

June 23, 2008

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The Court of Appeals Elucidates Position Regarding the Use of Similar Transaction Evidence of Sexual Offenses Involving Adult Victims in Child Sexual Abuse Cases

In Sands v. State, A08A0118, 2008 Ga. App. Lexis 595; 2008 FCDR 1818, appellant alleged that the trial court erred when it admitted similar transaction evidence of sexual offenses involving adult women during appellant's trial for child molestation. In support of his argument, appellant cited and relied on the Court's previous holding in Bloodworth v. State, 173 Ga. App. 688 (327 S.E.2d 756) (1985). In Bloodworth, the defendant was charged with molesting a 6-year-old child by touching her private parts and making her touch Bloodworth the same way. At trial, the testimony of Georgette Wigzell was admitted into evidence as a similar transaction. Wigzell testified that, when she was 22 years old, everything Bloodworth said to her had sexual overtones. In addition, according to Wigzell, Bloodworth would "pat her on her behind," and on one occasion he pulled her down in a chair and started tickling her. On appeal, the Court of Appeals held that the admission of Wigzell's testimony was error. The Court did not find the transactions involving Georgette Wigzell of sufficient similarity to warrant its admissibility. The Court concluded that "making a 'pass' at an adult woman cannot be equated to molesting a 6-year-old child, nor is it of sufficient similarity to necessarily show a lustful disposition on the part of appellant." *Id.* at 689. Here, appellant urged that the Court's holding in Bloodworth created a bright-line rule that evidence of a sexual offense against an adult victim is not admissible in sexual assault cases involving minors.

The Court of Appeals rejected appellant Sands' argument. The Court wrote that "Bloodworth does not create a per se rule whereby evidence of a sexual offense involving an adult victim is always inadmissible in cases in which the sexual offense was perpetrated on a minor." The Court opined that focusing upon the similarities between the incidents and not the differences remains the appropriate manner in which to evaluate whether similar transaction evidence is admissible. Further, the Court took the opportunity to reiterate that courts are most liberal in admitting similar transactions in cases involving sexual offenses. With the foregoing in mind, the Court reviewed the record in the present case.

Appellant was tried for offenses committed against two minor victims, S.B. and A.W. In late 2004 or early 2005, appellant, who was 41 years old, approached S.B., a 15-year-old girl, while she was sitting in a gymnasium. Appellant sat down beside S.B., asked her a question, and rubbed his hand inside her pants leg. The girl moved her leg away, and appellant told her that she needed to shave. Appellant was charged with simple battery. In the summer of 2005, A.W., a 12-year-old girl, spent the night with appellant's daughter at appellant's home. While A.W., the daughter and appellant were watching television, the daughter fell asleep, and appellant sent the daughter to bed. However, appellant told A.W. that "she wasn't going anywhere." Appellant kissed A.W. and placed her hands inside his pants. Appellant made A.W. touch his penis and move her hand back and forth. Appellant also placed his penis inside A.W.'s vagina. Appellant threatened A.W. by stating that he would kill her if she told anybody. Appellant was charged with two counts of child molestation.



The Court of Appeals Elucidates Position Regarding the Use of Similar Transaction Evidence of Sexual Offenses Involving Adult Victims in Child Sexual Abuse Cases (continued)

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At trial, the State presented evidence of two similar transactions. The first involved Fernika Wilder, who was 17 years old at the time of her encounter with the appellant. Appellant was making repairs at Wilder's home when he asked her if "she had ever dated or been with a white guy." Wilder responded that the answer was none of appellant's business and walked away. Appellant then grabbed Wilder's buttocks. The second similar transaction involved 23-year-old Cindy Mitchell. In 2002, appellant approached Mitchell while she was working at Home Depot. Appellant pointed at Mitchell's apron and asked "what's that." Appellant then reached behind Mitchell's apron and rubbed her chest. The Court of Appeals affirmed the trial court's admission of the similar transactions involving Wilder and Mitchell. The Court opined that appellant was charged with battery for the inappropriate touching of 15-year-old S.B. The Court found that the similar transactions also involved inappropriate and sexually charged touching of young women. Therefore, there was sufficient similarity to warrant admissibility.