

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	NO. 00-660-1
v.	:	
	:	CIVIL ACTION
WILLIAM JONES	:	NO. 06-23

MEMORANDUM

Bartle, C.J.

June 23, 2006

Before the court is the motion of defendant William Jones under 28 U.S.C. § 2255 to correct, vacate, or set aside his conviction and sentence.

Jones maintains that he was denied the effective assistance of counsel and a fair trial because his counsel, Jack Gruenstein: (1) did not investigate or present his alibi defense, (2) failed to object to the introduction into evidence of a prison photograph and of related testimony, (3) did not object to testimony from his parole officer, (4) did not move to dismiss the indictment under the Interstate Agreement on Detainers, and (5) made a prejudicial misstatement during his closing argument. Jones further contends that he was denied his right to a fair trial due to misconduct on the part of the prosecutor at various points during the trial. Finally, Jones asserts his appellate counsel was constitutionally inadequate for failing to raise several specific claims on direct appeal.

I.

Jones was found guilty by a jury of: (1) conspiracy to commit robbery under the Hobbs Act, in violation of 18 U.S.C. § 1951; (2) interference with interstate commerce by robbery, in violation of 18 U.S.C. § 1951; (3) two counts of using, carrying and brandishing and aiding and abetting the use, carrying and brandishing of a firearm in relation to a crime of violence, in violation of 18 U.S.C. § 924(c)(1); (4) one count of using and carrying and aiding and abetting the use and carrying of a firearm in relation to a crime of violence, in violation of 18 U.S.C. § 924(c)(1); and (5) two counts of possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922 (g)(1).

At trial, the government presented evidence that Jones was the ringleader in the planning and carrying out of two violent jewelry store robberies. Jones, along with Damon Harris, Michael Krug, and Darryl Lamont Franklin, was involved in the first robbery on April 14, 1999 at Talisman's Jewelry Store ("Talisman's") in Reading, Pennsylvania.

On the day of the Talisman's robbery, the four men gathered at Jones' home in Reading. Jones, who provided two guns for use in connection with the crime, drove Franklin to Talisman's while Krug drove Harris. Jones and Krug acted as getaway car drivers, and Harris and Franklin entered the store and committed the robbery during which the latter pistol-whipped one of the jewelry store's employees, handcuffed him and then threw him down a flight of stairs. The owner of the store

struggled with Franklin for control of Franklin's gun and then shot Franklin twice. After the robbery, Jones dropped off his wounded companion at St. Joseph's Hospital where he was arrested. Jones, Harris and Krug then proceeded to Philadelphia to fence the stolen jewelry with the help of an individual named Gary Collins ("Collins").

Several months later, another jewelry store robbery occurred. As he had done in the case of Talisman's, Jones scouted out locations for the crime and ultimately selected "R&Q" in Collingswood, New Jersey as the target. Jones and Harris again participated in the robbery and this time Collins, Miranda and an unnamed individual did so as well. Neither Krug nor Franklin was involved this time.

On the morning of August 19, 1999, Jones, Miranda and Harris drove from Reading to Philadelphia where they picked up Collins and stopped at the home of Jones' mother, where Jones retrieved two guns for use in the robbery. They also purchased handcuffs and duct tape in Philadelphia.

On their way to New Jersey, Jones saw an unnamed individual whom he knew and convinced him to drive the second getaway car. Harris rode with the unnamed individual, and Miranda and Collins accompanied Jones. Harris, Miranda and Collins entered the store as Jones and the unnamed individual waited outside in their cars. As with the Talisman's robbery, events at R&Q did not go as planned. Two employees from R&Q returned from lunch as the crime was taking place and realized

what was occurring. In an attempt to escape from the store, Collins kicked the door which then jammed. Miranda kicked out a window in the door and the three men escaped. Harris returned to the car of the unnamed individual, and they headed back to Philadelphia. Jones, however, had driven away from the scene once he realized that the robbery had been discovered, leaving Miranda and Collins without a ride. The latter two men were arrested and taken into custody shortly thereafter. Jones then met up with Harris and the unnamed individual to sell the stolen jewelry.

Jones was arrested several months later. He was tried before Judge Bruce W. Kauffman in July, 2001.

II.

Jones first asserts that his trial counsel was ineffective in violation of his rights under the Sixth Amendment to the United States Constitution. In order to establish a claim of ineffective assistance of counsel Jones must demonstrate that: (1) "counsel's representation fell below an objective standard of reasonableness," and (2) "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland v. Washington, 466 U.S. 668, 687, 694 (1984). The Supreme Court has refused to "articulate specific guidelines for appropriate attorney conduct" and has instead emphasized that the proper measure of attorney performance "remains simply reasonableness under prevailing professional norms." Wiggins v. Smith, 539 U.S. 510, 521 (2003).

In addition, the Supreme Court has cautioned that courts must "indulge a 'strong presumption' that counsel's conduct falls within the wide range of reasonable professional assistance because it is all too easy to conclude that a particular act or omission of counsel was unreasonable in the harsh light of hindsight." Bell v. Cone, 535 U.S. 685, 702 (2002) (quoting Strickland, 466 U.S. at 689).

Jones claims that his trial counsel was deficient because he failed to investigate Jones' alibi defense for the R&Q robbery. On April 18, 2006, we held an evidentiary hearing on this issue. Jones testified that he wrote Mr. Gruenstein prior to trial with detailed instructions to investigate his contention that at the time of the R&Q robbery in New Jersey he was in class at the Gordon Phillips Barber School in Philadelphia. Jones said that in the small Gordon Phillips classes, attendance was mandatory and rigorously enforced. Any absence would be noticed. He also stated that he informed Mr. Gruenstein that the van used in the crime and confiscated by the government could not, at the time of the August robbery, be driven more a few blocks because it kept "running hot" due to a collision with a United States Postal Service mail truck. He said that he even asked Mr. Gruenstein to raise the issues during the trial. According to Jones, his attorney responded that to raise the alibi at trial would be "too much work" for which he was "not getting paid."

Mr. Gruenstein, an experienced criminal defense attorney of twenty-five years, also testified at the April 18

hearing. He stated that Jones wrote to him on many occasions but never mentioned anything in his correspondence or face-to-face meetings about the Gordon Phillips Barber School alibi. Mr. Gruenstein also testified that Jones never said a word about his van was "running hot" so that it could not have been used in connection with the R&Q robbery in New Jersey.

Jones has produced no documentation to contradict Mr. Gruenstein or to support his testimony. Having heard and observed both witnesses, we find Mr. Gruenstein to be credible and Jones not to be credible.

Jones makes several additional arguments that Mr. Gruenstein's performance was deficient. He asserts that Mr. Gruenstein was ineffective for failing to move to dismiss the indictment against him for violating the Interstate Agreement on Detainers ("IAD"), 18 U.S.C. App. § 2. Jones claims his indictment should have been dismissed pursuant to Article IV(e) of the IAD, the compact's "anti-shuttling" provision. He claims that he was confined in the jail of Hunterdon County, New Jersey, serving a sentence for an unrelated crime, when he was transferred to federal custody for his arraignment before a magistrate judge in Pennsylvania before being returned to New Jersey after spending one night in the Lehigh County, Pennsylvania jail. Jones maintains the indictment against him should be dismissed because it violates the IAD as interpreted by the Supreme Court in Bozeman.

New Jersey, Pennsylvania, and the United States are signatories to the IAD. The IAD is an interstate compact that "creates uniform procedures for lodging and executing a detainer, i.e., a legal order that requires a State in which an individual is currently imprisoned to hold that individual when he has finished serving his sentence so that he may be tried by a different State for a different crime." Alabama v. Bozeman, 533 U.S. 146, 148 (2001). A state need not wait, however, for a prisoner serving a sentence in another state to finish serving it before trying him. Article IV provides for "expeditious delivery of the prisoner to the receiving State for trial prior to the termination of his sentence in the sending State." Id. Once the "receiving state" has obtained custody of the prisoner, it must try him within 120 days, as provided by Article IV(c). Because one of the principal objectives of the IAD is to minimize the interruption of the prisoner's ongoing prison term, Article IV(e) contains an "anti-shuttling" provision. It states that "[i]f trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to article V(e) hereof, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice."¹ See id. at 148-49.

1. Article IV(e) prevents a state receiving a prisoner under the IAD from unnecessarily disrupting the sentence the prisoner is serving in the sending state by transporting said prisoner back
(continued...)

Neither the IAD nor the holding in Bozeman requires us to dismiss Jones' indictment because Article IV(e) does not apply in this context. The government claims that at the time he was transferred to federal custody, Jones was simply being held in a New Jersey jail on a Pennsylvania parole violation warrant pending a parole revocation hearing.² He had previously been sentenced by a New Jersey state court to time already served. Jones has not produced any documentation that he was serving a state prison sentence at the time he was transferred to federal custody. As Jones has not demonstrated he was serving a prison term when he was transferred to federal custody, Article IV(e), designed to ensure the a prisoner is promptly returned to the sending state with minimal interruption to his sentence there, does not apply because the transfer did not interrupt Jones' serving of any sentence.

The law is well established that being held in custody on a parole violation warrant pending a parole revocation hearing does not trigger the IAD. See United States v. Fulford, 825 F.2d 3, 11 (3d Cir. 1985); United States v. Dobson, 585 F.2d 55 (3d Cir. 1978). The Supreme Court has held that Article III of the

1.(...continued)
and forth between the sending and receiving states for various proceedings in the courts of the latter.

2. Jones' parole revocation proceeding was held on February 23, 2001 in Pennsylvania state court. His parole was revoked and he was sentenced that same day to serve a term in prison "when available." Jones' sentence for parole violation therefore does not begin until he is "available," namely after he serves his federal sentence in this matter.

IAD does not apply to a person held on a probation violation charge. Carchman v. Nash, 473 U.S. 716, 725 (1985); Fulford, 825 F.2d at 11. In Fulford our Court of Appeals held that the Supreme Court's decision in Carchman encompassed only "criminal charges stemming from a traditional prosecution with the full panoply of due process rights." Id. The Court of Appeals applied the Supreme Court's interpretation of Article III to the identical language in Article IV and concluded that the IAD does not apply to prisoners who are merely being held in custody pending a hearing for either a probation or a parole violation. Id.

We have carefully reviewed Jones' other alleged violations of the IAD and find they lack merit. Therefore, the IAD does not entitle Jones to relief.

Jones next claims that Mr. Gruenstein provided ineffective assistance of counsel when he failed to object to the publication to the jury of a photograph of Jones that had been taken in 1997 - several years before the robberies in question. Jones maintains it was an uncropped prison picture that depicted him in prison clothing with an information board bearing his name. The government replies that the picture was cropped and appears to be a drivers license or passport photograph as the prosecutor stated during the trial.

According to the trial transcript, the picture in question, included with seven other photographs of black males as part of a photographic lineup that in October, 1999, was shown to

Kim Freed, a witness of the getaway from the R&Q robbery. While she told the police she could not identify all of the participants, she expressed confidence in being able to recognize the driver of the getaway car. However, when the police showed Freed the lineup of pictures, she could not identify Jones. She remembered the driver of the getaway vehicle being "husky" and having "a round face."

Before Freed testified, there was a sidebar to discuss the picture in question. No one asserted that the photograph looked as if had been taken in a prison or depicted Jones in a prejudicial way. Mr. Gruenstein stated that while he planned to ask Freed about her inability to identify Jones in the 1999 picture lineup, the prosecutor said that in response he would introduce the picture into evidence to show the jury the line-up picture looked nothing like Jones did at trial.³ Thus, Mr. Gruenstein feared the government would effectively imply that Freed did not identify Jones because the picture did not accurately depict the man she had seen driving the getaway car on the day of the R&Q robbery. This troubled Mr. Gruenstein because Jones' slimmer appearance at the trial was due to weight loss that had occurred after the robbery. Mr. Gruenstein wanted the jury to know that the picture used in the picture lineup

3. By the time of the trial in this case, Jones looked considerably different than he had at the time of the robberies. In the intervening two years, Jones had spent considerable time in jail and, for that or some other reason, had lost forty pounds. At the sidebar, the trial judge commented that the 1997 photograph did not look "anything like" Jones did at the trial.

accurately depicted Jones at the time of the robbery when Freed saw him. Hence, the defense wanted to show that Freed's failure to identify Jones was not based on an inaccurate picture, but on the fact that the driver was not Jones.⁴

The photograph in question is closely cropped. Jones is depicted wearing what appears to be a white T-shirt and a jacket, not prison attire as he claims. Likewise, most of the area surrounding Jones' head has also been cut away, leaving a few horizontal lines used to evidence height in the background. A careful examination of the picture also reveals what appears to be a small section of the edge of what may be an information board at the bottom of the picture. After examining the photograph, we conclude that it is highly unlikely that the jury would view this picture of Jones dressed in civilian clothes as a prison photograph. Therefore, we find Jones did not suffer any prejudice from the publication of the photograph to the jury.

Even if the jury had realized the picture was taken in a police station or prison, its admission into evidence appears to have been a part of Mr. Gruenstein's trial strategy. As discussed above, Mr. Gruenstein did not object to the picture because its admission actually helped Jones' defense. Freed had

4. Despite the discussion at sidebar before Ms. Freed's testimony, the picture was not shown to the jury at that time because of Ms. Freed's in-court identification of Jones. It was introduced during the testimony of FBI Special Agent Thomas Neeson which immediately followed that of Kim Freed. Because these events took place at the end of the day, Mr. Gruenstein cross-examined Special Agent Neeson on the photograph at the outset of the following day.

failed to identify the 1997 picture of Jones at a picture lineup barely two months after telling the police she could definitely identify the driver of the getaway car. Because the picture in question accurately depicted Jones at the time of the robbery, Freed's failure to pick Jones from the lineup cast serious doubt on her testimony that Jones drove the getaway vehicle. We cannot say this strategy was unreasonable. Accordingly, Mr. Gruenstein was not ineffective for failing to object to the picture or its publication to the jury. His actions were part of a reasonable trial strategy designed to avoid the aspects of the photograph that potentially were the most damaging.⁵

Jones claims that Mr. Gruenstein was also ineffective for failing to object to the in-court identification of Jones by Kim Freed, a witness for the government. Shortly after witnessing the defendants getaway from the Talisman robbery, Freed had been unable to identify Jones from the array of pictures presented to her. However, immediately upon arriving in court for Jones' trial she privately told the prosecutor that she recognized Jones, who was sitting at the defense table. She said she recognized him by seeing the side of his face, that is, the

5. In addition, Jones claims that the prosecutor engaged in misconduct when he showed the jury the cropped picture and that his appellate counsel was ineffective for failing to raise this argument on direct appeal. Because the photograph was not prejudicial to Jones, the prosecutor did not engage in misconduct when he published it to the jury. Likewise, because Jones' claims lack merit, appellate counsel Elizabeth Hay was not ineffective for failing to raise it on direct appeal or any alleged failure to give notice.

view she had at the scene of the crime. While Mr. Gruenstein did not object, he thoroughly and effectively cross-examined her on the identification. He suggested her identification of Jones stemmed from the fact that she knew the suspect was a black male and Jones was the only black male in the courtroom and was sitting at the defense table. We cannot say that Mr. Gruenstein's tactic constituted ineffective assistance of counsel under Strickland.

Jones also maintains that Mr. Gruenstein was ineffective for failing to object to testimony from the former's parole officer, Fred Huehnergarth, that, according to Jones, revealed his position as such to the jury. Jones again mischaracterizes the testimony. The transcript reveals no testimony that demonstrates Huehnergarth's status as Jones' parole officer.⁶ Therefore, Mr. Gruenstein was not ineffective for failing to object.

Finally, Jones argues Mr. Gruenstein was ineffective for stating Mr. Jones' clothing was "soaked with blood" at one point during his closing argument. Mr. Gruenstein clearly misspoke when he said this, but it is equally certain that any error was harmless. Viewed in the context of the closing argument, the jury would not have been confused at Mr. Gruenstein's slip of the tongue. Mr. Gruenstein was referring to

6. Mr. Huehnergarth testified to seeing several cars parked on Jones' property matching the description of those used in the robberies.

Jones' co-defendant Franklin who had been shot and was bleeding. There had been considerable evidence on this point and none regarding any blood on Jones. Nobody objected to this slip and the prosecutor emphasized during his own closing argument that it was Franklin, not Jones, who had blood on his leg. Mr. Gruenstein closing argument was impassioned and effective in subjecting the government's case to meaningful and extensive adversarial testing. We reject Jones' contention to the contrary.

III.

In addition to attacking the performance of his counsel, Jones makes several claims of misconduct on the part of the prosecutor that he claims entitle him, at minimum, to a new trial. He first maintains that the prosecutor knowingly presented false and perjured testimony on three separate occasions. First, the government allegedly elicited testimony from Kim Freed concerning facts that were not included in the notes from interviews with her conducted by the FBI and Reading Police. Second, Jones asserts that the prosecutor offered the testimony of co-defendant Michael Krug which differed from that of Robin Williams. Third, Jones believes the government knowingly presented the testimony of co-conspirator Gary Collins that was inconsistent with his prior statements made after his arrest and which he admitted were false on the stand.

Jones has not made any showing that the prosecutor knowingly introduced any false testimony. In addition, he has

not demonstrated any inconsistency that would allow this court to conclude that the prosecutor knowingly introduced false testimony. See United States v. Miller, 59 F.3d 417 (3d Cir. 1995). Inconsistencies between different witnesses and between various statements made by the same witness are commonplace in civil and criminal trials. Simply because a witness contradicts himself or various witnesses disagree as to some sequence of events does not mean that various witnesses in Jones' case were lying or that the prosecutor deliberately foisted false testimony on the court. We have criminal jury trials for the very purposes of resolving factual questions, often requiring the jury to weigh the credibility of various witnesses and resolve the differences between competing versions of events. "Far from being a violation" of Jones' constitutional rights, "this is precisely how the trial process is supposed to work." United States v. Thomas, 987 F.2d 1298, 1301 (7th Cir. 1993).

Jones claims that the prosecutor impermissibly vouched for the credibility of co-defendant Krug in his closing argument when he made the following statement:

[B]efore he [Krug] has any motivation, before a lawyer takes him aside and tells him what to say or what not to say, before the Government and the defense attorneys start negotiating plea agreements in exchange for lenient treatment, before there's any aspect of him getting his story straight with co-defendants, he immediately gives up Kool Aid [Jones] and identifies Jones... And what nails down the credibility from Krug is that he gives up his best friend. So focus in on the testimony of Krug, look at the corroboration of the telephone records.

Tr. 7/21/01 at 175. Our Court of Appeals has explained that vouching "constitutes an assurance by the prosecuting attorney of the credibility of a government witness through personal knowledge or by other information outside of the testimony before the jury." United States v. Walker, 155 F.3d 180, 184 (3d Cir. 1998); see also United States v. Brennan, 326 F.3d 176, 185 (3d Cir. 2003). It is permissible, however, for the prosecutor to urge the jury to draw inferences about the credibility of a witness from the evidence that was presented at trial. Id. at 187.

The prosecutor did not vouch for the credibility of Michael Krug during his closing argument. At no time did the prosecuting attorney offer personal assurances of Krug's credibility or discuss facts that were not in evidence. In the portion of the government's closing argument quoted above, the prosecutor merely points out that Krug identified Jones, his best friend, very soon after being arrested. Furthermore, the prosecutor reminded the jury of the evidence supporting these statements and urged them to base their credibility decisions on that evidence. There was no impermissible "vouching" as defined by our Court of Appeals but rather an acceptable closing argument.⁷ Accordingly, we reject Jones' contention to the contrary.

7. Jones also argues that his appellate counsel, Elizabeth Hay, was ineffective for failing to raise this claim on direct appeal. Because the claim lacks legal merit, appellate counsel was not ineffective for failing to raise it.

IV.

Jones also asserts an additional reason why his appellate counsel was ineffective.⁸ He claims she should have raised the prosecutor's failure to provide notice under Rule 404(b) of the Federal Rules of Evidence prior to presenting evidence from co-defendant Damon Harris that Jones had easy access to fake drivers' licenses.

Rule 404 provides that "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." Fed. R. Evid. 404(b). The rule "precludes the admission of evidence of other crimes, wrongs or acts to prove a person's character." Becker v. ARCO Chemical Co., 207 F.3d 176, 189 (3d Cir. 2000) (emphasis added). Rule 404(b) codifies the common law rule that prohibits the introduction of prior bad acts or crimes for the sole purpose of showing the defendant is a bad person, that is to imply "a propensity or disposition to commit crime." United States v. Scarfo, 850 F.2d 1015, 1019 (3d Cir. 1990) (citation omitted). Such evidence is permitted, however, for certain other purposes⁹ "provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in

8. We have already addressed two additional contentions regarding appellate counsel. See supra notes 5, 7.

9. "Other crimes" evidence is admissible subject to Rule 403, if it is proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. See Fed. R. Evid. 404(b).

advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial." Fed. R. Evid.

404(b). Jones argues that Damon Harris' testimony regarding Jones' ability to obtain fake drivers' licenses is "other crimes" evidence that should have been excluded by Rule 404(b) and that his appellate counsel was ineffective for failing to raise it and the prosecutor's lack of notice regarding the same on appeal.

Various courts of appeals, including ours, have held that Rule 404(b) does not bar the admission of evidence of other acts if those acts and the crime with which the defendant is charged "are inextricably intertwined, or both acts are part of single criminal episode, or other act was necessary preliminary to crime charged."¹⁰ United States v. Freeman, 434 F.3d 384, 374 (5th Cir. 2005).¹¹ In United States v. Gibbs, 190 F.3d 188 (3d Cir. 1999), our Court of Appeals stated that Rule 404(b) "does

10. Like any other evidence, however, evidence that is "inextricably intertwined" to the crime charged must satisfy Rule 403.

11. Each Court of Appeals recognizes some version of the "inextricably intertwined" doctrine. See United States v. Rodriguez-Estrada, 877 F.2d 153, 156 (1st Cir. 1989); United States v. Carboni, 204 F.3d 39, 44 (2d Cir. 2000); United States v. Gibbs, 190 F.3d 188, 218 (3d Cir. 1999); United States v. Chin, 83 F.3d 83, 87-88 (4th Cir. 1996); United States v. Williams, 343 F.3d 423, 436 (5th Cir. 2003); United States v. Hardy, 228 F.3d 745, 748 (6th Cir. 2000); United States v. Lott, 442 F.3d 981 (7th Cir. 2006); United States v. Adams, 401 F.3d 886, 899 (8th Cir. 2005); United States v. DeGeorge, 380 F.3d 1203, 1220 (9th Cir. 2004); United States v. Gorman, 312 F.3d 1159, 1162 (10th Cir. 2002); United States v. Baker, 432 F.3d 1189, 1205 n.9 (11th Cir. 2005); United States v. Bowie, 232 F.3d 923, 928 (D.C. Cir. 2000) (citing prior cases).

not apply to evidence of uncharged offenses committed by a defendant when those acts are intrinsic to the proof of the charged offense." Gibbs, 190 F.3d at 217. If Rule 404(b) "does not apply" or is "not applicable" to inextricably intertwined evidence, we cannot see how the notice requirement contained therein would bind the government to inform the defendant of its intent to introduce that evidence. See id; United States v. Chin, 83 F.3d 83, 88 (4th Cir. 1996).

The testimony of co-defendant Harris that Jones had easy access to or could obtain fake drivers' licenses is evidence "inextricably intertwined" with the crimes charged in the indictment. Therefore, the notice provision of Rule 404(b) does not apply. This evidence was not admitted to show Jones' bad character or his tendency to commit criminal acts. Rather, the government introduced evidence at trial to explain the fact that the cars used in the crimes were purchased and registered by a "Joseph Tambe" whose address matched Jones'.¹² Jones' ability to acquire false identification was a crucial part of the conspirators' efforts to obtain getaway vehicles that could not be traced back to them.¹³ Thus, the evidence was an integral

12. The picture associated with the "Joseph Tambe" identification was not Jones.

13. The government observes that the acquisition of fake identification is an overt act necessary to and in furtherance of the conspiracy charged in the indictment. Therefore, as an element of the crime charged, it is not Rule 404(b) evidence. We do not consider this argument because we find the evidence is inextricably intertwined evidence not governed by Rule 404(b).

part of the conspirators' efforts and not an "other crime, wrong, or act" offered "to prove the character of a person in order to show action in conformity therewith."

Accordingly, because the claim related to Rule 404(b) evidence lacked merit, appellate counsel was not ineffective for failing to raise it on appeal.

We have carefully reviewed Jones' other contentions regarding the performance of his appellate counsel and find they lack merit.

V.

For the above reasons, the motion of William Jones pursuant 28 U.S.C. § 2255 will be denied.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	NO. 00-660-1
v.	:	
	:	CIVIL ACTION
WILLIAM JONES	:	NO. 06-23

ORDER

AND NOW, this 23rd day of June, 2006, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that the motion of William Jones to correct, vacate, or set aside his conviction and sentence pursuant to 28 U.S.C. § 2255 (Doc. #210) is DENIED.

BY THE COURT:

/s/ Harvey Bartle III

C.J.