

VAWA CaseLaw Update

VOLUME 1; ISSUE 4
October 2020-December 2020

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Rule 404 (b); Rule 403

Arrington v. State, 355 Ga. App. 361 (2020)

In the prosecution of a case based on circumstantial evidence, the State could not show that the probative value of evidence of defendant's prior convictions outweighed the danger of unfair prejudice. The previous crimes introduced to show intent, which happened 23 years earlier, were different from the case in chief and were not needed to show intent, which was not an issue in the case.

Rule 807

Reyes v. State, 309 Ga. 660 (2020)

The trial court properly admitted a murder victim's hearsay statements under the residual exception to the hearsay rule. The statements made by the murder victim to her nephew, with whom she shared an apartment, were made under circumstances that contained sufficient guarantees of trustworthiness to allow their admission as residual hearsay.

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Rule 404 (b); Rule 403

Hood v. State, 309 Ga. 493 (2020)

Other acts evidence is admissible when (1) the evidence is relevant to an issue in the case other than the defendant's character; (2) the evidence's probative value is not substantially outweighed by its undue prejudice; and (3) sufficient proof exists for a jury to find by a preponderance of the evidence that the defendant committed the other act. The prejudicial effect of the evidence must not be outweighed by the probative value. Factors to be considered in determining the probative value of other act evidence offered to prove intent include its overall similarity to the charged crime, its temporal remoteness, and the prosecutorial need for it.

Expert Testimony

Robinson v. State, 309 Ga. 729 (2020)

When an expert's testimony is offered to explain a matter that is "beyond the ken" of the average layperson and is not based on conclusions that jurors could draw on their own from the evidence, it is admissible.

Lay Opinion

Moreland v. State, 356 Ga. App. 452 (2020)

The brother of a sodomy victim with diminished mental capacity, who testified about the facts and circumstances of her abilities based on his personal knowledge, was qualified to offer his lay opinion on that issue.

Child Hearsay; Confrontation

Abernathy v. State, A20A1459 (8/19/20)

In a child molestation trial, the court properly admitted a child's hearsay statement and trauma narrative previously given during a forensic interview and subsequent therapy. The child's hearsay statements were admissible pursuant to the child hearsay statute even if the child was unresponsive on the witness stand because she was available for cross-examination. The current child hearsay statute does not require a showing that the out-of-court statement has indicia of reliability.

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Unavailability; Forfeiture-by-Wrongdoing

Welch v. State, 309 Ga. 875 (2020)

An unavailable witness's testimonial statement is admissible under the Forfeiture by Wrongdoing exception to the hearsay rule under certain circumstances. The State must demonstrate that it made reasonable, good-faith efforts to locate the witness and that the defendant contacted the witness with the intent to procure his or her absence from the upcoming trial.

Authentication

Woodruff v. State, 356 Ga. App. 659 (2020)

Emails sent from the defendant to the victim while he was in jail were properly authenticated when the state presented evidence of a certificate of authenticity from the jail, the victim's acknowledgment that she had been communicating with the defendant, and the defendant and the victim wrote the emails. The emails were original, documentary evidence and did not violate the continuing witness rule.

Rule 803; Rule 807

Atkins v. State, 850 S.E.2d 103 (2020)

A defense witness's out-of-court statements, made while the witness was involved with tampering with the crime scene after a murder, and was actively avoiding being found by the police, did not eliminate the possibility of fabrication. These circumstances did not possess the "exceptional guarantees of trustworthiness" required for the statements to be admitted under the excited utterances and residual exceptions to the hearsay rule.

Character Evidence

Goins v. State, S20A0847 (10/19/2020)

Evidence showing that a murder victim had previously been convicted of prostitution and drug crimes, and that unknown individuals had contacted her to obtain sex or drugs or had a conflict with her during the weeks and months before her death, was inadmissible. The character evidence rule regarding evidence about a victim, is limited to reputation or opinion, not specific bad acts.

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Intrinsic Evidence

Harris v. State, S20A0847 (10/19/20)

In a murder trial for his roommate's killing, evidence of the defendant's conflicts with his ex-wife and his ex-girlfriend was properly admitted as intrinsic evidence. The evidence provided a "chain of events explaining the context, motive, and set-up of the crime," and was reasonably necessary for the jury to complete the story for the jury.

Strangulation; Impeachment

Moore v. State, 356 Ga. App. 752 (2020)

Evidence that (1) while the victim was married to the defendant, he put his hands around her throat and choked her; (2) the victim's doctor and nurse testified about the victim's visible injuries to her neck; and (3) photographs of those injuries were admitted at trial, were sufficient to support a conviction of family violence aggravated assault. The trial court properly excluded impeachment evidence of the victim's alleged extramarital affair as too remote in time and collateral to the relevant issues at trial.

Rule 404 (b)

Lofland v. State, 357 Ga. App. 92 (2020)

Other acts evidence that the defendant shot the victim and a male friend four months *after* the case-in-chief was properly admitted at trial to show the reasonableness of the victim's fear and the "state of feelings" between the defendant and the victim.