

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term 2017

**Terrance DeAngelo Hamlin,
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 Writ of Certiorari

JAMES WYDA
Federal Public Defender
District Of Maryland
MEGHAN SKELTON
Appellate Attorney
Counsel of Record
6411 Ivy Lane, 7th Floor
Greenbelt, Maryland 20770
(301) 344-0600
meghan_skelton@fd.org

Attorneys for Petitioner

Question Presented

Rule 404(b) of the Federal Rule of Evidence prohibits the admission of prior convictions to prove that a criminal defendant has a bad character or a propensity to commit a crime, but permits admission of prior convictions for certain other purposes, such as proving knowledge, intent, or lack of mistake. In the Sixth and Seventh Circuits, courts examine what issues are actually in dispute before determining whether a prior conviction is admissible under Rule 404(b). In the Fourth Circuit, on the other hand, courts examine only the nature of the prior conviction. This difference results in divergent results because the same type of prior conviction would be inadmissible in some circuits, but admissible in others. Should this Court grant certiorari to resolve this circuit split?

List of Parties

All parties are listed in the caption of this case.

TABLE OF CONTENTS

	<u>Page</u>
Question Presented.....	i
List of Parties.....	ii
Table of Authorities	iv
Opinions Below	1
Jurisdiction	1
Constitutional and Statutory Provisions Involved.....	1
Statement of the Case	2
A. The events of June 9, 2015.....	2
B. The “other bad acts” evidence	4
C. Mr. Hamlin’s motion in limine to exclude the evidence under Fed. R. Evid. 404(b)	6
D. The Fourth Circuit’s affirmance of the district court’s ruling.....	7
Reasons for Granting the Petition	8
This Court should grant review to provide needed uniformity in how the Circuit Courts of Appeals interpret and apply Rule 404(b) of the Federal Rules of Evidence	8
Conclusion.....	12
 APPENDIX:	
A. Unpublished Opinion of the Fourth Circuit Court of Appeals, <i>United States v. Terrance DeAngelo Hamlin</i> , No. 16-4866	A1
B. Transcript Excerpt from <i>United States v. Hamlin</i> , Crim. No. RWT-15-378, U.S. District Court For the District of Maryland, Dated April 25, 2016	B1

TABLE OF AUTHORITIES

	<u>Page(s)</u>
<u>FEDERAL CASES</u>	
<i>United States v. Bell</i> , 516 F.3d 432 (6 th Cir. 2008)	7
<i>United States v. Hall</i> , 858 F.3d 254 (4 th Cir. 2017)	11
<i>United States v. Jenkins</i> , 593 F.3d 480 (6 th Cir. 2010).....	7, 9
<i>United States v. Lee</i> , 724 F.3d 968 (7 th Cir. 2013)	7, 9, 10
<i>United States v. Miller</i> , 673 F.3d 688 (7 th Cir. 2012)	7, 10, 11

<u>STATUTES</u>	
28 U.S.C. § 1254(1)	1
Fed. R. Evid. 404(b)	<i>passim</i>
Fed. R. Evid. 404(b)(1)	1

Petition for Writ of Certiorari

Petitioner Terrance DeAngelo Hamlin respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

Opinions Below

The opinion of the United States Court of Appeals (Pet. App. A1-A4) is unpublished. The decision of the district court (Pet. App. B1-11) is unpublished.

Jurisdiction

The United States Court of Appeals for the Fourth Circuit issued its opinion and judgment on November 14, 2017. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Constitutional and Statutory Provisions Involved

Rule 404(b)(1) of the Federal Rules of Evidence states, “Evidence of a crime, wrong or other 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.”

Statement of the Case

Terrance Hamlin was charged in a four-count indictment with possessing a firearm after having been convicted of a felony, in violation of 18 U.S.C. § 922(g) (Count 1), possession with intent to distribute crack cocaine and marijuana, in violation of 21 U.S.C. § 841(a)(1) (Counts 2 and 3), and possession of a firearm in furtherance of a drug trafficking offense, in violation of 18 U.S.C. § 924(c) (Count 4).

(JA 17-20.)¹ A jury convicted him of these four charges and the district court imposed a sentence of 63 months on Counts 1 and 2, to run concurrent, 60 months and Count 3, also to run concurrent, and 60 months on Count 4, to run consecutively to the other counts. (JA 716.) He appealed to the United States Court of Appeals for the Fourth Circuit, which affirmed his convictions on November 14, 2017. (Pet. App. A1-A4.)

Before trial, the government notified the defense that it intended to introduce evidence that Mr. Hamlin had been convicted of possession of cocaine in 2013. Mr. Hamlin filed a motion to exclude this evidence. After hearing the parties' arguments, the district court denied Mr. Hamlin's motion. (Pet. App. B10-B11.) Mr. Hamlin appealed the denial of that motion.

A. The events of June 9, 2015

Late in the evening of June 9, 2015, Lieutenant Patrick Hampson of the Prince George's County Police Department was patrolling an apartment complex near Benning Road and Marlboro Pike in Capitol Heights, Maryland. A man walked out from a courtyard in the complex, appeared to see the officer, grabbed his waistband and ran. (JA 126.) Lieutenant Hampson found this suspicious, so ran after the man. The man ran inside one of the buildings and closed the door to the vestibule behind him. (JA 126.) When Lieutenant Hampson tried to open the front door, it was locked. He knocked, but nobody answered.

Because he believed that the area was "active," Lieutenant Hampson invited some other officers to join him in patrolling the apartment complex. They walked by

¹ References to "J.A." are to the Joint Appendix filed in the court below.

a courtyard near a different building in the complex, 1207 Benning Road, and could smell the odor of marijuana, apparently emanating from an open window. (JA 130.) The officers heard someone inside say “feds.” (JA 132.)

The door to the vestibule of this building was open, so the officers walked in and knocked on the front door to the apartment with the open window. The lights inside the apartment all went out. Finding this suspicious, one of the officers went around to the back of the building to watch. (JA 134.) Lieutenant Hampson then heard over the police radio that someone had climbed out the back window of the apartment and was holding two guns. (JA 135.)

A woman named Denisha Leonard finally answered the door, which opened straight into the living room. (JA 136.) Since the lights in the apartment were off, the only light available was Lieutenant Hampson’s flashlight, which he shined inside. He could see what looked like bags of marijuana on the ground and on the sofa. He could also see digital scales in plain view. Lieutenant Hampson asked Ms. Leonard if he could search the apartment, and she consented. (JA 142-43.) Lieutenant Hampson and Ms. Leonard walked through the apartment together.

In the bedroom, an adult woman and some children were asleep. (JA 141-42.) Lieutenant Hampson could see a handgun on a shelf in the bedroom. (JA 141.)

When Ms. Leonard opened the door to the police on June 9, 2015, four adults were present. Ms. Leonard, who leased the apartment, and Mr. Hamlin, her boyfriend, lived there (although he had denied that fact to the police when they first entered the apartment). Crystal Wilkerson, one of Ms. Leonard’s friends, was

sleeping in the bedroom. Finally, Javone Smith, another man who was friends with Mr. Hamlin, was also there.

Another person also lived in the apartment. This man, Carlos Benjamin, was the person who had escaped out the window before Ms. Leonard opened the door. (JA 229.) Mr. Benjamin slept in the living room (where a substantial quantity of controlled substances and packaging materials were found, as well as ammunition) and kept his personal belongings in a closet off the living room.

A different officer saw Mr. Benjamin climb out the window holding a gun in each hand. (JA 361.) He ran toward a fence at the back of the apartment complex property. The officer chasing him was able to grab one of Mr. Benjamin's legs as he climbed the fence, but Mr. Benjamin managed to escape over the fence after dropping one of the guns. (JA 363.) The officer later identified Mr. Benjamin from a photo array. (JA 366.)

After they completed the preliminary walk-through of the apartment, the police proceeded to search it. They found digital scales, razors, plastic sandwich bags, suspected crack cocaine, suspected marijuana, and a spice grinder which was ostensibly used to grind the marijuana to prepare it for smoking. The police also seized a loaded .45 caliber Glock handgun from the bedroom closet and a Glock 9 millimeter handgun from the laundry bag in the bedroom. (JA 393-94.)

B. The "other bad acts" evidence

In 2013, Terrance Hamlin pled guilty to one count of possession of cocaine, and was sentenced to a time-served sentence of 290 days. (JA 24, 43, 558-59.) The government offered both a certified copy of the conviction and the testimony of two

police officers who arrested him for that offense.

This conviction stems from conduct that occurred in September 2012, three years before the charged conduct. Prince George's County police detective Joseph Killo was walking on patrol in the area around Benning Road and Marlboro Pike. He saw Terrance Hamlin walking along the road and said, "Hey, bud, do you mind if I talk to you for a second?" (JA 541.)

Mr. Hamlin continued walking, but turned and looked at the officer, who was wearing his uniform, and asked, "About what?" He grabbed at his waistband.

The officer then said, "Hey, come here." (JA 542.) Mr. Hamlin declined this "consensual" encounter and ran toward Benning Road. (JA 542.)

Detective Killo ran after Mr. Hamlin, who tripped and fell in a CVS parking lot. (JA 543.) As Mr. Hamlin was trying to stand back up, Detective Killo tackled him and held him face-down on the parking lot. Detective Killo's partner, who had been driving his police cruiser, pulled up and joined the arrest. They pulled Mr. Hamlin's hands behind his back, took him into custody, and pulled a loaded .45 caliber semi-automatic handgun from Mr. Hamlin's waistband. (JA 544-45.)

This was not the same gun as any of the weapons recovered from 1207 Benning Road in June 2015. Mr. Hamlin was never convicted of illegally possessing this firearm. (JA 548.)

Sergeant Julian Mitchell was Detective Killo's partner that day. Sgt. Mitchell took Mr. Hamlin to the Department of Corrections and strip searched him. (JA 556.) He found two grams of crack cocaine in Mr. Hamlin's underwear, packed into sixteen

individual baggies. (JA 557.) Mr. Hamlin pled guilty to one count of possession of a controlled substance. (JA 559.)

C. Mr. Hamlin's motion in limine to exclude the evidence under Fed. R. Evid. 404(b).

In his motion in limine to exclude this evidence, Mr. Hamlin argued that, since the core issue in the instant case was constructive possession, intent to distribute, or motive connecting the firearms and the controlled substances was not meaningfully in dispute. (Pet. App. B3.) Instead, the only issue was whether Mr. Hamlin intended to possess those specific items found in 1207 Benning Road. (*Id.*) There was no dispute about whether Mr. Hamlin knew that particular substances were cocaine or marijuana; the dispute narrowly focused on whether he was the one, among the numerous adults present and/or living in the apartment, who constructively possessed the contraband. Mr. Hamlin argued that evidence of his conduct from three years earlier was irrelevant, prejudicial, and was inadmissible as “straight propensity evidence.” (Pet. App. B8.)

The government argued that the evidence was relevant to his “intent and knowledge of what to do with drugs and the fact that he had them, the very fact that those drugs were there and the fact that he knew what drugs were and had been arrested with them in the past.” (Pet. App. B7.) The government further stated that the evidence was relevant to “knowledge of drug distribution” which, it asserted, was necessary to the government’s case because Mr. Hamlin’s “ability and intent to control the residence” was at issue. (*Id.*) The government asserted that the evidence demonstrated “his knowledge and intent, his motive and plan for doing with the

drugs that were found in the apartment what one would expect would be done with those things.” (Pet. App. B8.)

The district court decided that the evidence was admissible “in terms of intent, preparation, plan, knowledge, absence of mistake.” (Pet. App. B10-B11.) The court stated that the evidence would negate a defense argument that “I didn’t know it was there.” (*Id.*) The court stated that the prior bad acts evidence “is certainly germane to show that this is not a question of absence of intent, that he had no knowledge it was there. That he did have the intent to have it there.” (Pet. App. B11.) Without assigning particular weight to the probative value or prejudicial impact of the evidence, the court also stated, “I think that it’s not unfairly prejudicial under the balancing requirement that I do in any case under 403.” (*Id.*)

D. The Fourth Circuit’s affirmance of the district court’s ruling

On appeal, Mr. Hamlin argued that, since his theory of defense was that he did not constructively possess the drugs or firearms found in the apartment, evidence of a three-year old conviction for unrelated drug activity was inadmissible under Fed. R. Evid. 404(b). He argued that, since he did not dispute knowledge or intent, the prior unrelated conviction for possessing cocaine was inadmissible to show knowledge or intent. He relied on cases from the Sixth and Seventh Circuit Courts of Appeals² to support the argument that in constructive possession cases, this type of evidence is inadmissible under Rule 404(b).

² See, e.g., *United States v. Lee*, 724 F.3d 968 (7th Cir. 2013); *United States v. Miller*, 673 F.3d 688 (7th Cir. 2012); *United States v. Jenkins*, 593 F.3d 480 (6th Cir. 2010); *United States v. Bell*, 516 F.3d 432 (6th Cir. 2008).

The court below, however, held that the unrelated prior conviction for a different type of offense was admissible to prove intent and knowledge. (Pet. App. A3.) The court ignored the cases from the Sixth and Seventh Circuits.

Reasons for Granting the Petition

This Court should grant review to provide needed uniformity in how the Circuit Courts of Appeals interpret and apply Rule 404(b) of the Federal Rules of Evidence

If Mr. Hamlin had been prosecuted in a district within the Sixth or Seventh Circuits, his prior conviction for possessing cocaine would not have been admissible in a trial for constructively possessing with intent to distribute different narcotics. But in the District of Maryland, within the Fourth Circuit, that prior conviction was admitted against him. This Court should grant much needed review to resolve a circuit split and ensure uniformity in how the Circuits interpret and apply Rule 404(b) of the Federal Rules of Evidence.

The government argued here that Rule 404(b) is broadly a rule of inclusion, and that prior drug activity is relevant and necessary to prove intent and knowledge in constructive possession cases. The court below accepted this argument with little comment. (Pet. App. A2-A3.) The Fourth Circuit's decision therefore establishes a rule providing an uncritical eye and admitting broad categories of prior bad acts evidence, even when the issues cited by the government as non-propensity issues are not actually in dispute. (*See id.*)

The Sixth and Seventh Circuits, however, take a different approach. Where, as here, the government's theory of liability is that the defendant constructively possessed contraband, the principle issue at trial is whether the defendant, as

opposed to someone else, knowingly had the power and intention to exercise dominion and control over the contraband. *See Jenkins*, 593 F.3d at 483. The Sixth and Seventh Circuits recognize that the presence of the words “knowingly” and “intention,” however, do not mean that those aspects of constructive possession are meaningfully disputed.

When confronted with prior bad acts evidence under Rule 404(b), those courts will not admit prior convictions for unrelated narcotics offenses. “When the defense theory of the case has nothing to do with intent—when, for example, the defendant flatly denies that the drugs were his . . . other crimes evidence offered to establish his intent will have much less relevance, such that its probative worth is more likely to be outweighed by the inherent risk of prejudice that such evidence poses to the defendant.” *Lee*, 724 F.3d at 976.

These courts recognize that, in defending against allegations of constructive possession, knowledge and intent are not truly at issue. For example, in *Jenkins*, a case with strikingly similar facts to this case, the court noted that the defendant’s denial that he constructively possessed the contraband amounted to a flat denial of all aspects of possession. “We do not think the issue of knowledge was at issue in any meaningful sense. Whoever possessed all the drugs lying in plain view about the house obviously did not do so inadvertently. Thus, as a practical matter, the issue of knowledge was subsumed by that of possession.” *Jenkins*, 593 F.3d at 485. Likewise, regarding intent, “the same argument applies to this element: Whoever possessed drugs in these quantities likely meant to sell some of them.” *Id.* Accordingly,

“Knowledge did not stand on its own bottom as an issue in Jenkins’s trial; and thus the admission of his prior conviction cannot be bottomed on it either.” *Id.*

In *Miller*, the Seventh Circuit similarly found that in defending against a constructive possession argument by the government, the defendant never argued that the drugs were not for distribution, “intent” is not in dispute. 673 F.3d at 697. When the defense is that the drugs were not the defendant’s, the defense has nothing to do with intent. *Id.* at 698. Instead, intent is “at issue” in only the most attenuated sense.” *Id.* at 697.

Lee also involved constructive possession, with a defense that the drugs were not the defendant’s, period. The defendant “did not pursue the type of defense which would have raised particular questions—about what he knew, what his purpose was, and whether his proximity to the cocaine was inadvertent—that his prior conviction might help the jury to answer.” *Lee*, 724 F.3d at 978. His defense was of complete innocence—he had absolutely nothing to do with the cocaine that was in the trunk of the car the defendant was driving, not that he did not understand how the cocaine trade worked. *Id.* at 980. Knowledge and intent were not at issue because the defense did not involve a denial of, for example, what cocaine looks like, that the drugs were for personal use, or that he did some act inadvertently. *Id.* at 978.

In cases like these constructive possession cases, “when intent is not meaningfully disputed by the defense, and the bad act evidence is relevant to intent only because it implies a pattern or propensity to so intend, the trial court abuses its discretion by admitting it.” *Miller*, 673 F.3d at 697. “Intent is the exception most

likely to blend with improper propensity uses.” *Id.* at 698.

When defenses to constructive possession cases do not meaningfully dispute knowledge and intent, the Sixth and Seventh Circuits require the government to specifically articulate how the prior misconduct proves something other propensity. “To differentiate between the illegitimate use of a prior conviction to show propensity and the proper use of a prior conviction to prove intent, the government must affirmatively show why a particular prior conviction tends to show the more forward-looking fact of purpose, design, or volition to commit the new crime.” *Miller*, 673 F.3d at 699 (internal quotation omitted).

The Fourth Circuit, on the other hand, requires no similar showing by the government. *See* Pet. App. at A2-A3. The Fourth Circuit continues to look for links between the prior narcotics offense and the charged conduct, even in constructive possession cases when knowledge and intent are not meaningfully at issue. *See United States v. Hall*, 858 F.3d 254, 260 (4th Cir. 2017).

The Fourth Circuit looks primarily to the nature of the prior bad act rather than the charged conduct and the issues in dispute. *Id.* The Sixth and Seventh Circuits, on the other hand, examine the issues in dispute to determine what prior bad act evidence might be relevant, necessary, and admissible for a non-propensity purpose. This case demonstrates how the difference between the rules in the Sixth and Seventh Circuits on the one hand, and the Fourth on the other, can determine the results in constructive possession cases.

Conclusion

This case presents a recurring issue regarding the correct interpretation and application of Rule 404(b) of the Federal Rules of Evidence, with broad implications for the admission into evidence of prior convictions in criminal prosecutions. Review is necessary to address a circuit split and to bring the application of the evidentiary rules into uniformity.

Respectfully submitted,

_____/s/_____
JAMES WYDA
Federal Public Defender
District Of Maryland
MEGHAN SKELTON
Appellate Attorney
Counsel of Record
6411 Ivy Lane, 7th Floor
Greenbelt, Maryland 20770
(301) 344-0600
meghan_skelton@fd.org
Attorneys for Petitioner