

SUPREME COURT OF GEORGIA

Jones v. State

301 Ga. 544 (2017) · Decided June 26, 2017

SUMMARY

The Georgia Supreme Court reviewed the admission of a prior DUI conviction as extrinsic-act evidence under Georgia Evidence Code Rules 404(b) and 403. The Court held that the trial court abused its discretion because the prior DUI’s probative value was substantially outweighed by the danger of unfair prejudice, but concluded the error was harmless as to the defendant’s DUI per se conviction. The judgment of the Court of Appeals was affirmed under the right-for-any-reason rule.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Benham, Justice; All Justices
JURISDICTION	Georgia
DECIDED	June 26, 2017
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal following the Court of Appeals' affirmance, on remand, of the trial court's admission of appellant's prior DUI conviction under Georgia Evidence Code Rules 404(b) and 403. The Supreme Court of Georgia reviewed the case for a second time after granting the State's petition for certiorari.
STANDARD OF REVIEW	Admission of Rule 404(b) evidence and the trial court's Rule 403 balancing are reviewed for clear abuse of discretion. Harmlessness of a nonconstitutional evidentiary error is reviewed de novo, with the question whether it is highly probable that the error did not contribute to the verdict.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Michael Jones v. State

TOPICS

- character evidence
- evidence
- standard of review
- harmless error
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the trial court properly admitted evidence of Jones's prior DUI conviction under Evidence Code Rule 404(b) and Rule 403.
2. Whether the trial court abused its discretion by determining that the prior DUI's probative value was not substantially outweighed by the danger of unfair prejudice.
3. Whether admission of the prior DUI was harmless as to Jones's conviction and sentence for DUI per se.

HOLDINGS

1. Extrinsic-act evidence may be admitted only if it is relevant to an issue other than the defendant's character, its probative value is not substantially outweighed by unfair prejudice under Rule 403, and there is sufficient proof for a jury to find by a preponderance of the evidence that the defendant committed the prior act.
2. The trial court abused its discretion by admitting Jones's prior DUI because the evidence's probative value as to intent was substantially outweighed by the danger of unfair prejudice.
3. The erroneous admission of the prior DUI was harmless as to Jones's conviction and sentence for DUI per se.

KEY QUOTATIONS

“Relevance and probative value are related, but distinct, concepts. Relevance is a binary concept — evidence is relevant or it is not — but probative value is relative.” (547)

“Instead, whether the charged crime is one of general intent is one of the factors, an important one, the trial court may consider when assessing the prosecutorial need for the extrinsic act evidence in question.” (548)

“Therefore, the trial court abused its discretion by admitting appellant’s prior DUI in this case because the probative value of the evidence was substantially outweighed by the danger of unfair prejudice.” (550)

FACTUAL BACKGROUND

Jones was stopped while driving in 2011 after consuming alcohol. He admitted drinking two beers, was driving over the posted speed limit, and recorded BAC levels of 0.147 and 0.139 grams, substantially above the statutory 0.08 threshold. His defense attributed his field-sobriety-test performance to a prior head injury, improper administration of the HGN test, heavy work boots, and bad knees. The State introduced Jones's 2005 guilty plea to DUI less safe, using differences in his statements and alphabet-recitation performance during the two incidents to argue that he had attempted to conceal impairment.

PROCEDURAL HISTORY

Jones was convicted and sentenced in 2013 for DUI per se; a DUI less safe conviction merged for sentencing. The trial court admitted evidence of Jones's 2005 guilty plea to DUI less safe for the limited purpose of proving intent and knowledge. The Court of Appeals initially held the evidence irrelevant, but the Supreme Court

reversed that determination in *State v. Jones* and remanded for Rule 403 review. On remand, the Court of Appeals affirmed, and the Supreme Court held that the prior DUI should have been excluded under Rule 403 but that its admission was harmless as to the DUI per se conviction and sentence.

DISPOSITION

affirmed

CASES CITED

- *Olds v. State*, 299 Ga. 65, 786 S.E.2d 633 (2016)
- *Jones v. State*, 326 Ga. App. 658, 757 S.E.2d 261 (2014)
- *State v. Jones*, 297 Ga. 156, 773 S.E.2d 170 (2015)
- *Jones v. State*, 335 Ga. App. 563, 565, 782 S.E.2d 466 (2016)
- *Hood v. State*, 299 Ga. 95, 786 S.E.2d 648 (2016)
- *Brannon v. State*, 298 Ga. 601, 783 S.E.2d 642 (2016)
- *United States v. Perez*, 443 F.3d 772, 780 (11th Cir. 2006)
- *Bradshaw v. State*, 296 Ga. 650, 657-658, 769 S.E.2d 892 (2015)
- *Prine v. State*, 237 Ga. App. 679, 515 S.E.2d 425 (1999)
- *United States v. Sterling*, 738 F.3d 228 (11th Cir. 2013)
- *United States v. Johnson*, 27 F.3d 1186 (6th Cir. 1994)
- *Mullins v. State*, 299 Ga. 681, 791 S.E.2d 828 (2016)
- *Rivera v. State*, 295 Ga. 380, 382, 761 S.E.2d 30 (2014)
- *Smith v. State*, 299 Ga. 424, 431-432, 788 S.E.2d 433 (2016)
- *Old Chief v. United States*, 519 U.S. 172, 180, 117 S. Ct. 644, 136 L. Ed. 2d 574 (1997)

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