

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING AUGUST 31, 2018

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THIS WEEK:

- **Venue; Deliberate Ignorance**
- **Search & Seizure; Exigent Circumstances**
- **Involuntary Manslaughter; Sufficiency of the Evidence**
- **Search & Seizure; Inherent Authority of the Court**
- **Failure to Yield; OCGA § 40-6-71**
- **Miranda; Custodial Questioning**
- **Rule 404 (b); Harmless Error**

Venue; Deliberate Ignorance

Lowry v. State, A18A0177, A18A0178 (6/27/18)

Appellants Weidman and Lowry were charged in Cobb County with three counts of violating Georgia RICO: Count 1 — Conspiracy to Acquire Property Through a Pattern of Racketeering Activity; Count 2 — Acquiring Property Through a Pattern of Racketeering Activity; and Count 3 — Participating in an Enterprise Through a Pattern of Racketeering Activity. A jury convicted Weidman on all three counts and acquitted Lowry on Count 1, but the jurors convicted him on the remaining counts. The evidence showed that as part of a plan to assert claims of adverse possession against a series of properties in DeKalb, Forsyth, and Fulton Counties that had been foreclosed upon, Weidman, Lowry, and others broke into and occupied homes located on those properties, even though they had no valid legal right to do so. During the course of the criminal enterprise, Weidman sent cease and desist letters from her Cobb County home to realtors handling the sale of the respective real properties. These letters were allegedly

sent by named attorneys in a named law firm. Both the attorneys and the law firm were subsequently determined to be non-existent.

Lowry contended that the State failed to prove that Cobb County was the proper venue for the RICO charges against him because the evidence showed that he was not personally involved in any racketeering activity in that county. The Court noted that Georgia's RICO statute has its own venue provision defining where a RICO crime occurs. At the time of the crimes charged in this case, that statute provided that “[i]n any criminal proceeding brought pursuant to this chapter, the crime shall be considered to have been committed in any county in which an incident of racketeering occurred or in which an interest or control of an enterprise or real or personal property is acquired or maintained.” Former OCGA § 16-14-11.

Here, the only incidents of racketeering activity that the indictment alleged occurred in Cobb County are incidents of mail fraud under 18 U.S.C. § 1341 including letters sent by Weidman to the realtors and others representing that they were from the fake law firm. Lowry notes that he was acquitted him of Count 1 of the indictment, which charged Weidman, Lowry, and another “individually and as parties concerned in the commission of a crime,” with unlawfully conspiring “to acquire directly and indirectly control of property through a pattern of racketeering activity” in violation of OCGA § 16-14-4 (c). Based on this acquittal, Lowry argued that he could not be considered a party to the crime of, or part of a conspiracy to commit, mail fraud and thus, the State cannot rely on the incidents of mail fraud to lay venue for *his* RICO convictions on Counts 2 and 3 of the indictment. In other

words, the Court noted, the gist of Lowery's argument is that the Act's venue provision requires not only that an incident of racketeering have occurred in the county bringing the RICO charges, but also that each defendant alleged to have participated in the enterprise and pattern of racketeering activity must have personally committed an act of racketeering activity in that county or have participated in a conspiracy to commit a racketeering activity in that county.

The Court stated that although our courts have not directly addressed this issue, the plain language of the RICO statute imposes no such requirement. Instead, read in its most natural and reasonable way, venue is appropriate in any county where any of the incidents of racketeering occurred, not just the incidents of racketeering involving the particular defendant. And here, even though Lowery was acquitted of the RICO charge expressly alleging a conspiracy, the charges of which he was convicted required proof of a pattern of racketeering activity "in furtherance of one or more incidents, schemes, or transactions that have the same or similar intents," former OCGA § 9-14-3 (8) (A), as well as participation in a common enterprise. The evidence supported a finding that Lowery was involved with a group of individuals led by Weidman who participated in the common enterprise, Lowery committed at least two acts of racketeering in furtherance of their scheme, and that Weidman committed the predicate act of mail fraud in Cobb County. Because the evidence at trial showed that an incident of racketeering activity as alleged in Counts 2 and 3 occurred in Cobb County as part of a common enterprise or scheme, the Court found that the evidence was sufficient to support a finding that Cobb County was a proper venue for the RICO charges against Lowery.

Lowry also argued that the evidence did not support the trial court's charge on deliberate ignorance and that the charge improperly relieved the State of its burden to disprove his defense of mistake of fact. The Court noted that an instruction on deliberate ignorance is appropriate when the facts support the inference that the defendant was aware of a high probability of the existence of the fact in question and purposely contrived to avoid learning all of the facts in order to have a defense in the event of a subsequent prosecution. However, a court should not instruct a jury on deliberate

ignorance when the evidence points to actual knowledge or no knowledge on the defendant's part. Lowery argued that the trial court erred in giving the charge because evidence only pointed to his having either actual knowledge or no knowledge of the alleged enterprise. The Court disagreed.

Lowery's defense was that he was acting under a mistake of fact because he believed that Weidman was the owner of the properties that he lived in. However, the evidence showed that Lowery was forced to leave the Forsyth County residence after the police told him Weidman was not the owner, they instructed him to leave the property, and the electricity was cut off. Nevertheless, he continued his dealings with Weidman, later moving to the Dekalb and Fulton properties under what he claimed was the mistaken belief that Weidman owned and rented those properties. Before moving to Fulton property, he went with Weidman to that property where he observed her remove the realtor's for-sale signs and enter the house through the back door. Lowry's girlfriend testified that Lowery was shaken by what he observed but chose to move to the Fulton property anyway. Thus, the Court found, this evidence was sufficient to present a jury issue as to whether Lowery's suspicions were aroused but he nevertheless deliberately chose not to make further enquiries, because he wanted to remain in ignorance.

Nevertheless, Lowery contended, the charge was prejudicial error because it relieved the State of its burden to disprove his only defense, mistake of fact. Once again, the Court disagreed. The trial court charged the jury that the State bore the burden of proving beyond a reasonable doubt that Lowery had knowledge "that the crimes alleged in the indictment were being committed and that [he] knowingly and intentionally participated in or helped in the commission of such crimes[.]" It is well settled under Georgia law that the knowledge element of a violation of a criminal statute can be proved by demonstrating either actual knowledge or deliberate ignorance of criminal activity. Here, the charge as given was a correct statement of the law, and therefore, it did not mislead the jury or relieve the State of its burden to prove knowledge.

Search & Seizure; Exigent Circumstances

Wiggins v. State, A18A0611 (6/28/18)

Appellant was convicted of misdemeanor possession of marijuana. The evidence, briefly stated, showed that officers responded to a report of a loud party at a residence whose owners were suspected of being out of town. When they arrived, it appeared that a significant party was being held in the back yard of the residence. The officers "followed the noise" by walking down the driveway. They walked past the walkway to the front door and continued down the driveway and the officers observed a large party occurring in the backyard with several people on a raised porch. Given these circumstances, officers suspected that the partygoers had broken into the house while the homeowners were out of town. The officers announced his presence as law enforcement and instructed "[e]verybody [to] stay there." The individuals were not free to leave at that point. When an unidentified individual yelled "run," the officers observed some people jump off the back of a balcony. The officers then gave chase and detained one of the individuals attempting to flee. One officer also saw a backpack being thrown off the balcony. After detecting the smell of marijuana, the officer discovered marijuana inside the backpack. Appellant admitted that the backpack belonged to him, and he subsequently was arrested and charged with possession of less than an ounce of marijuana.

Appellant moved to suppress the evidence, which the trial court denied. The court found that based on reports of a party at the residence while the homeowners were out of town, the officers were authorized to investigate whether the individuals had permission to be at the property. Moreover, the court concluded that they took "the same route as any other guest" in their approach towards the back of the residence, and their observations of the backyard from the driveway did not qualify as a search.

Appellant argued that the trial court erred in denying his motion to suppress because undisputed facts showed that, absent a warrant, the officers had no reasonable or articulable suspicion on which to enter the backyard of a residence where he was arrested. A divided Court agreed and reversed.

First, the Court addressed whether appellant had standing to contest the search. The Court stated a person has a legitimate expectation of privacy in his or her home and may have a legitimate expectation of privacy

in a house in which the person is an overnight guest. However, one who is merely present with the consent of the householder may not claim the protection of the Fourth Amendment. And here, the Court found, there was no dispute that appellant was an invited overnight guest at the house when the officers arrived.

The Court stated that regardless of whether the observations of the party in the backyard occurred from a lawful vantage point on the driveway at the rear of the residence, the State failed to meet its burden to show that the officers were authorized to enter the backyard. Given that the officers were not invited into the home and did not have a search warrant to enter the curtilage of the home, the State was required to show that the officers' entry into the backyard without a warrant and absent consent was justified by exigent circumstances. And here, the Court found, based on the circumstances known to the officers when they arrived at the scene, the trial court could not have found that exigent circumstances authorized the officers to enter the backyard. While responding to a report of an unauthorized party at a residence where the homeowners were reported to be out of town, the officers found several cars parked in front of the residence and heard loud noises coming from the rear of the house consistent with a party. Rather than approach the front door to confirm whether the homeowners were present, the officers walked directly to the rear of the residence and observed a gathering of partygoers in the backyard. They did not witness any illegal activity aside from the presence of a large group of individuals on the back patio. After announcing their presence and instructing everybody to stay there, an unidentified individual yelled "run" and some of those present jumped off the raised porch. At that point, the officers entered the backyard in pursuit of several of the individuals. Appellant admitted to tossing a backpack off the porch, which one officer opened after detecting the odor of marijuana. The officers, however, did not find the marijuana until they had already entered the backyard illegally. Moreover, the mere presence of contraband without more does not give rise to exigent circumstances.

Thus, the Court concluded, given the totality of the circumstances, the officers' entry into the backyard was not supported by a combination of probable cause and exigent circumstances. Because the evidence at issue

— the marijuana found in appellant's backpack — was obtained through a search and seizure that was unlawful under the Fourth Amendment, the trial court erred in denying appellant's motion to suppress.

Involuntary Manslaughter; Sufficiency of the Evidence

Evans v. State, A18A0184 (6/29/18)

Appellant was convicted of one count of involuntary manslaughter in connection with the death of Rodney Graham ("RG"), an inmate who died while incarcerated at the county jail. The evidence showed that at the time of RG's incarceration at the jail, Appellant was serving as the supervisor for the medical department for the Sheriff's Office. The department's three other employees were Chad Skinner, Kelli Brown, both EMTs, and Jody Faircloth, a medical assistant, and all four employees worked at the jail. Dr. Jimmy Graham contracted as the medical director for the sheriff's office, which meant he made limited, regular visits to the jail but was on-call for all medical issues.

The indictment alleged that appellant failed to provide RG proper medical care and treatment "in that inmate [RG] was suffering from a life threatening kidney disorder while incarcerated at the ... County jail and despite repeated requests from family members of [RG] the defendant failed to properly treat and care for [RG] and further, notwithstanding these repeated requests to provide the necessary treatment the defendant failed to do so resulting in his death, contrary to the laws of said State, the good order, peace and dignity thereof."

Appellant contended that the evidence was insufficient to support her conviction for involuntary manslaughter. The Court found that the evidence was sufficient to support a jury finding that appellant's actions and inactions constituted reckless conduct, the alleged crime underlying the charge of involuntary manslaughter, but, the State failed to present evidence sufficient for the jury to find beyond a reasonable doubt that appellant's reckless conduct caused RG's death.

The Court found that appellant had information from multiple sources that RG's kidney condition was severe, required close medical supervision, and had, in fact, resulted in multiple hospitalizations. Nevertheless, she

did not inform Dr. Graham of RG's condition before scheduling an appointment for the doctor to see RG on November 5, four days after RG first began exhibiting similar symptoms as noted in the hospital medical records. Instead, Appellant focused her treatment on detoxing him from his prescribed narcotics and/or illegal drugs despite warnings from RG's doctor and family and evidence in the medical records showing that his disorder had previously resulted in renal failure. Moreover, appellant failed to inform Brown and Skinner or other jail employees, upon whom she relied to evaluate RG's condition that he suffered from a severe and apparently recurring kidney disorder, thereby preventing them from considering that factor during their evaluation of his symptoms of vomiting, seizure, and extreme weakness.

Thus, the Court found, the evidence supported a jury finding that appellant disregarded a substantial and unjustifiable risk that her acts or omissions would cause harm or endanger RG's safety, and that her disregard constituted a gross deviation from the standard of care which a reasonable person in her position would exercise. Likewise, the jury was authorized to find that her actions and inactions demonstrated a willful, wanton, or reckless disregard for RG's safety so as to amount to criminal negligence. Accordingly, applying the proper standard of review, the evidence was sufficient for the jury to find that appellant was guilty of reckless conduct, the underlying unlawful act to the involuntary manslaughter charge.

However, the Court stated, to support appellant's conviction for involuntary manslaughter, the State was also required to present evidence showing that appellant's reckless conduct *caused* RG's death within the meaning of OCGA § 16-5-3 (a). For charges of involuntary manslaughter in Georgia, proof of cause requires proof of proximate cause. In a criminal case, proximate cause exists when the accused's act or omission played a substantial part in bringing about or actually causing the victim's injury or damage and the injury or damage was either a direct result, or a reasonably probable consequence of the act or omission.

Here, the Court found, the State's evidence of causation was presented through the testimony of the medical examiner, who opined that RG "died of complications of chronic renal failure with electrolyte abnor-

mality and nephrolithiasm,” which another doctor defined as having “[a] lot of kidney stones.” The medical examiner explained that chronic renal failure occurs over a prolonged time, weeks, months, or years. Although she testified that had RG seen a doctor earlier, he or she could have intervened to correct the electrolyte abnormality, she stated that there was no assurance that RG would not have gone into renal failure even with such treatment. Rather, in response to a question about whether RG would have survived if he had been treated four hours before he was found non-responsive, the medical examiner testified that although there would have been the opportunity to treat RG, she could not “make that assessment that, in fact, the patient will have been cured or will have been treated accordingly.” And even though the medical examiner acknowledged that getting RG treatment earlier would have “helped,” she testified that “[n]obody knows to what extent this therapy would have helped him survive.”

Likewise, the medical examiner’s affirmative response to the question on cross-examination asking, “[I]f someone had seen blood in his urine 48 hours to 60 hours earlier, would there have been the possibility that treatment could have, at least, prolonged this life?” was insufficient for the jury to find that appellant’s actions or omissions proximately caused RG’s death. Although this testimony raised a possibility of some treatment that could have prolonged RG’s life, the medical examiner did not identify what blood in the urine indicated nor did she specify the “treatment” that could have possibly prolonged life in response to the presence of blood in the urine. And in fact, the evidence showed that Faircloth and appellant did respond to the presence of blood, leukocytes, and bilirubin in RG’s urine by prescribing an antibiotic to combat any infection. The medical examiner testified that at the time of RG’s death, he did not have an infection nor was his death caused by an infection. Therefore, while the evidence raised a possibility that some unidentified treatment could have prolonged RG’s life, it also raised the possibility that the treatment appellant provided RG was effective in treating any infection.

Therefore, the Court found, the State’s evidence fell short of establishing beyond a reasonable doubt that appellant’s reckless conduct was the proximate cause of RG’s death.

The prosecution failed to present evidence establishing that appellant’s reckless conduct played a substantial part in bringing about or actually causing his death, and it failed to demonstrate that RG’s death was a direct or reasonably probable consequence of appellant’s actions or inactions. At best, the State’s medical evidence only supported the possibility that earlier more aggressive medical intervention might have extended RG’s life.

Accordingly, the Court concluded, because the State failed to carry its burden to establish that appellant was guilty of involuntary manslaughter beyond a reasonable doubt, her conviction was reversed.

Search & Seizure; Inherent Authority of the Court

Csehy v. State, A18A0381 (6/29/18)

Appellant was convicted of two counts of possession of methamphetamine. The evidence, briefly stated, showed that appellant was representing a criminal defendant in a superior court case. The judge observed appellant prior to calling the case for trial. Before proceeding with the trial, the court held a bench conference and asked appellant’s client if he was aware that appellant was the subject of disciplinary proceedings before the State Bar. When the client said that he was, the judge then told appellant that because of her observations of him, appellant was to go with one of the deputies in the courtroom for a drug test. Appellant was then taken out of the courtroom.

Several hours later, the judge had another colloquy with appellant and confirmed that he was continuing to represent the client and was announcing ready for trial. The judge told appellant that based on her observations and the results of the urine test she ordered (positive for methamphetamine and cocaine), he was in no shape to try the case. Appellant stated the test was wrong and offered to take a blood test. The judge refused the offer, found appellant in contempt, and sentenced him to five days in the county jail.

The following day, an investigator obtained a search warrant for appellant’s blood. The affidavit in support of the warrant averred the observations made by the judge, the observations of an ADA, and that appellant consented to urine test. This blood test showed the presence of methamphetamine. Subsequently,

appellant was released from jail on bond, with a condition that he submit to random drug tests. Those random drug tests also were positive for methamphetamine.

Prior to his trial, appellant unsuccessfully moved to suppress the results of his blood test and all subsequent blood tests. He argued that all of the blood tests resulted from the court-ordered urine test, which violated his Fourth Amendment rights. Thus, he contended, the blood test results were subject to exclusion as the fruit of the poisonous tree.

The Court stated that it must decide two questions. First, whether appellant’s court-ordered urine test violated his constitutional rights. Second, if that search did violate the Fourth Amendment, whether, in the absence of the results of that test, the search warrant for appellant’s blood was supported by probable cause. Here, the Court noted, the trial court specifically found that no such exception to the warrant requirement applied to appellant’s urine test. Instead, the trial court relied on the “inherent powers” of the judiciary to find that the warrantless search was legal. But, the Court found, in exercising its inherent power to control the proceedings and parties before it, a court may not order a warrantless Fourth Amendment search that does not otherwise fall within one of the well-established exceptions to the warrant requirement. Thus, given the trial court’s unchallenged finding that the search did not fall within an exception to the warrant requirement, the Court concluded that appellant’s court-ordered urine test constituted an unlawful search under the Fourth Amendment.

The Court then turned to whether in the absence of the urine test results, probable cause supported the issuance of the search warrant for appellant’s blood. The Court found that there was evidence presented at the motion to suppress hearing that was not set forth in the investigator’s affidavit and not presented to the magistrate. Additionally, the investigator made several misstatements when applying for the warrant. Specifically, he averred that the judge told appellant’s client that appellant “had been arrested [on] drug charges” and that appellant consented to the judge’s request to take a urine test.

The Court stated that because appellant did not consent to the urine test and that the test itself was illegal, it must view the affidavit without those statements. The Court further

found that it must strike from the affidavit the investigator's statement that the judge questioned appellant's client regarding the attorney's arrest on drug charges. Thus, the Court found it must determine whether the remaining information in the affidavit would lead a reasonable person to believe that evidence of a crime probably would be found in appellant's blood.

The Court acknowledged that the admissible evidence contained in the affidavit could be described as somewhat thin. Nevertheless, the information provided to the magistrate included the investigator's summary of his interviews with the judge and the ADA regarding their direct observations of appellant. Thus, the affidavit demonstrated that appellant was exhibiting a wide range and number of symptoms, all of which were consistent with the use of illegal substances. Moreover, the circumstances presented to the magistrate included the fact that the affidavit was sought by an investigating officer with significant training and experience in the area of narcotics. Additionally, the magistrate was entitled to give substantial weight to the fact that the judge had observed appellant for several hours and was of the opinion that appellant's behavior indicated the use of illegal narcotics.

Consequently, applying the deferential standard of review owed a magistrate's findings of probable cause, the Court found that these circumstances, taken together with the number and range of appellant's physical manifestations suggestive of drug use, as set forth in the affidavit, would lead a reasonable person to conclude that the use of illegal narcotics by appellant was an equally or more probable explanation for appellant's appearance and conduct than any explanation that did not involve illegal drug use. Accordingly, the Court concluded that the magistrate had a substantial basis for finding probable cause in this case. Therefore, because the blood draw was supported by a valid warrant, the trial court did not err in denying appellant's motion to suppress the results of his blood tests.

Failure to Yield; OCGA § 40-6-71

Oduok v. State, A18A1022 (7/11/18)

Appellant was convicted of failure to yield right of way pursuant to OCGA § 40-6-71. Appellant argued that his conviction must be

vacated because OCGA § 40-6-71 does not regulate "intersections controlled by a traffic light." Specifically, he argued that his failure to yield violation should have been charged under OCGA § 40-6-21, rather than OCGA § 40-6-71. He thus contended that the accusation was defective. The Court disagreed.

As an initial matter, the Court found that appellant waived this claim by failing to raise it in the trial court through a special demurrer. However, the Court found, even absent waiver, his contentions were meritless. OCGA § 40-6-21, is a "definitional section" that describes the various traffic signals on the roadway, but does not define a violation of the law. Instead, the legislature specifically addressed failure to yield through OCGA § 40-6-71, which by its plain terms requires a driver "intending to turn to the left within an intersection" to yield to oncoming traffic. Nothing in the statutory language restricts its application to intersections without a traffic signal. And, the Court noted, it has routinely affirmed convictions under OCGA § 40-6-71 for failure to yield at traffic-light controlled intersections.

Thus, the Court concluded, the State properly charged appellant with failure to yield pursuant to OCGA § 40-6-71. Nevertheless, the Court held, to the extent any language in *Bailey v. Bartee*, 205 Ga. App. 463, 463-464 (1) (1992) (physical precedent only), or *Corley v. Harris*, 171 Ga. App. 688, 689 (3) (1984), suggests a different conclusion, that language is disapproved.

Miranda; Custodial Questioning

State v. Daniell, A18A1564 (7/11/18)

Daniell was charged with aggravated assault. The evidence, very briefly stated, showed that the victim, a ninth grade student, was found unconscious in the school restroom. After reviewing surveillance video, Daniell, and Shane Black, were observed entering the restroom with the victim. A third student entered shortly thereafter. Daniell and Black were called to the administrative offices after they were observed leaving the restroom without the victim. Daniell was questioned separately in the principal's office. He stated that he did not know what happened and then opined that maybe the third student hit the victim. Because Daniell and Black were observed texting each other about the incident and perhaps getting

their story straight.

Moore, the school resource officer and a police officer, was summoned. She did not consider Daniell and Black a suspect, did not know if a crime had been committed, but seized the cell phones of Daniell and Black because she suspected they knew more than they were saying. Daniell's mother was summoned and when she arrived, she told her son to tell what he knew. Daniell then stated that he choked the victim until he was unconscious and then dropped him to the floor.

No one expected this admission. Daniell was asked to write a statement, which he did. Moore then left the room and attempted to contact the victim's mother, who had by this time taken the victim to the emergency room. When she made contact with the mother, and the mother indicated she wanted Daniell prosecuted, Moore went back inside and arrested him.

Daniell filed a motion to suppress his oral and written statements. The trial court found that after Moore seized Daniell's cell phone, the situation became a custodial interrogation requiring *Miranda* warnings. Because Moore had not informed Daniell of his rights before his subsequent oral and written admissions, the trial court suppressed those statements. The State appealed.

The Court reversed. Here, the Court found, Daniell was in the school principal's office; he had been called there by the school principal, not Officer Moore. When Moore arrived, she did not think of Daniell as a suspect and did not treat him like one. She was simply trying to find out what had caused a student to end up unconscious on the restroom floor. Daniell was allowed to speak to his mother, and actually it was his mother who elicited Daniell's statement. Daniell was not restrained while he was in the principal's office. Even after Daniell admitted choking the victim, Moore never restrained him or told him he was not free to leave, and she left him entirely unsupervised, with a clearly marked exit door near the office, while she left the room to contact the victim's mother.

Being called to the principal's office did not constitute an arrest, and being questioned by his own mother did not constitute a police interrogation. The Court noted that under the circumstances, Daniell had reason to feel he was in some trouble, but this situation did not transform into a custodial interrogation, even

after Moore took away his cell phone. Thus, the Court concluded, considering the totality of the circumstances, a reasonable person would not perceive he was deprived of his freedom of action in a meaningful way.

Moreover, the Court found, even if Daniell were considered to have been in custody, the fact that his own mother elicited the statement militates against suppression of the statement. *Miranda* is not implicated when a suspect in custody is questioned or encouraged to confess by a father, mother, wife, or girlfriend.

Rule 404 (b); Harmless Error
Thompson v. State, A18A1254 (7/18/18)

Appellant was convicted of trafficking in cocaine, possession of cocaine with intent to distribute, possession of a Schedule I controlled substance with intent to distribute, and possession of marijuana with intent to distribute. The evidence showed that an officer smelled a strong odor of marijuana coming from appellant's car after the officer stopped him for a traffic violation. A search of the vehicle resulted in the seizure of the drugs.

At trial, the State introduced evidence of appellant's prior criminal acts pursuant to Rule 404 (b) to show intent and absence of mistake or accident. Specifically, the State introduced evidence that in 2001, appellant was convicted of possession of cocaine with intent to distribute, felony obstruction and misdemeanor obstruction. The evidence showed that an officer observed what he believed to be a drug deal involving appellant. Appellant attempted to flee. The officer caught appellant and the two engaged in a "street fight" in which two additional officers were needed to subdue him. Appellant did not contest that the trial court erred in admitting the evidence of his prior cocaine conviction, but argued that permitting the jury to hear evidence of the circumstances surrounding his arrest and his convictions for obstruction violated Rule 404 (b)'s prohibition on the introduction of character evidence. The Court agreed.

The Court noted that while appellant was charged with a variety of drug offenses, he was not charged with obstruction or any similar offense. Nor did the record reflect that his arrest for these offenses involved any type of violent conduct or obstructive behavior. Thus, even though the trial court was within its discretion to admit evidence of his cocaine conviction

and the officer's testimony that he witnessed appellant engage in a hand-to-hand cocaine transaction, it abused its discretion when it allowed the State's witness to testify regarding the ensuing pursuit and altercation and the obstruction convictions stemming from it. That evidence did not yield any information which would allow the jury to assess his intent or the absence of mistake or accident regarding the drug charges against him in this case and was not otherwise relevant to any issue in the case. Thus, the trial court abused its discretion in admitting this evidence.

The Court then reviewed the evidence of the traffic stop and found that because the evidence was overwhelming, and in both opening and closing, the State referred to the testimony and evidence regarding appellant's prior drug convictions, but it did not refer to the testimony regarding the circumstances of appellant's conviction for obstruction, the error was harmless. Nevertheless, in so holding, the Court opined that the record suggested that the need for *testimony* about the circumstances of appellant's prior arrest was minimal and that the State's decision to elicit testimony regarding the incident was gratuitous and unnecessary. Moreover, in light of the physical evidence of appellant's guilt in the State's possession in this case, the decision to introduce testimony of the prior arrest needlessly jeopardized the State's case and risked potential reversal on appeal.