

THIS WEEK:

- **Impeachment; Merger**
- **Jury Charges; Closing Arguments**
- **Suspended Licenses; Out-of-State Driving Histories**
- **Ineffective Assistance of Counsel; Conflict of Interest**
- **Polygraphs; Rule 404 (b)**
- **Identification Testimony; Rule 701**
- **Electronic Eavesdropping; Rule 404 (b)**

Impeachment; Merger

Hawkins v. State, A19A0717 (6/24/19)

Appellant was convicted on 16 counts relating to her role in the unlicensed operation of Serene Reflections, a care facility for disabled persons, and the neglect and abuse endured by McCargo, Wilson, and Bacon, the residents of that facility. Appellant argued that the trial court improperly allowed the State to impeach Greg Roseberry, who helped produce a chart of Serene Reflections' finances that appellant relied on in her defense at trial. by presenting evidence of his prior conviction. Appellant argued that the chart that Roseberry prepared was not hearsay because she provided all the data that was used in the chart, and Roseberry merely assembled the data into a chart, and, therefore, Roseberry should not have been impeached as a hearsay declarant. Appellant also contended that the trial court erred when it denied her motion for a mistrial based on the improper impeachment. The Court disagreed.

The Court noted that hearsay is defined as a “statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” OCGA § 24-8-801 (c). A “statement” is an “oral or written assertion.” OCGA § 24-8-801 (a) (1). “When a hearsay statement has been admitted in evidence, the credibility of the declarant may be attacked and, if attacked, may be supported by any evidence which would be admissible for those purposes if the declarant had testified as a witness.” OCGA § 24-8-806.

The Court found that during the direct examination of appellant, the defense introduced into evidence a chart that demonstrated Serene Reflections's Medicaid billings for Bacon and Wilson to demonstrate that the amount of money involved would have been too small for appellant to have had a financial motive to exploit them. Appellant testified that she “worked ... together” on “the content of the chart” with Roseberry, who was her accountant and the accountant for Serene Reflections. Appellant further testified that Roseberry “plugged in the information in the boxes” in the chart. Thus, the Court concluded, Roseberry was shown to be an author of the information in the chart, which was created outside of trial. Because Roseberry did not testify to that information at trial, and appellant introduced the chart for the purpose of showing the true financial statements of Serene Reflections regarding the billing for Wilson and Bacon, the information

in the chart was hearsay. The State therefore was entitled to impeach Roseberry's credibility, and, as a result, the trial court did not abuse its discretion when it denied appellant's motion for a mistrial based on the impeachment.

Appellant also argued that her convictions on Counts Eleven, Twelve, and Thirteen for abuse of a disabled person through the deprivation of essential services should have merged with her convictions on Counts Two, Three, and Four for the neglect of a disabled person. The Court agreed.

Among other provisions, a crime merges into another if it “is established by proof of the same or less than all the facts” that were required to establish the other crime. OCGA § 16-1-6. To determine whether two distinct statutory crimes merge, courts must use the required evidence test, which asks whether each statutory provision requires proof of a fact which the other does not. If so, then two offenses exist, and one is not “included in” the other.

The Court noted that the crime of neglect of a disabled person occurs when a person “willfully deprives a disabled adult ... of health care, shelter, or necessary sustenance to the extent that the health or well-being of such person is jeopardized.” OCGA § 16-5-101 (a). On the other hand, “[a]ny person who ... willfully deprives of essential services a disabled adult” shall be guilty of abuse of a disabled person. OCGA § 16-5-102 (a). “Essential services” is defined in OCGA § 16-5-100 (5) (2013) as “social, medical, psychiatric, or legal services necessary to safeguard a disabled adult’s ... rights and resources and to maintain the physical and mental well-being of such person. Such services may include, but not be limited to, the provision of medical care for physical and mental health needs, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, and protection from health and safety hazards.”

Here, the indictment charged that appellant and her co-conspirators committed the offense of neglect (constituting Counts Two, Three, and Four) by “willfully depriv[ing McCargo, Wilson, and Bacon] of health care, shelter, and sustenance to the extent that the health and well-being of such person[s] was jeopardized.” Similarly, the indictment charged in Counts Eleven, Twelve, and Thirteen that appellant and her co-conspirators committed the offense of abuse by “willfully depriv[ing McCargo, Wilson, and Bacon] of . . . the provision of shelter that was free from health and safety hazards in and around the shelter; adequately heated and ventilated shelter; assistance in personal hygiene, including proper bathing and toiletry facilities; the provision of adequate clothing; the provision of adequate and nutritionally balanced meals.”

The Court concluded that these offenses, at least as charged, merged under the required evidence test. The crime of neglect requires proof of an additional element that the crime of abuse by deprivation does not—namely, that the deprivation be “to the extent that the health or well-being of [the victim] is jeopardized.” OCGA § 16-5-101 (a). However, the crime of abuse by deprivation, as charged here, did not require the proof of any additional facts that the crime of neglect did not. All of the acts of deprivation charged in the indictment for the counts of abuse by deprivation fell under the categories of deprivation “of health care, shelter, and sustenance” that were used to support the convictions for neglect. While the broad statutory definition of “essential services” may include some services that do not fall under the categories of deprivation listed in the statute of conviction for neglect, the important question under the required evidence test is not whether the crimes have overlapping elements, but whether, looking at the evidence required to prove each crime, one of the crimes was established by proof of the same or less than all the facts required to establish the commission of the other crime charged. Under these circumstances, the Court held, appellant's convictions on Counts Eleven, Twelve, and Thirteen for

abuse by deprivation of essential services merged into her convictions on Counts Two, Three, and Four for neglect. Thus, appellant's convictions on these counts were vacated and the case remanded to the trial court for resentencing.

Jury Charges; Closing Arguments

Seals v. State, A19A0468 (6/24/19)

Appellant was convicted of rape (two counts), burglary, aggravated assault, false imprisonment, third-degree cruelty to children (three counts), and giving a false name to law enforcement. The record showed that before the State rested, appellant requested a charge on sexual battery as a lesser-included offense at least as to the rape charge involving one of the two rape victims. The court took it under advisement. Following this discussion, the State presented its final witness and rested its case. The defense then presented several witnesses, including appellant, who admitted having sex with both victims, but claimed both sexual encounters were consensual. Then, after the close of evidence and closing arguments, the trial court addressed some outstanding issues before it charged the jury. The parties agreed that sexual battery was a lesser-included offense of rape, and the court ruled that it would give the instruction as to both rape charges, which it did.

Nevertheless, appellant argued that the trial court erred by failing to rule on his request for the sexual-battery charge until *after* closing arguments, thereby depriving his counsel of the opportunity to make arguments related to that charge. The Court noted that OCGA § 5-5-24 (b) provides, in relevant part: "In all cases, at the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may present to the court written requests that it instruct the jury on the law as set forth therein. . . . The court shall inform counsel of its proposed action upon the requests *prior to their arguments* to the jury but shall instruct the jury after the arguments are completed. (Emphasis supplied.).

The Court stated that this is a mandatory rule, designed to permit counsel to argue the case intelligently before the jury. And in applying this rule, Georgia courts have found, in some cases, that a trial court's failure to inform the parties of which jury instructions it planned to give prior to closing arguments constituted reversible error. However, appellant did not object at the time and therefore, the Court stated, its consideration of this issue was limited to the deferential plain-error standard of review.

And here, the Court found, at trial, appellant's sole defense was that he had consensual sex with the victims, he never attacked them, and they fabricated their rape allegations. If the jury believed this defense, it would not be authorized to find appellant guilty of rape or sexual battery. Thus, even if trial counsel had known he could argue to the jury that it could find appellant guilty of sexual battery instead of rape, such an argument would have been in direct conflict with appellant's own theory of defense. Moreover, as acknowledged by appellant's trial counsel at the motion-for-new-trial hearing, the evidence presented at trial, including the victims' testimony, the DNA evidence, and appellant's admission to having sex with both victims, did not support a conviction for sexual battery because a rape conviction requires evidence of penetration, while sexual battery does not. If counsel had argued otherwise during his closing argument, it would have been unsupported by the evidence and may have served only to confuse the jury. Thus, the Court concluded, given these particular circumstances, appellant could not show that he was harmed when the trial court failed to notify his counsel of its ruling on the sexual-battery charge before closing arguments, much less that the alleged error affected his substantial rights or the outcome of the trial court proceedings.

Appellant also argued that the trial court erred in giving an improper sequential jury charge, which instructed the jury that it must unanimously reach a verdict as to rape before considering whether he was guilty of the lesser-included offense of sexual battery. The Court stated that a sequential charge requiring the jury to consider a lesser-included offense only if they have considered and found the defendant not guilty of the greater indicted offense is not appropriate when there is evidence that would authorize a charge on the lesser offense. But instructing the jury that it must consider the greater offense before considering any lesser-included offense is not equivalent to instructing them that they may consider the lesser included offense only if they have considered and found the defendant not guilty of the greater offense. Indeed, a trial court may instruct a jury to consider a greater offense before it considers a lesser offense, but a trial court may not instruct the jury that it must reach a unanimous verdict on the greater offense before considering the lesser offense.

And here, after reviewing the trial court's instructions, the Court found that the sequential charge on rape and sexual battery was not improper. First, a sequential jury charge is only improper if, there is sufficient evidence to authorize a guilty verdict on the lesser offense, and here, the evidence did not support a sexual-battery conviction because it was undisputed that appellant penetrated both victims. Second, a trial court is permitted to instruct the jury to consider the greater-indicted offense before considering the lesser-included offense, which is exactly what the trial court did in its instruction. Thus, the Court found, there was simply no language in the challenged instruction on rape and sexual battery suggesting that the jury was required to reach a unanimous verdict as to rape before considering the lesser-included offense of sexual battery. Moreover, the trial court did not use the word "unanimous" or any other language that could have given the jury the impression that it must reach a unanimous verdict on rape before even considering sexual battery. And because Georgia's appellate courts have held that sequential jury instructions similar to the one in this case were not reversible error, the Court found that appellant failed to show error.

Suspended Licenses; Out-of-State Driving Histories

Hines v. State, A19A0072 (6/24/19)

Appellant was accused of possession of cocaine, fleeing or attempting to elude an officer, DUI (less safe), and driving with a suspended license. He was acquitted of the DUI charge, but convicted of all the remaining offenses. He contended that the trial court erred in admitting evidence of his Mississippi driving record, which revealed his prior DUI conviction, because it was unduly prejudicial under Rule 403. The Court disagreed.

The record showed that the State sought to introduce appellant's Mississippi driving record to show that his license was suspended on the night in question and he had been notified of the suspension. The driver's history showed that appellant had one prior conviction for driving with a suspended license and one for DUI. The trial court stated it "[did]n't think the State ha[d] any other way to prove [notice] other than tendering a certified copy of the State of Mississippi Department of Public Safety showing [appellant's] DUI conviction[,] which resulted in his suspension, showing that his license was suspended at the time and that the reinstatement date was [almost a year after his arrest]". Subsequently, appellant's driving record given to the jury showed his prior DUI conviction, but his prior suspended-license offense was redacted.

The Court initially stated that while appellant challenged the admissibility of other aspects of his driving record, he never argued to the trial court that his prior DUI conviction should be excluded as unduly prejudicial. Thus, its review was limited to whether there was plain error. And here, the Court found, citing only to the general standard for when to exclude

relevant evidence, as delineated in Rule 403, appellant argued that his driving record was inadmissible because “[t]he knowledge that a defendant had a prior conviction for [DUI] could prejudice a juror's decision on *any* future offense.” (Emphasis supplied). But, the Court stated, appellant provided no legal authority for this conclusory contention, and significantly, although the jury was aware that he had a prior DUI conviction, he was acquitted of the DUI charge in this case. Further, the trial court found that this evidence was the only means by which the State could prove that appellant's license was suspended at the time of his arrest and he was on notice of the suspension, both of which are essential elements of driving with a suspended license. Further, appellant—who refused to stipulate that he was aware of the license suspension—acknowledged that his redacted driving record was “clearly relevant” evidence to prove the elements of his offense. And, Rule 402 provides that all relevant evidence is admissible absent some specific statutory, rule-based, or constitutional exception excluding such elements.

Accordingly, the Court stated, under plain-error review, appellant bears the burden of persuasion with respect to prejudice, and he was required to affirmatively show that the error probably did affect the outcome of his trial. And while appellant made vague references to other possible ways the State could have proven the notice element of driving with a suspended license other than through his driving record, he did not identify any specific evidence available in this case that the State could have presented to prove that element of his offense. Thus, the Court concluded, under these particular circumstances, appellant failed to show that the admission of his prior DUI offense was an error, much less a clear and obvious one, that likely affected the outcome of the trial.

Ineffective Assistance of Counsel; Conflict of Interest

Shelton v. State, A19A0358 (6/24/19)

Appellant was convicted of one count of armed robbery and three counts of aggravated assault. The record showed that on January 6, 2010, appellant's trial counsel—a circuit public defender—filed a motion for new trial. Then, in February 2013, the same attorney who initially filed the 2010 motion for new trial, requested that the trial court hold a hearing on the motion. No hearing, however, was conducted on this request.

In May of 2016, a new attorney from the same public defender's office requested a hearing on the motion for new trial. Then, on June 29, 2016, this second public defender filed an amended motion for new trial, adopting and restating the arguments from the 2010 motion and adding a claim that appellant received ineffective assistance of trial counsel. On July 1, 2016, the trial court issued an order on the motion for new trial, indicating that on June 29, 2016, the same day the amended motion was filed, a hearing had been conducted. The trial court summarily denied appellant's motion and concluded that he received effective assistance of trial counsel. On July 13, 2016, appellant's second public defender filed a notice of appeal. Thereafter, a couple of more public defenders were assigned to the case and the appeal was eventually docketed in the Court of Appeals on Sept. 10, 2018.

Appellant argued that his trial counsel rendered ineffective assistance in a number of instances. However, the Court stated, it would not reach the merits of his contentions because, among these arguments, appellant asserted that his trial and motion-for-new-trial counsels were hampered by a conflict of interest when both were public defenders in the same Circuit Public Defender's Office. Indeed, the Court found, appellant's second attorney was employed with the same public

defender's office as his trial counsel, and this same attorney filed an amended motion for new trial alleging ineffective assistance of counsel.

Appellant's second public defender filed the amended motion for new trial, adding the claim of ineffective assistance of counsel on the same day that the trial court held a hearing on the motion for new trial. And at that hearing, appellant's former trial counsel was not called to testify. The State mentioned on the record that appellant's trial counsel was "a public defender at the time of this trial" and that former trial counsel "still works in the circuit as a conflict defender[.]" Appellant's post-trial counsel agreed, saying that the State's representation was "factually correct" and that appellant's trial counsel "was, in fact, working with us."

The Court stated that the Georgia Rules of Professional Conduct provides that while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rule 1.7: Conflict of Interest. And, under a plain reading of this rule and its comments, circuit public defenders working in the circuit public defender office of the same judicial circuit are akin to lawyers working in the same unit of a legal services organization and each judicial circuit's public defender's office is a "firm" as the term is used in the rule. Accordingly, if one public defender in a circuit office has an impermissible conflict of interest, then that conflict is imputed to all of the public defenders in the same circuit office.

And because an attorney cannot reasonably be expected to assert or argue his own ineffectiveness, it is likewise unreasonable to expect one member of a law firm to assert the ineffectiveness of another member. Thus, attorneys in a public defender's office are to be treated as members of a law firm for the purposes of raising claims of ineffective assistance of counsel. As such, different attorneys from the same public defender's office are not to be considered "new" counsel for the purpose of raising ineffective assistance claims.

Consequently, the Court held, appellant's second public defender, as well as the third public defender, should have been disqualified from representing him upon arguing that he received ineffective assistance of counsel. Indeed, appellant's second attorney from the same office only filed the amended motion for new trial with the ineffective-assistance claims on the morning of the hearing, and trial counsel was not called to testify.

Accordingly, under these particular circumstances, and keeping in mind the already prolonged appellate history of this case, the Court vacated the trial court's order to the extent it concluded that appellant received effective assistance of counsel, and remanded this case. On remand, the trial court must ensure that appellant is represented by conflict-free counsel and conduct a new hearing on the amended motion for new trial to reconsider the assertions that appellant received ineffective assistance of counsel. Thereafter, a direct appeal may be filed from the trial court's ruling.

Polygraphs; Rule 404 (b)

State v. Parks, A19A0491, A19A0873 (6/24/19)

Parks was convicted of aggravated child molestation and contributing to the delinquency of a minor, but acquitted of oral sodomy based on acts occurring on July 25, 2012. Prior to trial, the court refused to allow Parks to present evidence and/or question the complaining witness, K. P., regarding prior false allegations of "inappropriate touching" made by her against

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her brother, T. P. At trial, the evidence, very briefly stated, showed that the victim, K. P., was 14 years old on July 25 when K. P. performed oral sex on Parks. K. P. testified that she did so because Parks threatened to tell her mother that she had tried drugs. Although not charged in the indictment, the State was allowed to also present evidence that on July 30, 2012, Parks anally sodomized K. P. The trial court allowed this unindicted act to be admitted because it showed a course of conduct between K. P. and Parks. Also, without objection, the State was allowed to admit the testimony of Rushton, a GBI polygraph examiner. She testified that Parks agreed to be polygraphed, but following an extensive pre-polygraph interview during which Rushton did most of the talking, he refused to do so without an attorney. Without objection, the State also played for the jury the video of the pretest interview which was approximately an hour long.

Following the trial, a different trial court judge granted Parks' motion for new trial because 1) the admission of the polygraph evidence was error; and 2) Parks should have been allowed to cross-examine K. P. regarding the false allegations against her brother. The State appealed and Parks cross-appealed the trial court's admission of the unindicted July 30 anal sodomy evidence.

The State argues that the trial court did not err in admitting as evidence Parks's refusal to take the polygraph examination, and in allowing the polygraph examiner to testify to information of which she had no firsthand knowledge (via the recording of the pre-test interview). The Court disagreed.

Initially, the Court noted that its review was limited to whether the admission of the evidence was plain error since Parks did not object. With regard to the admission of testimony related to the fact that Parks refused to complete the polygraph examination, the Court stated that it is well-established that evidence that a defendant entered into a stipulation to take a polygraph but later refused to do so is neither probative nor admissible, and it is error to allow evidence of a defendant's refusal to submit to a polygraph examination. Thus, the error was clear and obvious.

Also, the polygraph examiner's testimony via the recorded interview as to what happened between Parks and K. P. and statements made by witnesses involved in the case was inadmissible because the examiner had no firsthand knowledge. Specifically, Rushton testified on cross-examination that she had not personally done any investigation in the case. Instead, all of the knowledge regarding the case came from her discussions with the investigators and from reviewing the incident report. Furthermore, through the video of the interview, the polygraph examiner was allowed to opine that Parks was lying when he denied that no sexual activity, including oral sex, occurred between him and K. P. However, Georgia does not allow witnesses to opine that a party or victim is lying or telling the truth, for the issue of credibility is a matter solely within the province of the jury. Accordingly, the Court found the admission of the polygraph examiner's testimony via the recorded interview was clear and obvious error.

The Court also found that these errors affected the outcome of the proceedings and seriously affected the fairness and integrity of the proceeding. Not only was the polygraph examiner permitted to testify as to Parks' original willingness and later refusal to complete the polygraph examination, but, on multiple occasions, she implied that she believed that Parks was lying when he denied that any sexual activity occurred with K. P. This testimony improperly bolstered K. P.'s testimony and was highly prejudicial to Parks, particularly, since he exercised his right not to testify on his own behalf. The Court also found that the fourth prong of plain error review was met, as to this error. Accordingly, the Court affirmed the grant of a new trial on these grounds.

The State also argued that the trial court properly excluded evidence of K. P.'s allegedly prior false allegation against her brother because Parks failed to establish that K. P.'s prior allegation was in fact false. The Court agreed. The Court found that neither T. P. nor K. P. could specify the exact nature of the “inappropriate touching” allegation or provide any details as to the nature of the allegation. Indeed, K. P. did not remember making any allegation at all. Although Parks argued that “inappropriate touching” had to be of a sexual nature due to the fact that T. P. was asked to take a polygraph and DFCS conducted an investigation, the Court found this assertion to be pure speculation.

Further, the Court stated, although T. P. testified that he took a polygraph examination in which he was questioned about the allegation, and passed the polygraph, that does not per se establish a reasonable probability that the allegation was false. Similarly, the fact that T. P. stated that the allegation was false is not sufficient to establish a reasonable probability of falsity. Likewise, the fact that no charges were brought against T. P. does not establish a reasonable probability that the allegation was false. Consequently, the Court reversed the reviewing court's ruling that this evidence is admissible.

Finally, on cross-appeal, Parks argued that the trial court erred in admitting other acts evidence (the uncharged anal sodomy act that allegedly occurred on July 30, 2012) over his objection. The Court agreed. At trial, the trial court admitted the other acts evidence based on the State's argument that it demonstrated a continuing course of conduct. However, the Court stated, it is well-established that with regard to the admission of other acts evidence, the “course of conduct” and “bent-of-mind” exceptions, formerly an integral part of our law of evidence, have been eliminated from the new Evidence Code. Accordingly, the trial court erred in admitting the challenged evidence as evidence of continuing course of conduct.

Nevertheless, the motion for new trial reviewing court held that the evidence was admissible Rule 404 (b). However, the Court found, it did not appear the court conducted the required three-part test in determining the admissibility of this evidence. And thus, because the Court held that Parks was entitled to a new trial, the Court stated that should the State seek to admit this evidence, the trial court should conduct the appropriate test prior to trial.

Identification Testimony; Rule 701

Rice v. State, A19A0745 (6/25/19)

Appellant was convicted of one count of armed robbery and two counts of robbery by intimidation, a lesser included offense of robbery. The evidence showed that appellant robbed three taxi drivers over the course of a month. Appellant argued that the trial court erred by allowing, over objection, Hennessy, one of the three taxi drivers, to compare the robber in his case to the man depicted in videos and still photographs of the two other robberies.

Citing *Glenn v. State*, 302 Ga. 276, 280-281 (II) (2017), and OCGA § 24-7-701, the Court stated that Georgia's new Evidence Code allows lay witness testimony in the form of opinions or inferences that are rationally based on the witnesses' perception, helpful to a clear understanding of the determination of a fact in issue, and not based on scientific, technical, or other specialized knowledge. The Court also noted that the *Glenn* Court adopted the test used by the Eleventh Circuit in *United States v. Pierce*, 136 F.3d 770, 774 (11th Cir. 1998) to decide whether there is some basis for concluding that a witness is more likely to correctly identify a defendant as the individual depicted in the photograph, and thus to allow a lay witness identification. The factors cited in allowing such testimony in *Glenn* included poor quality of the surveillance

video, the witness's prior familiarity with defendant, and the fact that the defendant's appearance had changed since the time of the crime.

Here, the Court found, appellant's appearance had changed since the time of trial because he grew a beard, and Hennessy testified that he had the ability to recognize and memorize voices as a result of his job as a taxi driver and that he recognized the man in the videos as the man who robbed him and coincidentally, a few days later, tried to get in his car at a Krystal restaurant. Thus, the Court concluded, the trial court did not abuse its discretion in admitting this testimony.

Electronic Eavesdropping; Rule 404 (b)

Wilson v. State, A19A0433 (6/25/19)

Appellant was convicted of one count of aggravated assault (family violence) and one count of misdemeanor escape. The evidence showed that appellant and his wife, Wilson, stopped at a gas station. While there, they argued and appellant stabbed Wilson in the thigh with a kitchen steak knife. Appellant then drove off and Wilson refused to call the police, so the gas station manager did so. Later that day, Wilson was interviewed by a detective at the police station. Wilson was Mirandized and told the detective appellant unintentionally stabbed her with a "metal comb thing" that was in his pocket. After questioning Wilson, the detective left the room explaining, "I'll be right back then." He did not state that the interview was over. Wilson then made phone calls to undisclosed recipients. Her side of these phone conversations were captured on a video recording and played for the jury. During one of these conversations, Wilson discussed her marriage to appellant, her frustrations with him, and his desire to sell drugs.

Appellant argued that the trial court erred in allowing the State to introduce the portion of the video which recorded a phone call Wilson made after being left alone in the police interview room. Appellant argued that the recording violated Georgia's Eavesdropping Statute, OCGA § 16-11-62. The Court disagreed.

Pretermitted the issue of whether appellant has standing to contest the admission of the evidence, the Court found that the trial court did not err in overruling appellant's objection. The Court stated that its analysis hinged upon whether Wilson was in a "private place" while she was unaccompanied in a police interview room. And here, the Court noted that Georgia courts have routinely held that a person does not, without other assurances of privacy not present in this case, have a reasonable expectation of privacy while in a police station or police car.

Thus, the Court found, even if the evidence showed that Wilson had a subjective expectation of privacy when she was left alone in a police interview room, the Court concluded that this expectation of privacy was not reasonable or justifiable under the circumstances of the case. Although Wilson was not charged with a crime, the circumstances still should have alerted her that she did not have a reasonable expectation of privacy under the circumstances. Wilson had been given a *Miranda* warning; she was aware that she was at the police station to give a statement in connection with a crime; she was in the interview room and had been told that she was not free to leave; the detective had made no representation of privacy or confidentiality; she was aware that the interview had not yet been terminated; and she was aware that the detective or other employees could come into the room at any moment.

Appellant also argued that the trial court erred by permitting the State to introduce Wilson's recorded phone call because it contained impermissible character evidence. Specifically, appellant objected to the admission of the portion of Wilson's phone call where she stated that appellant's "idea in life is he wants drugs, more drugs, more drugs to sell" because it contained impermissible character testimony. The trial court overruled the objection, finding that it provided a motive for the stabbing.

The Court stated that OCGA § 24-4-404 (b) provided that other acts evidence may be admissible for purposes, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident. Motive is the reason that nudges the will and prods the mind to indulge the criminal intent. Because evidence of appellant's interest in illegal drugs was being offered to show motive and intent, the State was not required to show an overall similarity between the extrinsic offense and the crime for which he was charged. Rather, the extrinsic offense needed to have any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

And here, the Court found, Wilson's recorded phone conversation revealed a motive for why appellant would want to injure her. It also demonstrated that the stabbing was intentional. Wilson told her friend that she felt like she needed to divorce appellant because he was "not putting forth an effort to" work, and that "he want[s] to live wrong and he wants me to indulge in his living." She stated that "I'm still trying to stand up for myself ... I'm not going to do it because I know it's wrong. ... His idea in life is he wants more drugs, more drugs, more drugs to sell. And my idea of life is that's just not what I want. ... I dealt with that growing up and I just want more for my kids than that." Accordingly, the Court held, the trial court was authorized to conclude that the reference to Wilson's unhappiness with appellant's focus on drugs was relevant to why they argued and why he would have purposefully stabbed her.