



King v. State, A16A1144

Georgia Court of Appeals, Criminal Case (10/6/2016, 10/17/2016)

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The Court of Appeals, Judge Carla Wong McMillian for the Court, affirmed Jeffrey King's conviction for DUI-less safe, holding that the trial court, Henry County State Court, did not abuse its discretion in admitting evidence of King's statement to police that he had a prior DUI. Before trial, the Defendant's attorney made a motion in limine to redact the video of the traffic stop to remove the portion in which the Defendant King mentioned his prior DUI, arguing that the statement would constitute improper character evidence since the State indicated that it did not intend to introduce evidence of the prior DUI. The trial court denied the defense motion, finding that the statement was voluntary, not the product of custodial interrogation and that it was relevant to the case because it showed that King understood the implied consent notice. The officer testified and the actual video was shown to the jury.

The Defendant appealed the denial of his motion for new trial after a jury convicted him of one count of driving under the influence ("DUI") to the extent that it was less safe to drive and asserted that the trial court erred in admitting his statement to police that he had a prior DUI into evidence. The Defendant argued that the probative value was substantially outweighed by its unfair prejudice.



The Defendant's Jeep was pulled off the road with its flashers on and its hood up. When the Henry County officer stopped to help, he spoke to the Defendant, King, who was standing on the passenger side of the vehicle. The officer observed that King was "a little bit unsteady" on his feet, his speech was "rather slurred," and he smelled strongly of alcohol. The Defendant admitted to the officer that he had been drinking, gave the officer permission to search his car, and the officer found an unopened 24-ounce can of beer.

The Defendant then told the officer that he had back problems stemming from a recent automobile accident and that he was legally blind in one eye, and the officer decided not to perform most of the standard field sobriety tests. The Defendant was not able to recite the alphabet accurately. Based upon the foregoing, the officer determined the Defendant was under the influence of alcohol to the extent that he was not safe to operate a motor vehicle, and he placed King under arrest.

The officer then read the Defendant the warning, during which the Defendant stated that he was familiar with the implied consent warning because he had a prior DUI; he consented to a breath test, but after the officer placed him in the back of the police car, he began to complain of back pain and asked for an ambulance. The Defendant was transported to the hospital by ambulance. Accordingly, the breath test was not performed, but King later consented to a blood test, which showed a blood alcohol level of .307.

Before trial, the defense filed a generalized motion to suppress, which the trial court denied following a hearing. The State filed a notice of its intent to introduce evidence of a 2011 guilty plea King made to a 2010 DUI charge, but then announced at trial the State would not be going

forward with that evidence. In response, King's attorney made an oral motion in limine to redact the video of the traffic stop to remove the portion in which King mentions his prior DUI, arguing that the statement would constitute improper character evidence since the State indicated that it did not intend to introduce evidence of the prior DUI. The trial court denied the defense's motion, finding that the statement was voluntary, not the product of custodial interrogation, and that it was relevant to the case because it showed that King understood the implied consent notice.

The Defendant again raised the issue in his amended notice for new trial, arguing that the trial court erred in denying the motion in limine because it failed to conduct a hearing under OCGA § 24-4-404 (b) to determine whether the evidence was "unfairly prejudicial compared to its probative value." Although the trial court had not previously undertaken the 404 (b) analysis on the record, the trial court applied the analysis in denying the motion for new trial. The Defendant then filed his appeal.

The Court of Appeals held that for other acts evidence to be admissible under Rule 404 (b), the State must show (1) the evidence is relevant to an issue in the case other than the defendant's character, (2) sufficient proof to enable the jury to find that the defendant committed the act in question, and (3) "the probative value of the other acts evidence is not substantially outweighed by its unfair prejudice, i.e., the evidence must satisfy the requirements of [OCGA § 24-4-403 ("Rule 403")]." *State v. Jones*, 297 Ga. 156, 158-59 (1) (773 SE2d 170) (2015).

On appeal, the Defendant limited his argument to the trial court's ruling on the third requirement, asserting that the trial court erred in finding that the admission of the evidence was not unduly prejudicial, and had slight probative value because the State did not need it to prove its case.

The Court of Appeals held that Rule 403 provides that "[r]elevant 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." OCGA § 24-4-403. The Supreme Court has explained that "[t]he application of the Rule 403 test is a matter committed principally to the discretion of the trial courts," but it has also found that "the exclusion of evidence under Rule 403 is an extraordinary remedy [that] should be used only sparingly."

The Court of Appeals noted that, as the Supreme Court recently explained, "Evidence is relevant if it has *'any tendency'* to prove or disprove a fact, whereas the probative value of evidence derives in large part from the *extent to which* the evidence tends to make the existence of a fact more or less probable." "See also OCGA § 24-4-401 ('[T]he term 'relevant evidence' means evidence having 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.')." "

The Court of Appeals agreed with the trial court, that the Defendant's prior DUI was relevant to the King's intent to drive while intoxicated, his defense at trial that the State had failed to prove that he had driven while intoxicated, and that he did not become intoxicated after stopping the vehicle by the side of the road, and why Defendant King suddenly developed back pain moments after consenting to a breath test.

A material issue in the State's prosecution was intent and "because the same state of mind required for committing the prior act and the charged crimes, i.e., the general intent to drive while under the influence of alcohol," evidence of King's prior DUI was relevant to show King's intent on this occasion. The relevance of the prior DUI was heightened because King's defense was that he did not drive the vehicle while intoxicated, "making evidence that he had voluntarily driven under the influence of alcohol on a prior occasion all the more relevant because it tended to show that it was more likely that he intentionally did so on this occasion."

As there were no witnesses that observed the Defendant driving, the trial court found that made it difficult for the State to prove intent and the fact that King had been driving. Thus, his admission to a prior DUI had a strong logical connection to his commission of the DUI charged in this case, and that evidence added significantly to the otherwise circumstantial evidence that he had been ***driving*** while intoxicated. Thus, as the trial court explained in its order, the State needed this evidence to support its case and to counter King's defense. Although evidence of the statement was prejudicial "as almost all evidence presented by the State will be," we agree with the trial court that any such prejudice did not outweigh the probative nature of the evidence in this case. *Smart v. State*, __ Ga. __ (2) (b) (788 SE2d 442) (2016). See also *United States v. King*, 713 F2d 627, 631 (III) (11th Cir.1983) ("[I]n a criminal trial relevant evidence is inherently prejudicial; it is only when unfair prejudice substantially outweighs probative value that [Federal Rule 403] permits exclusion."). Accordingly, the Court of Appeals did not find that the trial court abused its discretion in admitting evidence of Defendant King's statement and affirmed the trial court.