

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

MOHAMED IBRAHIM AHMED,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Is an updated, clear, and uniform test needed for the most common evidentiary issue presented on appeal, Rule 404(b) related issues?

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OPINION BELOW

The opinion from the Fifth Circuit was issued on November 14, 2022, was not selected for publication in the Federal Reporter, but reported at 2022 WL 16914540 and is attached hereto as Appendix A.

The criminal judgment from the Eastern District of Texas was entered on October 21, 2020, and is attached hereto as Appendix B.

JURISDICTION

The Court's jurisdiction is invoked pursuant to 28 U.S.C. §1254. The date on which the United States Court of Appeals decided this case was November 14, 2022, and no petition for rehearing was filed with said court. The 90-day period in which to file the petition is extended to February 13, 2023.¹

STATEMENT OF THE CASE

Mohamed Ibrahim Ahmed (herein "Ahmed") was serving a sentence of incarceration in the Beaumont FCI for his conviction of terrorism related offenses and was indicted for recruiting support for a foreign terrorist organization, lying to federal officials, and soliciting a crime of violence. (ROA.37-40; 98-102) In sum, he was accused of recruiting for ISIS while in the prison. In his prosecution and on appeal Ahmed challenged the admission of evidence that 1) he attended an al-Qaeda affiliated training camp in Afghanistan in 1997; 2) he engaged in criminal activity with a terrorist-facilitation network in Sweden before late 2009; and 3) he pled guilty to his original conviction in 2012 as said evidence was neither intrinsic not extrinsic

¹ The 90th day is a Sunday, so the filing period is extended to Monday. S. Ct. Rule 30.1.

evidence permitted under Rule 404(b)². (ROA.4188) Basically, Ahmed's argument was that all evidentiary matters relevant to his case at bar occurred while he was incarcerated at Beaumont and that the 20 year old training activities while in his own country, Sweden activities, and prior conviction details would only inflame (scare) the jury.

The Fifth Circuit Court of Appeals considered the issues and affirmed the conviction stating that the 1997 training camp participation was "necessary preliminary evidence" and that the Sweden related activity was "admissible to complete the story of the crime by proving the immediate context of events in time and place". The Fifth Circuit's analysis was conducted under its two-step test established in *United States v. Beechum*.³

REASONS FOR GRANTING THE PETITION

The different federal circuits use different (sometimes conflicting) tests in their respective analysis under Rule 404(b): intrinsic vs extrinsic and the rule's application to extrinsic evidence. Some of these tests have results contrary to this Court's analysis and instruction in *Huddleston, v. United States*.⁴

The Fifth Circuit's Rule 404(b) application in this case incorrectly applies (or does not apply) the instruction of this Court in *Huddleston*⁵ and resulted in the

² Federal Rules of Evidence Rule 404(b) – "Rule 404(b)" herein.

³ *United States v. Beechum*, 582 F.2d 898, 911 (5th Cir. 1978, en banc).

⁴ *Huddleston v. United States*, 485 U.S. 681 (1988).

⁵ *Id.*

affirmation of Ahmed's conviction by an East Texas jury who was unfairly prejudiced (inflamed/scared/terrified) against the terrorist that was in the courtroom with them.

ARGUMENT

Rule 404(b) has become the most cited evidentiary rule on appeal.⁶ The most recent case from this Court thoroughly analyzing the application of Rule 404(b) is *United States v. Huddleston* (1988), in which this Court held that under Rule 404(b) a preliminary finding by the Court that the Government has proved the act is not required⁷ and provided cautionary analysis on the rule's application⁸.

We share petitioner's concern that unduly prejudicial evidence might be introduced under Rule 404(b)...We think, however, that the protection against such unfair prejudice emanates not from a requirement of a preliminary finding by the trial court, but rather from four other sources: first, from the requirement of Rule 404(b) that the evidence be offered for a proper purpose; second from the relevancy requirement of Rule 402—as enforced through Rule 104(b); third, from the assessment the trial court must make under Rule 403 to determine whether the probative value of the similar acts evidence is substantially outweighed by its potential for unfair prejudice...; and fourth, from Federal Rules of Evidence 105, which provides that the trial court shall, upon request,

⁶ *United States v. Davis*, 726 F.3d 434, 441 (3rd Cir. 2013).

⁷ *Huddleston* at 689.

⁸ *Huddleston* at 691-692.

instruct the jury that the similar acts evidence is to be considered only for the proper purpose for which it was admitted.

However, if evidence is considered intrinsic, being considered as part and parcel of the charged offense, then it is not subject to the application or analysis of Rule 404(b).⁹ Thus the Government has increased its argument of evidence being considered intrinsic to avoid Rule 404(b) application, and the different circuit courts have established different standards of review and different tests of applying Rule 404(b). In essence the definition of intrinsic evidence and thus the door to admissibility has become wider. Instead of a specific and thorough analysis as discussed in *Huddleston*, “intrinsic evidence” has become more of an empty phrase (like *res gestae*) which encourages looseness of thinking and uncertainty of decision and is most frequently used as a cover for loose ideas and ignorance of principles.¹⁰

Both the Third and D.C. Circuits have been critical of bifurcating the universe into intrinsic and extrinsic evidence because it has proven difficult in practice.¹¹ In order to brighten the line separating intrinsic and extrinsic evidence many courts have focused on the connection between a given crime or act and the charged crime – how they are inextricably intertwined – and every circuit now has some formulation of the inextricably intertwined test.¹²

⁹ *United States v. Green*, 617 F.3d 233, 245 (3rd Cir. 2010);

¹⁰ *Green*, 617 F.3d at 243-245.

¹¹ See *United States v. Green*, 617 F.3d 233, 245 (3rd Cir. 2010); *United States v. Bowie*, 232 F.3d 923, 927-929 (D.C. Cir. 2000).

¹² See *Bowie* at 928.

The *Bowie* court discussed how some of the formulations provide circular definitions and others are over-broad.¹³ The *Bowie* court stated that the “complete the story” definition of “inextricably intertwined” threatens to override Rule 404(b). For, example a defendant’s bad act may be only tangentially related to the charged crime, but nevertheless could “complete the story” or “incidentally involve” the charged offense “explain the circumstances.”¹⁴ This is the same concern that *Huddleston* voiced.

This concern has become reality for Ahmed. The Fifth Circuit stated that Ahmed 1997 training camp evidence was intrinsic because it was “necessary preliminary evidence” or “necessary to complete the story” of the charged offense.¹⁵ So, the story of Ahmed’s alleged 2014-2017 terrorist recruitment while incarcerated in Beaumont FCI could not be told (complete) without the fact that in 1997 he was in a training camp in Afghanistan?

So, to analyze Ahmed’s case or another Rule 404(b) case, which test is correct?

Different Standards of Review

The **First Circuit, Second Circuit, Fourth Circuit, Seventh Circuit, Eighth Circuit, Tenth Circuit, Eleventh Circuit, and D.C. Circuit** use an abuse of discretion standard of review for Rule 404(b) issues.¹⁶

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *United States v. Ahmed*, 2022 WL 16914540 at *1 (5th Cir. 2022).

¹⁶ *United States v. Rodriguez*, 215 F.3d 110, 118 (1st Cir. 2000); *United States v. McCallum*, 584 F.3d 471, 474 (2nd Cir. 2009); *United States v. Sterling*, 860 F.3d 233, 246 (4th Cir. 2017); *United States v.*

The Third Circuit reviews a district court's evidentiary rulings on an abuse of discretion standard. However, the court conducts a plenary (de novo) review to the extent that the district court's rulings are based on a legal interpretation of the Federal Rules of Evidence. This includes plenary review of whether evidence falls within the scope of Rule 404(b).¹⁷

The Fifth Circuit applies an abuse of discretion standard when the district court admits intrinsic evidence; however, applies a heightened version of that standard when the district court admits extrinsic evidence under Rule 404(b) because the evidence in a criminal trial must be strictly relevant to the particular offense charged.¹⁸

The Sixth Circuit reviews a district court's decision to admit Rule 404(b) evidence by first reviewing for clear error the district court's factual determination that the other acts occurred. Second the court examines de novo the district court's legal determination that the evidence was admissible for a legitimate purpose. Third the court reviews for abuse of discretion the district court's determination that the probative value of the other acts evidence is not substantially outweighed by its unfairly prejudicial effect.¹⁹

Seals, 813 F.3d 1038, 1043 (7th Cir. 2016); *United States v. Buckner*, 868 F.3d 684, 687 (8th Cir. 2017); *United States v. Burgess*, 576 F.3d 1078, 1098 (10th Cir. 2009); *United States v. Ramirez*, 426 F.3d 1344, 1354 (11th Cir. 2005); *United States v. McGill*, 815 F.3d 846, 880 (D.C. Cir. 2016).

¹⁷ *United States v. Washington*, 602 Fed.Appx. 858, 860 (3rd Cir. 2015).

¹⁸ *United States v. Ahmed*, 2022 WL 16914540 *1 (5th Cir. 2022).

¹⁹ *United States v. Merriweather*, 78 F.3d 1070, 1974 (6th Cir. 1996); *United States v. Taylor*, 818 Fed.Appx. 495, 503 (6th Cir. 2020).

The Ninth Circuit reviews the question whether specific evidence falls within the scope of Rule 404(b) de novo and reviews the admission of other act evidence for abuse of discretion. If the district court abuses its discretion under Rule 403, the reviewing court asks whether the government bore its burden of proof that the error in admitting the evidence was harmless.²⁰

Different Rule 404(b) Legal Tests (Standards)

The First Circuit has a two-step test. First, the evidence must be “specially probative of an issue in the case – such as intent or knowledge – without including bad character or propensity as a necessary link in the inferential chain.” Second, the trial court must conduct a Rule 403(b) analysis.²¹

The Second Circuit Rule applies the *Huddleston* four-step test. That circuit takes an inclusionary approach to the admission of prior crimes evidence, under which such evidence “is admissible for any purpose other than to show the defendant’s propensity. When evidence is offered for the purpose of establishing the defendant’s knowledge or intent, that circuit requires that the government “identify a similarity or connection between the two acts that make the prior act relevant to establishing knowledge of the current act.”²²

The Third Circuit applies the *Huddleston* four-step test. Because the evidence that may be admitted under Rule 404(b) has a unique potential to distract the jury,

²⁰ *United States v. Lague*, 971 F.3d 1032, 1037 (9th Cir. 2020).

²¹ *Rodriguez*, 215 F.3d at 118.

²² *McCallum*, 584 F.3d at 475.

inflammate emotions, or arouse prejudices by reflecting negatively on a defendant's character, we require that district court employ "care and precision" in ruling on the admissibility of such evidence. If the evidence is admitted, the district court must thoroughly explain its reasoning as to each step of the four-prong test on the record. The government must also act with care, explaining how the evidence "fits into a chain of inferences—a chain that connects the evidence to a proper purpose, no link of which is a forbidden propensity inference."²³

The Fourth Circuit has a four-step test. The evidence must be 1) relevant to an issue other than the general character of the defendant, 2) necessary to prove an essential claim or element of the charged offense, 3) reliable, and 4) pass a Rule 403 analysis.²⁴

In **the Fifth Circuit**, evidence is intrinsic when it is "inextricably intertwined" with or "a necessary preliminary to the crime charged," or when it is "part of a single criminal episode" with the charged act.²⁵ The Fifth Circuit has a two-step test for extrinsic evidence. First the evidence must be relevant to a non-character issue and second must pass a Rule 403 analysis.²⁶

In **the Sixth Circuit**, the *Huddleston* test is applied with additional instruction. Upon objection by the defendant, the proponent of the evidence indicating that the

²³ *United States v. Davis*, 726 F.3d 434, 441-442 (3rd Cir. 2013); *Washington*, 602 Fed.Appx at 861.

²⁴ *Sterling*, 860 F.3d at 246-247.

²⁵ *United States v. Lugo-Lopez*, 833 F.3d 453, 460 (5th Cir. 2016).

²⁶ *United States v. Beechum*, 582 F.2d 898, 911 (5th Cir. 1978, en banc).

defendant committed another crime or bad act “should be required to identify the *specific* purpose or purposes for which the government offers the evidence. The district court must then determine whether the identified purpose is material, that is, whether it is “in issue” in the case. Next, if it is indeed “material,” the court must then conduct a Rule 403 analysis. Finally, if the evidence satisfies Rule 403, then after receiving the evidence, the district court must “clearly, simply, and correctly” instruct the jury as to the *specific* purpose for which they may consider the evidence.²⁷

In the **Seventh Circuit**, the proponent of the evidence must first establish that the other act is relevant to a specific purpose other than the person’s character or propensity to behave in a certain way. Other-act evidence need not be excluded whenever a propensity inference can be drawn. But its relevance to “another purpose” must be established through a chain of reasoning that does not rely of the forbidden inference that the person has a certain character and acted in accordance with that character on the occasion charged in the case. If the proponent can make this initial showing, the district court must in every case assess whether the probative value of the other-act evidence is substantially outweighed by the risk of unfair prejudice and may exclude the evidence under Rule 403 if the risk is too great. The court’s Rule 403 balancing should take account of the extent to which the non-propensity fact for which the evidence is offered actually is at issue in the case.²⁸

²⁷ *Merriweather* 78 F.3d at 1076-1077; *United States v. Finnell*, 276 Fed.Appx. 450, 454 (6th Cir. 2008).

²⁸ *United States v. Gomez*, 763 F.3d 845, 860 (7th Cir. 2014).

The Eighth Circuit has enunciated a four-part test for Rule 404(b) admission which asks if the evidence is 1) relevant to a material issue, 2) similar in kind and not overly remote in time to the crime charged 3) supported by a preponderance of the evidence, and 4) higher in probative value than in prejudicial effect.²⁹ Intrinsic evidence provides a total picture of the charged crime, or tends logically to prove an element of the crime charged and is subject to testing under regular principles of admissibility.³⁰

The Ninth Circuit applies a four-part test. Rule 404(b) evidence is admissible if 1) the evidence tends to prove a material point, 2) the other act is not too remote in time, 3) the evidence is sufficient to support a finding that defendant committed the other act and, 4) the act is similar to the offense charged. The government has the burden of providing that the evidence meets all of the above requirements.³¹ Intrinsic evidence is admissible if it is inextricably intertwined with the charged conduct. This exception applies when 1) particular acts of the defendant are part of a single criminal transaction or 2) when the other act evidence is necessary for the government to offer a coherent story of the crime.³²

²⁹ *Buckner*, 868 F.3d at 688.

³⁰ *Id.*

³¹ *Lague*, 971 F.3d at 1038.

³² *Id.* at n.5.

The Tenth Circuit applies the Huddleston four-part test and states that Rule 404(b) is considered to be an inclusive rule, admitting all evidence of other crimes or acts except that which tends to prove *only* criminal disposition.³³

The Eleventh Circuit applies a three-part test, 1) the evidence must be relevant to an issue other than the defendant's character, 2) the probative value must not be substantially outweighed by its undue prejudice, 3) the government must offer sufficient proof so that the jury could find the defendant committed the act. A similarity between the other act and a charged offense will make the other offense highly probative with regard to a defendant's intent in the charged offense.³⁴

The D.C. Circuit has a two-step mode of analysis in determining the admissible evidence of other acts by the defendant. The first steps in the analysis address Rule 404(b) and requires the court to determine whether the evidence is relevant to a material issue other than character. The second step is a Rule 403 analysis.³⁵ Intrinsic acts are not subject to Rule 404(b)'s requirements. The D.C. Circuit has adopted a very narrow understanding of what counts as an intrinsic act, explicitly rejecting the application of that label to evidence that merely "completes the story or incidentally involves" the charged offense or "explains the circumstances" surrounding it. Instead the D.C. Circuit has identified two narrow circumstances encompassing intrinsic evidence; the evidence "is either of an act that is part of the

³³ *Burgess*, 576 F.3d at 1098.

³⁴ *Ramirez*, 426 F.3d at 1354.

³⁵ *United States v. Roberson*, 581 F.Supp.3d 65, 70 (D.C. Cir. 2022).

charged offense or is of acts performed contemporaneously with the charged crime...if they facilitate the commission of the charged crime.³⁶

Conclusion

Certiorari should be granted for Rule 404(b) issues because an updated, clear, and uniform test is needed for the most common evidentiary issue presented on appeal.

Certiorari should be granted in this case because it is a great case to develop and discuss an updated, clear, and uniform Rule 404(b) test. The unique remoteness in time and distance in the relationship between 1) the acts that occurred in Europe and Asia at least five to fifteen years before the charged offense and 2) Ahmed's alleged recruiting activities while being housed in a federal high security prison in Beaumont, Texas.

³⁶ *Id.* at 71.

PRAYER

WHEREFORE PREMISES CONSIDERED, Mohamed Ibrahim Ahmed prays that the Court will grant this petition for a writ of certiorari to the Honorable Fifth Circuit Court of Appeals.

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I, the undersigned attorney, hereby certify that a true and correct copy of the foregoing document has been served upon the following party(ies) via First Class Mail with Tracking on February 13, 2023:

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CERTIFICATE OF COMPLIANCE

Certificate of Compliance with Type-Volume Limitation, Typeface Requirements, and Type Style Requirements

1. This petition complies with the type-volume limitations of Supreme Court Rule 33 because this entire brief contains 3648 words including the parts that are excluded therefrom.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a) (5) and the type style requirements because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word in 12-point Century font.

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Attorney for Mohamed Ibrahim Ahmed

Dated: February 13, 2023.

APPENDIX

Appendix A Fifth Circuit Panel Opinion

Appendix B Criminal Judgment from Western District of Texas, Waco Division

APPENDIX A

2022 WL 16914540

Only the Westlaw citation is currently available.

United States Court of Appeals, Fifth Circuit.

UNITED STATES of America, Plaintiff—Appellee,

v.

Mohamed Ibrahim AHMED, Defendant—Appellant.

No. 20-40713

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Summary Calendar

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FILED November 14, 2022

Appeal from the United States District Court for the Eastern District of Texas, USDC No. 1:17-CR-151-1, [Marcia A. Crone](#), U.S. District Judge

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Before [King](#), [Higginson](#), and [Willett](#), Circuit Judges.

Opinion



Per Curiam: *




*1 Mohamed Ibrahim Ahmed appeals his jury trial convictions and total 300-month sentence for attempting to provide material support or resources to designated foreign terrorist organizations, in violation of [18 U.S.C. § 2339B\(a\)\(1\)](#), and making false statements involving international terrorism to federal officers, in violation of [18 U.S.C. § 1001\(a\)](#). Ahmed argues that the district court erred in granting the Government's motion in limine and admitting evidence of (1) his prior 2012 terrorism convictions, (2) his prior participation in a terrorist training camp, and (3) his prior criminal activity for a terrorist network in Sweden, asserting that none of the evidence was intrinsic or admissible as extrinsic evidence pursuant to [Federal Rule of Evidence 404\(b\)](#).

Ahmed preserved his claims by objecting to admission of the evidence before trial; accordingly review of the district court's evidentiary rulings is for an abuse of discretion. [United States v. Smith](#), 804 F.3d 724, 735 (5th Cir. 2015). We apply an abuse of discretion standard when the district court admits intrinsic evidence. [United States v. Lucas](#), 849 F.3d 638, 642-643 (5th Cir. 2017). However, we apply a “heightened” version of that standard when the district court admits extrinsic evidence under [Rule 404\(b\)](#) because the evidence in a criminal trial “must be strictly relevant to the particular offense charged.” [Smith](#), 804 F.3d at 735 (internal quotation marks and citation omitted).


Ahmed specifically argues that evidence of his participation in a terrorist training camp in 1997 was too remote in time to be intrinsic evidence and was not admissible pursuant to [Rule 404\(b\)](#) because the evidence was too remote and did not go to intent. Ahmed does not point out any case law citing time as a relevant factor when considering whether evidence is intrinsic. Moreover, the record reveals that the training camp evidence was intrinsic because it was “necessary preliminary” evidence, [United States v. Lugo-Lopez](#), 833 F.3d 453, 460 (5th Cir. 2016) (internal quotation marks and citation omitted), or “necessary to complete the story of” the charged offenses, [United States v. Gonzalez](#), 328 F.3d 755, 759 (5th Cir. 2003) (internal quotation marks and citation omitted) (concluding that prior arrests were admissible to show that a drug defendant made false exculpatory statements relevant to knowledge). Namely, the evidence demonstrated that Ahmed was familiar with the ideological roots of ISIS, supported its objectives, sought to further those objectives by attempting to train and recruit other inmates, and had at least some knowledge of bomb-making.

In addition, the training camp evidence was relevant to establish that Ahmed had knowledge which was essential to prove the elements of the charged offenses. *See* [FED. R. EVID. 404\(b\)](#). The training camp evidence tended to make Ahmed's knowledge of terrorist activities and bomb-making more probable. *See* [United States v. Kinchen](#), 729 F.3d 466, 472 (5th Cir. 2013). Accordingly, the training camp evidence passes the first step of the two-step test outlined in [United States v. Beechum](#), 582 F.2d 898, 911 (5th Cir. 1978) (en banc), which states that the evidence (1) must be relevant to a non-character issue, and (2) “must possess probative value that is not substantially outweighed by its undue prejudice” under [Federal Rule of Evidence 403](#).

*2 As Ahmed asserts, under the second step of the *Beechum* analysis, the remoteness of the evidence in time militates in favor of exclusion. See *Kinchen*, 729 F.3d at 473. However, the other factors militate in favor of inclusion. First, the evidence was consequential for the Government to prove knowledge and corroborate the testimony of witnesses whose credibility Ahmed challenged. See *United States v. Juarez*, 866 F.3d 622, 627 (5th Cir. 2017) (noting that extrinsic evidence was “highly persuasive in corroborating” drug dealer’s testimony). Second, there were major similarities between the skills learned at the training camp and the offenses charged. See *Kinchen*, 729 F.3d at 473;  *Beechum*, 582 F.2d at 915. Third, the district court provided a sufficient limiting instruction. See *Kinchen*, 729 F.3d at 473. Fourth, regarding the overall prejudice of the contested evidence, the evidence (1) did not provide facts that were more gruesome than the facts of the charged offenses; (2) was not “greater in magnitude” than the charged offenses; and (3) did not “occupy more of the jury’s time” than the other evidence. *Juarez*, 866 F.3d at 629 (internal quotation marks and citation omitted). Although the lengthy time gap is problematic, we have rejected challenges to similarly dated evidence when the other factors supported admission. See  *United States v. Hernandez-Guevara*, 162 F.3d 863, 873 (5th Cir. 1998) (noting that earlier conviction “was nearly eighteen years old”); *United States v. Chavez*, 119 F.3d 342, 346 (5th Cir. 1997) (noting that “temporal remoteness” is not a “per se bar” under Rule 404(b)).


Regarding his prior alleged criminal activity for a terrorist network in Sweden, Ahmed argues that the evidence served only to scare the jury and was highly prejudicial, asserting that the evidence was not intrinsic because the alleged crimes were not clearly intertwined with the instant offenses of conviction and was not admissible extrinsic evidence because it was not relevant. Ahmed’s long association with the Swedish terror network and his continued participation in the group’s criminal activities demonstrated that, as the district court concluded, he had a “conduit” through which he could funnel would-be recruits into terrorist organizations; thus, making the evidence intrinsic because it “completes the story of the crime by providing the context of events,”  *United States v. Walters*, 351 F.3d 159, 166 n.2 (5th Cir. 2003). See  *United States v. Coleman*, 78 F.3d 154, 156 (5th Cir. 1996) (noting that intrinsic evidence was “admissible to complete the story of the crime by proving the immediate context of events in time and place”);  *United States v. Royal*, 972 F.2d 643, 647

(5th Cir. 1992) (noting that intrinsic evidence is admissible to allow the jury to “evaluate all the circumstances under which the defendant acted” (internal quotation marks and citation omitted)).

The criminal activity evidence was also admissible under Rule 404(b) because it was relevant to establish that Ahmed had the intent, knowledge, and motive, among other things, to commit the offenses as charged. See FED. R. EVID. 404(b). The evidence tended to make Ahmed’s recruitment efforts more plausible. See *Kinchen*, 729 F.3d at 472. Accordingly, the criminal activity evidence passes the first step of the *Beechum* analysis. See *id.* Regarding the second step of the *Beechum* analysis, the evidence was needed for the Government to corroborate other testimony. See *Juarez*, 866 F.3d at 627. The Government acknowledges that the financial crimes were dissimilar from the offenses charged. Where the extrinsic and charged offenses are not similar, “except for the common element of intent, the extrinsic offense may have little probative value to counterbalance the inherent prejudice of this type of evidence.”  *Beechum*, 582 F.2d at 915. Still, although “the probative value of the extrinsic offense correlates positively with its likeness to the offense charged,” elemental “equivalence” is “not required.” *Id.* Moreover, it is within “the sound discretion” of the district court to determine whether the probative value of evidence is substantially outweighed by “its undue prejudice.” *Id.*



The criminal activity evidence was not too remote in time, as the facts predated the charged offenses by approximately six years. See *United States v. Dudley*, 562 F.2d 965, 966 (5th Cir. 1977) (noting that six-year-old offense was not too remote in time). In addition, the district court gave an appropriate limiting instruction. Also, the evidence was not unduly prejudicial to Ahmed because the extrinsic crimes were not more violent than the charged offenses such that they would evoke juror emotion and the evidence occupied a relatively miniscule amount of the jury’s time. See *Juarez*, 866 F.3d at 629–30. The *Beechum* factors militate in favor of inclusion.

*3 Regarding evidence of his 2012 terrorism convictions, Ahmed asserts that the evidence was not intrinsic because his prior convictions had nothing to do with the instant offenses of conviction. He further asserts that the evidence was not admissible pursuant to Rule 404(b) because there is no direct relationship between his prior convictions and the alleged criminal conduct in the instant case. As the district court concluded, evidence of Ahmed’s 2012 terrorism convictions

was intrinsic because it was intertwined with the instant terrorism charge and helped tell the story of why Ahmed was imprisoned in the United States, why he wanted to bomb the Brooklyn detention center, how he obtained a terrorism training manual, why he wanted to help ISIS members travel to the United States, and why he attempted to recruit and train new members of the terrorist organization. See  *Gonzalez*, 328 F.3d at 759.

In the alternative, the evidence was admissible as extrinsic evidence because it provided knowledge, intent, and motive for Ahmed's recruitment efforts and his desire to bomb the detention center. See FED. R. EVID. 404(b)(2); *Smith*, 804 F.3d at 735. As to the second step of the *Beechum* analysis, the Government had sufficient need of the evidence because it corroborated contested testimony. See *Juarez*, 866 F.3d at 627. Also, Ahmed's prior conviction for conspiracy to provide material support to a terrorist organization was similar to the charges as alleged in Count One. See *Kinchen*, 729 F.3d at 473. Moreover, the prior convictions were not too remote in time, as Ahmed committed the offenses in 2009. See *id.* In addition, the district court gave a sufficient limiting instruction. See *id.* Also, the evidence was not unduly

prejudicial. See *Juarez*, 866 F.3d at 629-30. Admitting the evidence did not reveal any facts that were more violent than the facts of the offenses charged, nor was the evidence more likely to inflame the jury. See *Juarez*, 866 F.3d at 629-30.

Ahmed has not demonstrated that the district court abused its discretion in admitting any of the challenged evidence as intrinsic evidence. See  *Lucas*, 849 F.3d at 642-43. He also has not demonstrated that the district court committed a prejudicial abuse of discretion in alternatively concluding that the evidence also was admissible pursuant to Rule 404(b) as extrinsic evidence. See  *United States v. Williams*, 620 F.3d 483, 491 (5th Cir. 2010). Furthermore, even if the district court had committed error in admitting the challenged evidence, because there is “ample other evidence” of guilt, any error was harmless beyond a reasonable doubt, and Ahmed's substantial rights were not affected. *United States v. McCall*, 553 F.3d 821, 827, 829 (5th Cir. 2008). Accordingly, the judgment of the district court is AFFIRMED.

All Citations

Not Reported in Fed. Rptr., 2022 WL 16914540

Footnotes

- * Pursuant to 5th Circuit Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Circuit Rule 47.5.4.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS BEAUMONT DIVISION

UNITED STATES OF AMERICA

v.

MOHAMED IBRAHIM AHMED§ **JUDGMENT IN A CRIMINAL CASE**

§

§

§ Case Number: **1:17-CR-00151-MAC-KFG(1)**§ USM Number: **91506-054**§ **Gerardo S Montalvo (Gerry)**

§ Defendant's Attorney

THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input checked="" type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	Counts 1 and 3 of the First Superseding Indictment

The defendant is adjudicated guilty of these offenses:

<u>Title & Section / Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 2339B(a)(1) Attempt to Provide Material Support or Resources to Designated Foreign Terrorist Organizations	5/23/2017	1
18 U.S.C. § 1001, 18 U.S.C. § 1001(a) False Statements to Federal Officers	10/24/2017	3


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 counts 4 and 5 of the First Superseding Indictment.
- ☒ The prior Indictment and count 2 of the First Superseding Indictment 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.

October 19, 2020

Date of Imposition of Judgment



Signature of Judge

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE

Name and Title of Judge

10/21/20

Date

DEFENDANT: MOHAMED IBRAHIM AHMED
CASE NUMBER: 1:17-CR-00151-MAC-KFG(1)

IMPRISONMENT

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

The term consists of **300 months**; 240 months on Count 1 and 60 months on Count 3 of the First Superseding Indictment, with Count 3 to be served consecutively to Count 1.

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

The Court recommends the defendant not serve the term of imprisonment at FCC Beaumont.

☒ 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 2 p.m. 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

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

DEFENDANT: MOHAMED IBRAHIM AHMED
CASE NUMBER: 1:17-CR-00151-MAC-KFG(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: LIFE as to count 1, and 3 years as to count 3. The terms shall run concurrently.

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 additional conditions on the attached page.

DEFENDANT: MOHAMED IBRAHIM AHMED
CASE NUMBER: 1:17-CR-00151-MAC-KFG(1)

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: MOHAMED IBRAHIM AHMED
CASE NUMBER: 1:17-CR-00151-MAC-KFG(1)

SPECIAL CONDITIONS OF SUPERVISION

As a condition of supervised release, immediately upon release from confinement, you must be surrendered to a duly authorized immigration official for deportation proceedings in accordance with the established procedures provided by the Immigration and Nationality Act, 8 U.S.C. § 1101, et seq. If ordered deported, you must remain outside of the United States. In the event you are not deported, or for any reason re-enter the country after having been deported, you must comply with all conditions of supervised release, to include reporting to the nearest United States Probation Office within 72 hours of release by immigration officials or re-entry into the country.

You must be monitored by the form of location monitoring indicated below during the first five (5) years of supervised release and must abide by all technology requirements. You must pay all or part of the costs of participation in the location monitoring program as directed by the Court and the pretrial services or probation officer.

Curfew: You are restricted to your residence every day from 11 p.m. to 6 a.m., or as directed by the supervising officer.

You must provide the probation officer with access to any requested financial information for purposes of monitoring your financial activities, as well as efforts to obtain lawful income and employment.

DEFENDANT: MOHAMED IBRAHIM AHMED
CASE NUMBER: 1:17-CR-00151-MAC-KFG(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$200.00	\$.00	\$.00	\$.00	\$.00

- ☐ The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* 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. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

- ☐ 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 the schedule of payments page 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:
- | | | |
|---|-------------------------------|--|
| <input type="checkbox"/> the interest requirement is waived for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution |
| <input type="checkbox"/> the interest requirement for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution is modified as follows: |

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** 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.

DEFENDANT: MOHAMED IBRAHIM AHMED
CASE NUMBER: 1:17-CR-00151-MAC-KFG(1)

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 payments of \$ 200.00 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 20 (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:
It is ordered that the Defendant shall pay to the United States a special assessment of \$200.00 for Counts 1 and 3 , which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during 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
See above for Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- ☐ Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
- ☐ 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:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT Assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.