I. INTRODUCTION

The publication of this article marks the tenth time the Mercer Law Review has honored the author by asking him to survey Eleventh Circuit evidence decisions. While some may argue the Review has returned to the same well entirely too many times, ten years of analyzing Eleventh Circuit evidence decisions cannot help but to give some perspective and, perhaps, even some insight into the court's decisions. In this regard, there can be no doubt that the Eleventh Circuit has dramatically reduced its level of scrutiny of evidentiary issues. In the late 1980s, it could be fairly said that the court often paid only lip service to the principle that district court evidentiary decisions could be reversed only for abuse of discretion. Thus, in early survey issues, we see the Eleventh Circuit minutely reviewing evidence to determine whether the district court ran afoul of Rule 403 which prohibits the admission of evidence if its prejudicial impact outweighs its probative value. Although, as discussed below, the Eleventh Circuit continues to apply the Rule 403 balancing test as a part of the test for admissibility of extrinsic act evidence under Rule 404(b), it is virtually unheard of for the court to spend any time discussing Rule 403 alone. Rule 404(b), which has probably received more attention from the Eleventh Circuit than any other single rule of evidence, has become a much less significant factor in appeals. Similarly, the admissibility of co-conspirators' statements under Rule 801(d)(2)(E) is now a routine matter rather than a fecund ground for reversal.

One can debate endlessly the reason for this trend. No doubt, some say that it is a consequence of the appointment of more conservative judges. However, the existence of the trend is unmistakable. In today's
environment, the Eleventh Circuit clearly defers much more broadly to the evidentiary decisions of district court judges.

II. ARTICLE IV: RELEVANCY AND ITS LIMITS

The drafters of the Federal Rules of Evidence deserve high praise for the twelve rules governing relevant evidence. These twelve, generally brief, rules provide a cogent distillation of common law principles of relevancy and a straightforward guide to practitioners. Article IV begins with the simple statement that “‘relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”1 In years past, most relevancy issues addressed by the Eleventh Circuit have involved Rule 404(b), which governs the admission of extrinsic act evidence. Because district courts are vested with broad discretion in evidentiary matters, the Eleventh Circuit rarely discusses, much less reverses, the admission or exclusion of evidence on general relevancy grounds. The Eleventh Circuit’s decision in United States v. Williams2 provides a good illustration of proper general relevancy analysis. In Williams, defendant, who was charged with attempted carjacking, complained that the district court improperly admitted testimony that an individual whom he shot, but did not kill, was residing “in the cemetery” at the time of the trial.3 In criminal trials, the Eleventh Circuit noted, the scope of relevancy is generally determined by the elements of the offense and the defendant’s defenses.4 Even if evidence is relevant, it may be excluded if “its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by consideration of undue delay, wasted time, or needless presentation of cumulative evidence.”5 In determining the relevancy of evidence, district courts are granted broad discretion and should be affirmed “even though we would have gone the other way had it been our call.”6 Williams was such a case. Had it been the district court, the Eleventh Circuit noted, it would have excluded evidence that the victim had died because his subsequent death was not relevant to the elements of the offense. Nevertheless, it could be said that the testimony was relevant,

1. FED. R. EVID. 401.
2. 51 F.3d 1004 (11th Cir. 1995).
3. Id. at 1010.
4. Id. (quoting United States v. Hall, 653 F.2d 1002, 1005 (5th Cir. Unit A Aug. 1981)).
5. FED. R. EVID. 403.
6. 51 F.3d at 1010 (quoting In re Rasbury, 24 F.3d 159, 168 (11th Cir. 1994)).
“although perhaps not by a wide margin.” For example, the district court could have concluded that the evidence was relevant to explain the witness’s absence at trial.8

Rule 404 is the principal rule of evidence addressing the admissibility of “extrinsic act evidence”—evidence of acts and transactions other than the one at issue.9 The rule is intended to prevent the introduction of what has been called propensity evidence or evidence of prior misconduct offered solely to prove that a defendant is of bad character and thus is more likely to have committed the charged offense. Although nothing in the terms of Rule 404(b) limits its application to criminal cases, courts rarely mention Rule 404 in civil cases. Indeed, the level of scrutiny of extrinsic act evidence seems much lower in criminal cases than in civil cases. At first glance, this appears to be somewhat of an anomaly. In criminal cases, where life and freedom are at stake, courts routinely admit evidence of a defendant’s prior misconduct. Yet in civil cases, evidence of extrinsic occurrences is generally not admissible. For example, in an automobile negligence case, it is highly unlikely that a plaintiff could introduce evidence that a defendant had been involved in prior motor vehicle collisions. There is, however, a rational basis for this disparity of treatment. Criminal prosecutions generally involve intentional misconduct. The fact that a defendant committed a prior similar offense is relevant to prove his intent to commit the charged offense. Typically, civil cases do not involve intentional misconduct. In the automobile negligence case, evidence that a defendant was involved in a prior collision would merely serve to prove that the defendant, because he was negligent on one occasion, is more likely to have been negligent on the occasion at issue. This is precisely the result Rule 404 seeks to avoid.

To determine the admissibility of extrinsic act evidence under Rule 404, the Eleventh Circuit uses the test established by the old Fifth Circuit in United States v. Beechum.10 First, the extrinsic act evidence

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7. *Id.* (quoting *In re Rasbury*, 24 F.3d at 168-69).
8. In United States v. Puentes, 50 F.3d 1567 (11th Cir.), *cert. denied*, 116 S. Ct. 341 (1995), another general relevancy decision, the Eleventh Circuit held that the district court abused its discretion when it admitted irrelevant evidence, but found that the error was harmless. 50 F.3d at 1577-78.
9. Rule 404 governs the admissibility of extrinsic act evidence offered for substantive purposes. If the extrinsic act evidence is offered to impeach or bolster a witness, then the admissibility of the evidence is determined by the rules found in Article VI, principally Rule 608, which addresses the use of character evidence and evidence of specific instances of conduct.
must be relevant to an issue other than the defendant’s character. Second, the prosecution must prove that the defendant committed the extrinsic act. Third, the evidence must not contravene Rule 403. Consistent with its recent generally more relaxed scrutiny of district court evidentiary decisions, the Eleventh Circuit, in stark contrast to its prior practice, generally deferred to the district courts’ extrinsic act evidence decisions during the survey period.

The Eleventh Circuit’s decision in United States v. Delgado is an excellent primer on Rule 404(b) analysis. In Delgado, defendant contended the district court improperly admitted, during his drug trafficking trial, evidence of his arrest and conviction on cocaine possession charges that were unrelated to the drug trafficking charges and which occurred after the drug trafficking charges. The Eleventh Circuit first noted that it made no difference that the extrinsic act occurred after the charged offense; the admissibility of the extrinsic act evidence is still determined by the Beechum test. The government contended the extrinsic act was relevant to the issue of defendant’s intent to commit the charged offense and, thus, was relevant to an issue other than defendant’s character. The Eleventh Circuit agreed that by pleading not guilty, defendant made intent an issue, and the extrinsic act was relevant to prove defendant’s intent to commit the charged offense because the state of mind involved in both offenses is the same. The government easily satisfied the second element of the Beechum test—defendant had been convicted of the extrinsic offense.

Defendant next argued that the probative value of the evidence was outweighed by its prejudice because the two offenses were not similar and, thus, the third prong of Beechum had not been met. The extrinsic offense involved a small purchase of drugs from an undercover

11. 582 F.2d at 911.
12. Id. at 903.
13. Id. at 911.
14. In the case of extrinsic act evidence, this deferential trend can be traced, at least in part, to a definite cause. In Huddleston v. United States, 485 U.S. 681 (1988), the Supreme Court held that the government did not have to prove that a defendant committed the extrinsic act by clear and convincing evidence; it was sufficient that the government proved the point by a preponderance of the evidence.
16. 56 F.3d at 1365.
17. Id.
18. Id.
19. Id.
20. Id. at 1366.
21. Id.
agent while the charged offense involved a multi-million dollar drug importation scheme. The Eleventh Circuit was not swayed. Generally, if the extrinsic act evidence is offered to prove intent, the required degree of similarity is not as great. Because both offenses related to trafficking in cocaine, the offenses were sufficiently similar that the probative value of the extrinsic offense outweighed its prejudicial impact. Accordingly, the Eleventh Circuit held, the Beechum test was satisfied, and the district court did not abuse its discretion when it admitted the extrinsic act evidence.

The temporal connection between the extrinsic act and the charged offense is sometimes a factor in the determination of whether evidence of the extrinsic act should be admitted. It is not, however, a very significant factor. In United States v. Lampley, the Eleventh Circuit held that transactions occurring fifteen years earlier were not too remote in time to be inadmissible extrinsic act evidence.

In United States v. Muscatell, the Eleventh Circuit addressed the issue of whether the evidence in question was extrinsic or intrinsic. The outcome of this inquiry has significant ramifications. If the evidence is extrinsic, it must pass muster under Rule 404(b), including the Rule's notice requirement, and the jury must be instructed on the proper use of extrinsic act evidence. If the evidence is intrinsic, it is treated like any other evidence.

The fact that the evidence does not relate directly to the charged offense does not necessarily mean that it is extrinsic. For example, evidence is not extrinsic for the purposes of Rule 404 "if it arose out of the same transaction or series of transactions as the charged offense, was inextricably intertwined with evidence of the charged offense, or was necessary to complete the story of the charged offense." In Muscatell, defendants contended that the evidence at issue was necessarily

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22. *Id.*

23. The requisite degree of similarity depends on the purpose for which the extrinsic act evidence is offered. If extrinsic act evidence is offered to establish identity, the similarity between the extrinsic act and the charged offense "must be such that it marks the offenses as the handiwork of the accused." United States v. Lail, 846 F.2d 1299, 1301 (11th Cir. 1988) (citing Beechum, 582 F.2d at 912 n.15).


25. 68 F.3d 1296 (11th Cir. 1995).

26. *Id.* at 1300.


28. 42 F.3d at 630.

29. United States v. Collins, 779 F.2d 1520, 1532 (11th Cir. 1986); *see also* United States v. Martin, 794 F.2d 1531, 1532-33 (11th Cir. 1986); United States v. Butler, 792 F.2d 1528, 1535 (11th Cir.), *cert. denied sub nom.,* Waites v. United States, 479 U.S. 933 (1986).
extrinsic and, thus, subject to Rule 404(b) scrutiny, because it occurred either before or after the charged offenses. Defendants were charged with conspiracy, fraud, and money laundering in connection with the sale of condominiums, and the alleged extrinsic act evidence concerned similar but unrelated land fraud schemes. The Eleventh Circuit concluded that this evidence was not extrinsic. The Court noted, defendants "were charged with conducting a continuing scheme to defraud, characterized by land flip transactions, inflated appraisals, buyer rebates, and fraudulent loan applications." In reasoning that was somewhat difficult to follow, the Eleventh Circuit noted that it was necessary for the government to prove that defendants intentionally devised a scheme to defraud. "[O]ther transactions connected with the offenses charged have long been used to show a general pattern, the necessary criminal intent, or the guilty knowledge of the defendant." Therefore, the court held the evidence was intrinsic. It is not clear how the fact that the evidence was probative of pattern, intent, or knowledge can necessarily lead to a conclusion that the evidence is intrinsic. On the contrary, these are issues that extrinsic act evidence is often used to prove.

Apparently, the Eleventh Circuit concluded that the allegedly extrinsic act evidence was actually an uncharged offense arising out of the same transaction or series of transactions as the charged offense. If so, it would seem that the Eleventh Circuit took an exceptionally broad view of the charges against defendants.

In 1991, the Supreme Court amended Rule 404(b) to provide that the prosecution must, upon request by a defendant, give reasonable notice in advance of trial of its intention to introduce extrinsic act evidence. In United States v. Lampley, defendant contended that the government failed to give this required notice because the differences between the description of the evidence in the notice and the actual testimony presented at trial "were so great that the notice was essentially

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30. 42 F.3d at 630.
31. Id. at 631.
32. Id.
33. Id.
34. Id. (citing United States v. Dula, 989 F.2d 772, 777 (5th Cir.), cert. denied, 114 S. Ct. 172 (1993)).
35. Id. (quoting Dula, 989 F.2d at 777).
36. Id.
37. This was the situation in Dula, upon which the court relied. 989 F.2d at 772.
38. See United States v. Cancelliere, 69 F.3d 1116, 1124 (11th Cir. 1995), for what would appear to be a more conventional example of extrinsic/intrinsic analysis.
39. FED. R. EVID. 404(b).
40. 68 F.3d 1296 (11th Cir. 1995).
ineffective." The Eleventh Circuit disagreed, holding that the government need only provide notice of the general nature of the extrinsic act evidence. Differences in the details do not render the notice ineffective.

Rule 410 provides, inter alia, that statements made in the course of plea discussions between a criminal defendant and a prosecutor are inadmissible against the defendant. In United States v. Mezzanatto, the Supreme Court addressed the issue of whether Rule 410's bar against the admission of plea discussions may be waived by a defendant. In Mezzanatto, defendant, in a standard agreement to enter plea negotiations, agreed that any statements made by him during the course of the plea discussions could be used to impeach his testimony if negotiations were unsuccessful and the case proceeded to trial. Eventually, the government terminated negotiations because the prosecutor concluded that defendant was not providing completely truthful information. At trial, the prosecutor cross-examined defendant about statements made during plea discussions that were inconsistent with his trial testimony. When defendant denied these statements, the government called an agent present at the meeting who testified to his recollection of defendant's prior statements. Defendant was found guilty, but the Ninth Circuit reversed his conviction. The Ninth Circuit reasoned that Rule 410 did not expressly permit a defendant to waive that rule's prohibition against the admission of statements made during plea discussions, and thus Congress must not have intended to allow such a waiver.

The Supreme Court reversed, holding that a defendant could knowingly and voluntarily waive Rule 410. The Supreme Court rejected the Ninth Circuit's reasoning, noting that it is generally accepted that legal rights, including those granted by evidentiary rules,

41. Id. at 1300 n.4.
42. Id.
43. FED. R. EVID. 410(4).
44. 115 S. Ct. 797 (1995).
45. Id. at 800.
46. Id.
47. Id.
48. Id.
49. Id. at 800-01.
51. 998 F.2d at 1454.
52. 115 S. Ct. at 803, 806.
can be waived by parties.\textsuperscript{53} Further, the Court concluded that a blanket prohibition against waiver would be inappropriate.\textsuperscript{54} Rather, the Court reasoned, each case should be judged on its facts to determine whether the waiver was made knowingly or voluntarily, or whether it was the product of fraud or coercion.\textsuperscript{55}

Justice Souter, in a beautifully written dissenting opinion joined by Justice Stevens, acknowledged that, at first glance, Rule 410 seemed no different than any other rule of evidence that can be waived.\textsuperscript{56} For example, Justice Souter noted, Rule 802, regarding hearsay, and Rule 1002, regarding best evidence, may be waived.\textsuperscript{57} Looking more closely, however, Justice Souter found a purpose behind Rule 410 broader than merely providing evidentiary rules for parties.\textsuperscript{58} Rule 410 is intended to promote the "disposition of criminal cases by compromise."\textsuperscript{59} Absent negotiated resolution of criminal cases, Justice Souter lamented, the federal judicial system would grind to a halt.\textsuperscript{60}

The provisions protecting a defendant against use of statements made in his plea bargaining are thus meant to create something more than a personal right shielding an individual from his imprudence. Rather, the rules are meant to serve the interests of the federal judicial system (whose resources are controlled by Congress), by creating the conditions understood by Congress to be effective in promoting reasonable plea agreements.\textsuperscript{61}

Whether Congress was right or wrong in this judgment is immaterial. Justice Souter's point was that Congress made the judgment and the Court should respect it. The eventual effect of the majority's holding was clear to Justice Souter. Defendants are typically in no position to negotiate the framework of plea discussions. If Rule 410 can be waived with regard to the admission of plea discussions to impeach a defendant, then there is nothing to prevent the government from insisting, as a precondition to plea negotiations, that statements made during plea discussions could be used in the government's case in chief. Thus, any defendant entering into plea discussions with the government will be handing the government admissible evidence against him.

\textsuperscript{53} Id. at 803.
\textsuperscript{54} Id. at 801 n.2.
\textsuperscript{55} Id. at 806.
\textsuperscript{56} Id. at 806 (Souter, J., dissenting).
\textsuperscript{57} Id. at 807.
\textsuperscript{58} Id.
\textsuperscript{59} Id. (citing FED. R. EVID. 410 advisory committee's note).
\textsuperscript{60} Id.
\textsuperscript{61} Id. at 808.
The only defendant who will not damage himself by even the most restrained candor will be the one so desperate that he might as well walk into court and enter a naked guilty plea. It defies reason [Justice Souter concluded] to think that Congress [desired] . . . such a result when it adopted a Rule [intended] . . . to promote candid discussion in the interests of encouraging compromise.  

III. ARTICLE VIII: HEARSAY

For the first time since the author has been surveying Eleventh Circuit evidence decisions, the court rendered no significant decision addressing the inherent conflict between the admission of hearsay evidence and the Confrontation Clause of the Sixth Amendment. However, this conflict lingers on the edges of every criminal case in which evidence from an unavailable declarant is admitted, and criminal law practitioners should keep abreast of the Eleventh Circuit's treatment of this issue. These decisions are chronicled in past survey articles.

Rule 801(d)(1)(B) provides that a statement is not hearsay if it is "consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence on motive." The Eleventh Circuit has long recognized that a prior consistent statement may be admitted pursuant to Rule 801(d)(1)(B) even though the prior statement was made after the declarant developed a motive to fabricate. However, the circuits were split on this issue, and in Tome v. United States, the Supreme Court granted certiorari to the Tenth Circuit and held that a prior consistent statement is not admissible to rebut a charge of recent fabrication unless the statement was made before the alleged fabrication was made.

In Tome, the government alleged that defendant abused his daughter while the child was in his custody, but the abuse was only discovered when the child visited her mother. Defendant argued that the allegations were fabricated to prevent the child from returning to him. The child testified at trial that defendant molested her. The government then produced six witnesses who testified to statements...
made by the child concerning the alleged sexual abuse.⁷⁰ All these statements were made after the alleged motive to fabricate the charges of sexual abuse arose.⁷¹ Defendant was convicted and the Tenth Circuit affirmed his conviction.⁷²

In reversing, a four-Justice plurality relied primarily on the "prevailing common law rule" that the prior consistent statement must be "made before the source of the bias, interest, influence, or incapacity originated."⁷³ Upon a careful review of the common law, the precise wording of Rule 801(d)(1)(B), and Advisory Committee Notes, the majority concluded that Congress intended to maintain the common law pre-motive requirement.⁷⁴

Justice Scalia concurred in the judgment, but wrote separately to voice his disagreement with the plurality's reliance on Advisory Committee Notes.⁷⁵ Acknowledging that he had placed significant weight on these notes in previous decisions, Justice Scalia found that "[m]ore mature consideration has persuaded me that is wrong."⁷⁶

Four dissenting Justices argued that the issue was not whether the statement was hearsay, but whether it was relevant.⁷⁷ Even post-motive statements may be relevant to refute a charge of fabrication depending upon the circumstances of a particular case.⁷⁸ To the dissenters, the admissibility of a post-motive prior consistent statement should be judged under Rule 401 (whether the statement renders the charge of recent fabrication less probable) and Rule 403 (whether the probative value of the statement is substantially outweighed by its prejudice).⁷⁹ Thus, the dissenters argued, the admissibility of a post-motive prior consistent statement must be determined by the facts of each case.⁸⁰

Rule 801(d)(1)(C) provides that a witness's out-of-court identification of a person is not hearsay if the declarant testifies at the hearing and is subject to cross-examination.⁸¹ In United States v. Blackman,⁸² a

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⁷⁰ Id.
⁷¹ Id. at 700.
⁷² United States v. Tome, 3 F.3d 342 (10th Cir. 1993).
⁷³ 115 S. Ct. at 700 (quoting E. CLEARY, MCCORMICK ON EVIDENCE § 49, at 105 (2d ed. 1972)).
⁷⁴ Id. at 702.
⁷⁵ Id. at 706 (Scalia, J., concurring).
⁷⁶ Id.
⁷⁷ Id. (Breyer, J., dissenting).
⁷⁸ Id. at 708.
⁷⁹ Id. at 709.
⁸⁰ Id.
⁸¹ FED. R. EVID. 801(d)(1)(C).
⁸² 66 F.3d 1572 (11th Cir. 1995).
government agent testified that an eyewitness to the robbery, allegedly committed by defendant, identified defendant from a photo spread shortly after the robbery. Although the eyewitness was unable to identify defendant at trial, the Eleventh Circuit held that the agent's testimony about the witness's identification of defendant shortly after the robbery was admissible pursuant to Rule 801(d)(1)(C).

Rule 801(d)(2)(E) provides that out-of-court statements by co-conspirators are not hearsay if they were made "during the course and in furtherance of the conspiracy." Decisions interpreting Rule 801(d)(2)(E) perhaps provide some insight as to why evidentiary issues figure less and less prominently in criminal appeals. When the author began this annual survey of Eleventh Circuit evidence decisions ten years ago, the Eleventh Circuit applied the so-called James test to determine the admissibility of co-conspirators' statements. In United States v. James, the old Fifth Circuit held that co-conspirators' statements were not admissible unless the government showed by evidence other than the statement itself that a conspiracy existed, that the declarant and defendant were members of the conspiracy, and that the co-conspirators made the statements in furtherance of the conspiracy. However, the Supreme Court, in Bourjaily v. United States, overruled James to the extent that it prohibited district courts, in making preliminary factual determinations concerning the existence of a conspiracy, from relying on the co-conspirators' statements that the government sought to admit. In other words, the Supreme Court held that the co-conspirator's statement itself could prove the existence of the conspiracy and, thus, the government did not have to offer independent evidence proving the conspiracy's existence before co-conspirators' statements could be admitted. After Bourjaily, the number of appeals in which Rule 801(d)(2)(E) figured prominently dramatically decreased. It seems clear that Bourjaily's relaxation of the criteria for the admission of co-conspirators' statements is a reason for this.

During the present survey, only one decision applying Rule 801(d)(2)(E) merits discussion, and it broke no new ground. In United States v. Bazemore, 41 F.3d 1431, 1434-35 (11th Cir. 1994).

83. Id. at 1578 n.6.
84. Id. at 1578.
86. 590 F.2d 575 (5th Cir.), cert. denied, 442 U.S. 917 (1979).
87. 590 F.2d at 578.
89. Id. at 175.
90. For discussion of the "liberal standard" applied by the Eleventh Circuit in determining the admissibility of co-conspirators' statements, see United States v. Bazemore, 41 F.3d 1431, 1434-35 (11th Cir. 1994).
v. Lampley, 91 defendant contended that a co-conspirator’s statement was not admissible against him because he did not join the conspiracy until after the statements were made. 92 The Eleventh Circuit, citing United States v. Tombrello, 93 held that a statement by a co-conspirator is admissible against members of the conspiracy even though those members joined the conspiracy after the statement was made. 94

In United States v. Walker, 95 defendant attempted to testify that someone identified only as “Jeffrey” told defendant that he was involved in the offense for which defendant was charged. 96 Defendant argued that he was only purchasing drugs from Jeffrey rather than selling drugs. 97 He contended that Jeffrey’s statements were admissible under Rule 804(b)(3), which permits the admission of statements against a declarant’s penal interest. 98 The district court excluded this evidence, and the Eleventh Circuit affirmed. 99 The Eleventh Circuit held that defendant failed completely to prove the elements necessary for the admission of statements against penal interest. 100 First, Rule 804(b)(3) requires that the declarant be unavailable, and defendant did not offer evidence to this effect. 101 Second, defendant failed to adduce any evidence corroborating Jeffrey’s statement. 102 Finally, the court noted that defendant had a motive to fabricate Jeffrey’s alleged statements. 103 Although this is not an element found in Rule 804(b)(3), the Eleventh Circuit has held that the motives of a witness testifying to an out-of-court statement may be considered. 104

IV. ARTICLE IX: AUTHENTICATION AND IDENTIFICATION

In United States v. Puentes, 105 defendant contended that the government had not properly authenticated transcripts of tapes of wiretapped conversations. 106 The tapes had been destroyed as a matter of routine

91. 68 F.3d 1296 (11th Cir. 1995).
92. Id. at 1300-01.
94. 68 F.3d at 1301 (citing Tombrello, 666 F.2d at 491).
96. 59 F.3d at 1198.
97. Id.
98. Id.
99. Id. at 1198, 1199.
100. Id. at 1199.
101. Id.
102. Id.
103. Id.
106. 50 F.3d at 1576.
procedure, but the district court permitted a Spanish police officer to read from the Spanish transcript of the taped conversations.\textsuperscript{107} The police officer testified that he heard the conversations, presumably from the actual tapes, and that the conversations were accurately transcribed.\textsuperscript{108} The fact that the actual tape recordings had been destroyed did not bar the admission of the content of the transcripts because the transcripts were adequately authenticated by police officers.\textsuperscript{109} Finally, the court reasoned, defendant had an opportunity to cross-examine the police officer and, therefore, the jury had available adequate information to assess whether the transcripts were authentic.\textsuperscript{110} With regard to the fact that the police officer was not familiar with defendant's voice before the wiretapping, the court noted that Rule 901(b)(5) specifically provides that voice identification may be "based upon hearing the voice at any time under circumstances connecting it with the alleged speaker."\textsuperscript{111} Therefore, the Eleventh Circuit affirmed the district court's conclusion that the government properly authenticated the transcripts.\textsuperscript{112}

Addressing a similar situation, the Eleventh Circuit, in \textit{United States v. Green},\textsuperscript{113} held that the government need not establish that every person playing a role in the preparation of a transcript of a tape recording can vouch for the accuracy of the transcript.\textsuperscript{114} Also, as in \textit{Puentes}, the court held that the fact that the monitoring agents only became familiar with defendants' voices after their conversations had been recorded did not bar the admission of the recordings.\textsuperscript{115}

\begin{thebibliography}{99}
\bibitem{}\textit{Id.}
\bibitem{}\textit{Id.} at 1577.
\bibitem{}\textit{Id.}
\bibitem{}\textit{Id.}
\bibitem{}\textit{Fed. R. Evid.} 901(b)(5) (emphasis added).
\bibitem{}50 F.3d at 1577.
\bibitem{}40 F.3d at 1173 (citing \textit{United States v. Hogan}, 986 F.2d 1364, 1375 (11th Cir. 1993)).
\bibitem{}\textit{Id.} (citing \textit{United States v. Biggins}, 551 F.2d 64, 68 (5th Cir. 1977)).
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