

No. 21-6396

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IN THE SUPREME COURT OF THE UNITED STATES

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TAMARA JEUNE, PETITIONER

v.

UNITED STATES OF AMERICA

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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BRIEF FOR THE UNITED STATES IN OPPOSITION

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#### QUESTION PRESENTED

Whether the court of appeals correctly determined that the district court did not abuse its discretion by admitting evidence pursuant to Federal Rule of Evidence 404(b) of petitioner's prior conviction for a tax crime to show motive, opportunity, plan, or state of mind in petitioner's trial for similarly designed tax offenses.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (S.D. Fla.):

United States v. Jeune, No. 18-cr-20684 (Dec. 7, 2021)

United States Court of Appeals (11th Cir.):

United States v. Jeune, No. 21-14420 (docketed Dec. 20, 2021)

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1, at 1-20) is not published in the Federal Reporter but is available at 2021 WL 3716406.

JURISDICTION

The judgment of the court of appeals was entered on August 23, 2021. The petition for a writ of certiorari was filed on November 19, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT

Following a jury trial in the United States District Court for the Southern District of Florida, petitioner was convicted on one count of conspiring to defraud the government, in violation of 18 U.S.C. 286; one count of filing false, fictitious, or fraudulent claims, in violation of 18 U.S.C. 287; and three counts of assisting in the preparation of false tax returns, in violation of 26 U.S.C. 7206(2). Am. Judgment 1. She was sentenced to 180 months of imprisonment, to be followed by three years of supervised release. Id. at 3-4. The court of appeals affirmed petitioner's convictions but vacated her sentence and remanded to the district court for resentencing. Pet. App. A1, at 1.

1. In the early 2000s, petitioner operated Accounting Advisors Group, a tax-preparation business in South Florida. Pet. App. A1, at 1. While at Accounting Advisors Group, petitioner and one of her sisters prepared false individual income tax returns for clients, fraudulently inflating their clients' claimed tax withholdings and deductible expenses to generate larger tax refunds. Ibid. Petitioner was eventually indicted on 30 counts of willfully assisting in the preparation of false income tax returns, in violation of 26 U.S.C. 7206(2). Pet. App. A1, at 1-2. In 2009, petitioner pleaded guilty to one of the charged counts, and the district court sentenced her to 18 months of imprisonment, to be followed by one year of supervised release.

Ibid. Petitioner served a reduced prison sentence of nine months and began her supervised release in February 2010. Id. at 2.

As a special condition of her supervised release, petitioner was prohibited from providing tax-preparation services. Pet. App. A1, at 2. But before her supervised release period had ended, petitioner began preparing tax returns for clients at another of her companies, Investment Equity Development, Inc. Id. at 2, 6; Gov't C.A. Br. 5. Because petitioner was a recently convicted felon, she was not able to obtain an Electronic Filing Identification Number (EFIN) from the IRS to facilitate these filings. Pet. App. A1, at 2. Petitioner therefore submitted the returns using EFINs obtained in the names of others, including her boyfriend, her ex-husband, and her son. Id. at 2, 4.

In 2011, the IRS began a civil audit of Investment Equity for its delinquent business and corporate tax filings. Pet. App. A1, at 2. Petitioner told the IRS auditor that she was responsible for managing and running Investment Equity's business. Id. at 3. But petitioner and her ex-husband gave the IRS inconsistent and contradictory accounts regarding who prepared tax returns at the company. Ibid. Petitioner's ex-husband initially told the auditor that he did not prepare tax returns at all, but in a subsequent interview at which petitioner was also present, he instead -- with prompting from petitioner -- claimed primary responsibility for preparing tax returns at Investment Equity. Ibid. After the auditor asked petitioner's ex-husband probing questions about tax

preparation and reminded both he and petitioner about the consequences of perjury, petitioner finally admitted that she and a sister had prepared tax returns at Investment Equity. Ibid.

The IRS auditor also observed additional conduct that she found suspicious. See Pet. App. A1, at 3-4. For example, during a visit to Investment Equity's office, the auditor saw petitioner's boyfriend applying for an EFIN on a computer. Id. at 4. During a follow-up office visit, the auditor saw a 2012 tax-product training certificate listing petitioner's name but the boyfriend's EFIN. Ibid. The auditor also observed in plain view fraudulent tax forms that were used to claim false tax withholdings on the returns prepared at Investment Equity. Ibid. The IRS referred Investment Equity for criminal investigation. Ibid.

2. A grand jury charged petitioner with one count of conspiring to defraud the government, in violation of 18 U.S.C. 286, four counts of filing false, fictitious, or fraudulent claims, in violation of 18 U.S.C. 287, and five counts of assisting in the preparation of false tax returns, in violation of 26 U.S.C. 7206(2). Pet. App. A1, at 4. Petitioner pleaded not guilty and went to trial. Ibid. Her defense proceeded on the theory that the tax fraud at Investment Equity was perpetrated by others -- including petitioner's sister, ex-husband, and boyfriend -- without petitioner's knowledge. Pet. C.A. Br. 21; Gov't C.A. Br. 13.

Before trial, the government filed a motion in limine to admit evidence establishing petitioner's 2009 tax-fraud conviction, the facts underlying that conviction, and the fact that petitioner continued to operate a tax-preparation business while on supervised release. Pet. App. A1, at 5; see Gov't C.A. Br. at 9-10. The district court granted the motion, finding the evidence admissible under Federal Rule of Evidence 404(b) to prove intent or motive. Pet. App. A1, at 5.

During trial, the government introduced redacted transcripts of petitioner's 2009 guilty plea and sentencing hearing to establish the factual similarities between petitioner's 2009 offense and the charged offenses. Pet. App. A1, at 6; Gov't C.A. Br. 12. That evidence demonstrated that, like the fraud in 2009, the charged conduct involved inflated tax returns for medical and business expenses and falsified W-2s listing businesses with unique names like Nickcourts International, Inc., and Steven and Steven Electric, Inc. Pet. App. A1, at 6. One unredacted portion of the 2009 sentencing transcript contained petitioner's statement, made to the 2009 sentencing judge, seeking the sentencing court's "mercy" on the ground that she would "learn" from her "mistake," which the government argued showed petitioner's "absence of mistake" in the commission of the charged offenses in this case. Id. at 6-7.

The government also used evidence of petitioner's prior criminal proceedings to establish her intent, motive, and plan to

use other persons' names to obtain EFINs and prepare tax returns at Investment Equity. Pet. App. A1, at 6. The government observed that, because petitioner knew that she was prohibited from preparing tax returns during her period of supervised release, she had to use the names of her close associates. Ibid.; Gov't C.A. Br. 12, 32. In addition, the government introduced evidence showing that, just days before petitioner's 2009 sentencing hearing, she had personally reactivated Investment Equity by filing the requisite paperwork with the State of Florida -- a fact that the government used to rebut petitioner's claim that the fraud at Investment Equity was committed by others. Pet. App. A1, at 2, 6. In its opening and closing statements, the government also made four references to petitioner's having gone "back" to committing tax fraud after her prior conviction. Id. at 8. For example, in the opening statement, the government said that "[w]hen [petitioner] came out of prison, she went back to what she knew best, committing more tax fraud, but this time it was different." Ibid. (emphasis omitted).

The district court provided a limiting instruction before the testimony of the two witnesses that presented the government's Rule 404(b) evidence, before the parties' closing statements, and before the jury deliberations, instructing the jurors to consider the evidence related to petitioner's prior conviction only for the "limited purpose" of assessing petitioner's motive, opportunity, plan, or state of mind. Pet. App. A1, at 8. At the conclusion of

the evidence, petitioner asserted that the evidence was insufficient to support the government's charges and moved for a judgment of acquittal on all counts. 5/20/19 Trial Tr. 291. After hearing the parties' detailed arguments on each count, id. at 291-322, the court found there was sufficient evidence on five of the counts and dismissed the other five, id. at 322. The jury found petitioner guilty on the remaining five charges, and the district court sentenced petitioner to 180 months of imprisonment, along with an order to pay \$398,021 in restitution to the IRS. Pet. App. A1, at 5.

3. In an unpublished per curiam opinion, the court of appeals affirmed petitioner's convictions, but vacated petitioner's sentence and remanded for resentencing. Pet. App. A1, at 1-20. The court rejected petitioner's assertion that the district court had abused its discretion in admitting the evidence underlying her 2009 conviction under Rule 404(b), id. at 5-8, and found that petitioner had not established plain error with respect to her unpreserved challenge to the references to her prior conviction in the government's opening and closing statements, id. at 8-9.

The court of appeals explained that, for evidence to be admissible under Rule 404(b), it "(1) must be relevant to an issue other than defendant's character, (2) must be sufficiently proven to permit a jury determination that the defendant committed the act, (3) must have probative value that is not substantially

outweighed by undue prejudice, and (4) must otherwise satisfy Federal Rule of Evidence 403.” Pet. App. A1, at 6 (quoting United States v. Nerey, 877 F.3d 956, 974 (11th Cir. 2017)). And applying that standard, the court found no abuse of discretion in admitting the evidence underlying petitioner’s prior conviction, because that evidence -- which established “striking similarities” between the 2009 offense and the current scheme, ibid. -- was relevant to show petitioner’s intent, identity, knowledge, and absence of mistake, id. at 6-7. The court further determined that, consistent with Federal Rule of Evidence 403, the probative value of the prior-conviction evidence was not substantially outweighed by any undue prejudice. Id. at 8.

The court of appeals rejected petitioner’s argument that the government “should not have been permitted to get into the details of her prior conviction” and should have instead “simply relied on the 2009 criminal judgment.” Pet. App. A1, at 7. The court explained that many of the details were necessary to establish the similarities between the prior offense and the charged conduct in order to prove “identity, intent, knowledge, lack of mistake, and modus operandi.” Ibid. And, while the court stated that the government should not have relied on the facts that petitioner was initially charged with 30 counts and that her initial sentence was 18 months, it found that evidence insufficiently prejudicial to tilt the balance under Rule 403 because the permissible evidence of the general scope of her prior offense “would have nonetheless

covered at least those thirty counts," and because the length of her prior sentence "was not significantly more prejudicial" than the nine months that she actually spent in prison -- a fact that she herself had emphasized as a partial alibi. Id. at 7-8. The court also emphasized that "the district court's instructions to the jury appropriately mitigated any possible unfair prejudice." Id. at 8. The court of appeals observed that "[b]efore" the relevant testimony, "closing arguments, and jury deliberations, the district court instructed the jury to consider [petitioner's] 2009 conviction for only the 'limited purpose'" of determining "motive, opportunity, or plan or the state of mind necessary to commit the charged offenses." Ibid.

The court of appeals reviewed "for plain error" petitioner's challenge to the government's references to her prior conviction in its opening and closing statements, observing that petitioner "never objected" to those references in the district court. Pet. App. A1, at 8. The court acknowledged that the government should not have been permitted to refer to petitioner "having gone 'back' to committing tax fraud" after serving her prior prison sentence, because the court viewed that statement as a "clear propensity argument." Ibid. But the court found "no basis to conclude plain error occurred here." Ibid. It explained that opening and closing statements are not evidence; that the district court had repeatedly given limiting instructions about the proper use of the prior conviction; and that "[t]he brief impermissible statement here was

repeated on four occasions over the course of a five-day trial involving hundreds of trial exhibits and testimony of sixteen witnesses,” such that this was not a case in which the statements “provide an appropriate basis for vacating a conviction.” Id. at 9.

Judge Martin dissented. She had “no quarrel with the idea that some of the uses the government made of [petitioner’s] 2009 conviction came within the bounds of the rules,” Pet. App. A1, at 18, but in her view, the majority erred in finding that the instances in which it found that the government misused the prior conviction constituted “harmless error,” id. at 19.

On December 7, 2021, three weeks after petitioner filed her petition for certiorari review, the district court resentenced her to 132 months of imprisonment, to be followed by three years of supervised release. Second Am. Judgment 3-4. Petitioner filed a notice of appeal on December 20, 2021, D. Ct. Doc. 148, and her opening brief in the court of appeals is currently due on March 14, 2022, 21-14420 Docket entry (11th Cir. Feb. 1, 2022).

#### ARGUMENT

Petitioner contends (Pet. 12-24) that the court of appeals erred in finding that the district court did not abuse its discretion in admitting evidence about her prior conviction under Rule 404(b), and petitioner further contends (ibid.) that the court of appeals’ approach to Rule 404(b) evidence conflicts with that of the Third Circuit. The court of appeals’ decision is correct;

no meaningful difference exists between its approach and the Third Circuit's; and the courts of appeals have uniformly affirmed the admission of similar Rule 404(b) evidence in other tax fraud cases. In any event, this case would be a poor vehicle to consider the question presented because it is in an interlocutory posture; petitioner did not press her challenge to the court of appeals' approach to Rule 404(b) evidence in the proceedings below; and adopting petitioner's favored articulation of the Rule 404(b) inquiry would not affect the outcome of this case. Further review is unwarranted.

1. Under Rule 404(b), although "[e]vidence of any other crime, wrong, or 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 [that] character," it is 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)(1) and (2); see 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."). The "threshold inquiry a court must make before admitting similar acts evidence under Rule 404(b) is whether that evidence is probative of a material issue other than character." Huddleston, 485 U.S. at 686. The

evidence must also be sufficient for a reasonable jury to conclude that the defendant committed the act in question. Id. at 689. And the trial court should consider whether evidence of the act, though otherwise admissible under Rule 404(b), should nevertheless be excluded under Fed. R. Evid. 403 because its "probative value is substantially outweighed by," inter alia, "the danger of unfair prejudice." Old Chief v. United States, 519 U.S. 172, 180 (1997) (quoting Fed. R. Evid. 403).

The court of appeals correctly incorporated those principles in the decision below, expressly recognizing that prior-acts evidence is admissible under Rule 404(b) only if it is "relevant to an issue other than defendant's character," "sufficiently proven to permit a jury determination that the defendant committed the act," free of substantial "undue prejudice," and otherwise compatible with Rule 403. Pet. App A1, at 6 (quoting United States v. Nerey, 877 F.3d 956, 974 (11th Cir. 2017)). That approach is fully consistent with this Court's precedent. Indeed, the court of appeals' test stems from the Fifth Circuit's en banc decision in United States v. Beechum, 582 F.2d 898 (1978), cert. denied, 440 U.S. 920 (1979), which this Court approvingly cited in Huddleston v. United States, supra. See Huddleston, 485 U.S. at 689 (citing Beechum, 582 F.2d at 912-913); United States v. Miller, 959 F.2d 1535, 1538 (11th Cir.) (en banc) ("The leading case in this circuit on Rule 404(b) evidence is [Beechum]," whose "analysis

has now been confirmed by the Supreme Court in Huddleston."), cert. denied, 506 U.S. 942 (1992).<sup>1</sup>

The court of appeals also correctly applied the Rule 404(b) analysis to the facts of this case. The court carefully reviewed the particular items of evidence related to petitioner's prior conviction that were admitted at trial, including redacted hearing transcripts and witness testimonies. Pet. App. A1, at 6-7. It then determined that the evidence was relevant under Rule 404(b) to show intent, identity, knowledge, and absence of mistake. Ibid. The court also found that the probative value of the evidence was not substantially outweighed by undue prejudice. Ibid. And while it noted a few instances where the government had introduced details of the prior conviction that should not have been admitted, the court found that those details were unlikely to have prejudiced petitioner and that "the district court's instructions to the jury appropriately mitigated any possible unfair prejudice." Id. at 8; see id. at 7-8.

Similarly, although the court of appeals found that four of the government's references to petitioner's prior conviction in the opening and closing statements constituted error, it observed that petitioner had not challenged those statements in the district court, Pet. App. A1, at 8, and that the "brief impermissible" references did not rise to the level of "plain error," particularly

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<sup>1</sup> Decisions of the Fifth Circuit handed down before 1981 are binding in the Eleventh Circuit. Bonner v. City of Prichard, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc).

in the context of a "five-day trial involving hundreds of trial exhibits and the testimony of sixteen witnesses," id. at 9. Petitioner has not offered any meaningful reason for this Court to review that fact-bound determination. Moreover, petitioner does not seek further review of the court of appeals' determination that any error made by the government during opening and closing statements was not plain, reversible error. And the decision below is consistent with this Court's requirements for correcting plain, forfeited error. E.g., United States v. Olano, 507 U.S. 725 (1993).

2. Petitioner contends (Pet. 12-21) that review is warranted because the court of appeals' approach to Rule 404(b) conflicts with the Third Circuit's approach in United States v. Caldwell, 760 F.3d 267 (2014). That contention lacks merit, and the courts of appeals have uniformly affirmed the admission of similar prior-acts evidence in tax cases.

In Caldwell, the Third Circuit stated that prior-acts evidence is inadmissible unless it is "offered for a proper non-propensity purpose"; "relevant to that identified purpose"; "sufficiently probative under Rule 403"; and "accompanied by a limiting instruction, if requested." 760 F.3d at 277-278. In the decision below, the court of appeals explained that prior-acts evidence is admissible only if it is "relevant to an issue other than defendant's character," "sufficiently proven to permit a jury determination that the defendant committed the act," free of

substantial "undue prejudice," and otherwise compatible with Rule 403. Pet. App. A1, at 6 (citation omitted). The court also viewed the repeated limiting instructions by the district court as supporting the propriety of the admission of the evidence in this case. Id. at 8. No meaningful distinction can be drawn between the Third Circuit's approach in Caldwell and the approach in the decision below.

Petitioner nevertheless asserts (Pet. 18) that the decision below conflicts with Third Circuit precedent because the court of appeals purportedly endorsed the admission of Rule 404(b) evidence whenever it is "theoretical[ly]" possible that the evidence could have been admitted for a proper purpose, whereas the Third Circuit requires an analysis of the "real purpose" for which the evidence was used. But petitioner cites no language from any Eleventh Circuit decision in support of her characterization of that court's Rule 404(b) standard as a "theoretical" one. And to the extent that she views the unpublished decision below as adopting such a standard, the court of appeals' detailed analysis of the precise facts of this case belies any assertion that the Eleventh Circuit requires only "theoretical" compliance with Rule 404(b). See Pet. App. A1, at 6-8.

The court of appeals did not consider whether the Rule 404(b) evidence in this case could, theoretically, have been admitted for proper purposes. Instead, it analyzed how the government had used the evidence at trial, and determined that for the most part the

government had used the evidence for non-character purposes such as proving intent, identity, knowledge, and absence of mistake. See, e.g., Pet. A1, at 6 (explaining that "it was fair for the government to rely on the underlying facts of her 2009 tax fraud conviction to prove identity and knowledge of the scheme"). The court also identified some evidence and statements in the government's opening and closing arguments that should have been excluded, and made clear that those were instances of error, but found that they did not warrant reversal. Id. at 8-9.

Further, Caldwell is distinguishable from this case because the Third Circuit rejected Rule 404(b) evidence of knowledge on the ground that the defendant's "knowledge" was "not at issue." 760 F.3d at 279. Here, in contrast, petitioner's knowledge and intent were undisputedly "at issue." Ibid. At trial, petitioner claimed that she was ignorant of the tax fraud that occurred at her business, and that the fraud was perpetrated by others behind her back. Gov't C.A. Br. 12; see Pet. App. A1, at 6. Thus, as the court of appeals correctly recognized, petitioner's intent was a material issue that the government had the "substantial burden" to prove. Pet. App. A1, at 6. And, as the court further recognized, the evidence of petitioner's prior conviction was highly probative of that issue, in light of the "striking similarities" between the prior and the charged offenses. Ibid.

The courts of appeals have uniformly recognized that evidence of prior tax violations may be admitted under Rule 404(b) in

circumstances similar to petitioner's.<sup>2</sup> Indeed, the Third Circuit itself has recognized that, in a criminal tax case, the government may properly introduce Rule 404(b) evidence of a defendant's "prior tax non-compliance" to make its "essential" showing of "intent or willfulness." United States v. Daraio, 445 F.3d 253, 264 (2006), cert. denied, 549 U.S. 1111 (2007).

Finally, petitioner errs in suggesting (Pet. 22-23) that the dissenting opinion in this case supports her assertion of disagreement as to the proper approach to Rule 404(b) evidence. The majority and the dissent did not disagree on the legal standards that govern petitioner's evidentiary challenge; rather, the dissent disagreed with the majority's determination that the errors it had identified were harmless. Pet. App. A1, at 19.

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<sup>2</sup> See, e.g., United States v. Johnson, 893 F.2d 451, 453 (1st Cir. 1990) (upholding admission of uncharged acts of tax fraud to show that the defendant willfully violated tax laws); United States v. Bok, 156 F.3d 157, 165-166 (2d Cir. 1998) ("a defendant's past taxpaying record is admissible to prove willfulness circumstantially" because such evidence is "indicative of an intent to evade the tax system"); United States v. Zizzo, 120 F.3d 1338, 1355 (7th Cir.) (upholding admission of failure to file tax returns in prior years as "relevant to [the defendant's] specific intent"), cert. denied, 522 U.S. 998 (1997); United States v. Upton, 799 F.2d 432, 433 (8th Cir. 1986) (per curiam) ("Evidence of [defendant's] questionable compliance with tax laws, both in the years prior to and subsequent to [the charged conduct], is probative of willfulness in the present context."); United States v. Marashi, 913 F.2d 724, 735 (9th Cir. 1990) (upholding admission of prior, similar tax violations to show modus operandi and intent); United States v. Horner, 853 F.3d 1201, 1215 (11th Cir. 2017) (upholding admission of prior-year tax returns to show willful intent to falsify charged returns), cert. denied, 138 S. Ct. 674 (2018).

3. In any event, this case would be a poor vehicle to consider the question presented because it is in an interlocutory posture; petitioner did not challenge the Eleventh Circuit's approach to Rule 404(b) in the proceedings below; and she cannot prevail under the articulation that she endorses.

First, the decision below was remanded for resentencing. That resentencing has already occurred, and petitioner's appeal of the district court's new judgment is currently pending in the court of appeals. See p. 10, supra. The interlocutory posture of this case "alone furnishe[s] sufficient ground for the denial" of the petition for a writ of certiorari. Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 240 U.S. 251, 258 (1916); see Brotherhood of Locomotive Firemen & Enginemen v. Bangor & Aroostook R.R., 389 U.S. 327, 328 (1967) (per curiam) (explaining that a case remanded to district court "is not yet ripe for review by this Court"). "[E]xcept in extraordinary cases, [a] writ [of certiorari] is not issued until final decree." Hamilton-Brown Shoe Co., 240 U.S. at 258. Following the conclusion of her second appeal, petitioner will have an opportunity to raise the claim pressed here, in addition to any claims that may arise from her resentencing, in a single petition for a writ of certiorari. See Major League Baseball Players Ass'n v. Garvey, 532 U.S. 504, 508 n.1 (2001) (per curiam). No justification exists in this case to depart from this Court's usual practice of declining to review interlocutory petitions.

Second, petitioner did not raise the question presented before the court of appeals. In her appellate brief, petitioner did not contend that the Eleventh Circuit's approach to Rule 404(b) was overly "theoretical" or otherwise flawed, nor did she cite the Third Circuit's decision in Caldwell. See Pet. C.A. Br. 36-42. Instead, petitioner simply argued that, under the precedent of this Court and the Eleventh Circuit, the admission of the prior-conviction evidence was improper. See ibid. Under the "traditional rule," this Court will not grant a petition for a writ of certiorari to review questions that were "not pressed or passed upon below." United States v. Williams, 504 U.S. 36, 41 (1992) (citation omitted).

Third, the question presented is not outcome determinative. Even if this Court were to adopt petitioner's "real purpose" articulation of the test for the admission of Rule 404(b) evidence, Pet. 18, it would not alter the outcome because the court of appeals already analyzed the "real purpose[s]," ibid., to which the government put the evidence in her trial. At bottom, petitioner simply disagrees with the results of that analysis, and particularly with the court of appeals' determination that any errors in the government's use of the evidence do not warrant reversal. But that fact-bound disagreement does not warrant this Court's review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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FEBRUARY 2022