



JUNE 1, 2015

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State v. Jones

The Supreme Court holds that Rule 404(b) evidence in general intent crimes, like DUI, is relevant when offered for the permissible purpose of showing a defendant's intent and knowledge

In *State v. Jones*, S14G1061 (June 1, 2015), the State charged Jones with DUI (less safe) and DUI (per se). The trial court allowed the State to offer into evidence a prior DUI conviction under O.C.G.A. § 24-4-404(b) ("Rule 404(b)") for the limited purpose of showing knowledge and intent. The Court of Appeals found that the trial court erred because DUI is a general intent crime and no culpable mental state was required to commit general intent crimes. Thus, because the charged crimes do not require a defendant to act with a specific intent to commit the crimes, the fact that Jones voluntarily or intentionally drove under the influence of alcohol on another occasion was of no relevance. *Jones v State*, 326 Ga.App. 658 (2014).

The Supreme Court granted the State a writ of certiorari and reversed. Citing *Bradshaw v. State*, 296 Ga. 650, 656 (2015), the Court stated that in order to be admissible as a prior bad act, the State must make a showing that 1) evidence of extrinsic, or other, acts is relevant to an issue other than a defendant's character (Rule 404(b)); 2) the probative value of the other acts evidence is not substantially outweighed by its unfair prejudice (Rule 403); and 3) there is sufficient proof so that the jury could find that the defendant committed the act in question. The Court of Appeals erred in determining that the evidence did not meet the first prong of the *Bradshaw* test.

First, the Court held, the Court of Appeals erred by failing to give legal significance to the State's burden of proving as an essential element Jones' general intent to do the prohibited acts. Intent was a material issue in Jones' DUI case because the State had the burden of proving beyond a reasonable doubt Jones' 1) intent 2) to drive 3) with a blood alcohol content of 0.08 or higher and his 1) intent 2) to drive 3) under the influence of alcohol 4) to the extent he was a less safe driver. And because the same state of mind was required for committing the prior act and the charged crimes, i.e., the general intent to drive while under the influence of alcohol, evidence of Jones' prior conviction was relevant under Rule 404(b) to show Jones' intent on this occasion.

Second, although the State was not required to prove Jones knew that he was driving less safe or with an illegal blood alcohol level, "the relevancy of his prior conviction evidence was heightened by his defense in which he vehemently challenged the State's allegation that he was under the influence of alcohol and argued that his physical reactions and poor performance on field tests, behavior which he claims the officer misconstrued as evidence of his being under the influence of alcohol, were attributable to the fact that he had previously suffered a serious head trauma." Thus, the Court

State Prosecution Support Division



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found “[a] genuine issue regarding whether Jones was voluntarily driving while under the influence of alcohol was raised by this defense, making evidence that he had voluntarily driven under the influence of alcohol on a previous occasion all the more relevant because it tended to show that it was more likely that he intentionally did so on this occasion.” Furthermore, the Court added, “[t]he relevancy of evidence of a prior state of mind and the introduction of evidence of repetitive conduct to allow a jury to draw logical inferences about a defendant’s knowledge and state of mind from such conduct is well-established.” Accordingly, the Court concluded, “other acts evidence may be relevant under Rule 404(b), without regard to whether the charged crime is one requiring a specific or general intent, when it is offered for the permissible purpose of showing a criminal defendant’s intent and knowledge.”

In so holding, the Court noted that because the Court of Appeals erred in making a determination that the evidence did not fit the first prong of the *Bradshaw* test, it did not consider the evidence under the second prong of the test. The Court therefore remanded the case back to the Court of Appeals for this purpose. But, the Court cautioned, “Our holding ... does not signify that evidence of other acts will be admissible in every criminal prosecution to prove intent and knowledge.” The danger of prejudice in such evidence is ever-present and the trial court should take great care to make an independent determination in each case as to whether the probative value of the evidence is substantially outweighed by the danger of unfair prejudice. Nevertheless, the Court noted, Rule 403 is an extraordinary remedy which should be used sparingly and in close cases, the balance under Rule 403 should be struck in favor of admissibility.