

White Collar Defense

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Second Circuit Oks ‘Good Acts’ Evidence on Intent

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On February 18, the United States Court of Appeals for the Second Circuit issued a significant decision in *United States v. Cardenas*, vacating a drug conspiracy conviction and remanding the case for a new trial. The opinion clarifies the scope of Federal Rule of Evidence 404(b) and its application to evidence of a third party’s prior conduct—particularly where such evidence is offered to corroborate a defendant’s testimony regarding intent and state of mind.

What Is Rule 404(b)?

Federal Rule of Evidence 404(b)(1) generally prohibits the admission of “evidence of any other crime, wrong, or act” to establish a person’s character and prove that a person acted in conformity with a character trait on a particular occasion. Rule 404(b)(2), however, contains exceptions to Rule 404(b)(1). Rule 404(b)(2) permits the use of so-called other acts evidence for non-propensity purposes, such as proving motive, intent, knowledge, opportunity, absence of mistake, or lack of accident. Rule 404(b) is often invoked by parties in civil and criminal cases, hoping to exclude evidence of prior bad acts—whether a litigant’s or a third-party’s—and thereby keep other act evidence from swaying a jury’s determinations. However, courts have also used Rule 404(b) to bar evidence of prior *good* conduct when offered to suggest the defendant acted lawfully and did not commit the charged crime.

The Cardenas Case

The defendant, Jey James Roldan Cardenas (Roldan), a patrol-level officer in the Colombian National Police, was convicted of conspiracy to import cocaine into the United States. Although Roldan admitted to communicating about cocaine exportation, his defense was that he was helping arrange a law enforcement seizure rather than facilitating drug trafficking.

Roldan testified that he was told by Jose Alfredo Aguas Oviedo (Aguas), a colleague, that Aguas previously provided tips to Colombian anti-narcotics authorities that led to successful drug seizures and reward payments. Roldan sought to introduce evidence that Aguas had, in fact, twice provided such tips. The district court excluded the evidence under Rule 404(b) as improper “good act” propensity evidence. After a jury trial, Roldan was convicted of conspiracy to import cocaine and sentenced to nearly 14 years in prison.

The Second Circuit’s Decision

The Second Circuit reversed, holding that exclusion of the evidence was error and not harmless. The court found the evidence relevant because it corroborated Roldan’s account that he believed he was part of a law enforcement sting rather than a drug trafficking conspiracy. The fact that Aguas had actually facilitated seizures made it more credible that he had described such conduct to Roldan, supporting Roldan’s lack-of-criminal-intent defense.

The court emphasized that the evidence was not offered to show Aguas’s prior good conduct. Instead, the evidence was offered merely to corroborate what Aguas told Roldan and to support why Roldan believed he was assisting a law enforcement seizure. Because the evidence did not depend on an inference about either man’s character, Rule 404(b)(1) did not apply.

Key Takeaways

Cardenas confirms that evidence of a third party's prior good acts may be admissible when offered not to prove conforming conduct, but to corroborate a defendant's testimony about conversations bearing directly on the defendant's state of mind. The decision underscores that Rule 404(b)'s propensity bar does not apply where the evidence serves an entirely different purpose like corroborating a defendant's lack of intent.

Counsel seeking admission of third-party conduct evidence should emphasize its corroborative purpose—supporting the defendant's account of what was said or believed—rather than any inference about the third party's character. *Cardenas* is particularly relevant in cases where intent, knowledge, or mistake are disputed and the defendant's understanding turns on representations made by others. Litigants should raise these theories clearly in pretrial motions and articulate why the evidence is offered for its relevance to the defendant's intent and not to show conformity with prior good acts.

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