. 2004)(gambling losses admissible to prove motive for bank robbery); *United States v. Abdelhaq*, 246 F.3d 990 (7th Cir.

2001)(evidence of defendant's gambling activities relevant to show motive); *United States v. Bates*, 146 Fed. Appx. 795, 2005 WL 2087835 (6th Cir.)(gambling habit evidence admissible under Rule 404(b) in a prosecution for bank robbery; trial court erred in excluding such evidence). *See also, United States v. Chan*, 2002 WL 46994 (S.D.N.Y.); *United States v. Cobbs*, 233 Fed. Appx. 524, 2007 WL 1544207 (6th Cir.).

6. Defense counsel is already aware of the information set forth in the preceding paragraph, as it was detailed in discovery documents provided. (BATE 24255, 24261, 31902, and 33780-33782).

7. 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 First 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 _____

Jane W. Duke