No. 25-

In the
Supreme Court of the United States

BROCK BEEMAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Circumstances. A federal jury convicted Brock Beeman of mailing three threatening letters to a prosecutor and an investigator who were involved in an earlier criminal proceeding against him, in violation of 18 U.S.C. § 876(c). Beeman appealed that conviction, challenging, *inter alia*, the district court's admission of a subsequently mailed fourth, uncharged, threatening letter under alternative theories of intrinsic *res gestae* evidence or under Federal Rule of Evidence (FRE) 404(b). *United States v. Beeman*, 135 F.4th 139, 143 (4th Cir. 2025). The Fourth Circuit upheld the district court's determination that the fourth letter was admissible *res gestae* evidence, and also upheld the district court's alternative finding that the fourth letter was admissible under FRE 404(b). Despite acknowledging that the fourth letter "escalated the threat to kill others besides the investigator and to blow up all sorts of property" *Id*. at 146, the Fourth Circuit failed to meaningfully weigh the question of whether its expanded threats were unfairly prejudicial, merely concluding instead that the trial court did not abuse its discretion. *Id*. at 147-148. This Court should grant certiorari to determine whether some analysis of underlying facts is appropriate before an appellate court concludes that there was no abuse of discretion.

Question for Review. Did the Fourth Circuit err in upholding the district court's conclusion that an uncharged threatening letter was not unfairly prejudicial under an abuse of discretion standard without first evaluating the underlying facts and district court justification, or lack of justification, for its ruling?

PARTIES TO THE PROCEEDINGS

All Parties are listed in the caption on the cover page.

RELATED CASES STATEMENT

United States v. Brock Beeman, Case No. 3:21-cr-00095-MHL-1 (U.S. District Court for the Eastern District of Virginia, Judgment on August 26, 2022).

United States v. Brock Brian Beeman, Case No. 22-4488, Fourth Circuit Court of Appeals, Judgment entered on April 18, 2025, published as *United States v. Beeman*, 135 F.4th 139 (4th Cir. 2025).

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Filed with this Petition is the published Opinion of the Fourth Circuit Court of Appeals denying Petitioner's appeal, *United States v. Beeman,* No. 22-4488 (4th Cir. April 18, 2025) (published at 135 F.4th 139, 143 (4th Cir. 2025), (Pet. App., 1a-15a); and the unpublished opinion of the United States District Court of the Eastern District of Virginia, *Case No. 3:21-cr-00095-MHL-1 (U.S. District Court for the Eastern District of Virginia, entered on August 26, 2022)* (Pet. App., 16a – 20a).

STATEMENT OF JURISDICTION

The Fourth Circuit Court of Appeals entered judgment on April 18, 2025. This Court has jurisdiction to consider Mr. Beeman's petition from the Fourth Circuit Court of Appeals pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS

Federal Rule of Evidence 403 states that:

> The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

Federal Rule of Evidence 404 states in pertinent part that:

(a) Character Evidence.

(1) *Prohibited Uses* . Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

. . .

(b) Other Crimes, Wrongs, or Acts.

(1) *Prohibited Uses* . Evidence 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 the character.

(2) ***Permitted Uses*** **.** This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

. . .

STATEMENT OF THE CASE

On September 21, 2021, Mr. Beeman was charged in a three-count Superseding Indictment with three counts of mailing threatening communications to a "covered official" in violation of 18 U.S.C. § 876(c) and 18 U.S.C. § 1114. Joint Appendix ("JA"), 9 - 10. Specifically, Count One charges him with mailing a threatening letter on June 22, 2021, to M.H., a Special Assistant United States Attorney; Count Two alleges that on September 8, 2021, he mailed a threatening letter to N.H., a Special Agent with the Naval Criminal Investigative Service; and Count Three alleges that on September 8, 2021, he mailed another threatening letter to M.H. *Id*. All of the letters related to Mr. Beeman's dissatisfaction with a separate prosecution against him in the Norfolk Division of the United States District Court for the Eastern District of Virginia (hereafter the "Norfolk case"). *See generally*, JA622-632 (Count One letter); JA633-638 (Count Two letter); and JA639-641 (Count Three letter).

Prior to trial, the government filed a motion in limine seeking to admit into evidence an uncharged letter allegedly sent by Mr. Beeman on December 9, 2021, to Special Agent N.H. JA11-20. This letter contains threats to kill not only the Special Agent., but also a plethora of other individuals associated with the Norfolk case, including the presiding federal judge, two additional prosecutors, the probation officer, the courtroom clerk, the court reporter, and all the United States Marshals.

JA615-616. The rant continues with threats to blow up various courthouses, the office of the United States Attorney in Norfolk, Oceana Naval Air Station, and "the whole State of Virginia." JA616-617. Mr. Beeman opposed the introduction of the uncharged letter as being unduly prejudicial extrinsic evidence that was not probative of whether he committed the earlier-in-time charged conduct. JA21-28.

The district court ruled that the uncharged December 9, 2021 letter was admissible as *res gestae* evidence or, in the alternative, as 404(b) evidence. JA43-49. Critically, the district court opinion failed to discuss whether the (uncharged) vast expansion of targets of Mr. Beeman's threats in the fourth letter was unfairly prejudicial. *Id*. The Fourth Circuit, in its opinion, likewise fails to meaningfully examine whether including evidence of Mr. Beeman's expanded targets is unfairly prejudicial and, instead, defers to the discretion of the district court despite that court's failure to examine the unfairly prejudicial nature of the uncharged threats.

REASONS FOR GRANTING THE PETITION

Circuit courts routinely and appropriately resolve appellate issues under the abuse of discretion standard by deferring to the conclusions of the district court. In this case, the circuit court demurred to the district court's finding that the uncharged fourth letter was not unfairly prejudicial and therefore admissible in evidence, stating that "[w]e may only reverse if the district court acted arbitrarily or irrationally, failed to consider judicially recognized factors constraining its exercise of discretion, relied on erroneous factual or legal premises or committed an error of law." *United States v. Beeman*, 135 F.4th 139, 148 (4th Cir. 2025). However, abuse

of discretion review cannot be a mere rubber stamp of the district court's decision, and an appellate court must adequately evaluate the reasons for the district court's decision before acquiescing to the lower court's discretion. Here, the district court conducted no meaningful weighing or analysis of the unfairly prejudicial nature of the expanded threats in the uncharged letter, and it was thus improper for the appellate court to defer to its conclusion. Certiorari should be granted to correct this error.

ARGUMENT

I. The Fourth Circuit erred in upholding the district court's conclusion that an uncharged threatening letter was not unfairly prejudicial under an abuse of discretion standard without first evaluating the underlying facts and district court justification for its ruling.

This Court has held that "abuse-of-discretion review is not toothless; and it is entirely proper for a reviewing court to find an abuse of discretion when important factors ... are 'slighted.'" *United States v. Tsarnaev*, 595 U.S. 302, 332, 142 S. Ct. 1024, 1045, 212 L. Ed. 2d 140 (2022) (Gorshuch, J. concurring), quoting, *Gall v. United States*, 552 U.S. 38, 72, 128 S.Ct. 586, 169 L.Ed.2d 445 (2007) (Alito, J., dissenting), (quoting *United States v. Taylor*, 487 U.S. 326, 337, 108 S.Ct. 2413, 101 L.Ed.2d 297 (1988)). Thus, in conducting an abuse of discretion review, appellate courts must "determine whether the [court] adequately considered the factors relevant" to the issue decided. *Id.*, quoting, *American Paper Institute, Inc. v. American Elec. Power Service Corp.*, 461 U.S. 402, 413, 103 S.Ct. 1921, 76 L.Ed.2d 22 (1983). Moreover, "[t]he abuse-of-discretion standard does not preclude an appellate court's correction of a district court's ... clearly erroneous assessment of

the evidence" (internal quotation marks omitted). *Highmark Inc. v. Allcare Health Management System, Inc.*, 572 U.S. 559, 564, n. 2, 134 S.Ct. 1744, 188 L.Ed.2d 829 (2014). In this case, the district court failed to explain its decision that the uncharged letter was not unfairly prejudicial. The Fourth Circuit, even under an abuse of discretion review, was charged with the duty to evaluate whether the district court properly considered all the factors under Federal Rule of Evidence 404(b) and under a Federal Rule of Evidence 403 weighing of the evidence if it was to potentially be admitted as intrinsic or *res gestae* evidence. Because the district court did not explain its decision regarding whether the evidence was unfairly prejudicial, the Fourth Circuit's deference was "toothless" and should be reviewed by this Court.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari in this case.

Respectfully submitted,

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Dated: July 17, 2025

APPENDIX

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United States Court of Appeals, Fourth Circuit.

UNITED STATES of America, Plaintiff - Appellee,
v.
Brock BEEMAN, Defendant - Appellant.

No. 22-4488
|
Argued: January 31, 2025
|
Decided: April 18, 2025

Synopsis

Background: Following grant of government's motion to admit res gestae evidence, 2022 WL 22929169, and grant of government's motion for anonymous jury, 2022 WL 22929163, defendant was convicted in the United States District Court for the Eastern District of Virginia, M. Hannah Lauck, J., of mailing threatening communications to federal official. Defendant appealed.

Holdings: The Court of Appeals, Quattlebaum, Circuit Judge, held that:

[1] uncharged threatening letter from defendant to investigator was admissible as intrinsic evidence;

[2] uncharged threatening letter was admissible other-act evidence;

[3] probative value of uncharged threatening letter was not substantially outweighed by danger of unfair prejudice;

[4] assuming that procedures used by district court amounted to empaneling anonymous jury, district court did not abuse its discretion; and

[5] district court did not abuse its discretion by denying defendant's motion for mistrial based on alleged improper statement by government during closing argument.

Affirmed.

West Headnotes (27)

[1] **Criminal Law** Discretion of Lower Court

Under abuse-of-discretion standard, Court of Appeals does not ask whether it would have made the same decision as the district court; Court asks whether the district court acted arbitrarily or irrationally, failed to consider judicially recognized factors constraining its exercise of discretion, relied on erroneous factual or legal premises or committed an error of law.

[2] **Criminal Law** Reception and Admissibility of Evidence

Court of Appeals reviews the district court's admission of evidence for abuse of discretion.

[3] **Criminal Law** Other Misconduct as Evidence of Offense Charged in General
Criminal Law Weight and conclusiveness in general

To convict a criminal defendant, the government must present evidence that the defendant committed the actual charged offense; it is not enough to introduce evidence of unrelated bad conduct and suggest—or hope—the jury believes the defendant must have committed the charged offense because he has done other bad things. Fed. R. Evid. 404(b).

[4] **Criminal Law** Other Misconduct Inseparable from Crime Charged

Criminal Law🔑What constitutes other misconduct

Not all prior bad act evidence is encompassed by rule prohibiting evidence of a defendant's crimes, wrongs or acts to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character; the rule applies only when the challenged conduct is extrinsic to the charged offense, not when it is intrinsic. Fed. R. Evid. 404(b).

[5] **Criminal Law**🔑Other Misconduct Inseparable from Crime Charged

Rule governing other-acts evidence does not prohibit evidence of conduct that is intrinsic to, or a part of, the alleged crime, and not admitted solely to demonstrate bad character. Fed. R. Evid. 404(b).

[6] **Criminal Law**🔑Other Misconduct Inseparable from Crime Charged

"Extrinsic evidence" means evidence of conduct that is separate from or unrelated to the charged offense.

[7] **Criminal Law**🔑Res gestae in general

Evidence is intrinsic, and sometimes referred to as res gestae, when it is related to acts that are a part of the alleged crime.

[8] **Criminal Law**🔑Same transaction in general
Criminal Law🔑Completing the narrative in general

Evidence is related to acts that are part of the alleged crime, and thus is intrinsic, when it arises out of the same series of transactions as the charged offense or when it is needed to complete the story of the crime on trial.

[9] **Criminal Law**🔑Completing the narrative in general

To complete story of charged crime, and thus be intrinsic, evidence of uncharged conduct must be probative of integral component of crime on trial or provide information without which fact finder would have incomplete or inaccurate view of other evidence or of story of crime itself.

[10] **Criminal Law**🔑Completing the narrative in general

Assessing whether evidence is needed to complete story of charged offense, for purposes of intrinsic evidence, requires hard look to ensure that there is clear link or nexus between evidence and story of charged offense, and that purpose for which evidence is offered is actually essential; otherwise, the "complete the story" doctrine might be used to disguise the type of propensity evidence that rule governing other-acts evidence is meant to exclude. Fed. R. Evid. 404(b).

[11] **Criminal Law**🔑Extortion, threats, stalking, and harassment

Uncharged threatening letter from defendant to

investigator was admissible as intrinsic evidence, in prosecution for mailing threatening communications to federal official; letter provided necessary contextual information relevant to elements of crimes on trial, letter threatened to kill investigator and provided more evidence of seriousness of threat, it escalated threat to kill others besides investigator and to blow up all sorts of property, letter helped government prove motive, it referenced people and agencies involved in prior criminal case, showing that defendant's threats against investigator stemmed from her role in earlier prosecution, and handwriting on letter and envelope further linked defendant to charged letter. 18 U.S.C.A. §§ 876(c), 1114.

[12] **Postal Service** Mailing defamatory or threatening matter

To convict defendant of mailing a threatening letter to federal official, the government has to establish that the defendant intended to transmit the interstate communication and that the communication contained a true threat. 18 U.S.C.A. §§ 876(c), 1114.

[13] **Postal Service** Mailing defamatory or threatening matter

As to the issue of whether the letter was a "true threat," in prosecution for mailing threatening letter to federal official, the government has to convince the jury that the charged letter was a serious statement expressing an intent to do harm. 18 U.S.C.A. §§ 876(c), 1114.

[14] **Criminal Law** Extortion, threats, stalking, and harassment
Criminal Law Controverting defense evidence or theory
Criminal Law Letters and telegrams

Uncharged threatening letter from defendant to investigator was admissible other-act evidence, in prosecution for mailing threatening communication to federal official; uncharged letter was relevant to motive and issue of whether defendant, rather than someone else, mailed charged letter, uncharged letter helped establish that defendant made true threat, which was element of crime, and uncharged letter had many of the same characteristics as charged letters. 18 U.S.C.A. §§ 876(c), 1114; Fed. R. Evid. 404(b).

[15] **Criminal Law** Prejudicial effect and probative value

Evidence of uncharged conduct can be admissible if: (1) the prior-act evidence is relevant to an issue other than character; (2) the evidence is necessary to prove an element of the crime charged; (3) the evidence is reliable; and (4) its probative value is not substantially outweighed by its prejudicial nature. Fed. R. Evid. 403, 404(b).

[16] **Criminal Law** Other offenses

Court of Appeals reviews a district court's determinations of the admissibility of evidence under rule governing other-acts evidence for abuse of discretion, as it does generally for evidentiary rulings. Fed. R. Evid. 404(b).

[17] **Criminal Law** Extortion, threats, stalking, and harassment
Criminal Law Controverting defense evidence or theory

Probative value of uncharged threatening letter from defendant to investigator was not substantially outweighed by danger of unfair prejudice, in prosecution for mailing threatening communications to federal official; uncharged letter provided additional evidence of motive, seriousness of threat, and who wrote charged letter. 18 U.S.C.A. §§ 876(c), 1114; Fed. R. Evid. 403, 404(b).

[18] **Jury** Designation and identity of jurors

District court may empanel anonymous jury only in rare circumstances when two conditions are met: (1) there is strong reason to conclude that jury needs protection from interference or harm, or that integrity of jury's function will be compromised absent anonymity; and (2) reasonable safeguards have been adopted to minimize risk that rights of accused will be infringed. 28 U.S.C.A. § 1863(b)(7).

[19] **Jury** Designation and identity of jurors

Even if circumstances warrant empaneling anonymous jury, courts must consider whether defendant's constitutional right to presumption of innocence is impacted or whether procedure would otherwise impede defendant's constitutional right to trial by impartial jury. U.S. Const. Amends. 5, 6; 28 U.S.C.A. § 1863(b)(7).

[20] **Jury** Designation and identity of jurors

Factors that inform strong reasons supporting empaneling of anonymous jury are: (1) defendant's involvement in organized crime, (2) defendant's participation in group with capacity to harm jurors, (3) defendant's past attempts to interfere with judicial process, (4) potential that, if convicted, defendant will suffer lengthy incarceration and substantial monetary penalties, and (5) extensive publicity that could enhance possibility that jurors' names would become public and expose them to intimidation or harassment; presence of any one factor or even a set of factors does not automatically compel the empaneling of an anonymous jury. 28 U.S.C.A. § 1863(b)(7).

[21] **Jury** Designation and identity of jurors

Court's decision to empanel anonymous jury in non-capital case must rest on something more than speculation or inferences of potential risk. 28 U.S.C.A. § 1863(b)(7).

[22] **Criminal Law** Selection and impaneling

Court of Appeals reviews challenges to empaneling anonymous juries for abuse of discretion. 28 U.S.C.A. § 1863(b)(7).

[23] **Jury** Designation and identity of jurors

Assuming that procedures used by district court amounted to empaneling anonymous jury, district court did not abuse its discretion, in prosecution for mailing threatening communications to federal official; district court pointed to defendant's previous attempts to interfere with judicial process, his previous threats to harm those involved in his prosecution, potential for defendant to face lengthy prison term, and potential for jury to face harassment if their names became too public, and district court protected defendant's rights by giving his counsel unredacted list of

jurors, by not drawing attention to issue, and by telling jury that process was being used to avoid unnecessary publicity rather than because defendant was dangerous. 18 U.S.C.A. §§ 876(c), 1114; 28 U.S.C.A. § 1863(b)(7).

[24] **Criminal Law** Discretion of court
Criminal Law Issues related to jury trial

The denial of a defendant's motion for mistrial is within the sound discretion of the district court and will be disturbed in only the most extraordinary of circumstances.

[25] **Criminal Law** Arguments and statements by counsel
Criminal Law Statements as to Facts, Comments, and Arguments

Court of Appeals reviews the district court's ruling on an objection made during closing argument for abuse of discretion and will only reverse when an abuse of discretion constitutes prejudicial error.

[26] **Criminal Law** Rebuttal Argument; Responsive Statements and Remarks
Criminal Law Action of Court in Response to Comments or Conduct

To evaluate whether comments made during closing argument are prejudicial to point of requiring mistrial, court considers six factors: (1) degree to which prosecutor's remarks have tendency to mislead jury and to prejudice accused, (2) whether remarks were isolated or extensive, (3) absent remarks, strength of competent proof introduced to establish guilt of accused, (4) whether comments were deliberately placed before jury to divert attention to extraneous matters, (5) whether prosecutor's remarks were invited by improper conduct of defense counsel, and (6) whether curative instructions were given to jury; factors are to be viewed in the context of the trial as a whole, and no one factor is dispositive.

2 Cases that cite this headnote

[27] **Criminal Law** Appeals to sympathy or prejudice

District court did not abuse its discretion by denying defendant's motion for mistrial based on alleged improper statement by government during closing argument, in which prosecutor transitioned from talking about objective person to asking jurors to think about how they would feel if they received threatening letters, in prosecution for mailing threatening communications to federal official; even if government's use of subjective standard for evaluating true threat was improper, statement was brief and isolated and was corrected immediately by both counsel and court, and district court gave both curative instruction and proper legal instructions to jury, making it unlikely that statement played any noticeable role in jury's verdict. 18 U.S.C.A. §§ 876(c), 1114.

***143** Appeal from the **United States** District Court for the Eastern District of Virginia, at Richmond. M. Hannah Lauck, District Judge. (3:21-cr-00095-MHL-1)

Attorneys and Law Firms

ARGUED: William Jeffrey Dinkin, WILLIAM J. DINKIN, PLC, Richmond, Virginia, for Appellant. Avishek Panth, OFFICE OF THE **UNITED STATES** ATTORNEY, Richmond, Virginia, for Appellee. ON BRIEF: Jessica D. Aber, **United States** Attorney, Angela Mastandrea-Miller, Assistant **United States** Attorney, OFFICE OF THE **UNITED STATES** ATTORNEY, Richmond, Virginia, for Appellee.

Before KING, WYNN, and QUATTLEBAUM, Circuit Judges.

Opinion

Affirmed by published opinion. Judge Quattlebaum wrote the opinion in which Judge King and Judge Wynn joined.

QUATTLEBAUM, Circuit Judge:

After a two-day trial, a federal jury convicted **Brock Beeman** of mailing three threatening letters to a prosecutor and an investigator who were involved in an earlier criminal proceeding against him, in violation of 18 U.S.C. § 876(c). **Beeman** now appeals that conviction, challenging the district court's (1) admission of an uncharged threatening letter, (2) empaneling ***144** of an anonymous jury and (3) denial of his motion for a mistrial on account of the prosecutor's improper statement during closing argument.

[1]We review all three of these challenges for abuse of discretion. Under that standard, we do not ask whether we would have made the same decision as the district court. We ask whether the district court acted arbitrarily or irrationally, failed to consider judicially recognized factors constraining its exercise of discretion, relied on erroneous factual or legal premises or committed an error of law. *See* ***United States*** *v. Delfino*, 510 F.3d 468, 470 (4th Cir. 2007). Applying that standard to **Beeman's** challenges, we affirm the district court's judgment.[1] The district court did not abuse its discretion in any of the rulings **Beeman** challenges on appeal.

I.

In an earlier case brought in the Norfolk division of the **United States** District Court for the Eastern District of Virginia, **Beeman** pled guilty to interstate communication with intent to injure to another person in violation of 18 U.S.C. § 875(c). *See* ***United States*** *v.* ***Beeman***, No. 22-4081, 2023 WL 4488261, at *1 (4th Cir. July 12, 2023). Matthew Heck, then a Special Assistant **United States** Attorney, prosecuted that case. Nichole Harris, a special agent with the Naval Criminal Investigative Service, served as an investigator.

On September 21, 2021, after **Beeman** pled guilty in the Norfolk case, a federal grand jury issued a three-count superseding indictment in the **United States** District Court for the Eastern District of Virginia in the Richmond division. The indictment charged **Beeman** with three counts of mailing threatening communications to a federal official in violation of 18 U.S.C. § 876(c) and 18 U.S.C. § 1114. Count one charged **Beeman** with mailing a letter to Heck on June 22, 2021, threatening to kill him; count two alleged that on September 8, 2021, **Beeman** emailed a threatening letter to Harris threatening to kill her; and count three alleged that on September 8, 2021, he mailed another letter to Heck threatening to kill him. All the letters relate to Heck's and Harris' involvement with the Norfolk case.

The Richmond division case proceeded to a jury trial. The government called several witnesses including Heck, Harris and a forensic handwriting and document analyst. Heck and Harris talked about receiving the letters and feeling threatened and concerned by them. They also testified that they were familiar with **Beeman's** handwriting due to their involvement with the Norfolk case and that they attributed the letters' handwriting to **Beeman**. The forensic expert confirmed this. **Beeman** did not present any evidence, but he did question the government's evidence linking the letters to him.

The jury found **Beeman** guilty on each of the three counts of the superseding indictment. After sentencing, the district court entered its final judgment. This appeal followed.

II.

First, **Beeman** argues that the district court improperly admitted a fourth threatening letter—this one uncharged—from **Beeman** to the same investigator, Harris. That letter was intercepted and was ultimately not received by the investigator. The government, however, moved to admit ***145** it into evidence as *res gestae* and under Federal Rule of Evidence 404(b). It maintained that the letter—dated several months after the charged letters—provided context for **Beeman's** animus toward the investigator, as well as his motivation and intent to threaten the investigator in the charged letters. And the letter, according to the government, was reliable and probative because it shared common features with the charged letters. **Beeman** objected to the letter's admission into evidence. He argued that the letter—which contained threats to kill the investigator and others associated with the Norfolk case and to blow up the courthouse, other federal buildings and the state of Virginia—was unfairly prejudicial to him. According to **Beeman**, the letter had

no meaningful probative value since the government did not charge him with any violation for sending it and it had the strong potential to unfairly inflame the jury.

[2]The district court granted the government's motion to admit the fourth letter as *res gestae* evidence and, alternatively, under Rule 404(b). We review the district court's admission of this evidence for abuse of discretion. *See* ***United States*** *v. Queen*, 132 F.3d 991, 995 (4th Cir. 1997).

[3] [4] [5]Federal Rule of Evidence 404(b) governs most character-based evidence in federal court. That rule prohibits evidence of a defendant's crimes, wrongs or acts—other than those for which he is charged—"to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." Fed. R. Evid. 404(b)(1). The purpose of this rule should be apparent. To convict a criminal defendant, the government must present evidence that the defendant committed the actual charged offense. It is not enough to introduce evidence of unrelated bad conduct and suggest—or hope—the jury believes the defendant must have committed the charged offense because he has done other bad things. *See Queen*, 132 F.3d at 995 ("The principal danger that Rule 404(b) targets is addressed by the language of the rule itself—that defendants not be convicted simply for possessing bad character."). But "not all prior 'bad act' evidence is encompassed by Rule 404(b)." ***United States*** *v. McBride*, 676 F.3d 385, 396 (4th Cir. 2012). The rule applies only when the challenged conduct is extrinsic to the charged offense, not when it is intrinsic. *See* ***United States*** *v. Brizuela*, 962 F.3d 784, 793 (4th Cir. 2020). Rule 404(b) does not prohibit evidence of conduct that is intrinsic to, or a part of, the alleged crime, and not admitted solely to demonstrate bad character. *See id.*; *see also* ***United States*** *v. Brewer*, 1 F.3d 1430, 1436 (4th Cir. 1993) ("While Rule 404(b) forecloses admission of similar acts evidence simply to prove a defendant's bad character, it permits such evidence where necessary to provide the context or *res gestae* of the charged offenses.").

[6] [7] [8]So, what is the difference between extrinsic and intrinsic evidence? Extrinsic evidence means evidence of conduct that is separate from or unrelated to the charged offense. *See Brizuela*, 962 F.3d at 793. Take *Brizuela*, in which we reversed a doctor's conviction for unlawful distribution of controlled substances. We held that the testimony of several patients about uncharged prescriptions the doctor gave them was not necessary to complete the story of the doctor's prescriptions that were charged because none of the acts described arose from the same transaction of the charged offenses. *Id.* at 795. For that reason, the testimony about the uncharged prescriptions was extrinsic and improper. *Id.* at 796. In contrast, evidence is intrinsic—and sometimes referred to as ***146** *res gestae*—when it is related to acts that are a part of the alleged crime. *See id.* Evidence is related to acts that are part of the alleged crime when it arises out of the same series of transactions as the charged offense or when it is needed to complete the story of the crime on trial. ***United States*** *v. Kennedy*, 32 F.3d 876, 885 (4th Cir. 1994); *see* ***United States*** *v. Basham*, 561 F.3d 302, 326 (4th Cir. 2009) ("Evidence is intrinsic if it is necessary to provide context relevant to the criminal charges." (internal quotation marks omitted)); *see also Sprinkle v.* ***United States***, 150 F. 56, 61 (4th Cir. 1906) ("The res gestae may be, therefore, defined as those circumstances which are the undesigned incidents of a particular litigated act and which are admissible when illustrative of such act." (internal quotation marks omitted)).

[9] [10]While that explanation is a good start, we still need to know what is required for evidence to complete the story of the charged crime. To do that, the evidence of the uncharged conduct must be "probative of an integral component of the crime on trial or provide information without which the factfinder would have an incomplete or inaccurate view of other evidence or of the story of the crime itself." *Brizuela*, 962 F.3d at 795. Assessing whether evidence is needed to complete the story of a charged offense "requires a hard look to ensure that there is a clear link or nexus between the evidence and the story of the charged offense, and that the purpose for which the evidence is offered is actually essential." *Id.* "Otherwise, the 'complete the story' doctrine might be used to disguise the type of propensity evidence that Rule 404(b) is meant to exclude." *Id.* (quoting *Kennedy*, 32 F.3d at 885). For example, in ***United States*** *v. Chin*, 83 F.3d 83, 87–88 (4th Cir. 1996), we recognized that testimony about murder-for-hire was intrinsic to charges of distribution of heroin because the murder statements were made during an exchange of heroin for cash and were thus part of a drug deal. As a result, that testimony was intrinsic to the charged heroin distribution offense and properly admitted.

[11] [12] [13]Applying that standard here, the district court did not abuse its discretion in admitting the uncharged letter. As it explained, the letter provided necessary contextual information relevant to elements of the crimes on trial. To convict **Beeman** of mailing a threatening letter to the investigator, the government had to "establish that the defendant intended to transmit the interstate communication and that the communication contained a true threat." ***United States*** *v. Darby*, 37 F.3d 1059, 1066 (4th Cir. 1994). As to the issue of whether the letter was a

true threat, the government had to convince the jury that the charged letter was a serious statement expressing an intent to do harm. *See Virginia v. Black*, 538 U.S. 343, 359, 123 S.Ct. 1536, 155 L.Ed.2d 535 (2003). And the government had to prove **Beeman** sent the letter to Harris.

The uncharged letter addressed all these points. It threatened to kill the investigator. While the charged letter did as well, the uncharged letter provided more evidence of the seriousness of the threat. For example, it escalated the threat to kill others besides the investigator and to blow up all sorts of property. Next, the uncharged letter helped the government prove motive. It referenced people and agencies involved in the Norfolk case, showing that **Beeman's** threats against the investigator stemmed from her role in the earlier prosecution. Finally, the uncharged letter helped the government establish that **Beeman** wrote the charged threatening letter to the investigator. It showed that the text followed a pattern and used ***147** the same bold typeface and consistent structure. The handwriting on the letter and envelope further linked **Beeman** to the charged letter.

For these reasons, the uncharged letter addressed elements of the charged offense. As such, it completed the story of the charged letter. Thus, the district court did not abuse its discretion in admitting the uncharged letter.

[14] [15] [16]But even assuming the uncharged letter should not have been admitted as intrinsic evidence, the district court did not err in admitting it under Rule 404(b). "Rule 404(b) prohibits the introduction of evidence of prior acts for the purpose of proving the character of a person." ***United States*** *v. Cooper*, 482 F.3d 658, 663 (4th Cir. 2007). But while evidence of other acts is not admissible to prove bad character or propensity, that evidence can be used for other purposes such as "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." *Queen*, 132 F.3d at 994 (quoting Fed. R. Evid. 404(b)). Combining Rules 403 and 404(b), evidence of uncharged conduct can be admissible if: (1) the prior-act evidence is relevant to an issue other than character; (2) the evidence is necessary to prove an element of the crime charged; (3) the evidence is reliable; and (4) its probative value is not substantially outweighed by its prejudicial nature. *Id.* at 995. "[W]e [ ] review a district court's determinations of the admissibility of evidence under Rule 404(b) for abuse of discretion, as we do generally for evidentiary rulings." *Id.*

Under this review, we find no error with the district court's alternative basis for admitting the uncharged letter. As already discussed, the uncharged letter was relevant to motive; it was relevant to the issue of real threat; and it was relevant to the issue of whether **Beeman**, rather than someone else, mailed the charged letter. For those same reasons, the letter helped establish that **Beeman** made a true threat, which is an element of the crime. And it was reliable. Although **Beeman** questioned the evidence that he sent any of the letters, the uncharged letter had many of the same characteristics as the charged letters. What's more, a handwriting expert testified that the same author wrote both the charged letters and the uncharged letter.

[17]Finally, we find no error in the district court's rejection of **Beeman's** primary argument—that the uncharged letter was unfairly prejudicial. According to **Beeman**, the uncharged letter did not contain any meaningfully different information than that contained in the charged letters. He claims admitting that evidence permitted the government to pile on evidence in a way that inflamed the jury.

To be sure, the letter contained dramatic evidence. And it was no doubt prejudicial to **Beeman**. But the point of any evidence the government would introduce would be to prejudice **Beeman** in the sense of trying to prove his guilt. The relevant question is whether it was unfairly prejudicial. *See* ***United States*** *v. Haney*, 914 F.2d 602, 607 (4th Cir. 1990) ("True, it was prejudicial to the defendants in the sense that it bolstered the prosecution's case, but under that definition, all incriminating evidence is prejudicial. The primary impact of the evidence was to demonstrate a string of robberies committed in the same manner and that type of evidence was certainly proper."). In deciding that it wasn't, the district court balanced the probative value of the evidence from the letter against any potential for unfair prejudice.

For good reason, we give district courts wide discretion in resolving these types of questions. They have a better view of evidentiary questions than we do and more ***148** experience answering them. While we review sterile written transcriptions of proceedings, district courts experience those dynamic proceedings live, observing witnesses and evidence firsthand. For that reason, we only reverse these types of decisions if the district court abuses its discretion. That means we are not permitted to reverse just because we might have answered the same question differently. We may only reverse if the district court acted arbitrarily or irrationally, failed to consider judicially recognized factors constraining its exercise of discretion, relied on erroneous factual or legal premises or committed an error of law. *See Delfino*, 510 F.3d at 470. Here, the district court acted within its discretion in concluding that the uncharged letter provided additional evidence of motive, the seriousness of the threat and who wrote the

charged letter.

III.

Next, **Beeman** argues the district court abused its discretion in empaneling an anonymous jury, where the court and lawyers would refer only to juror numbers in open court. Because of **Beeman's** history of threatening those involved with his prosecution as well as other individuals, the government moved for that procedure. **Beeman** did not object to receiving a redacted jury list. But he did object to referring to the jurors by their numbers in open court. **Beeman** argued that the procedure would send the message to the jury that he was dangerous. The court granted the government's motion. But it provided **Beeman's** counsel "with an unredacted juror list for his use in voir dire examination and a redacted juror list for conferring with **Beeman**." J.A. 201.

[18] [19]A district court may empanel an anonymous jury "only in rare circumstances when two conditions are met: (1) there is strong reason to conclude that the jury needs protection from interference or harm, or that the integrity of the jury's function will be compromised absent anonymity; and (2) reasonable safeguards have been adopted to minimize the risk that the rights of the accused will be infringed." ***United States*** *v. Dinkins*, 691 F.3d 358, 372 (4th Cir. 2012); *see also* 28 U.S.C. § 1863(b)(7) (A district court may empanel an anonymous jury, keeping the names of jurors confidential, in a non-capital case in which "the interests of justice so require"). But even if the circumstances warrant such a procedure, courts must consider whether a defendant's constitutional right to a presumption of innocence is impacted or whether the procedure would otherwise impede a defendant's constitutional right to trial by an impartial jury. *See Dinkins*, 691 F.3d at 372.

[20] [21] [22]We have recognized a non-exhaustive list of five factors that inform the "strong reasons supporting the empaneling of an anonymous jury." *Id.* at 373; *see also* ***United States*** *v. Mathis*, 932 F.3d 242, 252–53 (4th Cir. 2019). Those factors are:

> (1) the defendant's involvement in organized crime, (2) the defendant's participation in a group with the capacity to harm jurors, (3) the defendant's past attempts to interfere with the judicial process, (4) the potential that, if convicted, the defendant will suffer a lengthy incarceration and substantial monetary penalties, and (5) extensive publicity that could enhance the possibility that jurors' names would become public and expose them to intimidation or harassment.

Dinkins, 691 F.3d at 373 (*quoting* ***United States*** *v. Ross*, 33 F.3d 1507, 1520 (11th Cir. 1994)). The presence of any one factor or even a set of factors does not automatically compel the empaneling of an anonymous ***149** jury. *See id.* And the court's decision to empanel an anonymous jury in a non-capital case "must rest on something more than speculation or inferences of potential risk." *Id.* at 374. Finally, we review challenges to empaneling anonymous juries for abuse of discretion. *Id.* at 371.

[23]Here, one might question whether the jury was in fact anonymous. After all, the defendant's counsel had the jurors' names. But assuming, without deciding, that procedures used by the court amounted to empaneling an anonymous jury, the district court did not abuse its discretion. It considered the non-exhaustive list of factors that inform the jury's need for protection from interference or harm and the implementation of reasonable safeguards to minimize the risk of infringing on **Beeman's** rights. In deciding that the empaneled jurors should remain anonymous, the court pointed to **Beeman's** previous attempts to interfere with the judicial process, his previous threats to harm those involved in his prosecution, the potential for **Beeman** to face a lengthy prison term and the potential for the jury to face harassment if their names became too public. At the same time, the district court protected **Beeman's** constitutional rights by giving his counsel an unredacted list of the jurors, by not drawing attention to the issue and by telling the jury that the process was being used to avoid unnecessary publicity rather than because **Beeman** was dangerous. Thus, the court did not abuse its discretion in deciding to empanel an anonymous jury.

IV.

Finally, **Beeman** challenges the district court's denial of his motion for a mistrial after improper arguments by the government during closing argument. During the government's closing argument, **Beeman** objected when the prosecutor transitioned from talking about the objective person to asking the jurors to think about how they would feel if they received the letters.

> [MS. MASTANDREA-MILLER:] And when he writes the vitriol, the nastiness in the headings Dear Fag, Dear Faggot, Dear C, Dear Three Hole Wonder C, he's setting up the person for what's to come.

> And think about what it is that you would feel. As an objective person, you're allowed to look at what an objectively reasonable person would feel having received a letter like this. And so you can assess it and say "If I saw that – if I open up a letter and that's what I see, how am I going to feel about that?"
>
> MR. DINKIN: Judge, I don't think I've ever objected in a closing statement ever.
>
> THE COURT: The standard is an objective person.
>
> MS. MASTANDREA-MILLER: Right.
>
> THE COURT: And appealing to the jury's feelings should not be done.
>
> MS. MASTANDREA-MILLER: Objective person meaning a person who would look at this from a distance as opposed to their personal view.
>
> THE COURT: I'm going to tell you all to disregard the things about how you'd feel. You're looking at this from an objective perspective.
>
> MS. MASTANDREA-MILLER: Right. Not from how you personally feel. Look at it from an objective point of view.

J.A. 444–45.

On appeal, **Beeman** argues that the prosecutor's comments were a significant deviation from the applicable jury instructions in this case and, although corrected quickly, fundamentally misstated the law. He insists that the misstatement could have misled the jury to convict **Beeman** ***150** based on an incorrect standard of law. In response, the government maintains that its improper statement was isolated, addressed and corrected quickly both by counsel and the court, that the court properly instructed the jury on the law, and that **Beeman** cannot show any prejudicial effect on his rights to warrant a new trial.

[24] [25]The denial of a defendant's motion for mistrial is within the sound discretion of the district court and will be disturbed in only the "most extraordinary of circumstances." ***United States*** *v. Dorlouis*, 107 F.3d 248, 257 (4th Cir. 1997). Similarly, we review the district court's ruling on an objection made during closing argument for abuse of discretion and will only reverse when an abuse of discretion constitutes prejudicial error. *See* ***United States*** *v. Lopez*, 860 F.3d 201, 215 (4th Cir. 2017).

[26]To evaluate whether comments made during a closing argument are prejudicial to the point of requiring a mistrial, we consider six factors. Those factors are:

> (1) the degree to which the prosecutor's remarks have a tendency to mislead the jury and to prejudice the accused; (2) whether the remarks were isolated or extensive; (3) absent the remarks, the strength of competent proof introduced to establish the guilt of the accused; (4) whether the comments were deliberately placed before the jury to divert attention to extraneous matters; (5) whether the prosecutor's remarks were invited by improper conduct of defense counsel; and (6) whether curative instructions were given to the jury.

United States *v. Wilson*, 624 F.3d 640, 656–57 (4th Cir. 2010). These factors are to be viewed in the context of the trial as a whole, "and no one factor is dispositive." ***United States*** *v. Lighty*, 616 F.3d 321, 361 (4th Cir. 2010).

[27]**Beeman** contends that the government's use of a subjective standard for evaluating a true threat in its closing argument was prejudicial error. But, even if this was improper, **Beeman** has failed to establish that the statement was prejudicial to the point of depriving him of a fair trial. The statement in question was brief and isolated. More importantly, it was corrected immediately by both counsel and the court. The district court gave both a curative instruction and proper legal instructions to the jury, making it unlikely that the statement played any noticeable role in the jury's verdict. *See Nichols v. Ashland Hosp. Corp.*, 251 F.3d 496, 501 (4th Cir. 2001) (recognizing the assumption that jurors follow the court's instructions).

On top of that, the government presented overwhelming evidence of **Beeman's** guilt. Considering the misstatement during closing argument in context of the entire trial, we find no prejudice to **Beeman** from the closing arguments. Accordingly, we affirm the district court's denial of the motion for a mistrial.

V.

For the foregoing reasons, the district court's judgment is,

AFFIRMED.

All Citations

135 F.4th 139

Footnotes

1 We have jurisdiction to review the final judgment of the district court pursuant to 28 U.S.C. § 1291.

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Only the Westlaw citation is currently available.
United States District Court, E.D. Virginia,
Richmond Division.

UNITED STATES of America
v.
Brock BEEMAN, Defendant.

Criminal Case No. 3:21cr95
|
Signed May 9, 2022

Attorneys and Law Firms

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MEMORANDUM ORDER

M. Hannah Lauck, United States District Judge

***1** This matter comes before the Court on the United States's Motion to Admit Certain Evidence Pursuant to Res Gestae and Fed. R. Evid. 404(b) (the "Motion"). (ECF No. 22.) In the Motion, the Government asks the Court to admit as evidence "a December 9, 2021 letter that ... Defendant [Beeman] sent to Special Agent N.H." and "the Second Superseding Indictment from a prior prosecution of" Beeman (the "Norfolk Matter"). (*Id.* 1 (citing ECF No. 45, *United States v. Brock Brian Beeman*, Case No. 2:20cr56 (E.D. Va. Mar. 18, 2021)).) Specifically, the Government asks the Court to admit these documents as *res gestae* evidence, or, alternatively, pursuant to Federal Rule of Evidence 404(b). The Court will grant in part and deny in part the Motion.

I. Background

The Superseding Indictment in this matter involves three letters—one dated June 22, 2021 and two dated September 8, 2021—allegedly mailed by Defendant Beeman to a Special Assistant United States Attorney (M.H.) and a Special Agent with the Navy Criminal Investigative Service (N.H.).[1] (ECF No. 3; *see* ECF No. 19-3, ECF No. 19-5, ECF No. 19-7.) Each of the letters contained threats to kill the recipients, in violation of 18 U.S.C. § 876(c). (*Id.*)

II. Analysis

The Court will admit the December 9, 2021 letter as *res gestae* and, alternatively, under Rule 404(b). However, it will not admit the Second Superseding Indictment.

A. The December 9, 2021 Letter is Admissible as *Res Gestae* Evidence

In general, Federal Rule of Evidence "404(b) forecloses admission of similar acts evidence simply to prove a defendant's bad character." *United States v. Querubin*, 150 F. App'x 233, 235 (4th Cir. 2005) (quoting *United States v. Brewer*, 1 F.3d 1430, 1436 (4th Cir.1993)). However, Rule 404(b) "permits such evidence where necessary to provide the context or *res gestae* of the charged offenses." *Id.* (quoting *Brewer*, 1 F.3d at 1436). The United States Court of Appeals for the Fourth Circuit has stated that:

> [o]ne of the accepted bases for admissibility of evidence of [other acts] arises when such evidence ... is so intimately connected with and explanatory of the crime charged against the defendant and is so much a part of the setting of the case and its "environment" that its proof is appropriate in order "to complete the story of the crime on trial by proving its immediate context or the 'res gestae[.]' "

United States v. Masters, 622 F.2d 83, 86 (4th Cir. 1980) (citations omitted). Likewise, the Fourth Circuit has further articulated another accepted basis for admissibility of evidence of other acts when that evidence stems from other acts " 'so linked together in point of time and circumstances with the crime charged that one cannot be fully shown without proving the other ... ' (and is thus) part of the res gestae of the crime charged." *Id.* (alteration in original).

The Court will admit Defendant Beeman's December 9, 2021 letter as *res gestae* evidence. To begin, the December 9, 2021 letter is intrinsic to the charges here because it continues the threats made against N.H. in Defendant Beeman's September 8, 2021 letter, was sent close in time after the September 8, 2021 letter, and provides context necessary to paint the most complete picture of Defendant Beeman's actions. *See* December 9, 2021 Letter; ECF No. 19-5; *e.g.*, *Masters*, 622 F.2d at 86 (deeming evidence of other acts admissible because it "served to complete the story of the crime on trial").

2** In the December 9, 2021 letter, Beeman uses much of the same language as that in the letters charged in the indictment, but mentions more details about his prosecution out of the Norfolk division in a manner that clarifies his animus toward this investigating agent and the other participants in that prosecution. (*See* December 9, 2021 Letter, at 3 ("Now why don't you get in your car and come arrest me c. Show yourself b****! You drove 700+ miles during a pandemic now get in you car and drive 30 miles to come arrest me!").) As such, the December 9, 2021 letter not only provides evidence that is "probative of an integral component of the crime on trial"—Beeman's subjective intent to communicate a threat—but it also provides "information without which the fact finder would have an incomplete or inaccurate view of ... the story of the crime itself" because the factfinder would not otherwise fully know the basis for his hostility toward those who prosecuted him in Norfolk and Newport News and who are the alleged victims here. *United States v. Brizuela*, 962 F.3d 784, 795 (4th Cir. 2020).

B. The December 9, 2021 Letter Is Admissible Pursuant to Federal Rule of Evidence 404(b)

To the extent Defendant Beeman's December 9, 2021 letter constitutes extrinsic evidence, it would satisfy each prong of the Fourth Circuit's four-prong test, and it is therefore admissible pursuant to Rule 404(b).

Federal Rule of Evidence 404(b) provides, in pertinent part:

> Evidence 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 the character.... This evidence may be 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). "The government bears the burden of establishing that evidence of a defendant's prior bad acts is admissible for [one or more of these] proper purpose[s]." *United States v. Brizuela*, 962 F.3d 784, 797 (quoting *United States v. Hall*, 858 F.3d 254, 266 (4th Cir. 2017)).

The Fourth Circuit has crafted a four-prong test that governs the admission of evidence pursuant to Rule 404(b). *See id.* at 798 (quoting *Hall*, 585 F.3d at 266). Specifically, the *Brizuela* court concluded that, for evidence to be admissible pursuant to Rule 404(b), it must satisfy all four prongs of the following test:

> *First*, [t]he evidence must be relevant to an issue, such as an element of an offense, and must not be offered to establish the general character of the defendant. *Second*, [t]he act must be necessary in the sense that it is probative of an essential claim or an element of the offense. *Third*, [t]he evidence must be reliable. And *fourth*, the evidence's probative value must not be substantially outweighed by confusion or unfair prejudice in the sense that it tends to subordinate reason to emotion in the factfinding process.

Id. (quoting *Hall*, 858 F.3d at 266) (emphasis added) (alterations in original).

As noted, Defendant Beeman's December 9, 2021 letter satisfies each prong of the Fourth Circuit's test. First, the text contained in the December 9, 2021 letter speaks to Beeman's motive in mailing the threatening communications at issue in this matter. *See* (December 9, 2021 Letter); *Brizuela*, 962 F.3d at 798 (quoting *Hall*, 585 F.3d at 266). That is, the December 9, 2021 letter is relevant to Beeman's motive behind threatening those involved in prosecuting him. The United States has not offered it to establish Beeman's general character. Specifically, as to Beeman's motive, the December 9, 2021 letter suggests that Beeman's anger at having been prosecuted in the Norfolk Matter motivated his decision to mail threatening communications to N.H. (*See* December 9, 2021 Letter.) Accordingly, this evidence satisfies the first prong of the test.

Second, the December 9, 2021 letter is "probative of an essential claim or an element of the offense." *Brizuela*, 962 F.3d at 798 (quoting *Hall*, 585 F.3d at 266). As identified above, the December 9, 2021 letter speaks to the nature and extent of Beeman's threats toward N.H. —that Beeman subjectively intended them and that they constituted objectively real threats. *See* (December 9, 2021 Letter); *United States v. White*, 810 F.3d 212, 220 (4th Cir. 2016) (citation omitted). Therefore, this evidence satisfies the second prong of the four-part test.

***3** Third, the December 9, 2021 letter is reliable. *See Brizuela*, 962 F.3d at 798 (quoting *Hall*, 585 F.3d at 266). It references the Norfolk Matter and N.H.'s participation in that case, and it shares characteristics with the September 8, 2021 letter that relates to Count 2 of the Superseding Indictment in this matter, including the substance of the threats and insults, as well as their wording; the identification of Beeman as the author on the mailing envelope; the recipient; and the nature of the handwriting. (*See* December 9, 2021 Letter.) Thus, this evidence satisfies the third prong of the test.

Fourth, the danger of unfair prejudice due to the December 9, 2021 letter's admission does not substantially outweigh its probative value. *See Brizuela*, 962 F.3d at 798 (quoting *Hall*, 585 F.3d at 266). "True, it [is] prejudicial to [Beeman] in the sense that it bolster[s] the [Government's] case," *United States v. Haney*, 914 F.2d 602, 607 (4th Cir. 1990), but it is not unfairly prejudicial, *see* Fed. R. Evid. 403 Advisory Committee Note (" 'Unfair prejudice' within its context means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one."). As a result, this evidence satisfies the fourth and final prong of the Fourth Circuit's test.

C. The Court Will Exclude the Substance of the Second Superseding Indictment Pursuant to Federal Rule of Evidence 403

Pursuant to Federal Rule of Evidence 403, the Court will not allow the Government to introduce the Second Superseding Indictment from the Norfolk Matter because its prejudicial value substantially outweighs its probative value, and it could lead the jury to confuse the issues in the Norfolk matter with those they must decide with regard to *this* Superseding Indictment.

True, the Second Superseding Indictment charges Beeman with threatening individuals, including mailing threats against individuals' lives. (*See* ECF No. 45, *United States v. Brock Brian Beeman*, Case No. 2:20cr56 (E.D. Va. Mar. 18, 2021).) And, similar to the December 9, 2021 letter, it sheds light on why Beeman threatened to kill M.H., making it a seemingly good candidate for admission as *res gestae* evidence. (*See id.); Masters*, 622 F.2d at 86. Moreover, it may also satisfy three of the four prongs of the Fourth Circuit's four-prong test for admission pursuant to Rule 404(b). *See Brizuela*, 962 F.3d at 797 (quoting *Hall*, 858 F.3d at 266).[2]

***4** Nevertheless, its prejudicial value substantially outweighs its probative value such that Rule 403 renders it inadmissible. Indeed, while additional counts in the Second Superseding Indictment may have triggered the outrage expressed by Beeman, its contents are merely charges. Both the preamble and the number of charges at issue there—only one of which involved a conviction—if presented to this jury, would hew toward propensity evidence, not just absence of motive, knowledge, or absence of mistake.[3]

III. Conclusion

The Court GRANTS in part and DENIES in part the United States's Motion. (ECF No. 22.) The December 9, 2021 letter is admissible as *res gestae* evidence *and* pursuant to Federal Rule of Evidence 404(b). However, pursuant to Federal Rule of Evidence 403, the Second Superseding Indictment is not admissible because its prejudicial value substantially outweighs its probative value, and it could lead the jury to confuse the issues in the Norfolk matter with those it must decide in the instant case.

It is SO ORDERED.

All Citations

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Footnotes

1 The December 9, 2021 letter that the Government seeks to admit postdates the three letters listed in the Superseding Indictment. (*See* December 9, 2021 Letter; ECF No. 3.)

2 For instance, the Second Superseding Indictment is relevant to Beeman's motive, knowledge, and absence of mistake in threatening M.H. *See* ECF No. 45, *United States v. Brock Brian Beeman*, Case No. 2:20cr56 (E.D. Va. Mar. 18, 2021); *Brizuela*, 962 F.3d at 798 (quoting *Hall*, 585 F.3d at 266). Specifically, it speaks to his motivation for threatening M.H. in that it sparked his anger towards M.H., and it suggests that Beeman knowingly threatened M.H. and did not accidentally do so. *See* ECF No. 45, *United States v. Brock Brian Beeman*, Case No. 2:20cr56 (E.D. Va. Mar. 18, 2021).

Moreover, the Second Superseding Indictment is "probative of an essential claim or an element of the offense" in that it is probative of the *mens rea* necessary for the offense of mailing threatening communications in violation of 18 U.S.C. § 87(c). *Brizuela*, 962 F.3d at 798 (quoting *Hall*, 585 F.3d at 266). Namely, it indicates that Defendant Beeman knowingly

threatened M.H. in that Beeman was already aware of the type of conduct that would lead to a charge pursuant to 18 U.S.C. § 876(c). *See* ECF No. 45, *United States v. Brock Brian Beeman*, Case No. 2:20cr56 (E.D. Va. Mar. 18, 2021).

Lastly, the Second Superseding Indictment is reliable, indicated by its filing with and acceptance by the Court. *See* ECF No. 45, *United States v. Brock Brian Beeman*, Case No. 2:20cr56 (E.D. Va. Mar. 18, 2021); *Brizuela*, 962 F.3d at 798 (quoting *Hall*, 585 F.3d at 266).

3 However, the fact of the existence of the Second Superseding Indictment, as opposed to its substance, may be relevant. If the Government were to seek the introduction of that fact, the Court likely would be compelled to mitigate any prejudice stemming from the Second Superseding Indictment's admission through a limiting instruction. *See United States v. Queen*, 132 F.3d 991, 997 (4th Cir. 1997) (“In cases where the trial judge has given a limiting instruction on the use of Rule 404(b), the fear that the jury may improperly use the evidence subsides.”).

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