

**DEPARTMENT OF THE AIR FORCE
UNITED STATES AIR FORCE TRIAL JUDICIARY**

UNITED STATES	)	
	)	
v.	)	RULING – DEFENSE MOTION TO
	)	EXCLUDE EVIDENCE UNDER
	)	MRE 404(B)
	)	
STAFF SERGEANT KINYADA J. JOHNSON	)	
552nd Operations Support Squadron	)	
Tinker AFB, Oklahoma	)	4 March 2026
_____	)	_____

On 26 January 2026, the defense submitted a written motion moving the Court to suppress the evidence proffered by the Government pursuant to its Military Rule of Evidence 404(b). On 8 December 2025, the Government filed its motion in opposition. The Court has considered the written motions, the evidence provided, the relevant law, and hereby finds, by a preponderance of evidence, and concludes and rules as follows:

FACTS

This Court finds the following facts to have been established by at least a preponderance of the evidence:

1. The Accused in the above case is pending one charge and four specifications under Article 112a.
2. The charge and specification were preferred against the Accused on 10 September 2025 and referred to trial on 18 December 2025. With respect to the charge sheet, the Court adopts as fact for the purposes of this ruling that all matters contained within the document as accurately reflecting the items or information identified therein. In the Specification of the Charge, the Accused is alleged to have wrongfully using Delta-9 Tetrahydrocannabinol (THC-9), on divers occasions, between on or about 22 January 2025 and on or about 9 June 2025.
3. Defense counsel wishes to exclude the following statements:
 - a. “the Accused’s voluntary written admissions on or about 6 February 2025 and on or about 24 February 2025 about using THC9 between on or about 26 July 2024 and on or about 21 January 2025”, which are outside the charged timeframe. *Id.*, at para. (1)(a).¹

¹ The Accused stated in pertinent part as follows:

2. I accept full responsibility for the allegations against me. I am *truly* sorry for my lack of judgement and want to provide some insight on how I found myself in this situation. I do not intend on making excuses for my actions, I just respectfully ask that you empathize with the struggles that led me to make this poor decision. The last two years and the transition I made to

b. “[e]vidence of the Accused’s personal and professional situation and circumstances serving at Tinker Air Force Base and living in Oklahoma, leading up to and during the charged offenses,” to include SSgt Johnson’s divorce and separation from his family, his feelings about work, and the people SSgt Johnson socialized with. *Id.* at para. (1)(b).

c. “[e]vidence that, between on or about 5 December 2025 and on or about 5 January 2026, the Accused knowingly and wrongfully ingested delta-9 tetrahydrocannabinol (THC9) and delta-8 tetrahydrocannabinol (THC8) as evidenced by a urine sample submitted by the Accused on 5 January 2026 that subsequently tested positive for THC9 and THC8.” *Id.* at para. (1)(c).

4. The government and defense counsel agree on paragraphs 1-4 of the Defense motion.

BURDEN OF PROOF

5. As the proponent of the evidence, the burden of demonstrating that this evidence is admissible rests with the Government. *United States v. Finch*, 79 M.J. 389, 394 (C.A.A.F. 2020); *see also United States v. Shover*, 45 M.J. 119, 122 (C.A.A.F. 1996). The burden of proof on any factual issue the resolution of which is necessary to decide this motion shall be by a preponderance of the evidence. R.C.M. 905(c)(1).

LAW

6. M.R.E. 404(b), titled “*Crimes, Wrongs, or Other Acts*” provides:

(1) *Prohibited Uses*. 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.

Oklahoma have been the hardest of my life. When I was notified that I had orders to Tinker AFB, my wife of 19 years told me that she was divorcing me and taking my daughter to Texas with her. The divorce was a complete shock to me. When I arrived here, I did not know anyone, and I did not have the support system I had relied on for 19 years anymore. I felt completely alone and found myself falling into a deep depression like I had never experienced before. I felt isolated and work was my only opportunity to make friends, but it is hard to make deep connections with those you work with, especially when everyone is going to PCS at some point. 3. The void my wife left me with cannot be understated and because of this desperate need for comfort, I accepted friendships with people whom I would have never been around normally. I began to drink alcohol at an alarming rate to try to cope with my depression and suicidal thoughts. Many of the poor choices were made as I attempted to drink my sorrows away. The environment this friend group created enabled this and ultimately led to me partaking in marijuana. After completing in-person rehab and ADAPT, I have tools and people I can rely on to help me control my stress. I know that my job as an Aerospace Physiology Technician is extremely important, and that people depend on me to achieve the mission. I will take every precaution to make sure that this never happens again. I am extremely grateful for the opportunity to correct my mistake, and I will not let that opportunity go to waste. As difficult as they have been, I am going to take these last two years of my life as a learning experience, and not repeat the same mistakes.

(2) *Permitted Uses; Notice.* 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. On request by the accused, the prosecution must:

(A) provide reasonable notice of the general nature of any such evidence that the prosecution intends to offer at trial; and

(B) do so before trial – or during trial if the military judge, for good cause, excuses lack of pre-trial notice.

7. Generally, “[r]elevant evidence is admissible...” M.R.E. 402. “Evidence is relevant if... it has any tendency to make a fact more or less probable than it would be without the evidence; and... the fact is of consequence in determining the action.” M.R.E. 401. “The military judge 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 members, undue delay, wasting time, or needlessly presenting cumulative evidence.” M.R.E. 403.

8. “The term ‘unfair prejudice,’ as to a criminal defendant, speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged.” *Old Chief v. United States*, 519 U.S. 172, 180 (1997).

9. In conducting the M.R.E. 403 balancing test for legal relevance, a military judge should consider the following factors: “the strength of the proof of the prior act; the probative weight of the evidence; the potential to present less prejudicial evidence; the possible distraction of the fact-finder; the time need to prove the prior conduct; the temporal proximity to the prior event; the frequency of the acts; the presence of any intervening circumstances; and the relationship between the parties.” See *United States v. Barnett*, 63 M.J. 388, 396 (C.A.A.F. 2006) (quoting *United States v. Berry*, 61 M.J. 91, 95-96 (C.A.A.F. 2005)).

10. M.R.E. 403 and 404(b) “recognize that such evidence [of uncharged misconduct] can be very damaging to the accused. Therefore, the evidence is inadmissible unless there is some purpose to be served by its reception other than to show the accused is predisposed to commit crime.” *United States v. Ferguson*, 28 M.J. 104, 108 n.5 (C.M.A. 1989) (brackets in original) (quoting *United States v. Wingart*, 27 M.J. 128, 136 (C.M.A. 1988)).

11. “The threshold inquiry a court must make before admitting similar acts evidence under Rule 404(b) is whether that evidence is probative of a material issue other than character.” *United States v. Humpherys*, 57 M.J. 83, 90 (C.A.A.F. 2002) (quoting *Huddleston*, 485 U.S. at 686).

12. When courts look to evidence of uncharged acts, it tests its admissibility under three standards:

a. Does the evidence reasonably support a finding by the court members that the accused committed prior crimes, wrongs, or acts?

b. What fact of consequence is made more or less probable by the existence of this evidence?

c. Is the probative value of the evidence substantially outweighed by the danger of unfair prejudice?

See United States v. Staton, 69 M.J. 228, 230 (C.A.A.F. 2010), citing *United States v. Reynolds*, 29 M.J. 105, 109 (C.M.A. 1989).

13. The evidence at issue must fulfill all three prongs to be admissible. *See Barnett*, 63 M.J. at 394. M.R.E. 404(b) “is a rule of inclusion rather than exclusion.” *United States v. Browning*, 54 M.J. 1, 6 (C.A.A.F. 2000).

14. As to charged conduct, intent “is an integral part of the mens rea element of the criminal act and accompanies the actus reus, that is, what the criminal meant to accomplish by the act.” *United States v. Jenkins*, 48 M.J. 594, 599 (Army Ct. Crim. App. 1998). In the context of M.R.E. 404(b), evidence of uncharged misconduct “can be probative of general criminal intent, such as that required of rape and forcible sodomy.” *Id.* “There is no requirement that the uncharged acts be identical to the charged act so long as there is sufficient similarity to logically conclude that a similar intent existed.” *Id.*

15. In the context of M.R.E. 404(b), a plan can be considered a “method of action for accomplishment of a particular act or object, or as a method of putting into effect an intention.” *United States v. Jackson*, 2011 CCA LEXIS 303, unpub. op. at *21 (A.F. Ct. Crim. App. 2011). “Plan is a commonality of purpose that links otherwise disparate [acts] as stages in the execution of a singular scheme.” *Jackson*, unpub. op. at *12 (quoting *United States v. Jenkins*, 48 M.J. 594, 597 (Army Ct. Crim. App. 1998)). In evaluating whether evidence is probative of a plan under M.R.E. 404(b), Courts consider “whether the uncharged acts establish a ‘plan’ of which the charged act is an additional manifestation, or whether the acts merely share some common elements.” *Jackson*, unpub. op. at *12 (quoting *United States v. McDonald*, 59 M.J. 426, 430 (C.A.A.F. 2004)).

16. In the context of M.R.E. 404(b), evidence of motive tends to answer why an accused committed the charged act. *United States v. Jackson*, 2011 CCA LEXIS 303, unpub. op. at *21 (A.F. Ct. Crim. App. 2011). It is “the moving force that induces the criminal act and comes into play before the actus reus, that is, why the criminal did the act.” *United States v. Jenkins*, 48 M.J. 594, 597 (Army Ct. Crim. App. 1998). Evidence of motive is relevant “show the doing of an act by a person as an outlet for [an] emotion . . . [h]owever, the prior acts of conduct must be the type which reasonably could be viewed as ‘the expression and effect of the existing internal emotion’. . . [m]oreover, this same motive must be shown to have existed in appellant at the time of the subsequent charged acts.” *Jackson*, unpub. op. at *12 (quoting *United States v. Watkins*, 21 M.J. 224, 227 (C.M.A. 1986)). “[I]f there is a common motive for both the uncharged misconduct and the charged offense, evidence that the accused committed the former strengthens the inference of his having committed the latter.” *Id.*

17. Res Gestae evidence includes that evidence that is inextricably related in time and place to a charged offense. *United States v. Lull*, 2020 CCA LEXIS 301, unpub. op. at *77 (A.F. Ct. Crim. App. 2020). Put another way, res gestae evidence includes conduct “which is admissible because it is so closely intertwined with the offense charged as to be part and parcel of that offense....” *United States v. Robertson*, 2020 CCA LEXIS 257, unpub. op. at *18 (A.F. Ct. Crim. App. 2020) (quoting *United States v. Keith*, 17 M.J. 1078, 1079-80 (A.F.C.M.R. 1984). In discussing the importance of res gestae evidence, the Court of Military Appeals noted, “Res gestae evidence is vitally important in many trials....It enables the factfinder to see the full picture so that the evidence will not be confusing and prevents gaps in a narrative of occurrences which might induce unwarranted speculation....” *United States v. Metz*, 34 M.J. 349, 351 (C.M.A. 1992) (internal citation omitted). As to M.R.E. 412 in particular, the Army Court of Criminal Appeals had held, “When conduct is inexorably intertwined with the alleged offense itself, it is not ‘other sexual behavior,’ but rather becomes part of the res gestae of the offense.” *United States v. Gaddy*, 2017 CCA LEXIS 179, *5 (A.C.C.A. March 20, 2017).

ANALYSIS

18. The following are the courts rulings in regards to each potential 404(b) evidence:

a) “the Accused’s voluntary written admissions on or about 6 February 2025 and on or about 24 February 2025 about using THC9 between on or about 26 July 2024 and on or about 21 January 2025”, which are outside the charged timeframe. *Id.*, at para. (1)(a). **GRANTED** in part and **DEFERRED** in part.

First, the acts are not res gestae, as they are not related in time or place to the charged offenses. This court finds that court members could reasonably find that the Accused committed the specified acts. However, the government has not articulated a non-character theory of relevance that is made more or less probable by the existence of this evidence. This court does not find that the government has shown a proper use of the evidence to demonstrate a common plan or scheme on part of the Accused to use drugs. Accordingly, there is risk the members would convict the Accused because they view him as having a bad character rather than the strength of the evidence of the allegations. Thus, the probative value of the proffered evidence is substantially outweighed by the risk of unfair prejudice and the third prong is not met. Although the evidence is not admissible under a theory of M.R.E 404(b), the court is deferring ruling on whether Prosecution may offer the evidence in “rebuttal as proof that the Accused knowingly used THC9 during the dates of the charged offenses, had knowledge of THC9, and knew that the substance the Accused was ingesting was THC9.”

[REDACTED]

The court will revisit this ruling if the statements otherwise become admissible during the trial.

c) “[e]vidence that, between on or about 5 December 2025 and on or about 5 January 2026, the Accused knowingly and wrongfully ingested delta-9 tetrahydrocannabinol (THC9) and delta-8 tetrahydrocannabinol (THC8) as evidenced by a urine sample submitted by the Accused on 5 January 2026 that subsequently tested positive for THC9 and THC8.” *Id.* at para. (1)(c). **GRANTED** in part and **DEFERRED** in part.

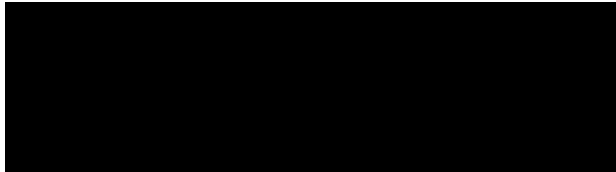
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RULING

In regards to the Government notice of its intent to introduce evidence pursuant to MRE 404(b) the defense motion to exclude is **GRANTED**.

The Court will consider any requests for reconsideration supported with additional evidence or argument if timely raised. This Ruling and Order remains subject to revision and clarification, and I reserve the right to supplement it as may be necessary and appropriate.

SO ORDERED, this 4th day of March, 2026.



MICHAEL A. SCHRAMA, Lt Col, USAF
Military Judge