Prosecuting Attorneys' Council of Georgia

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Jones v. State

Court Of Appeals Holds That O.C.G.A. § 24-4-404(b) Cannot Be Used To Admit A Defendant's Prior Acts Of Driving Under The Influence For The Purpose Of Establishing Intent Or Demonstrating A Defendant's Knowledge Of The Dangers Of Impaired Driving

In *Jones v. State*, A13A1940 (March 28, 2014), the Georgia Court of Appeals found that a trial court abused its discretion pursuant to O.C.G.A. § 24-4-404(b) by admitting in a DUI trial an earlier DUI conviction as prior bad act evidence. Deputies stopped the defendant for speeding and arrested him for DUI based upon his physical manifestations and performance on field sobriety evaluations. The defendant consented to breath testing, which revealed a breath-alcohol concentration of 0.139 g/210L. Subsequently, the defendant was charged with Driving with an Unlawful Alcohol Concentration (O.C.G.A. § 40-6-391(a)(5)), Driving Under the Influence of Alcohol (O.C.G.A. § 40-6-391(a)(1)), and Speeding (O.C.G.A. § 40-6-181).

Prior to trial, the State filed an amended motion to admit a "similar transaction" under O.C.G.A. § 24-4-404(b), which became effective on January 1, 2013 as part of Georgia's new evidence code. In the motion, the State indicated that it sought introduction of the prior bad act as proof of, among other things, "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." A hearing on the State's motion was conducted prior to trial, and the trial court ruled that the State could introduce evidence of the prior conviction for the purposes of showing the defendant's intent and knowledge relating to the charge of being less safe to drive. Specifically, the trial court found that the prior conviction was "probative of the fact that he's aware of what [drinking alcohol] did to him the first time and this is what it did to him the second time. We're talking about less safe. We're not talking about limits. … [F]orget about the levels. We're talking about what the substance did to him, within his knowledge. … [H]e knows, better than anybody does, what alcohol does to him this time." Pursuant to this ruling, the State presented the prior bad act evidence at trial, including the manner of the defendant's driving, performance on field sobriety, and breath-test results (0.195). After being convicted on both counts of DUI and speeding, the defendant appealed on the ground that the evidence was not relevant to, or probative of, any issue at trial other than his character.

In reviewing the trial court's ruling, the Court of Appeals adopted and employed the Federal 11th Circuit Court of Appeals three-part analysis for determining the admissibility of prior bad act evidence. Under this analysis, prior bad act evidence is admissible only when: (1) it is relevant to an issue other than the defendant's character; (2) there is sufficient proof to enable a jury to find by a preponderance of

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the evidence that the defendant committed the act in question; and (3) the probative value of the evidence is not substantially outweighed by the danger of undue prejudice in accordance with O.C.G.A. § 24-4-403. According to the Court, a trial court's admission of prior bad act evidence is reviewed for abuse of discretion.

Regarding the State's use of the prior bad act evidence to prove "intent," the Court noted that DUI is a strict liability offense which requires proof only of general intent. General intent is simply the intent to do an act which results in a violation of the law, and not the intent to commit the crime itself. Citing *United States v. Beechum*, 582 F.2d 898, 911 (5th Cir. 1978), the Court held that the relevance of a prior bad act used to prove intent comes from the defendant's "indulging himself the same state of mind in the perpetration of both the extrinsic and charged offenses. The reasoning is that because the defendant had unlawful intent in the extrinsic offense, it is less likely that he had lawful intent in the present offense." However, because DUI only requires proof of general intent, and not proof of a culpable mental state, prior bad act evidence showing that the defendant had formed the general intent to drive while less safe on a prior occasion does not logically tend to prove that the defendant formed the general intent to do so a second time. This is because "no culpable mental state [is] required to commit the crime in the first place." Accordingly, it was error for the trial court to admit the evidence to prove intent.

In relation to the use of the prior bad act evidence to prove "knowledge," the Court held that use of the prior bad act to show that the defendant knew that drinking made him a less safe driver "did not elucidate or throw light upon whether, in this instance, he committed the same crime again," because no proof of a culpable mental state was required. Much like its reasoning concerning "intent," the Court held that a defendant's knowledge of how drinking affects his or her driving only tends to prove a culpable mental state; because such a showing is unnecessary to prove DUI, admission of the evidence to show "knowledge" was error.

The Court stated that introduction of prior crimes evidence is highly and inherently prejudicial because of the danger of improperly placing a defendant's character in issue. Because of this danger, and because neither of the purposes for which the State was allowed to admit the prior bad act were found to be relevant to, or probative of the commission of the charged DUI offenses, the Court overturned the convictions. However, because the other evidence in the case was sufficient to have convicted the defendant, the Court held that the defendant can be retried on both counts.

The Cherokee County Solicitor-General's office will petition the Georgia Supreme Court for a Writ of Certiorari in this case. However, as a result of the *Jones* decision, prosecutors should be cautioned against attempting to admit prior DUI convictions as prior bad act evidence pursuant to O.C.G.A. § 24-4-404(b) under an "intent" or "knowledge" theory in future DUI trials.

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