

Evidence of “Other Acts” in Georgia Sex Offense Cases

When charged with a sex offense in Georgia, one of the challenges facing defendants is the court’s liberal policy of allowing prior allegations of sexual misconduct into evidence at trial. Evidence of *other acts* (previously referred to as *similar transactions*) is an exception to the general rule that evidence of independent crimes is inadmissible against a defendant at trial.

Under O.C.G.A. § 24-4-404(b), evidence of other acts can be introduced by the prosecution to prove a defendant’s “motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” More specifically, however, O.C.G.A. § 24-4-413 provides that “evidence of the accused’s commission of another offense of sexual assault shall be admissible and may be considered for its bearing on any matter to which it is relevant.”

Thus, while evidence of other acts is admissible in all types of criminal cases, it has been most liberally extended in the area of sexual offenses and has been deemed admissible “to show the lustful disposition of the defendant” as well as “to corroborate the victim’s testimony.” This presents an issue for defendants at trial because it potentially opens the door to every allegation anyone ever made against the defendant regardless of whether the allegation was reported to the police or whether the defendant was ever prosecuted. This often leads to the admission of uncorroborated and unreliable allegations that the defendant never had a prior opportunity to disprove.

For example, in *Sands v. State*, 291 Ga. App. 639 (2008), the defendant was on trial for an alleged sexual assault on a young child. Prosecutors were permitted to present the testimony of a woman who claimed that when she was 15 years old, Sands rubbed her on the leg. The court also allowed the testimony of another woman who claimed that Sands had touched her on the chest many years earlier. Sands never had a prior opportunity to defend himself against these allegations because they were never made until after he was arrested on the current charges. The Court of Appeals upheld Sands’ conviction finding that this evidence was admissible.

Evidence of other acts in sex offense cases has become so expansive that courts have permitted juries to hear about prior allegations made as far back as 41 years ago (See, *Henderson v. State*, 303 Ga. App. 531 (2010)). In cases involving allegations of child sexual abuse, courts will allow the evidence regardless of the gender of the alleged victims or the type of abuse alleged to have been committed. Thus, the evidence no longer needs to have any similarities to the present charges. For example, in *Walley v. State*, 298 Ga. App. 483 (2009), the Georgia Court of Appeals held that the prior rape of an adult was admissible in a trial involving the alleged molestation of a 12-year-old. In *Leaptrot v. State*, 272 Ga. App. 587 (2005), the Court of Appeals held that where the defendant was charged with child molestation, evidence that he had previously given marijuana to another young girl and invited her to his house was admissible.

However, O.C.G.A. § 24-4-403 states that “[r]elevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.” In *State v Dowdell*, 335 Ga. App. 773 (2016), the defendant was charged with forcibly raping a 28-year-old woman and the State sought to introduce evidence involving the alleged molestation of a 13-year-old girl from ten years earlier. It was held that the trial court properly exercised its discretion in excluding the evidence as the prejudice caused by this evidence substantially outweighed the probative value.

The unfortunate effect of this evidence is that it will often turn a relatively unreliable allegation into a very strong one—which leads to more false accusations getting to the jury. Early in the case, criminal defense attorneys must identify potential evidence of other acts and investigate these allegations just as thoroughly as the allegations in the indictment. Even though the defendant is technically only on trial for the charges in the indictment, we must effectively disprove the other allegations as well in order to secure an acquittal.