

*Rebecca Keaton*

19

IN THE SUPERIOR COURT OF COBB COUNTY  
STATE OF GEORGIA  
Court Rules: 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 STATE’S NOTICE OF INTENT TO PRESENT EVIDENCE OF OTHER ACTS PURSUANT TO O.C.G.A. § 24-4-404(b)**

This matter comes before the Court on the State’s filing titled “State’s Intent to Present Evidence of Other Acts Pursuant to O.C.G.A. § 24-4-404(b).” In response to this Other Act Notice, Defendant filed 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)) and Defendant’s Motion No. 19 (titled “Motion in Limine to Exclude Any Evidence of a Life Insurance Policy”). Defendant’s Motions Nos. 18 and 19 ask this Court to exclude certain topics that the State seeks to admit at trial pursuant to their Other Act Notice.

Through the above-styled Notice, the State argues that the evidence and acts referenced in the Notice are “intrinsic evidence” and admissible outside the purview of O.C.G.A. § 24-4-404(b). The State further argues that even if the evidence and acts were not found to be intrinsic, they would be admissible pursuant to Rule 404(b) as evidence of circumstances immediately surrounding the charged crime, motive, intent, knowledge, plan, preparation, absence of mistake, and absence of accident. The State’s Notice provides seven categories of other act evidence that it seeks to introduce at trial pursuant to Rule 404(b).

The Court notes that the parties also provided legal authority and made argument on similar legal issues during the hearing on Defendant's Motion to Sever, held October 12, 2015. The Court, having considered the motion and arguments of the parties (including the legal authority and argument cited during the October 12, 2015 hearing, and Defendant's Motions Nos. 18 and 19), makes the following findings regarding the State's Other Act Notice:

1.

This Court finds that evidence of Defendant's marital and family relationship and disharmony within those relationships, as proffered by the State, is admissible. First, the evidence as proffered by the State is intrinsic evidence as it "(1) arose out of the same transaction or series of transactions as the charged offense; (2) is necessary to complete the story of the crime; or (3) inextricably intertwined with the evidence regarding the charged offense." Baughns v. State, 2016 Ga. App. LEXIS 42 (2016) (citing U.S. v. Nowak, 370 Fed. Appx. 39 (11<sup>th</sup> Cir. 2010). See also U.S. v. Edouard, 485 F.3d 1324 (11<sup>th</sup> Cir. 2007)). This Court also finds that this evidence is intrinsic evidence of the offenses charged in counts one through five because the evidence pertains to the chain of events explaining the context, motive, and set-up of the crime, is linked in time and circumstances with the offenses charged in counts one through five, forms an integral and natural part of the crimes charged in counts one through five, or is necessary to complete the story of the crime for the jury. Id. See also States v. Troya, 733 F.3d 1125 (11<sup>th</sup> Cir. 2013).

This Court additionally finds that even if the evidence of Defendant's marital and family relationship and disharmony within those relationships is not admissible as intrinsic evidence, it is admissible as extrinsic evidence pursuant to Georgia Rule of Evidence 404(b) for the purposes

of showing circumstances immediately surrounding the charged crime<sup>1</sup>, motive<sup>2</sup>, intent, knowledge, absence of mistake, and absence of accident. Furthermore, this Court finds that the probative value of this evidence, as proffered by the State, would not be substantially outweighed by any unfair prejudice.

2.

This Court finds that evidence of Defendant's infidelity, extramarital relationships, desire to be with women outside of his marriage, and attempted extramarital relationships and sexual communications with other women, as proffered by the State, is admissible. First, the evidence proffered by the State is intrinsic evidence as it "(1) arose out of the same transaction or series of transactions as the charged offense; (2) is necessary to complete the story of the crime; or (3) inextricably intertwined with the evidence regarding the charged offense." Baughns v. State, 2016 Ga. App. LEXIS 42 (2016) (citing U.S. v. Nowak, 370 Fed. Appx. 39 (11<sup>th</sup> Cir. 2010)). See also U.S. v. Edouard, 485 F.3d 1324 (11<sup>th</sup> Cir. 2007)). This Court also finds that this evidence is intrinsic evidence of the offenses charged in counts one through five because the evidence pertains to the chain of events explaining the context, motive, and set-up of the crime, is linked in time and circumstances with the offenses charged in counts one through five, forms an integral and natural part of the crimes charged in counts one through five, or is necessary to complete the story of the crime for the jury. Id. See also States v. Troya, 733 F.3d 1125 (11<sup>th</sup> Cir. 2013).

This Court additionally finds that even if evidence of Defendant's infidelity, extramarital relationships, desire to be with women outside of his marriage, and attempted extramarital relationships and sexual communications with other women was not admissible as intrinsic

---

<sup>1</sup> Pursuant to O.C.G.A. § 24-4-404(b), pretrial notice is not required when evidence is permitted for this purpose.

<sup>2</sup> Pursuant to O.C.G.A. § 24-4-404(b), pretrial notice is not required when evidence is permitted for this purpose.

evidence, it would be admissible as extrinsic evidence pursuant to Georgia Rule of Evidence 404(b) for the purposes of showing circumstances immediately surrounding the charged crime, motive, intent, knowledge, absence of mistake, and absence of accident. Furthermore, this Court finds that the probative value of this evidence, as proffered by the State, would not be substantially outweighed by any unfair prejudice.

3.

This Court finds that evidence of Defendant's knowledge and research of the weather and the effects of heat on objects left in automobiles and left out in the sun, as proffered by the State, is admissible. First, the evidence proffered by the State is intrinsic evidence as it "(1) arose out of the same transaction or series of transactions as the charged offense; (2) is necessary to complete the story of the crime; or (3) inextricably intertwined with the evidence regarding the charged offense." Baughns v. State, 2016 Ga. App. LEXIS 42 (2016) (citing U.S. v. Nowak, 370 Fed. Appx. 39 (11<sup>th</sup> Cir. 2010). See also U.S. v. Edouard, 485 F.3d 1324 (11<sup>th</sup> Cir. 2007)). This Court also finds that this evidence is intrinsic evidence of the offenses charged in counts one through five because the evidence pertains to the chain of events explaining the context, motive, and set-up of the crime, is linked in time and circumstances with the offenses charged in counts one through five, forms an integral and natural part of the crimes charged in counts one through five, or is necessary to complete the story of the crime for the jury. Id. See also States v. Troya, 733 F.3d 1125 (11<sup>th</sup> Cir. 2013).

This Court additionally finds that even if evidence of Defendant's knowledge and research of the weather and the effects of heat on objects left in automobiles and left out in the sun is not admissible as intrinsic evidence, it is admissible as extrinsic evidence pursuant to Georgia Rule of Evidence 404(b) for the purposes of showing circumstances immediately

surrounding the charged crime, motive, intent, knowledge, plan, preparation, absence of mistake, and absence of accident. Furthermore, this Court finds that the probative value of this evidence, as proffered by the State, would not be substantially outweighed by any unfair prejudice.

4.

This Court finds that evidence of Defendant's state of mind regarding his child, children in general, and living a lifestyle free of the responsibilities of children, as proffered by the State, is admissible. First, the evidence proffered by the State is intrinsic evidence as it "(1) arose out of the same transaction or series of transactions as the charged offense; (2) is necessary to complete the story of the crime; or (3) inextricably intertwined with the evidence regarding the charged offense." Baughns v. State, 2016 Ga. App. LEXIS 42 (2016) (citing U.S. v. Nowak, 370 Fed. Appx. 39 (11<sup>th</sup> Cir. 2010)). See also U.S. v. Edouard, 485 F.3d 1324 (11<sup>th</sup> Cir. 2007)). This Court also finds that this evidence is intrinsic evidence of the offenses charged in counts one through five because the evidence pertains to the chain of events explaining the context, motive, and set-up of the crime, is linked in time and circumstances with the offenses charged in counts one through five, forms an integral and natural part of the crimes charged in counts one through five, or is necessary to complete the story of the crime for the jury. Id. See also States v. Troya, 733 F.3d 1125 (11<sup>th</sup> Cir. 2013).

This Court additionally finds that even if evidence of Defendant's state of mind regarding his child, children in general, and living a lifestyle free of the responsibilities of children is not admissible as intrinsic evidence, it is admissible as extrinsic evidence pursuant to Georgia Rule of Evidence 404(b) for the purposes of showing circumstances immediately surrounding the charged crime, motive, intent, knowledge, plan, preparation, absence of mistake, and absence of

accident. Furthermore, this Court finds that the probative value of this evidence, as proffered by the State, would not be substantially outweighed by any unfair prejudice.

5.

This Court finds that evidence of Defendant's state of mind and interest in topics regarding death in the months, weeks, and days leading up to the death of Cooper Harris, as proffered by the State, is admissible. First, the evidence proffered by the State is intrinsic evidence as it "(1) arose out of the same transaction or series of transactions as the charged offense; (2) is necessary to complete the story of the crime; or (3) inextricably intertwined with the evidence regarding the charged offense." Baughns v. State, 2016 Ga. App. LEXIS 42 (2016) (citing U.S. v. Nowak, 370 Fed. Appx. 39 (11<sup>th</sup> Cir. 2010). See also U.S. v. Edouard, 485 F.3d 1324 (11<sup>th</sup> Cir. 2007)). This Court also finds that this evidence is intrinsic evidence of the offenses charged in counts one through five because the evidence pertains to the chain of events explaining the context, motive, and set-up of the crime, is linked in time and circumstances with the offenses charged in counts one through five, forms an integral and natural part of the crimes charged in counts one through five, or is necessary to complete the story of the crime for the jury. Id. See also States v. Troya, 733 F.3d 1125 (11<sup>th</sup> Cir. 2013).

This Court additionally finds that even if evidence of Defendant's state of mind and interest in topics regarding death in the months is not admissible as intrinsic evidence, it is admissible as extrinsic evidence pursuant to Georgia Rule of Evidence 404(b) for the purposes of showing circumstances immediately surrounding the charged crime, motive, intent, knowledge, plan, preparation, absence of mistake, and absence of accident. Furthermore, this Court finds that the probative value of this evidence, as proffered by the State, would not be substantially outweighed by any unfair prejudice.

6.

This Court finds that evidence of Defendant's state of mind regarding his family's financial status and his employment situation in the months, weeks, and days leading up to the death of Cooper Harris, as proffered by the State, is admissible except for the subject matter of life insurance policies (See Order on Defendant's Motion No. 19). First, the evidence proffered by the State is intrinsic evidence as it "(1) arose out of the same transaction or series of transactions as the charged offense; (2) is necessary to complete the story of the crime; or (3) inextricably intertwined with the evidence regarding the charged offense." Baughns v. State, 2016 Ga. App. LEXIS 42 (2016) (citing U.S. v. Nowak, 370 Fed. Appx. 39 (11<sup>th</sup> Cir. 2010)). See also U.S. v. Edouard, 485 F.3d 1324 (11<sup>th</sup> Cir. 2007)). This Court also finds that this evidence is intrinsic evidence of the offenses charged in counts one through five because the evidence pertains to the chain of events explaining the context, motive, and set-up of the crime, is linked in time and circumstances with the offenses charged in counts one through five, forms an integral and natural part of the crimes charged in counts one through five, or is necessary to complete the story of the crime for the jury. Id. See also States v. Troya, 733 F.3d 1125 (11<sup>th</sup> Cir. 2013).

This Court additionally finds that even if evidence of Defendant's state of mind regarding his family's financial status and his employment situation in the months is not admissible as intrinsic evidence, it is admissible as extrinsic evidence pursuant to Georgia Rule of Evidence 404(b) for the purposes of showing circumstances immediately surrounding the charged crime, motive, intent, knowledge, absence of mistake, and absence of accident. Furthermore, this Court finds that the probative value of this evidence, as proffered by the State, would not be substantially outweighed by any unfair prejudice.

Regarding evidence of the existence of any life insurance policies in place for Cooper Harris at the time of his death, the Court finds that any such evidence is inadmissible at present. If, however, the State believes that it has proven a proper nexus between any insurance policies and the crimes charged, the State may approach the Court (outside the presence of the jury) and ask that the Court revisit its ruling.

7.

This Court finds that evidence of Defendant's knowledge, research, and interest in law enforcement, criminal law, and the prison system, as proffered by the State, is admissible. First, the evidence proffered by the State is intrinsic evidence as it "(1) arose out of the same transaction or series of transactions as the charged offense; (2) is necessary to complete the story of the crime; or (3) inextricably intertwined with the evidence regarding the charged offense." Baughns v. State, 2016 Ga. App. LEXIS 42 (2016) (citing U.S. v. Nowak, 370 Fed. Appx. 39 (11<sup>th</sup> Cir. 2010). See also U.S. v. Edouard, 485 F.3d 1324 (11<sup>th</sup> Cir. 2007)). This Court also finds that this evidence is intrinsic evidence of the offenses charged because the evidence pertains to the chain of events explaining the context, motive, and set-up of the crime, is linked in time and circumstances with the offenses, forms an integral and natural part of the crimes charged, or is necessary to complete the story of the crime for the jury. Id. See also States v. Troya, 733 F.3d 1125 (11<sup>th</sup> Cir. 2013).

This Court additionally finds that even if evidence of Defendant's knowledge, research, and interest in law enforcement, criminal law, and the prison system is not admissible as intrinsic evidence, it is admissible as extrinsic evidence pursuant to Georgia Rule of Evidence 404(b) for the purposes of showing circumstances immediately surrounding the charged crime, motive, intent, knowledge, plan, preparation, absence of mistake, and absence of accident. Furthermore,

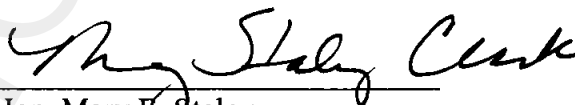


this Court finds that the probative value of this evidence, as proffered by the State, would not be substantially outweighed by any unfair prejudice.

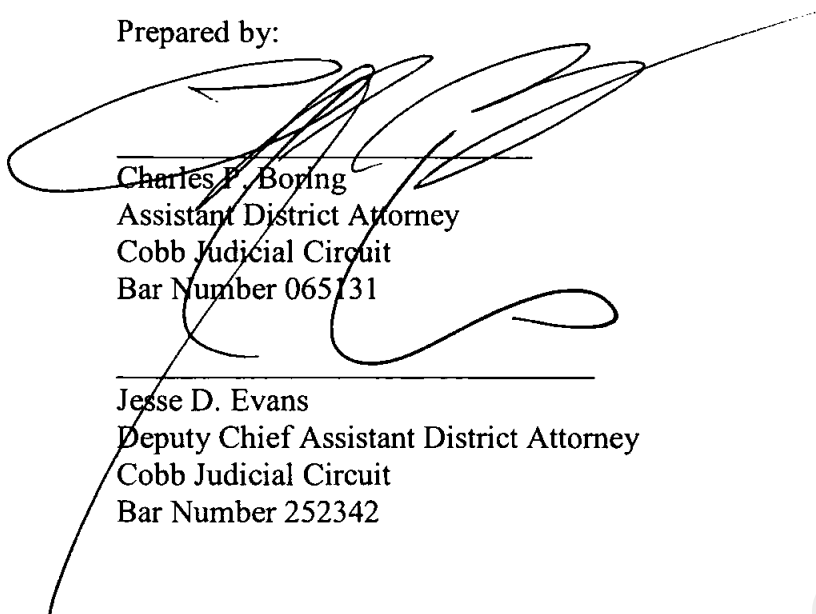
8.

For the above-stated reasons, the Court hereby finds that evidence cited in “State’s Intent to Present Evidence of Other Acts Pursuant to O.C.G.A. § 24-4-404(b)” and proffered by the State at the hearing on this Notice is admissible, except for evidence related to life insurance policies. Therefore the State’s request to introduce said proffered evidence is GRANTED, subject to the limitations of paragraph six regarding evidence of life insurance policies. (See also the Court’s Order on Defendant’s Motion No. 19).

SO ORDERED this 17 day of March, 2016.

  
\_\_\_\_\_  
Hon. Mary E. Staley  
Superior Court of Cobb County

Prepared by:



---

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

---

Jesse D. Evans  
Deputy Chief Assistant District Attorney  
Cobb Judicial Circuit  
Bar Number 252342

KarasOnCrime.com

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