Cite as 2011 Ark. App. 429

# ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR11-20

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| JERYL DEAN BOND<br>APPELLANT<br><br>V.<br><br>STATE OF ARKANSAS<br>APPELLEE | **Opinion Delivered** June 15, 2011<br><br>APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT, GREENWOOD DISTRICT [NO. CR-2009-151 B]<br><br>HONORABLE JAMES O. COX, JUDGE<br><br>AFFIRMED |

**JOHN MAUZY PITTMAN, Judge**

Following a search of his residence pursuant to a warrant on December 19, 2009, appellant was charged on September 7, 2010, with possession of drug paraphernalia with intent to manufacture methamphetamine, possession of drug paraphernalia, and possession of methamphetamine. After a jury trial, he was convicted of these offenses and sentenced as a habitual offender to fifteen years' imprisonment. On appeal, appellant does not contest the sufficiency of the evidence to support these convictions. Instead, he argues only that the trial court erred in admitting evidence concerning items that were seized during a second search of his residence on August 18, 2010, which resulted in other felony charges. We affirm.

Under Ark. R. Evid. 404(b), evidence of other crimes, wrongs, or acts is not admissible to prove character, but may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or

accident. *Anderson v. State*, 2009 Ark. App. 804. The rule applies to evidence of prior and subsequent bad acts. *Id.*; *Fitting v. State*, 94 Ark. App. 283, 229 S.W.3d 568 (2006). Evidence offered under Rule 404(b) must be independently relevant, thus having a tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. *Turner v. State*, 2009 Ark. App. 822. Even if the evidence is relevant, it may be excluded under Ark. R. Evid. 403 if its probative value is substantially outweighed by the danger of unfair prejudice. *Id.* On appeal, we accord the trial judge wide discretion in balancing the conflicting interests to determine whether the probative value of such evidence is substantially outweighed by the danger of unfair prejudice, *Bragg v. State*, 328 Ark. 613, 946 S.W.2d 654 (1997), and we will not disturb the trial court's decision to admit or reject evidence submitted under Rule 404(b) absent a showing of manifest abuse of discretion. *Id.*

We find no such abuse of discretion in this case. The evidence resulting from the December 2009 search consisted of a minute amount of methamphetamine and testimonial and photographic evidence of an assortment of household products found in appellant's kitchen, close to the sink. A police officer with special training in methamphetamine manufacture testified that appellant would easily have been able to produce methamphetamine using the products found in his kitchen. Over appellant's objection, photographic and testimonial evidence was admitted that the August 2010 search of appellant's residence disclosed that similar items, sufficient to manufacture methamphetamine, were again found in appellant's kitchen and a burn pit located beside the house.

Appellant's primary argument is that, because there was an eight-month interval between the initial and subsequent searches, the evidence obtained in the subsequent search was too remote and bore no logical relationship to the issues being tried. We do not agree. Here, the proof of manufacture was circumstantial, and possession of the household items discovered in the searches was not per se illegal. Given these circumstances, the need for proof of intent and lack of mistake was substantial. Time is not the only factor to be considered:

> In deciding whether the danger of unfair prejudice and the like substantially outweighs the incremental probative value, a variety of matters must be considered, including the strength of the evidence as to the commission of the other crime, the similarities between the crimes, the interval of time that has elapsed between the crimes, the need for the evidence, the efficacy of alternative proof, and the degree to which the evidence probably will rouse the jury to overmastering hostility.

1 Kenneth S. Broun, *McCormick on Evidence* § 190, at 768 (6th ed. 2009) (footnotes omitted). On this record, we cannot say that the trial court abused its discretion in permitting introduction of the evidence of the subsequent search.

Appellant also asserts that our holding in this case should be directed toward rectifying what he perceives to be the "abandonment of the independent relevance requirement" in Arkansas courts. This point presents a question that is largely academic and, to the extent that we are asked to limit or overrule prior holdings of the Arkansas Supreme Court, seeks relief beyond our authority to grant. Consequently, we do not address it.

Affirmed.

GLADWIN and BROWN, JJ., agree.