

Rebecca Keaton
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IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA Court Rule: www.cobbsuperiorcourtclerk.com
Rebecca Keaton
Clerk of Superior Court Cobb County

STATE OF GEORGIA)
)
 v.)
)
 JUSTIN ROSS HARRIS,)
)
 Defendant.)

Indictment 14-9-3124

ORDER ON DEFENDANT’S MOTION NO. 18

This matter comes before the Court on Defendant’s Motion No. 18, titled “Motion in Limine to Exclude Bad Character Evidence and Objection to State’s Intent to Present Other Acts Under O.C.G.A. § 24-4-404(b).” The Court held a hearing on the same on February 22, 2016. During the February 22, 2016, hearing, the parties also cited and legal authority and argument presented to the Court on October 12, 2015, during a hearing on Defendant’s Motion to Sever. The Court, having considered the motion and arguments of the parties (including the legal authority and argument cited during the October 12, 2015, hearing), hereby makes the following findings and rulings in regard to the Defendant’s specific claims made in the above-styled motion:

1.

The Defendant first generally moves to exclude any evidence concerning “the Defendant’s consensual sexual life and communications” as being irrelevant and unrelated to the charges in the indictment, not related to motive, and bad character evidence, and argues that any probative value is substantially outweighed by the danger of undue prejudice. The Court finds generally that the evidence of Defendant’s “consensual sexual life and communications” that was

proffered by the State at the hearing on this motion and the general description of the evidence related to Defendant's "consensual sexual life and communications" referenced in the State's "Intent to Present Other Acts Under O.C.G.A. § 24-4-404(b)" are admissible. This evidence is admissible as intrinsic evidence, as motive for the charged crimes, as "Other Act Evidence" pursuant to Georgia Rule of Evidence 404(b), and is admissible for purposes other than to show the bad character of the Defendant. The Court also finds that the probative value of such evidence is not substantially outweighed by the danger of unfair prejudice as it relates to Defendant's argument to generally exclude all evidence related to this subject matter. (See Also this Court's Order on the "State's Notice of Intent to Present Evidence of Other Acts Pursuant to O.C.G.A. § 24-4-404(b)"). Therefore, Defendant's general motion to exclude this subject matter is hereby DENIED.

2.

The Defendant next moves to exclude any evidence concerning specific sub-categories related to "the Defendant's consensual sexual life and communications" for the same reasons as above. This Court makes the following findings as to each sub-category:

(a) "Any alleged acts of masturbation involving the Defendant."

The Court finds that the above acts, as proffered by the State, are evidence of Defendant's disharmony in his marital and family relationship, extramarital relationships and attempted extramarital relationships, and Defendant's desire to be with women outside of his marriage, and are thus admissible as intrinsic evidence, to show motive for the charged crimes, as "Other Act Evidence" pursuant to Georgia Rule of Evidence 404(b), and are admissible for purposes other than to show the bad character of

Defendant. Therefore, Defendant's motion to exclude evidence of this sub-category is hereby DENIED.

(b) "Any alleged participation in acts of prostitution involving the Defendant."

The Court finds that the above acts, as proffered by the State, are evidence of Defendant's disharmony in his marital and family relationship, extramarital relationships and attempted extramarital relationships, and Defendant's desire to be with women outside of his marriage, and are thus admissible as intrinsic evidence, to show motive for the charged crimes, as "Other Act Evidence" pursuant to Georgia Rule of Evidence 404(b), and are admissible for purposes other than to show the bad character of Defendant. Therefore, Defendant's motion to exclude evidence of this sub-category is hereby DENIED.

(c) "Any alleged participation or communication in the social platforms: KIK, SCOUT, WHISPER, INSTAGRAM, SNAPCHAT, or similar applications."

The Court finds that the above acts, as proffered by the State, are evidence of Defendant's disharmony in his marital and family relationship, extramarital relationships and attempted extramarital relationships, and Defendant's desire to be with women outside of his marriage, and are thus admissible as intrinsic evidence, to show motive for the charged crimes, as "Other Act Evidence" pursuant to Georgia Rule of Evidence 404(b), and are admissible for purposes other than to show the bad character of Defendant. Therefore, Defendant's motion to exclude evidence of this sub-category is hereby DENIED.

(d) “Any alleged acts of marital infidelity involving the Defendant.”

The Court finds that the above acts, as proffered by the State, are evidence of Defendant’s disharmony in his marital and family relationship, extramarital relationships and attempted extramarital relationships, and Defendant’s desire to be with women outside of his marriage, and are thus admissible as intrinsic evidence, to show motive for the charged crimes, as “Other Act Evidence” pursuant to Georgia Rule of Evidence 404(b), and are admissible for purposes other than to show the bad character of Defendant. Therefore, Defendant’s motion to exclude evidence of this sub-category is hereby DENIED.

(e) “Any alleged acts or images of sexual exhibition involving Defendant whether lawfully possessed by Defendant or distributed by Defendant.”

The Court finds that the above acts, as proffered by the State, are evidence of Defendant’s disharmony in his marital and family relationship, extramarital relationships and attempted extramarital relationships, and Defendant’s desire to be with women outside of his marriage, and are thus admissible as intrinsic evidence, to show motive for the charged crimes, as “Other Act Evidence” pursuant to Georgia Rule of Evidence 404(b), and are admissible for purposes other than to show the bad character of Defendant. Therefore, Defendant’s motion to exclude evidence of this sub-category is hereby DENIED.

(f) Any alleged vulgar, profane, or inherently sexual oral or written communication involving Defendant.”

The Court finds that the above acts, as proffered by the State, are evidence of Defendant’s disharmony in his marital and family relationship, extramarital relationships and attempted extramarital relationships, and Defendant’s desire to be with women outside of his marriage, and are thus admissible as intrinsic evidence, to show motive for the charged crimes, as “Other Act Evidence” pursuant to Georgia Rule of Evidence 404(b), and are admissible for purposes other than to show the bad character of Defendant. Therefore, Defendant’s motion to exclude evidence of this sub-category is hereby DENIED.

(g) “Any internet search history involving subjects of an inherently sexual nature, including or personal ads.”

The Court finds that the above acts, as proffered by the State, are evidence of Defendant’s disharmony in his marital and family relationship, extramarital relationships and attempted extramarital relationships, and Defendant’s desire to be with women outside of his marriage, and are thus admissible as intrinsic evidence, to show motive for the charged crimes, as “Other Act Evidence” pursuant to Georgia Rule of Evidence 404(b), and are admissible for purposes other than to show the bad character of Defendant. The State concedes, however, that any evidence of pornography that is not admissible for any of the purposes set forth in their “Other Act Evidence” Notice and that only serves to show the bad character of the Defendant would be inadmissible. Therefore, Defendant’s motion to exclude evidence of this

sub-category is hereby DENIED as to acts that are admissible as intrinsic evidence, to show motive for the charged crimes, as “Other Act Evidence” pursuant to Georgia Rule of Evidence 404(b), and GRANTED as to any acts that serve only to show Defendant’s bad character.

(h) “Any private consensual sexual activity or communications involving Defendant.”

The Court finds that the above acts, as proffered by the State, are evidence of the Defendant’s disharmony in his marital and family relationship, extramarital relationships and attempted extramarital relationships, and Defendant’s desire to be with women outside of his marriage, and are thus admissible as intrinsic evidence, to show motive for the charged crimes, as “Other Act Evidence” pursuant to Georgia Rule of Evidence 404(b), and are admissible for purposes other than to show the bad character of Defendant. Therefore, Defendant’s motion to exclude evidence of this sub-category is hereby DENIED.

The Court also finds that the probative value of the evidence and acts referred to in sub-categories (a) through (h) above is not substantially outweighed by the danger of unfair prejudice as it relates to the Defendant’s argument to exclude all evidence related to these subject matters. (See Also this Court’s Order on the State’s Notice of “Intent to Present Evidence of Other Acts Pursuant to O.C.G.A. § 24-4-404(b)).

3.

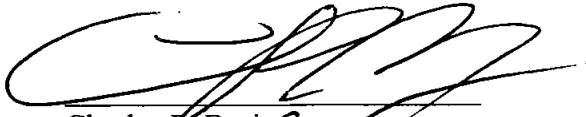
For the above-stated reasons, Defendant's Motion in Limine to Exclude Bad Character Evidence and Objection to State's Intent to Present Other Acts Under O.C.G.A. § 24-4-404(b) is DENIED in part and GRANTED in part.

SO ORDERED this 14 day of March ~~5~~, 2016.



Hon. Mary E. Staley
Superior Court of Cobb County

Prepared by:



Charles F. Boring
Assistant District Attorney
Cobb Judicial Circuit
Bar Number 065131

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IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

CERTIFICATE OF SERVICE

This is to certify that I have this day served the foregoing order (File No. 14-9-3124-28) upon all parties to this matter by sending a true and correct copy (through the Cobb County Mail System) addressed to the following:

Charles Boring, Esq.
District Attorney's Office
Cobb Judicial Circuit
(Via Interoffice Mail)

H. Maddox Kilgore, Esq.
Carlos Rodriguez, Esq.
36 Ayers Avenue
Marietta, Georgia 30060

Timothy Bryan Lumpkin, Esq.
332 Lawrence Street NE
Marietta, GA 30060-2057

This 14 day of March, 2016.

C Rooks

Charlotte J. Rooks for
Mary E. Staley, Judge
Superior Court of Cobb County
Cobb Judicial Circuit