

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

June 14, 2013

Before

WILLIAM J. BAUER, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

ROBERT L. MILLER, JR., *District Judge**

No. 12-1104

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

NICOLAS GOMEZ,
Defendant-Appellant.

Appeal from the United States District
Court for the Northern District of
Illinois, Eastern Division.

No. 1:10-cr-01055-1

William J. Hibbler,
Judge.

ORDER

The Petition for Rehearing En Banc is **GRANTED**. The panel's opinion and judgment are **VACATED**. The parties shall file new briefs addressing the following matters:

1. Whether the four-part test for Rule 404(b) evidence in our case law is useful, or whether the court should adopt a different test, such as one that asks: (a) whether the proposed evidence is relevant to any specifically identifiable and disputed non-propensity issue(s), and if so, how the evidence is relevant to such issue(s) without relying on propensity inferences; and (b) whether, under Rule 403, the evidence would be unduly prejudicial?

*The Honorable Robert L. Miller, Jr., of the Northern District of Indiana, sitting by designation.

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2. Whether admission of evidence under Rule 404(b) should require the use of jury instructions that identify the specific permissible use(s) of the evidence, such as language along the lines of Instruction No. 3.11 in the 2012 version of this court's Criminal Pattern Jury Instructions?

IT IS FURTHER ORDERED that supplemental briefing shall proceed as follows:

1. The opening supplemental brief of defendant-appellant Gomez is due on or before July 12, 2013.
2. The responsive brief of plaintiff-appellee United States is due on or before August 9, 2013.
3. Appellant may file a supplemental reply brief no later than August 23, 2013.

Counsel shall submit thirty-five (35) copies of all briefs and appendices and any citations of additional authority.

By separate order at a later date, the court will schedule oral argument en banc.

Important Scheduling Notice !

Notices of hearing for particular appeals are mailed shortly before the date of oral argument. Criminal appeals are scheduled shortly after the filing of the appellant's main brief; civil appeals after the filing of the appellee's brief. If you foresee that you will be unavailable during a period in which your particular appeal might be scheduled, please write the clerk advising him of the time period and the reason for such unavailability. Session data is located at <http://www.ca7.uscourts.gov/cal/calendar.pdf>. Once an appeal is formally scheduled for a certain date, it is very difficult to have the setting changed. See Circuit Rule 34(e).