

19-8380

No. _____

ORIGINATED
APR 23 1992
U.S. GOVERNMENT PRINTING OFFICE: 1992 50-1000-1000

IN THE
SUPREME COURT OF THE UNITED STATES

SAMORY AZIKIWE MONDS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals For The Eighth Circuit

APPENDIX

PARRISH KRUIDENIER DUNN BOLES
GRIBBLE GENTRY BROWN & BERGMANN, L.L.P.

Alfredo Parrish
Counsel of Record
2910 Grand Avenue
Des Moines, Iowa 50312
Telephone: (515) 284-5737
Facsimile: (515) 284-1704
Email: Aparrish@parrishlaw.com

TABLE OF CONTENTS

App. A: Portions of Trial Transcript, April 3, 2018	1a
App. B: <i>United States v. Samory Azikiwe Monds</i> , S.D. Iowa No. 4:17-CR-00170; Judgment entered September 12, 2018	4a
App. C: <i>United States v. Samory Azikiwe Monds</i> , Eighth Circuit Court of Appeals No. 18-3000; Opinion entered December 20, 2019	11a
App. D: <i>United States v. Samory Azikiwe Monds</i> , Eighth Circuit Court of Appeals No. 18-3000; Judgment entered December 20, 2019	19a
App. E: <i>United States v. Samory Azikiwe Monds</i> , Eighth Circuit Court of Appeals No. 18-3000; Petition for Further Rehearing Denied January 24, 2020	20a

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

- - - - - X
UNITED STATES OF AMERICA, :
: Plaintiff, : Criminal No. 4:17-170
: vs. :
: :
SAMORY AZIKIWE MONDS, : TRANSCRIPT OF TRIAL
: Defendant. :
- - - - - X

Second Floor Courtroom
United States Courthouse
123 East Walnut Street
Des Moines, Iowa 50309
Tuesday, April 3, 2018
8:30 a.m.

BEFORE: THE HONORABLE JAMES E. GRITZNER, Senior Judge,
and a Jury.

APPEARANCES:

For the Plaintiff: STEPHAN K. BAYENS, ESQ.
MIKAELA J. SHOTWELL ESQ.
Assistant U.S. Attorneys
U.S. Courthouse Annex, Suite 286
110 East Court Avenue
Des Moines, Iowa 50309-3899

For the Defendant: ALFREDO G. PARRISH, ESQ.
GINA MESSAMER, ESQ.
Parrish, Kruidenier, Dunn, Boles,
Gribble, Gentry, Brown &
Bergmann
2910 Grand Avenue
Des Moines, Iowa 50312

Terri L. Martin, CSR, RPR, CRR
United States Court Reporter
Room 189, U.S. Courthouse
123 East Walnut Street
Des Moines, Iowa 50309

1 knowledge of how these drugs are prepared, what tools would be
2 used to prepare and distribute the drugs, how profitable this
3 venture may be. It could conceivably go to his intent to and
4 opportunity and availability of a customer base. So those are
5 all things that are relevant to the intent here.

6 Sorry, go ahead, Judge.

7 THE COURT: Well, I just wanted to be clear. My
8 understanding from reading the materials is what we're going to
9 have here is a situation where we don't actually have direct
10 evidence of distribution. We have a person in a home that has
11 apparently got a lot of evidence of distribution-related
12 material, the drugs themselves, scales, packaging materials, and
13 so forth. And I'm quite sure that there will be a witness that
14 will testify that that is common for distribution. And so we
15 don't actually have the distribution, but you have evidence that
16 looks like somebody is going to distribute.

17 So that's your underlying factual situation that it
18 applies to?

19 MS. SHOTWELL: That's exactly right, Your Honor. And
20 it's our position that the defendant's prior experience in
21 possessing with the intent to deliver exactly this type of
22 substance demonstrates his knowledge and intent in possessing
23 those items in his home.

24 THE COURT: Okay. Well, I'm familiar with the case
25 that defendant cited to me where Judge Kelly talks about the

1 fact that you have to have some specific reason for using the
2 evidence in a particular case. Then Judge Gruender a little
3 later on wrote something that suggested that that was not a
4 particularly high burden; but that may be the distinction
5 between Judge Gruender and Judge Kelly. But I think, under the
6 circumstances of this case, I'm compelled to rule that they are
7 admissible.

8 With regard to the third one, I think if that were by
9 itself, that might be a closer call; but given the fact that the
10 two more recent ones are more significant anyway, I don't think
11 that the third one adds any particularly additional prejudice.
12 So I think they are admissible.

13 The question then becomes in what form. It seems to
14 me that we're kind of going two different directions on that
15 argument: A, how limited is that form when it's introduced and
16 then, B, how much you want to expand upon it yourselves. How do
17 we work that out? How do we balance those two things?

18 MR. BAYENS: Judge, what we have attempted to do is to
19 minimize any prejudicial prejudice by removing references to
20 penalties and those sorts of things. The proposed exhibits that
21 we have are redacted to the point where, for all practical
22 purposes, it cites the nature of the hearing and the charge and
23 the conviction date and no reference to penalties or probation
24 or fines or any of those other things. We did that
25 intentionally to try to limit any potential prejudice.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA

v.

Samory Azikiwe Monds

JUDGMENT IN A CRIMINAL CASE

Case Number: 4:17-cr-00170-001

USM Number: 14401-030

Alfredo G. Parrish

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) _____

pleaded nolo contendere to count(s) _____ which was accepted by the court.

was found guilty on count(s) Count One of the Indictment filed on September 26, 2017. after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section ?	Nature of Offense	Offense Ended	Count
21 U.S.C. §§ 841(a)(1), 841(b)(1)(C), 851	Possession with Intent to Distribute Cocaine Base and Cocaine	08/31/2017	One

See additional count(s) on page 2

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) _____

Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

September 12, 2018

Date of Imposition of Judgment



Signature of Judge

James E. Gritzner, Senior U.S. District Judge

Name of Judge

Title of Judge

September 12, 2018

Date

Judgment Page: 2 of 7

DEFENDANT: Samory Azikiwe Monds
CASE NUMBER: 4:17-cr-00170-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

262 months on Count One of the Indictment filed on September 26, 2017, to be served consecutively to the 30 month term of imprisonment imposed upon the revocation of supervised release in the United States District Court for the Southern District of Iowa, Docket Number 4:13CR00029-001 and any undischarged sentence in the Iowa District Court for Polk County, Docket Number FECR301890.

The court makes the following recommendations to the Bureau of Prisons:

Defendant be placed at FCI El Reno or FCI Greenville, with the preference given to FCI El Reno.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____
 as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before _____ on _____
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Samory Azikiwe Monds
CASE NUMBER: 4:17-cr-00170-001

Judgment Page: 3 of 7

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :
6 years on Count One of the Indictment file on September 26, 2017.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Samory Azikiwe Monds
CASE NUMBER: 4:17-cr-00170-001

Judgment Page: 4 of 7

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: Samory Azikiwe Monds
CASE NUMBER: 4:17-cr-00170-001

Judgment Page: 5 of 7

SPECIAL CONDITIONS OF SUPERVISION

You must participate in a program of testing and/or treatment for substance abuse, as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Office. At the direction of the probation office, you must receive a substance abuse evaluation and participate in inpatient and/or outpatient treatment, as recommended. Participation may also include compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment. You must not use alcohol and/or other intoxicants during the course of supervision.

You must participate in a cognitive behavioral treatment program, which may include journaling and other curriculum requirements, as directed by the U.S. Probation Officer.

You must comply with the terms and conditions ordered by Iowa District Court for Madison County, in case number 713927, requiring payments for the support and maintenance of Samory Monds Jr.

You will submit to a search of your person, property, residence, adjacent structures, office, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), and other electronic communications or data storage devices or media, conducted by a U.S. Probation Officer. Failure to submit to a search may be grounds for revocation. You must warn any other residents or occupants that the premises and/or vehicle may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your release and/or that the area(s) or item(s) to be searched contain evidence of this violation or contain contraband. Any search must be conducted at a reasonable time and in a reasonable manner. This condition may be invoked with or without the assistance of law enforcement, including the U.S. Marshals Service.

DEFENDANT: Samory Azikiwe Monds
CASE NUMBER: 4:17-cr-00170-001

Judgment Page: 6 of 7

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>JVTA Assessment *</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$ 0.00	\$ 0.00	\$ 0.00

The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
TOTALS	\$0.00	\$0.00	

Restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution.

the interest requirement for the fine restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

Judgment Page: 7 of 7

DEFENDANT: Samory Azikiwe Mond
CASE NUMBER: 4:17-cr-00170-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A Lump sum payment of \$ 100.00 due immediately, balance due
 not later than _____, or
 in accordance C, D, E, or F below; or

B Payment to begin immediately (may be combined with C, D, or F below); or

C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F Special instructions regarding the payment of criminal monetary penalties:

All criminal monetary payments are to be made to the Clerk's Office, U.S. District Court, P.O. Box 9344, Des Moines, IA. 50306-9344.

While on supervised release, you shall cooperate with the Probation Officer in developing a monthly payment plan consistent with a schedule of allowable expenses provided by the Probation Office.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:
\$1,183 in United States currency, as outlined in the Preliminary Order of Forfeiture granted on April 16, 2018.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, and (8) costs, including cost of prosecution and court costs.

United States Court of Appeals
For the Eighth Circuit

No. 18-3000

United States of America,

Plaintiff - Appellee,

v.

Samory Azikiwe Monds,

Defendant - Appellant.

Appeal from United States District Court
for the Southern District of Iowa - Des Moines

Submitted: September 27, 2019

Filed: December 20, 2019

Before LOKEN, COLLOTON, and KOBES, Circuit Judges.

COLLOTON, Circuit Judge.

A jury convicted Samory Monds of possession with intent to distribute cocaine and cocaine base. *See* 21 U.S.C. § 841(a)(1), (b)(1)(C). The district court¹ sentenced him to 262 months' imprisonment. On appeal, Monds challenges the admission of

¹The Honorable James E. Gritzner, United States District Judge for the Southern District of Iowa.

evidence that he had sustained three prior felony drug convictions, and the presentation of testimony adverting to the fact that Monds was under court supervision at the time of his arrest. Monds also disputes the district court's calculation of the advisory guideline range at sentencing. We conclude that there was no reversible error, and therefore affirm the judgment.

I.

In August 2017, Monds was serving terms of federal supervised release and state probation. He had violated conditions of supervised release, and police officers arrived at his home on August 30 to arrest him for the violation. As officers arrested Monds at his front door, a man named Tommy Johnson approached the house, but turned to flee when he saw the police. Officers caught Johnson and found that he possessed several baggies of heroin and a pipe for smoking crack cocaine. Police then obtained a search warrant for Monds's residence, and they seized cocaine and paraphernalia used in distributing drugs.

A grand jury charged Monds with possession with intent to distribute cocaine and cocaine base. Before trial, the government filed a notice under Federal Rule of Evidence 404(b) to present evidence of three prior convictions: (1) an August 2017 conviction for possession of marijuana with intent to deliver; (2) a May 2014 conviction for conspiracy to distribute cocaine base; and (3) an April 2011 conviction for possession of a controlled substance with intent to deliver. The motion asserted that the convictions were relevant to prove Monds's "motive, opportunity, intent, preparation, plan, knowledge, and absence of mistake." Monds moved to exclude the prior convictions. He also sought to keep out evidence that he was on supervised release and probation at the time of his arrest.

After a hearing, the district court ruled that the prior convictions would be received in evidence. In light of our decision in *United States v. Wright*, 866 F.3d

899 (8th Cir. 2017), which reiterated that “a prior conviction for distributing drugs . . . [is] relevant under Rule 404(b) to show knowledge and intent to commit a current charge of conspiracy to distribute drugs,” *id.* at 905 (internal quotation marks omitted), the court determined that “under the circumstances of this case,” it was “compelled to rule that they are admissible.” The court also ruled that witnesses would be permitted to make limited reference to the fact that officers appeared at Monds’s residence to arrest him for violating terms of supervised release.

At trial, the court admitted evidence of the three convictions, and instructed the jury that it could consider the evidence only to help decide “motive, intent, knowledge, or absence of mistake or accident.” The jury was admonished that it could not convict Monds simply because he may have committed similar acts in the past. When witnesses testified that Monds was under court supervision at the time of the investigation, the court gave a cautionary instruction about the limited purpose of the evidence.

II.

A.

Monds argues first that the district court abused its discretion by admitting the prior convictions. Rule 404(b) is a “rule of inclusion,” *United States v. Riepe*, 858 F.3d 552, 560 (8th Cir. 2017), that permits evidence of prior crimes to show a defendant’s “motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.” Fed. R. Evid. 404(b)(2). The evidence must be (1) relevant to a material issue raised at trial, (2) similar in kind and not overly remote in time to the crime charged, (3) supported by sufficient evidence to support a jury finding that the defendant committed the other act, and (4) of probative value not substantially outweighed by its prejudicial effect. See *United States v. LeBeau*, 867 F.3d 960, 978-79 (8th Cir. 2017); *United States v. Gant*, 721 F.3d 505, 509 (8th

Cir. 2013). Evidence is not admissible under Rule 404(b) if it is introduced solely to show a defendant's propensity to engage in criminal misconduct. *United States v. Walker*, 428 F.3d 1165, 1169 (8th Cir. 2005).

Monds contends that there was no meaningful similarity between his prior convictions and the charge in this case. Citing *dicta* from *United States v. Turner*, 781 F.3d 374 (8th Cir. 2015), Monds complains that the government failed to provide a specific non-propensity purpose for offering evidence of the prior convictions. We explained in *United States v. Harry*, 930 F.3d 1000 (8th Cir. 2019), however, that “*Turner* is inapposite where a defendant places his knowledge and intent at issue during trial.” *Id.* at 1006. Monds placed both elements at issue, by means of a general denial, *id.* (quoting *United States v. Thomas*, 58 F.3d 1318, 1322 (8th Cir. 1995)), and by suggesting specifically that the drugs may have belonged to Johnson and that any drugs that he possessed were for personal use.

The concern in *Turner*, moreover, was whether the government failed to explain *what* intent or knowledge the evidence would tend to show, or how the prior crimes were relevant to the offense charged. 781 F.3d at 390. Failure to elaborate in this way, while discouraged by this court, is “not in itself a basis for reversal.” *United States v. Mothershed*, 859 F.2d 585, 589 (8th Cir. 1988); *see United States v. Johnson*, 439 F.3d 947, 953-54 (8th Cir. 2006). Here, moreover, the government did more than “simply read the list of issues for which prior bad acts can be admitted under Rule 404(b).” *Mothershed*, 859 F.2d at 589.

The government was required to prove that Monds knew that the substance found on his dining room table was cocaine or cocaine base, as opposed to an innocent item, and the prosecution explained that a prior conviction for conspiring to distribute cocaine base was relevant to his knowledge. The government also bore the burden to prove that Monds intended to distribute the drugs in his possession, rather than hold them for personal use; the jury was given the option to consider the

lesser-included offense of simple possession. That Monds was convicted thrice before on charges involving the distribution of drugs, the prosecution explained, was relevant to whether he intended to distribute the drugs found in his residence. *E.g.*, *United States v. Patino*, 912 F.3d 473, 476 (8th Cir. 2019). The proposed uses of prior convictions to prove “motive” and “absence of mistake” were not well-explained, and might prudently have been omitted, but were consistent with circuit precedent. *E.g.*, *Wright*, 866 F.3d at 905; *United States v. Ellis*, 817 F.3d 570, 579 (8th Cir. 2016); *United States v. McGilberry*, 620 F.3d 880, 886-87 (8th Cir. 2010); *United States v. Shoffner*, 71 F.3d 1429, 1432 (8th Cir. 1995). Where the district court is satisfied by the government’s explanation for admissibility under Rule 404(b), the court not need repeat or augment the analysis.

Monds objects in particular to admission of the 2011 conviction because it was based on conduct occurring almost ten years before the alleged offense conduct in this case. The district court allowed that if this conviction were offered “by itself, that might be a closer call,” but reasoned that where the two more recent convictions were “more significant anyway,” admission of the third conviction did not occasion “any particularly additional prejudice.” This was a permissible exercise of discretion. The older conviction was within the range of relevance, *e.g.*, *United States v. Johnson*, 860 F.3d 1133, 1142 (8th Cir. 2017), and in considering prejudicial effect, the court was entitled to consider the incremental effect of the evidence in light of the record as a whole.

Monds also complains that the district court failed to conduct an adequate balancing of the probative value and prejudicial effect of the evidence. The argument seems to be that because the government admitted only the judgments of prior convictions, without greater detail about the crimes, the probative value was too small to justify admission. Of course, if the government had presented details of Monds’s prior drug trafficking, then that evidence would have risked greater prejudicial effect. We conclude that the district court’s decision to limit the evidence and to provide a

cautionary instruction justified its conclusion that the probative value of the evidence on issues such as knowledge and intent was not substantially outweighed by its prejudicial effect.

B.

Monds next argues that the district court abused its discretion by allowing references to the fact that he was serving terms of supervised release and probation at the time of his arrest. A police officer testified that he was assigned to arrest Monds while he was on “state and federal probation.” Two probation officers testified that they supervised Monds on federal supervised release and state probation, respectively, and that he reported living alone at the address where police arrested him and found drugs. Each time, the district court cautioned the jury that the evidence about court supervision was offered “solely to explain why the persons were called to the residence at issue,” who lived at the residence, or how the witness was familiar with the living situation.

Monds asserts that the district court abused its discretion by failing to exclude the evidence under Rule 403 on the ground that its probative value was substantially outweighed by a danger of unfair prejudice. He asserts that because he was willing to stipulate that he lived at the residence, the testimony added no probative value but created a risk that the jury unfairly would convict him of the charged offense based on his prior transgressions.

Monds understates the probative value of the disputed evidence. Testimony from the probation officers tended to establish not only that Monds lived at the residence, but that he lived there *alone*. This fact helped to prove that Monds, not the visiting Johnson, possessed the drugs that were found within the residence. The testimony of the police officer that he was present to arrest Monds for violating conditions of release was admissible to explain the circumstances surrounding the

event. *See United States v. Orozco-Rodriguez*, 220 F.3d 940, 942 (8th Cir. 2000); *United States v. Edwards*, 159 F.3d 1117, 1129 (8th Cir. 1998). The court properly cautioned the jury to consider it only for that purpose, and the jury already was aware that Monds had sustained prior convictions. The district court thus did not abuse its discretion under Rule 403.

III.

Monds also raises a claim of procedural error at sentencing. He argues that the district court erroneously calculated the advisory guideline range by denying him a two-level reduction for acceptance of responsibility under USSG § 3E1.1. We review the district court's determination for clear error. *United States v. Perry*, 640 F.3d 805, 813 (8th Cir. 2011).

A defendant is entitled to a two-level decrease if he "clearly demonstrates" an acceptance of responsibility. USSG § 3E1.1(a). This adjustment generally "is not intended to apply to a defendant who puts the government to its burden of proof at trial by denying the essential factual elements of guilt." USSG § 3E1.1, comment. (n.2). In "rare situations," however, a defendant who is convicted after trial may earn the adjustment, such as when the defendant "goes to trial to assert and preserve issues that do not relate to factual guilt." *Id.*; *see Perry*, 640 F.3d at 814. Given that Monds maintained at trial that he was not guilty as a factual matter, the district court ruled that it was "compelled to find that he is not entitled" to the two-level reduction.

Monds argues that he accepted responsibility by submitting to a proffer interview before trial and providing details about the charged offense. As it turned out, however, the parties did not reach a plea agreement or other pretrial resolution. The case proceeded to trial, and Monds denied factual guilt. That he refrained from obstructing justice by testifying falsely does not mean that his defense was unrelated to factual guilt within the meaning of the guideline commentary. This was not one

of the rare situations in which a defendant may receive an adjustment for acceptance of responsibility despite putting the government to its burden of proof at trial. Monds complains that the district court failed to exercise its discretion when it declared that it was “compelled” to deny the adjustment. But the court’s statement simply recognized the law: Under the guidelines, a defendant who proceeds to trial and presents a defense that denies factual guilt does not clearly demonstrate acceptance of responsibility.

* * *

The judgment of the district court is affirmed.

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 18-3000

United States of America

Plaintiff - Appellee

v.

Samory Azikiwe Monds

Defendant - Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Des Moines
(4:17-cr-00170-JEG-1)

JUDGMENT

Before LOKEN, COLLTON and KOBES, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court, briefs of the parties and was argued by counsel.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

December 20, 2019

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 18-3000

United States of America

Appellee

v.

Samory Azikiwe Monds

Appellant

**Appeal from U.S. District Court for the Southern District of Iowa - Des Moines
(4:17-cr-00170-JEG-1)**

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

Judge Kelly did not participate in the consideration or decision of this matter.

January 24, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans