

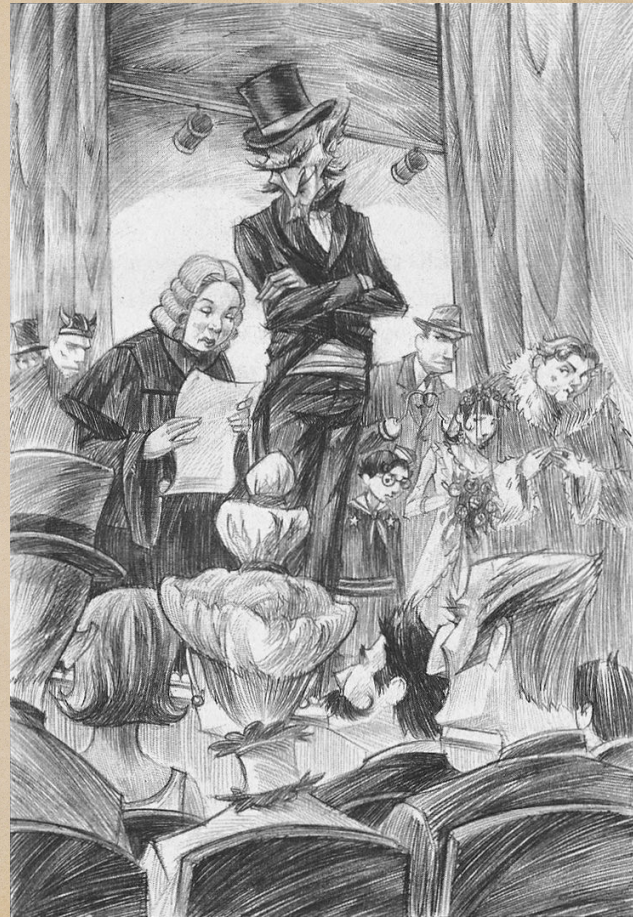
A Series of Unfortunate Events

BAD CHARACTER EVIDENCE IN DISGUISE

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Evidence of other crimes, wrongs, or acts **shall not** be admissible to prove the character of a person in order to show conformity therewith.

O.C.G.A. § 24-4-404(b) (emphasis added).



There are, of course, exceptions,
including but not limited to:

- Motive;
- Opportunity;
- Intent;
- Preparation;
- Plan;
- Knowledge;
- Identity;
- Absence of mistake or accident.

Since 2025, the Supreme Court has specifically addressed:

- **Motive;**
- **Opportunity;**
- **Intent;**
- **Preparation;**
- **Plan;**
- **Knowledge;**
- **Identity;**
- **Absence of mistake or accident.**



Illegal
Character
Evidence!



"Motive"



"Common
Scheme or
Plan"



"Absence
of
Mistake"

First Things First

- The State *must* articulate a clear hypothesis showing that the evidence offered has any tendency to prove or disprove the existence of any consequential fact independent of the use forbidden by Rule 404(b). *State v. Atkins*, 304 Ga. 413, 418 (2018) (citations omitted).
- Court findings unsupported by clear hypotheses by the State or reasoning by the trial court (e.g. listing every 404(b) exception) may be reversible. *See id.*
- The over broad ruling *at least* diminishes the deference owed to the trial court.

Harris v. State, 321 Ga. 87 (2025)

The Rocky Relationship

- Defendant Harris and Girlfriend had been dating and living together shortly before Girlfriend's death by stabbing.
- Harris and Girlfriend would sometimes get in each other's faces when they argued — Harris had a problem with his temper.
- Girlfriend stayed at her mother's home after an argument the day before she was killed. Harris picked her up to talk.

The Scandalous Stabbing

- After, Harris crashed Girlfriend's car and was in the hospital. Girlfriend was not in the car and her family could not reach her.
- They went to Harris' apartment and found Girlfriend's body in the living room.
- There was a broken knife near the body and a large amount of blood on the body and in the living room. Harris' fingerprints were on the knife.

The Ill-Fated Interview

- Harris said Girlfriend was sitting on the couch with a knife by her side and that she attacked him.
- He said they “fell while fighting” and he stabbed her to protect himself.

404(b) Notice

- The State filed a notice of intent to introduce Harris' guilty plea to aggravated battery of Ex-Girlfriend in 2017.
- They said it was relevant to prove Harris' "motive in killing Girlfriend was to control her with violence," the same motive from 2017.
- Harris objected stating the State's alleged motive was too broad.

404(b) Evidence

- Ex-Girlfriend testified he slapped her when angry, spit in Ex-Girlfriend's face, pushed her and kicked her repeatedly, and screamed "die!" while doing so.
- The abuse continued beyond this.
- The parties read a stipulation that Harris plead guilty to two counts of aggravated battery and he served 22 months in jail.

If the other-acts evidence actually tends to show the jury that the defendant had a specific reason for committing the charged crime, it is relevant to motive.

If, on the other hand, the evidence answers “why” a defendant committed the charged crime with “because that's what he does,” it is more likely just propensity evidence in disguise.

Harris, 321 Ga. at 98.



Improper arguments based on a person's character are often smuggled into the case through too-generic theories of “motive”: a motive to “obtain money and sex,” or to “control other people with violence,” is often just another way of saying that the defendant committed the charged crime because “that's who he is” or “that's what he does.”

Harris v. State, 321 Ga. 87, 98 (2025).



- Motive is **not** an essential element of any crime, so the State need not prove it.
- When the State seeks to introduce other-acts evidence to show motive, “the danger that the evidence will be used as improper propensity evidence is acute.” *Harris*, 321 Ga. at 97.

Absence of Accident or Mistake

- 404(b) evidence must be relevant to a contested issue at trial.
- Affirmatively taking an issue off the table at trial makes an issue irrelevant.
- In *Harris*, the defense was justification / self-defense. Harris testified he stabbed Girlfriend **on purpose**. Nobody was claiming accident.
- The only conceivable theory that Harris' prior DV history was relevant was that **battering Ex-Girlfriend on purpose** made it less likely he stabbed Current Girlfriend by mistake.

Encouraging the jury to find that Harris stabbed Girlfriend on purpose because he had committed an act of violence against Ex-Girlfriend in the past invited the jury to use that evidence for an improper purpose: to find that Harris stabbed Girlfriend merely because he had “done other bad things.”



By Comparison:

- Evidence of prior violent acts against ex-husbands similarly error for too-generic a motive, but admissible to prove absence of mistake where defendant claimed victim either shot himself or defendant accidentally shot him. *Hall v. State*, 322 Ga. 378 (2025).
- Character evidence involved defendant's prior actions against the victims — not others — and was necessary to complete the story of the crimes. *Hamilton v. State*, 927 S.E.2d 222 (2026).

Wilson v. State, 322 Ga. 76 (2025)

The Crooked Club

- . Wilson met Wealthy Acquaintance at a gentleman's club. Wealthy Acquaintance made a lot of money selling drugs.
- . Wilson worked with Accomplice and hatched a plan to rob Wealthy Acquaintance. They invaded his home and left it in disarray and stole his expensive watches worth \$142,500.00.
- . Two men were seen in Wealthy Acquaintance's black sedan. The sedan was later found on fire, where Wealthy Acquaintance was found burned in the trunk.
- . Wilson called Wealthy Acquaintance four times the morning of the murder. Wilson and Accomplice had their phones near the car fire and exchanged multiple calls.

The Cruel Conflagration

- . Two men were seen in Wealthy Acquaintance's black sedan. The sedan was later found on fire, where Wealthy Acquaintance was found burned in the trunk.
- . Wilson called Wealthy Acquaintance four times the morning of the murder. Wilson and Accomplice had their phones near the car fire and exchanged multiple calls.

404(b) Notice

- The State moved to introduce Wilson's 2011 armed robbery of Atlanta Businessman.
- They asserted the robbery showed Wilson's "motive, identity, absence of mistake or accident, and common plan or scheme." Wilson objected.
- The court admitted the evidence to show motive and common scheme or plan, finding it was relevant to show that Wilson "finds out what people have, sets them up to be robbed, steals jewelry," and involves other people.

404(b) Evidence

- Wilson contacted Businessman and his sister and offered to sell her discount designer handbags. They met *at the same gentleman's club* where Wilson and three–four other men did the deal, and where Wilson saw Businessman's \$30,000.00 Rolex.
- Wilson entered Businessman's condo and stole a watch, designer clothes, and a camera.
- Wilson was charged with armed robbery, burglary, and aggravated assault. The case was still pending.

Motive

- The State focused extensively on the similarity of the robberies. They said the case was about “good old fashioned American greed,” that, “that’s what Wilson does — he robs people,” and that he was a “professional robber.”
- This amounts to an argument that Wilson has a general propensity to commit robbery.



“Common Scheme or Plan”

- “Common scheme or plan,” or plan to show a common scheme, “blends plain and identity” showing a distinctive plan was used to prove the same person did both.
- The other offense must be a signature crime where the defendant used a modus operandi that is unique.

Claimed Similarities

- Wilson went to the Gentleman's Club for the purpose of meeting rich men;
- Wilson got to know the rich men;
- Wilson robbed those men with accomplices;
- Wilson stole expensive, unique watches;
- Wilson changed his phone number after the robberies.

Differences

- Nature of violence employed (placing a gun to the head v. binding / suffocating / burning);
- No evidence that the perpetrators of the 2011 armed robbery engaged in destruction of physical evidence;
- No evidence of personal or professional relationship between Wilson and the Businessman.

Plan and Identity

These differences undermine the State's theory that Wilson, as part of a robbery scheme, used the Gentleman's Club to "approach and target victims" to steal their "very unusual fancy watches." The evidence was improper propensity evidence in disguise.



Burden v. State, 2026 WL 1541275
(Ga. Jun. 2, 2026)

The Enigmatic Execution

- . The State charged Burden with the execution-style murder of Streater and Blizzard.
- . Streater and Blizzard were found in their apartment with Blizzard's computer bag missing.
- . Burden had interacted with Streater the morning of the murder, spent time with Streater at the apartment during the day, fled from police a short time after the murders, and dropped the laptop bag which contained the murder weapon and the stolen laptop.
- . He was identified months later by DNA from a cigarette butt and a photo line-up.

404(b) Notice

- The State moved to introduce a conviction for burglary with intent to commit theft, aggravated assault with a deadly weapon, and firearm crimes committed **18 months later** in Clayton County.
- Burden was caught carrying stolen televisions taken from a nearby burglarized home. He dropped the TV and shot at the witness.
- The State argued this supported their theory of intent and motive – killing witnesses.

Intent

- . “It is well settled that “[t]he relevance of other acts evidence offered to show intent is established when the prior act was committed with the same state of mind as the charged crime.”
- . Intent is (almost) **always put at issue by pleading not guilty**. So the evidence was relevant.
- . This will always boil down to 1) similarity between offenses and 2) prosecutorial need.

What can we do?

- . **Always** seek a court order that is specific. Ask for clarification on the record about 1) what specific 404(b) exception(s) the State is relying upon and 2) what the logical link is.
- . **Always** get 404(b) matters out of the way before trial. That plea deal might look much more appetizing if ten robberies are getting in.
- . Demand a certificate of immediate review if you're feeling feisty. Worst they can do is say no.

Why is this important?

Courts mess this up all the time and you
need to protect your client for appeal.

Richmond Co. Case No. 2019RCCR01671

- Defendant charged with armed robbery.
- The State moved to introduce a prior “robbery” to prove “intent, plan, knowledge, motive, and absence of mistake or accident.”
- The Court admitted it specifically to prove motive.
- State admitted a sentence sheet showing Defendant was indicted for robbery, false imprisonment, and cocaine possession. He entered a plea to misdemeanor theft by taking and cocaine possession, sentenced to two years in prison.



Washington Co. Case No. SUCR2022000124

- Defendant charged with a shivving murder in Washington State Prison.
- The State moved to introduce a prior stabbing in the Fulton County jail five years prior to show “opportunity, intent, knowledge, identity, and absence of mistake or accident.”
- “In both cases, Defendant was caught, on camera, in close proximity to another inmate who was repeatedly stabbed. And in both cases, Defendant was covered in blood shortly after the crimes occurred.”
- Court admitted the evidence to show intent, preparation, plan, and lack of accident.



Questions?

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