

IN THE COURT OF APPEALS

STATE OF GEORGIA

BILLY GREG PRUITT,
Appellant

vs.

STATE OF GEORGIA,
Appellee

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Docket No. A26A2155

BRIEF FOR THE APPELLEE

Submitted by:

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PART ONE

A. STATEMENT OF THE CASE

Appellant was indicted in Jackson County Superior Court case number 24CR0222 on April 29, 2024, for two counts of aggravated assault. Appellant entered a plea of not guilty on May 20, 2024, and the case proceeded to trial on December 8, 2025.

On December 11, 2025, the jury reached a verdict of guilty to both counts of aggravated assault. At that time the court entered a sentence of twenty years with the first fifteen years in confinement as to count two aggravated assault and count one merged with count two. Appellant filed a notice of appeal on December 15, 2025.

STATEMENT OF JURISDICTION

This Court has jurisdiction, pursuant to Ga. Const. Art. VI, sec. V, para. III, in that the issues presented are not reserved to the Georgia Supreme Court.

STANDARD OF REVIEW

The Appellate courts review a trial court's evidentiary rulings under an abuse of discretion standard of review. Woods v. State, 323 Ga. 727 at 730 (2026). Where proper objection has been made, this Court reviews questions regarding jury charges de novo. Matos-Bautista v. State, 353 Ga. App. 773 at 776 (2020).

STATEMENT OF FACTS

On March 30, 2024, Almedin Ajanovic went for a run at 8:30p.m. near his home on Doster Road in Jackson County, Georgia. (V5 p. 97-98). With it being dark at that time, Mr. Ajanovic activated the phone flashlight feature as he started his run. (V5 p. 102-103). Because there are no sidewalks on that route, Mr. Ajanovic would run on or close to the fog line next to the grass. (V5 p. 103). If vehicles came up behind him, he would go off into the grass. (V5 p. 103-104). As he was running on Doster Road, which is a two-lane road, a vehicle drove down the middle of the road and straddled the double yellow lines in the middle. (V5 p. 104).

Mr. Ajanovic was concerned because he was not sure if the driver was impaired, distracted or purposely trying to intimidate him. He moved his phone with the light still activated from side to side and said, "Hey you're driving in the middle of the road." as the vehicle's driver's door was parallel with Mr. Ajanovic. (V5 p. 105-106). Mr. Ajanovic heard the truck stop after it passed him. When Mr. Ajanovic turned around, he saw the reverse lights to the vehicle, now 200 to 300 feet away, come on. The driver then backed the vehicle, while still in the middle of the road, all the way back to where Mr. Ajanovic was standing. (V5 p. 107 and 160).

Mr. Ajanovic noticed at that moment there was a gun that was leaning on the windowsill of the vehicle. It appeared like a Magnum or a revolver. It was a long-barrel chrome gun. (V5 p. 107). The drive asked Mr. Ajanovic, "What did you

holler?” Mr. Ajanovic responded, “All I said is ‘hey you’re driving in the middle of the road’.” Mr. Ajanovic told the driver he needed to put that gun away. The gun was pointed right at Mr. Ajanovic. (V5 p. 107-108). Mr. Ajanovic had a feeling like “I’m about to die.” (V5 p. 108). Mr. Ajanovic told the man multiple times to put the gun away, but the person that was pointing the gun at him never put the gun away. Mr. Ajanovic told the man that he was a cop, but the man was not fazed at all and kept pointing the gun at Mr. Ajanovic. (V5 p. 108). The man said, “You hollered something.” (V5 P. 109). Mr. Ajanovic told the man that he was just out here trying to run but that he needed to put the gun away. The man responded, “You need to watch what you holler around here”. The man then took an LED bright light out and shined it in Mr. Ajanovic’s face and then drove away. (V5 p 109). Mr. Ajanovic was wearing a shirt and shorts, was holding a cell phone in his left hand and did not have any weapons. (V5 p. 109.)

After the person drove away, Mr. Ajanovic got the tag number for the vehicle and called 911. (V5 p. 109-110). Mr. Ajanovic identified Appellant’s vehicle as the vehicle that was being driven by the man with the gun. (V5 p.110-112). Mr. Ajanovic identified Appellant as the person who pointed the gun at him and Appellant stipulated to the identification. (V5 p. 112). Prior to March 30th, 2024, Mr. Ajanovic had never met Appellant. (V5 p. 113). Mr. Ajanovic was told later by law enforcement that the gun that was recovered from Appellant was a BB gun,

but at the time the weapon was pointed at him, Mr. Ajanovic had no idea that it was a BB gun. (V5 p. 115).

The trial gave a limiting instruction to the jury regarding the admission of 404(b) evidence and then Samantha Jones was called to testify. (V5 p. 163-164). Ms. Jones testified that in July of 2014, she moved to Hope Haven Road in Jackson County. On January 15, 2015, Ms. Jones had never met Appellant before. (V5 p. 166-167). At around 5:00 p.m. that day, Ms. Jones was at home with her husband and her daughter who was in kindergarten when a loud truck was driving by honking the horn. The truck was a black dually that was right in front of her house. (V5 p. 167-168). Ms. Jones testified that her husband went outside while Ms. Jones stayed on the porch with her daughter. Ms. Jones heard words exchanged, a little bit of yelling and then Appellant pulled out a pistol and shot at her husband in the yard three times while Appellant was still sitting in the driver's seat of his truck. Ms. Jones identified Appellant as the person that shot at her husband. (V5 p. 168-170). The State admitted into evidence Appellant's guilty plea to the aggravated assault that related to the incident Ms. Jones testified about as Exhibit 6. (V5 p. 171)

Deputy William Parks was on duty on March 30, 2024, canvassing the area for the vehicle that Mr. Ajanovic identified in his call to 911. (V5 p. 173). Deputy Parks encountered the vehicle and followed it into a business parking lot. Deputy Parks identified Appellant as the driver of the vehicle. Deputy Parks spoke with

Appellant and located a pellet gun from Appellant's front passenger seat. (V5, p. 175-176). The item was admitted into evidence as Exhibit #7. (V5 p. 176). Appellant was placed under arrest after his encounter with Deputy Parks. (V5. p. 176).

Appellant's prior testimony was admitted into evidence. (V5 p. 228). Appellant's testimony regarding the encounter with Mr. Ajanovic was that he placed the pistol on the dash. (V5 p. 230). "It was laying on the dash. So the only reason – the only way it was pointing at him is when I backed up. If I had backed up another foot, it wouldn't have been pointed – it would have been pointed over towards the woods. (V5 p. 231). On cross examination Appellant testified "I'm not going to say I turned the barrel and pointed it out the passenger side, no ma'am, I didn't. It was pointed in that direction." (V5 p. 235). Appellant was asked if he was told at least twice to put the gun down. Appellant answered "That's correct. Yes, ma'am." He was then asked "and you never did?" to which Appellant responded, "Well I didn't have it in my hand, but no, I didn't put it away." (V5 p. 236)

PART TWO

A. ARGUMENT AND CITATION TO AUTHORITY

I. THE COURT CORRECTLY ADMITTED 404 EVIDENCE.

Prior to trial the State filed a Notice of Intent to Offer evidence of Other Crimes, Wrong or Acts for two prior aggravated assault convictions, which was heard on January 8, 2025. The Court entered an order denying the admission of one act that occurred in 2007 and granting the admission of the other act that occurred in 2015 by written order on January 13, 2025. (R. 69)

On August 12, 2025, the trial court issued a written order amending the prior other acts order by rescinding its ruling regarding the prior aggravated assault from 2015 “and reserves ruling on the issue until such time that intent is a 404(b) appropriate purpose.” The Court cited Kirby v. State, 304 Ga. 472 (2018). The Court concluded the order by stating, “The Court does not yet grasp what Defense will argue, but they should be cautious not to open the door.” (R. 92-93). After opening statements, the trial court revisited the State’s Motion and found that Appellant had opened the door to making intent an issue in the case by stating during his opening that Appellant did not intend to harm anyone. (V5 p. 59-60, 67, 70-74). The trial court only allowed the State to call one witness and admit the conviction related to the 2015 extrinsic act. (V5 p. 95).

Rule 404(b) provides that

“evidence of other crimes, wrongs or acts shall not be admissible to prove the character of a person in order to show action in conformity therewith. Such evidence, however, may be admissible for other purposes, such as ‘proof of motive’ opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, if the evidence is relevant for proving that other purpose. Where a trial court errs in admitting Rule 404(b) evidence, we generally have found such errors harmless ‘where the properly admitted evidence was so strong that the prejudicial effect of the other-acts evidence had no significant influence on the guilty verdicts’.” Woods v. State, 323 Ga. 727 at 731 (2026).

“Additionally, this Court previously has stated that jury instructions limiting the use of 404(b) evidence can reduce the effect that such evidence might have on a jury’s decision, where the evidence of guilt is strong.” Id.

“Rule 404(b) is, on its face, an evidentiary rule of inclusion which contains a non-exhaustive list of purposes other than bad character for which other acts evidence is deemed relevant and may be properly offered in evidence.” Mitchell v. State, 317 Ga. 107 at 110 (2023) State v. Jones 297 Ga. 156 at 159 (2015). A party offering Rule 404(b) evidence must show that (1) it is relevant to an issue in the case other than the defendant’s character; (2) its probative value is not substantially outweighed by its unfair prejudice under O.C.G.A. §24-4-403, and (3) there is sufficient proof for a jury to find by a preponderance of the evidence that the defendant committed the other act. Mitchell v. State, 317 Ga. 107 at 110 (2023).

“On the first prong, ‘a defendant who enters a not guilty plea makes intent a material issue, and the State may prove intent by qualifying Rule 404(b) evidence

absent affirmative steps by the defendant to remove intent as an issue’.” Id. at 110; Naples v. State, 308 Ga. 43 at 51 (2020). “When intent is an issue, the first prong of Rule 404(b) is established when the prior act was committed with the same state of mind as the charged crime.” Mitchell v. State, 317 Ga. 107 at 110 (2023). In evaluating the second prong, the Appellate courts will examine both the probative value and the prejudicial effect of the other acts evidence. Harrison v. State, 310 Ga. 862 at 867 (2021).

“Probative value depends on the marginal worth of the evidence- how much it adds, in other words, to the other proof available to establish the fact for which it is offered. In assessing the probative value of other acts evidence in proving intent, we consider the acts’ similarity to the charged crimes, their temporal remoteness and the prosecutorial need for it.” Id. at 867-868. “Because the major function of O.C.G.A. §24-4-403 is to exclude matter of scant or cumulative probative force, dragged in by the heels for the sake of prejudicial effect, the trial court’s decision to exclude evidence under Rule 403 is an extraordinary remedy which should be used only sparingly.” Kirby v. State, 304 Ga. 472 at 480 (2018). Where Appellant does not dispute that the State satisfied the third part of O.C.G.A. §24-4-404(b) test as to the other act evidence, the Appellate court will examine the other two parts of the test as necessary for the incident and the purpose for which the evidence about the incident was admitted. Id.

In Johnson v. State, the Defendant appealed a conviction for kidnapping with bodily injury, rape, robbery by force, aggravated assault and obstruction of officers for an event that occurred in the spring of 2017. The prosecution presented other act evidence regarding a strangulation from an event that occurred in 2007 for the purpose of proving intent which Johnson challenged on appeal. The Court noted that “Johnson pled not guilty, and did not affirmatively withdraw the issue of intent. Rather, because Johnson’s theory at trial was that the victim’s injuries resulted from the fight with her friend and that the sex acts were consensual, his intent was an element the State was required to prove at trial.” Johnson v. State, 368 Ga. App. 762 (2023).

“Where the issue addressed is the defendant’s intent to commit the offense charged, the relevancy of the extrinsic offense derives from the defendant’s indulging himself in the same state of mind in the perpetuation of both the extrinsic and charged offenses. The reasoning is that because the defendant had unlawful intent in the extrinsic act offense, it is less likely that he had lawful intent in the present offense.” Campbell v. State 359 Ga. App. 391 at 393 (2021). “The evidence that Campbell previously committed an aggravated assault was relevant to his intent to commit an aggravated assault in this case, satisfying the first prong of the Rule 404(b) test.” Id.

In the case at hand, intent was a material issue that the State had to prove at trial. Appellant took no affirmative steps to remove intent as an issue at trial. In opening statements, counsel for Appellant even told the jury that the Appellant did not in any way intend to harm anyone. (V5 p. 59). Appellant's prior testimony that was admitted at trial was that Appellant was not holding the gun, but that the gun was laying on the dash when he spoke to the victim. (V5 p. 230, 235 and 236). Appellant stated "As I backed up, I put the toy on the dash, and I mean, that's what he seen when he got up there. It was laying on the dash. So the only reason—the only way it was pointing at him is when I backed up. If I had backed up another foot it wouldn't have been pointed—it would have been pointed over toward the woods." (V5 p. 231).

In closing arguments, counsel for Appellant stated "why'd that case even come in? For intent? What intent? Think about it; what intent? Billy told you everything that happened? Where's the intent?" (V5 p. 300). The Appellant's statement was that he never held the gun and that he never intended for it to be pointed at the victim. The extrinsic act was admissible evidence that went to the issue of intent.

In 2015, Appellant committed an aggravated assault against a stranger while sitting in his truck and the stranger was standing unarmed outside of the truck. Appellant was not provoked by violence but pointed a gun at the person after they exchanged words and ultimately shot at the person. In 2024, Appellant committed

an aggravated assault while sitting in his truck and a stranger was standing unarmed outside of the truck. Appellant was not provoked by violence but pointed a BB gun at the person after the person said something to him as he was driving by. The Appellant indulged himself in the same state of mind in the perpetuation of both the extrinsic act and the charged offenses. The State has satisfied the first prong of the 404(b) test.

In looking at the second prong of the 404(b) test, the State had a strong need for the evidence as the State was left with Appellant's differing narrative versus the victim's narrative. The State had to combat Appellant's attacks on the victim's credibility and negate the defense that he was acting in self-defense and that he never committed an intentional act. Appellant cross-examined Appellant about wanting to file a civil suit against Appellant. Appellant argued to the jury that the victim was acting at trial and that he was using the criminal case to sue Appellant.

In Cross v. State, this Court examined the probative value of 404(b) evidence in a rape case where extrinsic evidence was used under Rule 404. The Court noted that the "the probative value of the other acts was "great" because the State had a strong need for the evidence to combat Cross's attacks on the victim's credibility and to negate Cross's defense that the encounter was consensual. The only witness to the incident was the victim herself, and although the other acts were not overly similar to the charged offenses, each involved Cross's attempt at nonconsensual sexual

gratification with women he did not know.” Cross v. State, 354 Ga. App. 355 at 363 (2020).

In McWilliams v. State, the Court ruled that “the marginal value of the extrinsic acts evidence was great in comparison to the other available evidence...For direct evidence of what transpired on the night in question, the State was left only with appellant’s differing narratives.” McWilliams v. State, 304 Ga. 502 at 510-511 (2018). “Thus, the extrinsic acts evidence strongly helped to disprove appellant’s claim that he had no intent to harm Ms. Baxter and that her injuries were accidental.” Id. at 510.

In the Johnson case, the Court found that the prosecutorial need for the other acts evidence to establish Johnson’s intent was strong in light of his defense theory that he had consensual sex with the victim and her injuries were cause by her friend. Johnson v. State, 368 Ga. App. 762 at 767 (2023). The Court went on to say that “there is also no merit to Johnson’s argument that the 2007 incident is too remote to be probative. Here, the prior incident occurred ten years before the subject offenses. There is no bright-line test with regard to the temporal proximity of other acts evidence; rather the issue is determined on a case-by-case basis.” Id. at 768. The Court in Johnson also noted that the trial court mitigated any unfair prejudice by twice cautioning the jury that the other acts evidence could be considered only for the limited purpose of establishing intent. Id.

In this case, the trial court twice cautioned the jury that the other acts evidence could only be considered for the limited purpose of establishing intent. The probative value of the evidence was great because the State had a strong need for evidence to combat Appellant's attack on the victim's credibility and to negate the Appellant's defense of self-defense. Much like in the Cross case and the Johnson case, the only two witnesses to what occurred that night were the victim and Appellant. The circumstances of the extrinsic act in this case and the charged offenses were extremely similar and the temporal proximity was not too remote to be probative.

Appellant argues that the court erred in finding that Appellant "opened the door" to the other acts evidence because an opening statement is not evidence. Appellant's opening statement offered that Appellant did not have the intent to harm anyone. Appellant did not take any affirmative steps to remove intent from the trial, thus making the 404(b) evidence relevant to the case. In Perkins v. State, defense counsel gave an opening statement that detectives "arrested [Perkins] for the gun in his pocket. No crime was committed." Perkins v. State, 360 Ga App. 782 at 785 (2023). The trial court found that defense counsel opened the door to the admission of evidence that Perkins was a convicted felon. Id. The issue in Perkins was not whether the opening statement of the defense could make evidence relevant at trial, it was whether defense counsel was ineffective for doing so.

In this case, the trial court reversed its original order allowing the 2015 extrinsic act in evidence and reserved ruling on the admissibility of the extrinsic act until such time that intent is a 404(b) appropriate purpose. As the trial commenced, Appellant took no affirmative steps to remove intent as an issue from the case and to the contrary told the jury that Appellant had no intent. At that point the trial court appropriately found that the intent was a 404(b) appropriate purpose and that the evidence was relevant to the trial.

The trial court correctly admitted the 404(b) evidence in this case. The evidence was relevant for the purpose of proving intent which was a material issue. The probative value of the evidence was strong for the State to combat Appellant's attacks on the victim who was the only eyewitness to the crimes and to negate Appellant's claim of self-defense. The prejudicial effect was minimized by the trial court by twice instructing the jury on the limited purpose of the extrinsic act and limiting the State to calling one witness and admitting the conviction for the extrinsic act. For the court to have done otherwise would have been an extraordinary remedy that is disfavored under the law. Based on this, the Appellant's enumeration of error should be denied.

II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN THE CHARGE TO THE JURY

“A pellet gun is a deadly weapon per se when the uncontradicted evidence is that it reasonably appeared to the victim against whom it was used to be deadly”. State v. Nejad, 286 Ga. 695 at 699 (2010). The law clearly provides that “if (the weapon) reasonably appeared to the victim to be deadly, then [appellant] should be held to the consequences of using a ‘deadly weapon’.” Clark v. State, 191 Ga. App. 386 at 387 (1989).

In Nejad, “each of the two victims testified that Nejad pulled out a gun, pointed it at her and demanded she do as he said. Each victim testified she thought Nejad was going to shoot her. One of the victims described Nejad’s weapon as looking like the Glock firearm carried by law enforcement officers. In light of the uncontradicted evidence that each victim perceived the weapon used by Nejad to be a gun that could be used to shoot her, the trial court did not err when it informed the jury that the pellet gun was a deadly weapon per se.” State v. Nejad, 2286 Ga. 695 at 699 (2010).

Appellant argues that the evidence was contradicted by Appellant’s prior statement, but that argument is misplaced. The Appellate courts have found repeatedly that the viewpoint is if it reasonably appeared to the victim to be a deadly weapon then the charge is appropriately given that a pellet gun is a deadly weapon. The victim in our case clearly testified that he believed the weapon was a firearm

and that he was about to die. He made statements on the scene that were consistent with that testimony and at no time did he give any contradictory statements about what appeared to him to be a firearm that was pointed at him that night.

The trial court correctly charged the jury as to count 1 “A firearm, when used in the way a firearm is ordinarily used, is a deadly weapon. In deciding whether a BB gun is a deadly weapon, you may consider all of the following factors: The nature and extent of the injury inflicted, the character or capabilities of the weapon, the manner in which it was used, any display of it to the jury, and any other circumstances of the case. If the BB gun reasonably appeared, under the circumstances, to be a deadly weapon then you may find the BB gun was, per se, a deadly weapon.” (V5 p. 363)

Appellant further argues that his client was prejudiced by the instruction of count one as to count two but has provided no law to support that argument. At sentencing, count one aggravated assault with a deadly weapon, merged into count two aggravated assault with an offensive weapon. Under the law, guilty verdicts are not the equivalent of convictions and where the trial court merged two counts for which double jeopardy prohibited multiple convictions, the count that was merged into the other stood vacated as an operation of law. Any assertions of error related to that count are moot and any possible error is harmless. Collins v. State, 327 Ga. App. 590 at 592-593. (2014). Because the trial court did not commit any error in

its charge as to count one aggravated assault with a deadly weapon, the above enumeration should be denied. However, even if there were error as to the jury instruction on count one, the issue is moot as count one was vacated by operation of law when the count merged with count two.

III. THE TRIAL COURT DID NOT ERR IN MEETING WITH POTENTIAL JURORS PRIOR TO VOIR DIRE IN THE PRESENCE OF APPELLANT'S COUNSEL WITHOUT APPELLANT BEING PRESENT

Case law is clear that the Defendant's right to be present does not extend to any and all communications the trial court has with potential jurors.

It is well established that a defendant has a constitutional right to be present at every stage of the proceedings materially affecting his case. It is equally well established that proceedings at which the jury composition is selected or changed are critical stages at which the defendant is entitled to be present. Voir dire is one such stage. However, our Supreme Court has noted that, on similar occasions in which 'the limited scope of the trial court's questions' involved meeting with potential jurors prior to voir dire to inquire about possible hardships, a defendant's right to be present at critical stages of the proceedings is not infringed. Kendrick v. State 368 Ga. App. 633 (2023).

In Robertson, the Defendant asserted that his constitutional right to be present at all critical stages of the proceedings was violated. Defendant pointed out that the trial judge met with the prospective members of the jury panel prior to voir dire, in the absence of defendant and his lawyer, and asked these qualifying questions: whether they were citizens of the county; whether they had served on the grand jury; and whether they would suffer any hardship if they were chose to serve as jurors.

The court found no error in view of the limited scope of the trial court's questions. Robertson v. State, 268 Ga. 772 (1997).

In Neale, in the absence of the defendant, the judge met in the jury assembly area with the more than 100 prospective jurors who appeared pursuant to their summons for jury service. The Court in Neale noted that the trial does not begin until the jury has been impaneled and sworn. The Court in Neale also found that the right under the Georgia Constitution to be present does not extend to any and all communications between the trial courts and potential jurors. Neale v. State, 344 Ga. App. 448 at 452 (2018).

In this case, the trial court announced that there were over 100 potential jurors in the jury assembly room and that he planned to run through the basic qualifications questions with them and also address any exemptions and hardships. The court invited the attorneys to watch the process. The Court stated it would go over the statutory questions again in the court room when 36 potential jurors were brought to the court room. (V5 p. 12-13) Counsel for Appellant asked the court to put on the record what happened in the jury assembly room. The trial court stated that he took up any hardships that existed as well as any statutory exemptions. He stated that "we lost two to statutory exemptions of being over the age of 70 and another juror because she was the primary custodial caregiver of children with no reasonable alternative available. (V5 p. 17-19).

The judge noted that there were two hardships, one was for a planned surgery and the other involved a person caring for a daughter who was having post-cesarean complications. A third person claimed hardship but was not excused. The trial court noted that while the Defendant was not present, his trial counsel was present. No objections were made regarding the court's announcement on the record. (V5 p. 17-19). In the case at hand, the trial court's inquiry with 100 potential jurors was limited to hardships and statutory exemptions with trial counsel present. No jury had been impaneled. The trial had not begun and voir dire had not commenced. Appellant's constitutional rights were not infringed, and this enumeration of error should be denied.

PART THREE

A. CONCLUSION

For the foregoing reasons, the trial court did not err and this court should affirm the judgement below.

(This brief does not exceed the word count limit imposed by Rule 24.)

Respectfully submitted, this 10th day of July, 2026.

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Docket No. A26A2155

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing BRIEF FOR THE APPELLEE has been served upon Brian Steel and Walter Harvey, ATTORNEYS FOR THE APPELLANT, by placing a true copy of same in the United States Mail with adequate postage affixed thereon, as well as email to the following:

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