

2nd Circ. Clarifies When Prior Good Acts May Be Admissible

By **Rachel Maimin, Jonathan Algor and Alessandra Moore** (April 13, 2026)

Rule 404(b) of the Federal Rules of Evidence has long served as a gatekeeping mechanism in criminal and civil trials, barring parties from using evidence of prior conduct to argue that a person acted in conformity with a character trait on a particular occasion. Although the rule is most often invoked to exclude evidence of prior bad acts, courts have also applied it to bar evidence of prior good conduct being offered to suggest that a defendant acted lawfully.

However, a recent decision from the U.S. Court of Appeals for the Second Circuit clarifies an important limitation of that principle. When prior conduct is offered not to show character, but to corroborate a defendant's account of events bearing on their state of mind, Rule 404(b) may not apply at all.

On Feb. 18, the Second Circuit vacated a drug conspiracy conviction in *U.S. v. Cardenas* and remanded the case for a new trial after concluding that the U.S. District Court for the Southern District of New York improperly excluded evidence of a third party's prior cooperation with law enforcement.

The ruling offers meaningful guidance on when evidence of prior good acts may be admissible — not to prove conformity with good character, but to corroborate a defendant's testimony about their understanding of events and intent.

The Rule 404(b) Framework

Rule 404(b)(1) establishes the general prohibition against propensity evidence: 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 that character. The rule reflects the concern that juries may give undue weight to past conduct and infer that someone who committed wrongful acts before is likely to do so again.

Rule 404(b)(2), however, permits evidence of prior acts for nonpropensity purposes, including to prove motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or lack of accident. These exceptions recognize that prior conduct can have probative value entirely apart from any inference about character.

The central question in any Rule 404(b) dispute is therefore whether the evidence is offered to show propensity — that the person acted in conformity with a character trait — or for some other legitimate purpose.

Courts have often applied this principle symmetrically. Just as evidence of prior misconduct cannot be used to argue that a defendant is the type of person who would commit a crime, evidence of prior good conduct generally cannot be used to argue that a defendant is the type of person who would not commit one.



Rachel Maimin



Jonathan Algor



Alessandra Moore

The Cardenas decision does not disturb that principle. Instead, it clarifies its limits by emphasizing that Rule 404(b) applies only when the relevance of evidence depends on a propensity inference.

The Facts of Cardenas

The defendant, Jey James Roldan Cardenas, was a patrol-level officer in the Colombian National Police who was charged with conspiracy to import cocaine into the U.S.

Roldan did not dispute that he participated in communications about exporting cocaine. His defense, however, was that he believed he was assisting a legitimate law enforcement operation rather than facilitating drug trafficking.

Central to that defense were conversations with a colleague, Jose Alfredo Aguas Oviedo. According to Roldan's testimony, Aguas had previously told him that he had provided tips to Colombian anti-narcotics authorities that led to successful drug seizures and reward payments. Based on those representations, Roldan claimed that he believed the operation at issue was similarly intended to intercept drugs rather than import them.

To support that account, Roldan sought to introduce evidence that Aguas had, in fact, provided such tips to law enforcement on two prior occasions. The proposed evidence would corroborate Roldan's testimony about what Aguas had told him and explain why Roldan believed that he was participating in a legitimate operation.

The district court excluded the evidence under Rule 404(b), concluding that it constituted improper good act propensity evidence. Following a jury trial, Roldan was convicted and sentenced to nearly 14 years in prison.

The Second Circuit's Analysis

The Second Circuit reversed, holding that the district court erred in excluding the evidence and that the error was not harmless.

The court's analysis focused on the purpose for which the evidence was offered. The government had characterized the evidence as an attempt to show that Aguas was a law-abiding person who would not participate in drug trafficking. But the court concluded that this characterization misunderstood the defendant's theory of relevance.

Roldan did not seek to introduce the evidence to demonstrate Aguas' good character or to argue that Aguas acted in conformity with that character during the charged conspiracy. Instead, the evidence was offered to corroborate Roldan's testimony about what Aguas had told him, and to support Roldan's claim that he believed he was participating in a law enforcement operation.

The distinction is subtle but critical. The relevance of the evidence did not depend on any inference about Aguas' character. Rather, it depended on whether Aguas had previously assisted law enforcement, which, in turn, made it more plausible that he had described those activities to Roldan. If those conversations occurred, they provided context for why Roldan might have believed that the operation was legitimate.

In other words, the evidentiary chain ran through the credibility of Roldan's testimony about his conversations with Aguas, not through any inference that Aguas was the kind of person who would behave lawfully.

Because the evidence's relevance did not rely on a propensity inference, the Second Circuit concluded that Rule 404(b)(1) did not apply. The evidence was admissible to corroborate the defendant's testimony about communications that bore directly on his state of mind.

The court further determined that excluding the evidence was not harmless. Roldan's defense turned largely on whether the jury believed his account of his understanding of the operation. Therefore, evidence corroborating his testimony about Aguas' prior cooperation with law enforcement had substantial potential to influence the jury's assessment of his credibility.

Implications for Practitioners

The Cardenas decision offers practical guidance for practitioners in cases where intent, knowledge or mistakes are contested issues.

For defense counsel, this ruling highlights the importance of carefully articulating the nonpropensity purpose for which evidence of prior acts is offered. Moreover, evidence of a third party's prior conduct may be admissible when it corroborates a defendant's account of conversations or representations that shaped the defendant's understanding of events.

The key to admissibility lies in clearly explaining the chain of relevance. Counsel should emphasize that the evidence is offered not to prove that anyone acted in conformity with good character, but to corroborate testimony about specific statements or interactions that informed the defendant's state of mind. This framing matters. When the relevance of evidence does not depend on a propensity inference, Rule 404(b)(1) simply does not apply.

The decision also underscores the importance of raising these theories clearly in pretrial motions. By identifying the precise purpose of the evidence and explaining how it relates to the defendant's state of mind, counsel can help courts distinguish between impermissible propensity evidence and admissible corroborative proof.

Where a defendant's understanding of events depends on representations made by others, evidence corroborating those representations may be critical to presenting a meaningful defense. As Cardenas makes clear, Rule 404(b) should not stand in the way of its admission when the evidence is offered for that limited, but legitimate, purpose.

Rachel Maimin is a partner at Lowenstein Sandler LLP. She previously served as an assistant U.S. attorney in the Southern District of New York.

Jonathan E. Algor is a partner at the firm. He previously served as an assistant U.S. attorney in the U.S. Attorney's Office for the Eastern District of New York's National Security and Cybercrime Section.

Alessandra M. Moore is an associate at the firm.

Lowenstein Sandler partner Jason S. Gould and associate Cassandra A. Essert contributed to this article.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.