

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

WAYLAND COLLINS et al.

CIVIL ACTION

VERSUS

NO. 18-7465

**JOHN C. BENTON d/b/a Q&M MOTOR
TRANSPORTS et al.**

SECTION: "G"

ORDER AND REASONS FOR ADDING JURY INSTRUCTION

After review of Louis Fey's ("Fey") testimony and the opinions he rendered during trial on November 22, 2021, the Court became concerned about certain information that Fey referenced in explaining his conclusions—namely, indictments and/or arrests of individuals who are neither witnesses or parties in this case.

As a general rule, evidence of an indictment is not admissible as character evidence against a party or witness. Federal Rule of Evidence 404(b)(1) provides that "[e]vidence of any other crime, wrong, or act is not admissible to prove a persons' character in order to show that on a particular occasion the person acted in accordance with the character."¹ However, pursuant to Federal Rule of Evidence 404(b)(2), evidence of a crime "may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identify, absence of mistake, or lack of accident."² "[T]he general rule of exclusion in Rule 404(b) only excludes evidence of other crimes when offered to prove the conduct of a person by resort to an inference

¹ Fed. R. Evid. 404(b)(1).

² Fed. R. Evid. 404(b)(2).

as to his character.”³

Indictments and arrests are “other bad acts” under Rule 404(b). However, the testimony and opinions provided by Fey that reference mere arrests or indictments were not referring to the character of a party or witness, and thus were not being used in a manner prohibited by Rule 404(b). Therefore, the exclusions of FRE 404(b) do not apply. Moreover, Fey stated that whether or not someone is indicted does not impact a decision to deny a claim because an accident may have been staged. Nevertheless, indictments have been mentioned during the course of trial.

The policy behind Federal Rule of Evidence 404 is not implicated here considering this information is more remote to the facts of this case than if it were used against a party or witness. Moreover, Fey testified that it was not necessary for a person to be indicted or convicted to conclude that an accident was staged. To eliminate any confusion that reference to indictments and arrests may have created for the jury, the Court will instruct the jury that an arrest or indictment is only an accusation against someone and is not indicative of guilt.

NEW ORLEANS, LOUISIANA, this 23rd day of November, 2021.



NANNETTE JOLIVETTE BROWN
CHIEF JUDGE
UNITED STATES DISTRICT COURT

³ *United States v. Ebron*, 683 F.3d 105, 131–32 (5th Cir. 2012).