

IN THE SUPREME COURT OF THE UNITED STATES

MATTHEW PEDDICORD, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the district court abused its discretion by admitting evidence pursuant to Federal Rule of Evidence 404(b) of petitioner's prior firearm-related conviction as evidence that petitioner's unlawful possession of a gun was knowing, intentional, and not the product of a mistake or accident.

ADDITIONAL RELATED PROCEEDINGS

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

United States v. Peddicord, No. 22-cr-20208 (Nov. 15, 2022)

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

United States v. Peddicord, No. 22-13882 (May 30, 2024)

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No. 24-5519

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-10a) is not published in the Federal Reporter but is available at 2024 WL 2764818.

JURISDICTION

The judgment of the court of appeals was entered on May 30, 2024. On August 1, 2024, Justice Thomas extended the time within which to file a petition for a writ of certiorari to and including September 27, 2024. The petition for a writ of certiorari was filed on September 9, 2024. 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 possessing a firearm and ammunition following a felony conviction, in violation of 18 U.S.C. 922(g)(1). Judgment 1. He was sentenced to 60 months in prison, to be followed by three years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 1a-10a.

1. In April 2022, petitioner was driving a pickup truck in Miami and rear-ended a car stopped at a red light. Pet. App. 3a; Presentence Investigation Report (PSR) ¶ 3. Petitioner asked the two teenage girls in the other car not to contact law enforcement, but they flagged down a passing Miami Police Department (MPD) vehicle. Pet. App. 3a. When the MPD officer approached petitioner's truck, petitioner began acting erratically and refused to comply with the officer's instruction to exit his truck. PSR ¶ 3. On the theory that petitioner was experiencing a drug overdose or suffering from some other medical emergency, the officer called Fire Rescue for medical assistance while he attempted to dislodge petitioner from the truck. Pet. App. 3a.

Petitioner ultimately complied with the officer's instruction to exit the truck, at which point the officer noticed a holstered firearm in the middle of the driver's seat. Pet. App. 3a. The

officer seized the gun, which was fully loaded. Ibid. While petitioner was receiving medical attention at a nearby hospital, the police conducted a records check. PSR ¶ 5. That inquiry revealed several prior felony convictions, including a 2000 conviction for first-degree robbery with a deadly weapon; 2012 convictions for first-degree robbery and second-degree burglary; and 2019 convictions for burglary of an unoccupied dwelling and grand theft of a vehicle. PSR ¶ 6. After petitioner had been examined and received medical clearance, he was arrested. PSR ¶ 8.

Law enforcement later interviewed petitioner's girlfriend. PSR ¶ 9. She claimed that, upon arriving home on the night of the incident, she had mistakenly left her firearm in the seat of the pick-up truck. Pet. App. 3a. She also claimed that petitioner had taken the truck that night without her knowledge or permission. Id. at 3a-4a.

2. A federal grand jury in the Southern District of Florida charged petitioner with possessing a firearm and ammunition following a felony conviction, in violation of 18 U.S.C. 922(g)(1). Indictment 1. Petitioner proceeded to a jury trial. See Judgment 1.

Before trial, the government filed a notice of intent to offer evidence under Federal Rule of Evidence 404(b). See D. Ct. Doc.

32 (July 19, 2022). Rule 404(b) provides that “[e]vidence of any other crime * * * 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,” but 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).

Here, the government sought to introduce petitioner’s conviction in 2000 for first-degree robbery with the use of a firearm to demonstrate that petitioner “knows what a firearm looks and feels like,” for the purpose of establishing that his possession in this instance was knowing. D. Ct. Doc. 32, at 1, 6. Petitioner opposed admission, characterizing the evidence as “pure propensity evidence,” D. Ct. Doc. 35, at 4 (July 21, 2022), and asserting that, “[e]ven if the [c]ourt finds that there is a non-propensity reason for the admission of the evidence, the minimal probative value of the prior conviction is substantially outweighed by the risk of unfair and undue prejudice,” id. at 8. The district court reserved decision until it could “see a little bit about how this case is going to unfold.” D. Ct. Doc. 74, at 6 (Dec. 27, 2022).

Near the end of the first day of trial, the district court heard oral argument on the Rule 404(b) issue. D. Ct. Doc. 74, at

232. Petitioner "renew[ed] everything that was in [his] motion to exclude." Ibid. The government explained that the conviction "goes to [petitioner's] intent and knowledge because it shows that he has previously possessed a firearm, he has previously used a firearm, he knows what a firearm feels like, and he has held it in his hand" -- facts that would be helpful to the jury in "weigh[ing] whether or not they believe that he sat on the gun for however long and didn't know that it was in the car." Id. at 236. The court overruled petitioner's objection, id. at 233-234, but encouraged the parties to confer about the best way to introduce the evidence while omitting extraneous details of petitioner's prior conduct, id. at 235-236.

The next day, the government stated its intent to introduce petitioner's armed-robbery conviction through a law-enforcement witness. D. Ct. Doc. 75, at 5 (Dec. 27, 2022). The parties agreed that the district court should give a "cautionary instruction" immediately before the government began that line of questioning, ibid., and the court did so, instructing the jury that:

You are about to hear evidence of acts allegedly done by the defendant that may be similar to those charged in the indictment. But, which were committed on other occasions. You must not consider this evidence to decide if the defendant engaged in the activity alleged in the indictment. But, you may consider this evidence to decide whether the defendant had the state of mind or intent necessary to commit the crime charged in the indictment.

Id. at 15. The government then introduced a copy of a Washington State criminal judgment, dated February 17, 2000, reflecting convictions for "First Degree Robbery" and "Second Degree Malicious Mischief" and a "special verdict/finding for use of a deadly weapon which was a firearm." Id. at 16; Gov't Ex. 16 (emphasis omitted).

At the close of trial, the district court again instructed the jury that it could not use petitioner's armed-robbery conviction as propensity evidence, but only to assist its determination whether he had the requisite state of mind, explaining to the jury that:

During the trial, you have heard evidence of acts allegedly done by the defendant on other occasions that may be similar to acts with which the defendant is currently charged. You must not consider any of this evidence to decide whether the defendant engaged in the activity alleged in the indictment. This evidence is admitted and may be considered by you for the limited purpose of assisting you in determining whether the defendant had the state of mind or intent necessary to commit the crime charged in the indictment.

D. Ct. Doc. 75, at 190. The court also reminded jurors that petitioner was "on trial only for the specific crime charged in the indictment" and they were "to determine from the evidence in this case whether the defendant is guilty or not guilty of that specific crime" alone. Id. at 193.

The jury found petitioner guilty. Judgment 1.

3. The court of appeals affirmed in an unpublished per curiam decision. Pet. App. 1a-10a.

The court of appeals first articulated its "three-part test to determine if prior bad act evidence is admissible under Rule 404 (b)":

(1) is it relevant to an issue other than the defendant's character; (2) is it established by sufficient proof to permit a jury finding that the defendant committed the extrinsic act; and (3) is the probative value of the evidence substantially outweighed by its undue prejudice, as required by Rule 403.

Id. at 5a-6a. The court understood petitioner's appellate submissions to "admit[] that he satisfied both the first and second prongs": Petitioner "put his intent at issue when he pleaded not guilty to knowingly possessing the firearm," and there was no dispute as to the sufficiency of the evidence demonstrating his commission of the armed robbery. Id. at 6a. Thus, the court of appeals found that the only controverted element was "whether the probative value of [the] evidence outweigh[ed] its prejudicial effect." Ibid.¹

¹ In his briefing before the court of appeals, petitioner acknowledged that the "second prong of [the court's] test is undisputed" and that "the first prong is also satisfied under [circuit] precedent." Pet. C.A. Br. 14-15. Petitioner observed, however, that he was "preserv[ing] his disagreement with that precedent." Id. at 15.

As to probative value, the court of appeals observed that "knowing possession was the central question in this case, [and] the conviction was probative to addressing that question." Pet. App. 9a. And the court explained that the prior conviction "showed that [petitioner] had experience using a firearm," which "was relevant to [petitioner]'s knowledge that he was sitting on a gun while he drove a vehicle for twenty minutes." Id. at 7a; see id. at 4a (observing that the government offered the evidence "[t]o show that [petitioner] knew 'what a firearm looks and feels like,' and therefore knew he was sitting on the gun"). The court rejected petitioner's argument that his prior conviction was not relevant because of the time that had elapsed since his armed-robbery offense, finding that "his young age at the time of the prior conviction did not make it less likely that he knew how a firearm felt in his hand or in the driver's seat of his vehicle." Id. at 9a.

Turning to prejudice, the court of appeals was satisfied that the district court had mitigated any risk of unfairness by "instruct[ing] the jury three times that it could not use [petitioner]'s prior conviction as evidence of a propensity to commit crimes." Pet. App. 10a. And, emphasizing that "the district court is uniquely situated to make nuanced judgments on questions that require the careful balancing of fact-specific

concepts like probativeness and prejudice,'" the court of appeals identified no abuse of the district court's discretion in admitting the Rule 404(b) evidence. Ibid. (citation omitted).

ARGUMENT

Petitioner contends (Pet. 33-38) that the court of appeals erred in affirming the district court's admission of evidence of petitioner's prior armed-robery conviction. Petitioner further contends (Pet. 11-23) that the circuits disagree as to whether the government may introduce evidence of a prior conviction "where its relevance to a proper purpose * * * depends on the use of propensity reasoning." Pet. 11. The court of appeals' decision is correct, and the propriety of propensity reasoning is not implicated in this case. This Court has repeatedly declined review in cases raising related questions.² It should follow the same course here.

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

² See, e.g., Harrison v. United States, 144 S. Ct. 869 (2024) (No. 23-6489); Guzman v. United States, 144 S. Ct. 711 (2024) (No. 23-6339); Perpall v. United States, 142 S. Ct. 562 (2021) (No. 20-8322); Smith v. United States, 142 S. Ct. 396 (2021) (No. 20-8143); Williams v. United States, 577 U.S. 1219 (2016) (No. 15-6874); Adams v. United States, 579 U.S. 960 (2016) (No. 15-7798).

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.").

A trial court's decision whether to admit other-acts evidence under Rule 404(b) is necessarily fact-specific. See Huddleston, 485 U.S. at 691 (explaining that a trial court must consider whether evidence is offered for a proper purpose, whether it is relevant in light of that purpose, and whether its probative value is substantially outweighed by the risk of unfair prejudice); see also Old Chief v. United States, 519 U.S. 172, 184 (1997) (explaining that in "dealing with admissibility when a given evidentiary item has the dual nature of legitimate evidence of an element and illegitimate evidence of character * * * '[t]he determination must be made whether the danger of undue prejudice outweighs the probative value of the evidence in view of the availability of other means of proof and other facts appropriate for making [a] decision of this kind under [Rule] 403.'") (quoting

Fed. R. Evid. 404 advisory committee's note (1994 Amendment) (28 U.S.C. App. at 861)).

Here, the court of appeals correctly determined that the district court did not abuse its discretion in finding that, on the specific facts of this case, petitioner's prior conviction for committing an armed robbery was admissible "[t]o prove [petitioner] did know he was sitting on [a] gun, because he knew what a gun looks and feels like." Pet. App. 2a. As the government explained in the district court, the prior conviction was relevant to "show[] that [petitioner] has previously possessed a firearm, he has previously used a firearm, he knows what a firearm feels like, and he has held it in his hand." D. Ct. Doc. 74, at 236. The prior conviction therefore helped to establish "[petitioner's] intent and knowledge" because it assisted the jury in "weigh[ing] whether or not they believe that he sat on the gun for however long and didn't know that it was in the car." Ibid. And the court of appeals recognized that the district court appropriately mitigated the risk that the jury would consider the prior conviction for improper purposes by "instruct[ing] the jury three times that it could not use [petitioner]'s prior conviction as evidence of a propensity to commit crimes." Pet. App. 10a.

2. Petitioner asserts (Pet. 11) that the Court should grant review to consider "whether [the] evidence of prior bad acts is

admissible under Rule 404(b) where its relevance to a proper purpose, such as knowledge or intent, depends on the use of propensity reasoning." But that question is not implicated by this case. As both of the lower courts explained, petitioner's armed-robbery conviction helped to establish his knowledge and intent because the conviction established petitioner's familiarity with the "look[] and feel[]" of firearms, making it much less likely that petitioner could have been driving a car while sitting on a loaded firearm without realizing it. Pet. App. 2a; see D. Ct. Doc. 74, at 236. That reasoning does not rely on petitioner's propensity to commit crimes.

Accordingly, petitioner's claim (Pet. 11) that the decision below conflicts with the view of the Third, Fourth, and Seventh Circuits is misplaced. Even assuming those courts invariably require the proponent of Rule 404(b) evidence to identify a "chain of inferences" that completely excludes the possibility of any "inference that the defendant has a propensity to commit" crime, Pet. 11 (quoting United States v. Sampson, 980 F.2d 883, 888 (3d Cir. 1992)), the government and the courts articulated just such a propensity-free chain of inferences here. The prior conviction was offered simply to show petitioner's familiarity with guns -- and thus his "knowledge," "absence of mistake," or "lack of accident" about sitting on (and thereby possessing) one, Fed. R.

Crim. P. 404(b) -- not that petitioner's prior firearm crime made him more likely to have a gun. Thus, this case would not implicate any disagreement in the circuits about whether or when propensity reasoning is permissible.³

3. There is no other reason for granting review in this case. Petitioner asserts (Pet. 23-28) that this Court's intervention is warranted to clarify the application of Rule 404(b). But the application of the rule is necessarily fact-dependent, such that appellate courts -- including this Court -- cannot provide a dispositive general taxonomy of cases in which its application might be appropriate. Instead, whether prior-acts evidence is admissible turns on a host of case-specific facts, including the purpose for which the evidence is admitted, the relevance of the evidence to that purpose (which may depend on such factors as the similarity of the prior act to the charged offense and its proximity in time), the probative value of the evidence (which depends in part on whether the fact for which the

³ Moreover, as the government explained on pages 13-14 of its brief in opposition in Smith, supra (No. 20-8143), any disagreement is limited to the probativeness of prior-conviction evidence in cases involving actual, rather than constructive, firearm possession. Here, however, the jury was instructed on constructive possession, D. Ct. Doc. 75, at 191-193, and petitioner himself acknowledged below that this was "a constructive possession case," id. at 50. We have served petitioner with a copy of the government's brief in opposition in Smith, which is also available on this Court's electronic docket.

prior-act evidence is admitted is disputed), and the danger of unfair prejudice. This case, in which the court of appeals appropriately affirmed the admission of a prior conviction to show a defendant's familiarity with firearms, does not suggest that any further guidance from the Court is necessary.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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