APPENDIX

APPENDIX

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APPENDIX A

Supreme Court of Georgia

306 Ga. 367
FINAL COPY

S19A0367

[Filed June 10, 2019]

CLARK	)
	)
v.	)
	)
THE STATE.	)
	)

OPINION

BOGGS, Justice.

Following a jury trial, Arthur Lawton Clark was convicted of felony murder predicated on possession of a firearm by a convicted felon and aggravated assault in connection with the shooting death of his brother-in-law, Sonny Barlow.[1] He raises the following

[1] The crimes occurred on May 12-13, 2015. On June 1, 2015, a Dodge County grand jury indicted Clark for malice murder, felony murder predicated on aggravated assault, aggravated assault, felony murder predicated on possession of a firearm by a convicted felon, possession of a firearm by a convicted felon, and manufacture of marijuana. Clark was tried in October 2016, and a jury found him guilty of the lesser included offense of voluntary

enumerations of error: (1) the trial court erred in denying his motion for a new trial because the State failed to disprove his affirmative defense of justification based on self-defense; (2) the trial court erred in refusing to give his requested charges on sudden emergency and self-defense; (3) the trial court erred in admitting into evidence documentation of his prior conviction for aggravated cruelty to animals; and (4) the trial court erred in admitting testimony about a prior incident. After review, we affirm.

1. Viewed in the light most favorable to the jury's verdict, the record shows as follows. Clark and the victim, Sonny Barlow, were brothers-in-law; Mr. Barlow was married to Clark's sister, Susan Barlow ("Ms. Barlow"). The Barlows lived with Clark's and Ms. Barlow's mother at a house on the mother's property in Dodge County.

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manslaughter as to malice murder, as well as felony murder predicated on aggravated assault, aggravated assault, felony murder predicated on possession of a firearm by a convicted felon, and possession of a firearm by a convicted felon. The trial court entered an order of nolle prosequi as to the manufacture of marijuana charge and sentenced Clark to life imprisonment for felony murder predicated on possession of a firearm by a convicted felon, plus 20 years to serve concurrently for aggravated assault. The trial court noted that the voluntary manslaughter and felony murder predicated on aggravated assault convictions were vacated by operation of law and merged the possession of a firearm by a convicted felon count with the corresponding felony murder count. On October 17, 2016, Clark filed a motion for new trial, which he amended on December 1, 2017. The trial court denied his motion on April 30, 2018. Clark filed a timely notice of appeal, and the case was docketed in this Court for the term beginning in December 2018 and submitted for decision on the briefs.

In 2012, Clark pushed Ms. Barlow against a door at the Barlow residence and hit her three times. Ms. Barlow obtained a family violence protective order that barred Clark from her house for 12 months. In 2013, Clark separately was convicted and sentenced after pleading guilty to aggravated cruelty to animals, making him a convicted felon. In 2014, Clark obtained a .22-caliber pistol that his mother had purchased some years earlier. He brought the pistol to the Barlow residence whenever he visited.

Around lunchtime on May 12, 2015, Clark went to the Barlow residence to see his mother and to bring her some lunch. He did not bring his gun inside because he did not see Mr. Barlow's vehicle at the house. Clark returned to the Barlow residence later that evening, hoping to visit with his mother again. When he arrived, he saw that Mr. Barlow's vehicle was at the house, so he tucked his .22-caliber pistol under his shirt. Ms. Barlow and their mother were inside, and Mr. Barlow was outside at his dog pen.

Ms. Barlow told her mother that Clark was there to visit, and her mother replied that she did not feel up to the visit, so Ms. Barlow told Clark that she and her husband each needed to take a shower and suggested that Clark leave. Mr. Barlow then came into the house and eventually told Clark that he needed to leave, but Clark did not leave. Instead, he and Mr. Barlow got into an argument with raised voices. Clark finally got up and moved toward the back door when Mr. Barlow pushed Clark, causing him to trip on the back door threshold and fall onto the porch deck, hurting his leg. When Clark got back on his feet, he and Mr. Barlow

continued arguing, and Ms. Barlow again asked Clark to leave. Clark and Mr. Barlow eventually moved off the porch toward Clark's car. They were no longer arguing, and it appeared that Clark was going to leave peacefully, when Clark suddenly reached under his shirt, pulled out his pistol, and shot Mr. Barlow twice. Clark got in his car and drove away, throwing out the gun on the side of a road. Ms. Barlow rushed to dial 911. In the back yard of the Barlow residence, law enforcement officers found Mr. Barlow, who appeared to have been shot twice in the chest, and two .22-caliber shell casings.

Clark testified at trial and admitted that he shot Mr. Barlow multiple times and that Mr. Barlow did not have a gun. No witness substantiated Clark's claim that Mr. Barlow was about to attack him. Forensic evidence was consistent with Ms. Barlow's testimony that Clark and Mr. Barlow were standing three or four feet apart when Clark fired. The two chest wounds, including the one fatal wound, showed no stippling or powder burns, and the medical examiner testified that they were inflicted at an indeterminate or distant range. Further, an agent of the Georgia Bureau of Investigation who responded to the crime scene testified that he saw no sign of a struggle. Another GBI agent who photographed Clark after his arrest testified that he did not notice or document any injuries to Clark's neck, chest, or rib area. He also testified that nothing on Clark's clothes at the time of arrest indicated any kind of a struggle or physical altercation.

After receiving a "Be On the Look Out" notification for Clark's car, a Dodge County Sheriff's Deputy saw

Clark's car, performed a traffic stop, searched Clark, and found no weapon. Officers later searched Clark's residence, pursuant to a search warrant, and recovered a label and price tag for a .22-caliber semi-automatic pistol and .22-caliber ammunition that appeared to match the shell casings recovered from the crime scene.

We conclude that the evidence presented at trial and summarized above was sufficient to enable a rational trier of fact to find Clark guilty of the crimes of which he was convicted beyond a reasonable doubt. See *Jackson v. Virginia*, 443 U. S. 307, 319 (III) (B) (99 SCt 2781, 61 LE2d 560) (1979). The jury was free to reject Clark's testimony that he shot Mr. Barlow in self-defense, believing that Mr. Barlow was about to attack him. And Ms. Barlow testified that she saw Clark, without provocation, draw his weapon and shoot Mr. Barlow, who was unarmed. See OCGA § 24-14-8 ("The testimony of a single witness is generally sufficient to establish a fact."); *Dean v. State*, 273 Ga. 806, 807 (1) (546 SE2d 499) (2001) ("This Court does not reweigh evidence or resolve conflicts in testimony; instead, evidence is reviewed in a light most favorable to the verdict, with deference to the jury's assessment of the weight and credibility of the evidence.").

2. Clark contends that the trial court erred in refusing to give his requested instructions on sudden emergency and self-defense. Specifically, Clark requested that the trial court instruct the jury, "Where upon a sudden emergency, one suddenly acquires actual possession of a pistol for the purpose of self defense, if you find that to have been the purpose, then he would not be in violation of any law prohibiting a

felon from being in possession of a firearm." *Cauley v. State*, 260 Ga. 324, 326 (2) (c) (393 SE2d 246) (1990). Clark also requested that the trial court instruct the jury: (1) that "[a] felon would not be in violation of the firearm possession statute if he was found to be in possession of a firearm for purpose of self-defense"; (2) that "where the Defendant acts in self-defense, the jury is not permitted to find him guilty of the underlying felony, and accordingly [he] cannot be found guilty of felony murder"; and (3) that "[a] convicted felon is justified in possessing a weapon if he reasonably believed it was the only way to prevent his own imminent death or bodily injury."

Clark did not object to the charge as given, however, so we review only for plain error. See OCGA § 17-8-58 (b). In *State v. Kelly*, 290 Ga. 29 (718 SE2d 232) (2011), this Court adopted the federal plain error standard, which has four prongs:

> First, there must be an error or defect — some sort of deviation from a legal rule — that has not been intentionally relinquished or abandoned, i.e., affirmatively waived, by the appellant. Second, the legal error must be clear or obvious, rather than subject to reasonable dispute. Third, the error must have affected the appellant's substantial rights, which in the ordinary case means he must demonstrate that it affected the outcome of the trial court proceedings. Fourth and finally, if the above three prongs are satisfied, the appellate court has the *discretion* to remedy the error — discretion which ought to be exercised only if the

> error seriously affects the fairness, integrity or public reputation of judicial proceedings.

(Citation and punctuation omitted; emphasis in original.) Id. at 33 (2) (a).

Here, there was no clear or obvious error. A charge on sudden emergency may be appropriate when a defendant, who is on trial for felony murder predicated on possession of a firearm by a convicted felon, otherwise could not successfully assert self-defense because he was engaged in the felony of possessing a firearm at the time that he was defending himself. *Austin v. State*, 300 Ga. 889, 891 (2) (799 SE2d 222) (2017). However, "[a] trial court does not err by failing to give a jury charge where the requested charge is not adjusted to the evidence presented at trial." (Citation and punctuation omitted.) Id. Thus, a sudden emergency charge is not required where the defendant "did not suddenly acquire actual possession of the gun that he used to shoot [the victim] while trying to defend himself," but instead "already possessed [the] firearm that he chose to use before being placed in any situation that required him to actually defend himself." Id. at 891-892 (2).

Clark "provided no evidence of any sudden emergency that caused him to suddenly possess a firearm to defend himself." *Austin*, 300 Ga. at 891-892. Clark's own testimony was that he acquired the .22-caliber pistol that he used to shoot Mr. Barlow a year before the shooting, and he kept it hidden except to bring it with him whenever he visited his mother and Mr. Barlow was present. Indeed, on the day of the incident, intending to go to the Barlow residence to

visit his mother, Clark put the pistol in his car. And, when he saw Mr. Barlow's vehicle in the driveway, he chose to tuck the pistol under his shirt and carry it inside the home. Therefore, the evidence showed that Clark already possessed the pistol before he was confronted with any situation that would require him to defend himself, and the trial court's refusal to give Clark's requested instructions on sudden emergency was not a clear or obvious error. See *Kelly*, 290 Ga. at 33 (2) (a).

As for Clark's requested charges regarding self-defense, the trial court provided an extensive instruction on justification, including self-defense, which closely tracked the Georgia Suggested Pattern Jury Instructions. The trial court instructed the jury on the State's burden to disprove the affirmative defense beyond a reasonable doubt; the reasonable belief necessary to justify self-defense by use of force, including the use of deadly force; and when the jury has a duty to acquit based on justification. The trial court also explained that "[t]he fact that a person's conduct is justified is a defense for prosecution of any crime based on that conduct." These instructions adequately covered justification, including self-defense, and the State's burden of proof. The trial court's charge, therefore, was not clear or obvious error. See *Kelly*, 290 Ga. at 33 (2) (a); *Morris v. State*, 303 Ga. 192, 198-199 (V) (B) (811 SE2d 321) (2018).

3. Clark argues that the trial court erred by admitting into evidence State's Exhibit 65, the final disposition and sentence on his 2013 felony conviction for aggravated cruelty to animals. The exhibit included

the indictment, a form showing Clark's change of plea from not guilty to guilty, and a sheet reflecting the entry of a judgment of conviction and sentence for that crime. Clark contends that the admission of the exhibit was error because he had stipulated to the conviction for purposes of the felony murder charge and the danger of the jury using the evidence as inadmissible character evidence outweighed its probative value.

Clark makes no claim of harm stemming from the exhibit's admission beyond the fact that it references his prior felony. The only information given in the exhibit regarding Clark's felony conviction is that he was charged with aggravated animal cruelty for "knowingly and maliciously caus[ing] death to a dog belonging to John Woodard, an animal[,] by shooting him," and that Clark pled guilty to that offense. In contrast, Clark and a rebuttal witness testified extensively and without objection about the prior felony offense in far greater detail than that contained in the exhibit.

The admission of this exhibit was discussed repeatedly at trial. Initially, during the State's case-in-chief, the State sought to introduce the exhibit to prove the charge of possession of a firearm by a convicted felon. Clark stipulated that he was a convicted felon at the time of the shooting, and the trial court did not admit the exhibit at that time. The State later took issue with the trial court's refusal to admit the exhibit, and Clark argued that, because he stipulated to being a convicted felon, the specific details of the prior conviction were impermissible character evidence. The

trial court again ruled the exhibit inadmissible, but noted that it could become admissible at a later time.

After the State rested, Clark elected to testify. During cross-examination, the State asked Clark whether he and the State had entered into a stipulation that he was a convicted felon. Clark agreed and then volunteered that he previously pled guilty to aggravated cruelty to animals. Clark then testified in detail about the facts of the incident that led to that conviction. Specifically, Clark testified that he walked up to his neighbor's truck and told the neighbor that he was going to shoot the neighbor's dog, which was in the back of the truck; that the neighbor's only response was, "well, I'm sorry"; and that he then shot the neighbor's dog. In rebuttal to Clark's testimony the State called John Woodard, the neighbor, who testified that he was parked on the side of the road with his dog in the back of his truck when Clark pulled up beside him in the street and got out of his vehicle. According to Woodard, Clark said, "your dog killed my cat," and then pulled out a gun and shot Woodard's dog twice. Woodard testified that Clark then said, "okay[,] bud, we're even," and then got back into his vehicle and sped off. Clark's counsel did not object to the State's questioning of Clark or to Woodard's testimony, and Clark does not enumerate as error the admission of their testimony. The propriety of this testimony is therefore not before this Court for consideration.

Thereafter, the State again moved to admit into evidence the exhibit containing the documentation of Clark's guilty plea and judgment of conviction for aggravated animal cruelty for impeachment purposes

only. The trial court admitted the exhibit over Clark's objection purportedly for the limited purpose of attacking Clark's credibility. But even if the trial court erred in allowing the exhibit into evidence, any error was harmless. See *Jones v. State*, 305 Ga. __ (3) (__ SE2d __) (2019) (explaining that "[a] nonconstitutional error is harmless if it is highly probable that the error did not contribute to the verdict" (citation and punctuation omitted)). The unobjected-to testimony concerning the felony was far more damaging and detailed in content than was the reference to the felony in the exhibit. In addition, the other evidence of Clark's guilt was strong, as discussed in Division 1 above. Thus, we conclude that it is highly probable the outcome of the trial would have been no different had the exhibit not been introduced. See id. at 657 (3) (any error in admission of defendant's prior conviction was harmless when defendant admitted that he shot victim, no witnesses substantiated defendant's self-defense claim, police found no gun near victim's body, and forensic evidence strongly suggested only one gun was fired at the scene).

4. Clark next contends that the trial court erred in allowing Ms. Barlow to testify about a prior bad act, specifically, the 2012 incident in which Clark pushed her against a door and hit her. Because the incident did not occur between Clark and the victim, Clark argues that the testimony was irrelevant and prejudicial. The District Attorney argues that our review of this issue is limited to plain error because Clark did not object to the testimony about that prior bad act. However, the trial court ruled definitively at a pretrial hearing that evidence of the act would be admissible, so Clark was

not required to object to the evidence at trial to preserve his claim of error for appeal. See *Anthony v. State*, 298 Ga. 827, 831-832 (4) (785 SE2d 277) (2016). Therefore, this issue is entitled to ordinary appellate review for abuse of discretion. See *Booth v. State*, 301 Ga. 678, 682 (3) (804 SE2d 104) (2017).

Evidence of a prior bad act cannot be admitted to prove the character of a person, but it may "be admissible for other purposes, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." OCGA § 24-4-404 (b) ("Rule 404 (b)"). The Attorney General argues that Rule 404 (b) does not apply here because the evidence was "intrinsic." We agree.

"The limitations and prohibition on 'other acts' evidence set out in [Rule 404 (b)] do not apply to 'intrinsic evidence.'" (Footnote omitted.) *Williams v. State*, 302 Ga. 474, 485 (IV) (d) (807 SE2d 350) (2017). Evidence is intrinsic when it is "(1) an uncharged offense arising from the same transaction or series of transactions as the charged offense; (2) necessary to complete the story of the crime; or (3) inextricably intertwined with the evidence regarding the charged offense." (Citations and punctuation omitted.) Id. Evidence that explains the context of the crime is admissible if it "forms an integral and natural part of an account of the crime, or is necessary to complete the story of the crime for the jury." (Citations and punctuation omitted.) Id. at 485-486 (IV) (d).

The evidence must also meet the balancing test of OCGA § 24- 4-403, which says, "Relevant evidence may

be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." See *Williams*, 302 Ga. at 485 (IV) (d). Here, the trial court did not abuse its discretion in admitting the evidence regarding the prior incident between Clark and Ms. Barlow because it was intrinsic evidence. The testimony regarding Clark's hitting and pushing Ms. Barlow at her home in 2012 was necessary to complete the story of the crime for the jury. It provided context for the charged offenses to explain why the Barlows were persistent with their requests that Clark leave; why Mr. Barlow did not want Clark at his residence; why Mr. Barlow did not feel comfortable taking a shower, leaving Clark alone in the room with his wife; and why Mr. Barlow followed Clark outside of the home to ensure that he left. Because the evidence was intrinsic, it was outside the reach of Rule 404 (b). See *Williams*, 302 Ga. at 485 (IV) (d). And we cannot say that the trial court abused its discretion in finding that the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice.[2] See OCGA § 24-4-403. Therefore, the trial court did not err in admitting the evidence.

Judgment affirmed. All the Justices concur.

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[2] As we have noted previously, "the exclusion of evidence under [OCGA § 24-4-403] is an extraordinary remedy which should be used only sparingly." (Citation, punctuation and footnote omitted.) *Olds v. State*, 299 Ga. 65, 70 (2) (786 SE2d 633) (2016).

Decided June 10, 2019 – Reconsideration denied July 1, 2019. Murder. Dodge Superior Court. Before Judge Wall.

Thomas F. Jarriel, for appellant.

Timothy G. Vaughn, District Attorney, Christopher C. Gordon, Assistant District Attorney; Christopher M. Carr, Attorney General, Patricia B. Attaway Burton, Deputy Attorney General, Paula K. Smith, Senior Assistant Attorney General, Michael A. Oldham, Assistant Attorney General, for appellee.

APPENDIX B

IN THE SUPERIOR COURT OF DODGE COUNTY
STATE OF GEORGIA

CASE NO.: 15R-8538
PRE-TRIAL MOTIONS
VOIR DIRE

[Dated October 11, 2016]

STATE OF GEORGIA	)
	)
vs.	)
	)
ARTHUR LAWTON CLARK	)
	)

The transcript of the proceedings before The Honorable Judge Sarah F. Wall, reported by Jennifer Anderson, Certified Court Re porter, on the 11th day of October, 2016.

APPEARANCES:

FOR THE STATE:

MR. CHRISTOPHER GORDON
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OCONEE JUDICIAL CIRCUIT
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FOR THE DEFENDANT:

MR. LEE CANNON
THE CANNON LAW FIRM
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McRae, Georgia 31055

Jennifer Anderson, CCR, CVR
Official Court Reporter
1909 Scotland Road
Dublin, Georgia 31021
(478) 290-8373

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PROCEEDINGS

10:41 am.

THE COURT: All right, we're here on -- to complete our motions hearing the Clark case, 15R-8538. Let me first address counsel, there was -- the Court received via email from both Judge Mullis's office and from the Clerk's Office, a copy of a motion that was filed, I believe, on Friday of last week -- that being last Friday, after we were here with motions. It was what is entitled a motion to recuse and an affidavit, and it was filed pro se by Mr. Clark, and it was dated October 3, 2016. And, again, I received a copy of this on Friday, the 7th. And it was addressed to Chief Judge Mullis, and was not served upon myself, except for by Judge Mullis forwarding it to my office and the Clerk forwarding it to my office. Let me say, that motion to recuse, is denied by the Court. I don't think I need to hear anything from either the State or Mr. Cannon, as defense counsel. Mr. Clark is represented by counsel,

so it would be improper for him to file pro se motions, when he's represented by counsel. The Court finds that it was improperly filed, and that also, in addition, Mr. Clark, of course, failed to present a valid basis for recusal. So the Defendant's motion is dismissed and the Court is entering an order to that effect, on this

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date and will, of course, provide -- I have a written order, and I will provide a copy of that to both the State and to Mr. Cannon. Let me inquire, is there anything that either of you, the State or Mr. Cannon, wishes to say in response to that?

MR. GORDON: No, Your Honor.

MR. CANNON: No, Your Honor.

THE COURT: All right. And then the other matter that we need to take up this morning, is on -- I think the State had provided notice to the defense, and we're here to take up those issues regarding the similar transaction.

MR. GORDON: Yes, Your Honor.

THE COURT: All right.

MR. GORDON: Your Honor, just by way of proffer with the first notice of similar transaction, that would be the underlying -- the case the defendant is under convicted felon status for. I would expect Mr. Jeff Woodard to testify that he was near the defendant's residence in his truck, had a passenger in the car, a dog in the back of the truck and Mr. Clark abruptly

approached his truck, produced a firearm and shot and killed the dog in the back of the truck.

MR. CANNON: John.

MR. GORDON: John Woodard. I said Jeff. I apologize. Jeff is his son, I believe. This is offered, Your Honor,

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in 24-4-404(b) for a variety of reasons. This was a -- very similar to the case at hand. This is going to be, I think, a -- the evidence would show an instance where the defendant had a quarrel with somebody, lost his temper, produced a firearm, possibly the same caliber, I'm not sure and shot and killed, in that case, an animal, but in close proximity to two individuals. And in that case, the Defendant also attempted to assert a self-defense, or a defense of property claim, under the same set of facts.

And, Your Honor, this is offered to show motive, possession of a firearm, producing it in such a manner, opportunity, intent, preparation, planned knowledge, identity and absence of mistake of accident. Notice was provided. Under the second instance, Your Honor, that is offered to show -- that's an altercation with Susan Barlow that Mr. Clark was arrested for. The charges were ultimately dismissed, and I have some photographs that I think I produced to the Defendant last week -- yeah, last week. But what that would be offered for, Your Honor, is more of a prior difficulties between the victim and the Defendant, still under 24-4-404(b). But, I would note that the requirements for such evidence are even less strenuous than the similar

transaction notice. Notice is not even required for that type of incident, but the State furnished it out of an abundance of caution. I cited several cases

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to you last week, Your Honor, that just talked about the inclusive nature of this rule and I would ask to be allowed to present the similar transaction notice -- or the similar transaction of the dog, as part of the case in Chief, and I would ask to be allowed to present the prior difficulties between the victim and the defendant, as part of the victim's wife's testimony in the State's case in chief, again, to show the factors set forth in 24-4-404(b).

THE COURT: Mr. Cannon?

MR. CANNON: Your Honor, under -- again, this is another part of the law that's seen some change, and basically, this is another one of those like we argued last week, where we have to kind of go to Federal law to get some idea of what to do with this, since the State adopted that. But, basically, what has been said is the -- the whole bent of mind thing is out, and that was the whole point. I think Georgia was the only state that ever had any type of history of arguing that things could come in to show bent of mind of the defendant, and that's pretty much gone with these new rules. So basically -- and another thing is, if you look at the federal case law, it seems like that, even though Georgia has kept the name, similar transactions, that's a little bit of a misnomer, because similarity really doesn't have a whole lot to do with it anymore and the example that's given is basically, if you

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have a case that where somebody robbed a liquor store, and the prosecution wants to offer evidence that the accused purchased cocaine an hour after the robbery, then the courts have found that that's okay, even though it's not similar, because it tends to show something besides propensity. It shows, okay, this person wanted to buy cocaine, so they robbed a liquor store and the two kind of go hand in hand as to what the motive could have been for robbing the liquor store. So they're not even similar. So that whole thing has kind of been thrown out the window too.

But the case that I want to point out is U.S. versus Spikes, as sort of the rule that eveybody's looking to as far as handling these cases. It's 158 Federal 3rd 913, 6th Circuit, 1998. And, basically, it says discriminating between the illegitimate propensity use of evidence of the accused of the crimes of acts and the legitimate 404(b) use, it helps if one first isolates the illegitimate use by describing how the evidence impugns the accused character, in a way that suggests the accused has a propensity to commit the crime charged. Next, asks what other relevance the evidence has, if any, apart from propensity use. And my argument here is, that the State should not be allowed to use the -- first let's start with the conviction, or the pulling the firearm on Mr. Woodard. There's no other --

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there's no other use of that, than propensity. There's nothing it's not like the liquor store, it's not like the cocaine. There's no -- it's not to prove motive. It's not to

prove anything like that. All -- the whole purpose in getting that in, in a chief case, would be propensity, which this case law and the federal rules specifically says that's what you can't use it for.

So I think t hat it fails that test, as far as coming in on the case. And I know rebuttal's a whole different thing, but we don't know what's going to happen at trial. But I would say that it shouldn't be allowed to come in, in the case in chief. And as far as the second thing, the alleged physical assault on Susan Barlow, I would argue that that shouldn't come in, in the case in chief, under prior difficulties between the defendant and the victim, because Susan Barlow is not the victim. The argument was, okay, this was a prior difficulty between -- this was a difficulty between Susan Barlow, the wife of the alleged victim, and the defendant, not between the alleged victim and the defendant. So our argument is, it shouldn't come in, in the case in chief. If we open the door, we open the door, at some point and time. But we don't know what's going to happen in trial, and we don't know that we'll ever open the door.

THE COURT: Anything further?

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MR. GORDON: Just to point out that 24-4-404 does include, you know, the language of -- it may be -- it may, however, be admissible for other purposes, including, but not limited to, the factors given. That's a deviation from the federal statute It tends to show the Georgia statute is more inclusive. And just to say that, I would ask Your Honor consider the facts that a

physical altercation with a spouse could be considered prior difficulties with that victim's spouse.

THE COURT: All right. I will take break. We're going to be here all morning, and I'll come back out in a few minutes and I have other matters to handle as well, so I'll get you a ruling on this as well. Let me first inquire, now there is no dispute, is there, regarding the prior conviction of Mr. Clark, relating to the dog incident? Is the defense disputing that that's admissible in the case in chief? Not the facts surrounding the conviction.

MR. CANNON: No, just the fact that there is a conviction.

THE COURT: The fact that there is a conviction. I just want the record to be clear.

MR. CANNON: No, Your Honor.

THE COURT: Okay. That would of course go -- if there is an introduction in the case in chief, as to the

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conviction, it would go in at -- with limiting instruction chat it relates only as to the possession of a firearm by a convicted felon, as to that count.

MR. CANNON: Correct.

THE COURT: Okay. Anything else?

MR. CANNON: But not the facts.

THE COURT: But not the facts. That's what I'll rule on in just a moment, regarding the facts. All right. We'll take a few minutes.

(Whereupon, there was a recess in the proceedings from 10:53 to 11:50 a.m.)

THE COURT: We'll come back to order on the Clark matter. After consideration of the State's proffer and the arguments presented, by both the State and the Defense, as relates to the similar transaction paragraph, identified as number one, regarding the Woodard and the shooting of the dog incident, the State is not going to allow that -- the Court is not going to allow the State to get in that in its case in chief. I find that there's been no demonstration that the prior act proves any aspect of the current acts charged. So it will not be permitted in the case in chief.

As to paragraph number two regarding the alleged prior difficulties relating to Susan Barlow, the Court does find that that would be admissible and could be presented by the State in its case in chief, or as the State deems

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appropriate. Any other matters that we need to take up?

MR. GORDON: No, Your Honor. Not from the State.

MR. CANNON: No, Your Honor.

THE COURT: All right. I will see you gentlemen back at one. Are you going to be prepared, depending

on how long it takes in jury selection, for openings this afternoon?

MR. GORDON: The State is.

MR. CANNON: Yes, Your Honor.

THE COURT: Okay. Just depends on how long it takes with regard to jury selection and for this jury -- for us to seat the jury. If it's -- I'll just go ahead and let you know, if it's 4:00 or 4:30, before we get a jury, I'm not going to keep them here today until 5:30 or 6:00 for opening statements. We'll come back tomorrow and do that. Now, you gentlemen have indicated two to three days, is that correct, excluding jury selection?

MR. GORDON: Yes, ma'am.

MR. CANNON: Yes, Your Honor.

THE COURT: All right. Then I will see you back at 1:00. And when you gentlemen come back and get your items set up, if you will come in chambers we will go through the jury list with the Clerk to see who's present and who has been excused or did not appear and then we'll come out and do the voir dire.

* * *

APPENDIX C

SUPREME COURT OF GEORGIA

Case No. S19A0367

[Filed July 1, 2019]

ARTHUR LAWTON CLARK	)
	)
v.	)
	)
THE STATE.	)
	)

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

All the Justices concur.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.
Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/_____, Clerk