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Evidence

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I. INTRODUCTION

This year represents the first full survey period[1] in which the "new" Georgia Evidence Code, title 24 of the Official Code of Georgia Annotated (O.C.G.A.), takes effect. These new rules took effect on January 1, 2013. The rules conform in large part to the Federal Rules of Evidence and have continued to change the face of evidence law in Georgia. Appellate cases are now providing guidance and direction on the courts' interpretation of the rules, and these cases affect litigants' strategies. This Survey highlights cases decided by the Georgia Court of Appeals and the Georgia Supreme Court between June 1, 2013 and May 31, 2014 that have made an impact on evidence law in Georgia.

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1. For an analysis of evidence during the prior survey period, see John E. Hall, Jr., W. Scott Henwood & Alex Battey, *Evidence, Annual Survey of Georgia Law*, 65 MERCER L. REV. 125 (2013).

II. CASE LAW UPDATE

A review of last year's survey and the cases cited therein shows no subsequent notable history modifying those matters.[2] No cases cited in last year's survey were granted certiorari or were reversed at the time of this Article's publication. Changes evidenced by new case law are outlined below and organized by topic.

III. THE PAROL EVIDENCE RULE

In this survey period, the Georgia Court of Appeals grappled with the application of the parol evidence rule in the criminal law context. In *Davis v. State*,[3] a unique case out of Dodge County, Georgia, the court of appeals held that the parol evidence rule does not apply to contract discussions for the funding of a business relocation when that relocation proved to involve criminal behavior.[4] In *Davis*, the defendant, Bruce Davis, owned multiple clothing manufacturing companies in various parts of the country. Davis convinced a man named Pruett to loan him $350,000 to finance the relocation of a Florida trouser plant to a facility that Pruett owned in Eastman, Georgia. Before signing the contract, the two met and discussed various terms, including repayment and how the loan proceeds would be spent.[5] Once Davis received the money, he used the proceeds for "various other business interests, including some related to [a different] manufacturing facility . . . . In fact, Davis never relocated the Florida plant to Eastman, never made any rent payments [to Pruett] pursuant to the lease agreement . . ., and never repaid the loan . . . ."[6]

At a criminal bench trial for theft by taking, the man who introduced Davis and Pruett testified concerning Davis's promises to use the loan proceeds solely for relocating the trouser plant to Eastman. These were terms outside of the contract itself. The lower court found Davis guilty of theft by taking after considering this evidence. Davis appealed, and enumerated as reversible error the trial court's admission of this parol

2. *See generally* Hall, Henwood & Battey, *supra* note 1.
3. 326 Ga. App. 279, 754 S.E.2d 815 (2014).
4. *Id.* at 279, 754 S.E.2d at 815.
5. *Id.* at 279-80, 754 S.E.2d at 817-18.
6. *Id.* at 280, 754 S.E.2d at 818.

evidence.[7] Specifically, he contended "that the trial court erred in allowing Pruett and [the man who introduced Davis and Pruett] to testify regarding promises that Davis made prior to the execution of, yet not incorporated into, the contracts regarding how the funds would be spent."[8]

The court of appeals disagreed with Davis, holding that the parol evidence rule was inapplicable to the contracts at issue.[9] The court stated that "the purpose of the parol evidence rule is 'to bring finality to an agreement, except when ambiguity requires that the language of the contract be explained but not varied.'"[10] The court declined to extend this contractual rule to the evidence admitted in this particular criminal case, stating, "[C]riminal law is less concerned with the finality of agreements between two private parties."[11] The court considered the statements admissible and relevant in this criminal context, particularly because the statements showed Davis's intent, a necessary element of theft by taking, which the court, in a footnote, compared with "fraud in the inducement" in the civil context where parol evidence is generally admissible.[12] The court cited a plethora of other jurisdictions in agreement in the notes as well,[13] but reserved creating a broad rule for parol evidence in criminal cases, stating:

> This Court is not aware of any reported decisions, and the parties direct us to none, where an appellate court excluded parol evidence in the context of a criminal proceeding. Nevertheless, we are not prepared to say, and we do not say, that the parol evidence rule will never apply in any criminal context. We leave that question for another day.[14]

Thus, the court of appeals sailed nimbly through "uncharted jurisprudential waters," as it characterized the issues presented.[15] This interesting conflict between a traditionally civil rule and its application in the criminal context shows a unique seed planted for future evidence law in Georgia.

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7. *Id.* at 280-81, 754 S.E.2d at 818.
8. *Id.* at 284, 754 S.E.2d at 821.
9. *Id.* at 287, 754 S.E.2d at 823.
10. *Id.* at 286, 754 S.E.2d at 822 (quoting ESI Cos., Inc. v. Fulton Cnty., 271 Ga. App. 181, 184-85, 609 S.E.2d 126, 129 (2004)).
11. *Id.*
12. *Id.* at 286-87, 286 n.31, 754 S.E.2d at 822-23, 822 n.31.
13. *See generally id.* at 287 n.35, 754 S.E.2d at 823 n.35.
14. *Id.* at 287 n.36, 754 S.E.2d at 823 n.36.
15. *Id.* at 287, 754 S.E.2d at 823.

IV. HEARSAY: PRIOR CONSISTENT STATEMENTS

In *Grant v. State*,[16] the court of appeals confirmed Georgia's rule on prior consistent statements, as developed through case law.[17] In that case, Michael Grant appealed his convictions for aggravated assault and fleeing or attempting to elude a police officer, which he received after shooting his short-order cook while working as a restaurant manager. Grant had multiple enumerations of error; the one most relevant here is his argument that the trial court erred by allowing the state to introduce certain prior consistent statements.[18]

The statements at issue were by witnesses to the shooting who made statements to the patrol officer at the scene that supported the defendant, but whose later recorded testimony–and even later testimony at trial–while consistent at those stages, were not consistent with their original statements.[19] Grant argued in limine that the later interviews with the witnesses should not be admitted since they "improperly fortified or bolstered their testimony."[20] The court of appeals agreed and held that the admission of these statements (played by recording to the jury) was in error.[21]

The court explained its reasoning, stating, "[A] prior consistent statement is only admissible if affirmative charges of recent fabrication, improper influence, or improper motive are raised during cross-examination . . . ."[22] Otherwise, the statements are "pure hearsay evidence."[23] The court also pointed out the crucial need for the prior statement to *predate* alleged fabrication, which was not true of the statements offered at trial in this instance.[24]

16. 326 Ga. App 121, 756 S.E.2d 255 (2014).
17. *Id.* at 128, 756 S.E.2d at 262.
18. *Id.* at 121-22, 756 S.E.2d at 257-58.
19. *Id.* at 127, 756 S.E.2d at 261-62.
20. *Id.*
21. *Id.* at 128, 756 S.E.2d at 262.
22. *Id.*
23. *Id.*
24. *Id.* at 128-29, 756 S.E.2d at 262.

The court referenced the new Evidence Code[25] in its reasoning.[26] The court quoted *Carlson on Evidence*,[27] stating, "Georgia had no statute governing the admission of prior consistent statements in the pre-2013 [evidence] code. OCGA § 24-6-613(c) fills this gap and codifies [prior case law]."[28] The statute itself states, "If a prior consistent statement is offered to rebut an express or implied charge against the witness of recent fabrication or improper influence or motive, the prior consistent statement shall have been made *before* the alleged recent fabrication or improper influence or motive arose."[29] Thus, the new rule and the old rule are consistent regarding prior consistent statements; the new rule simply codifies what was previously decided over time through the common law.

V. SIMILAR TRANSACTIONS OR EVENTS

The Georgia Supreme Court has recently reviewed similar transaction evidence in the context of a felony murder appeal.[30] In *Reeves v. State*,[31] the court confirmed Georgia's rule regarding similar transactions in criminal cases and recognized its codification in the new Evidence Code.[32] In *Reeves*, the defendant, Robert Lee Reeves, Jr., was convicted of felony murder predicated on aggravated assault. The defendant based his appeal partially on the fact that a prior offense had been improperly admitted because the two transactions were not sufficiently similar.[33]

In reviewing the trial court's admission of the defendant's previous guilty plea for attempt to commit rape, the supreme court noted that the proper standard for the admission of similar transaction evidence requires the following from the state: "(1) it must identify a proper

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25. O.C.G.A. tit. 24 (2013 & Supp. 2014).

26. *Grant*, 326 Ga. App. at 128 n.4, 756 S.E.2d at 262 n.4. Because Grant was tried in 2011, the court noted that the "new Evidence Code [did] not apply to this case." *Id.* at 125 n.2, 756 S.E.2d at 260 n.2; *see also* Ga. H.R. Bill 24, Reg. Sess. (2011) ("This Act shall become effective on January 1, 2013, and shall apply to any motion made or hearing or trial commenced on or after such date.").

27. RONALD L. CARLSON & MICHAEL SCOTT CARLSON, CARLSON ON EVIDENCE: COMPARING THE GEORGIA RULES & FEDERAL RULES (2d ed. 2014).

28. *Grant*, 326 Ga. App. at 128 n.4, 756 S.E.2d at 262 n.4 (quoting CARLSON, *supra* note 27, at 269); *see also* O.C.G.A. § 24-6-613(c) (2013).

29. O.C.G.A. § 24-6-613(c) (emphasis added).

30. Reeves v. State, 294 Ga. 673, 673, 755 S.E.2d 695, 696-97 (2014).

31. 294 Ga. 673, 755 S.E.2d 695 (2014).

32. *Id.* at 675 n.3, 755 S.E.2d at 698 n.3.

33. *Id.* at 673, 755 S.E.2d at 696-97.

purpose for admitting the transaction; (2) show that the accused committed the independent offense; and (3) show a sufficient similarity between the independent offense and the crime charged so that proof of the former tends to prove the latter."[34] The proper purposes for admitting this evidence at the time of the appellant's trial included to show the defendant's "course of conduct, intent, modus operandi, scheme, and bent of mind."[35] The court went on to detail the striking similarities between the two crimes in the case at issue: similar age, location, and race of the victims, similar method of violence, similar time of year, and similar time of day were all present.[36]

Once again making a point to specifically note the similarities between the new Evidence Code and its own ruling, the court stated that the appellant's case was tried under Georgia's old Evidence Code, "under which courts routinely admitted similar transaction evidence for purposes such as bent of mind or course of conduct."[37] The new Evidence Code includes "admission of evidence of other crimes, wrongs, or acts for purposes including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."[38] Thus, once again the similarities in the new and old Evidence Codes are referenced by the appellate courts, but not yet directly applied because of the timeline of the original trials that were outside of the effective date for the new Evidence Code.[39] The courts are clearly setting up the standards for interpretation of the new Evidence Code for themselves and practitioners going forward.

VI. THE BEST EVIDENCE RULE

During this survey period, the court of appeals recognized changes in the best evidence rule. The new and old rules were contrasted in the following cases, illustrating that duplicates and police sketches are more clearly admissible under the new rules than the old.

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34. *Id.* at 675, 755 S.E.2d at 698.
35. *Id.*
36. *Id.* at 676, 755 S.E.2d at 698-99.
37. *Id.* at 675 n.3, 755 S.E.2d at 698 n.3.
38. *Id.* (quoting O.C.G.A § 24-4-404(b) (2013)) (internal quotation marks omitted).
39. *See id.* at 675 n.3, 755 S.E.2d at 698 n.3 (explaining that the "[defendant] was tried in 2010 under Georgia's old Evidence Code [but] . . . Georgia's new Evidence Code . . . applies [only] to trials conducted after January 1, 2013"); *see also Grant*, 326 Ga. App. at 128 n.4, 756 S.E.2d at 262 n.4.

A. Duplicates as Admissible: New v. Old Evidence Code

In *Leslie v. Doe*,[40] the court of appeals found reversible error when the trial court granted summary judgment against the plaintiff after failing to consider an affidavit that was submitted as a duplicate.[41] There, the plaintiff stated in his complaint that he lost control of his vehicle after another vehicle pulled out in front of him. The other vehicle did not stop, the plaintiff flipped several times after losing control, and an eyewitness provided an affidavit corroborating the plaintiff's perception of the facts.[42] The trial court found that "because the affidavit was a photocopy and not an original, it was 'not sufficient in a summary judgment context to constitute evidence.'"[43] The trial court granted summary judgment against the plaintiff.[44] The court of appeals held that the trial court's failure to consider the affidavit as evidence because it was a duplicate constituted reversible error.[45] It was reversible error not only because the defendant failed to make an objection based on the best evidence rule, but also because the court is permitted to consider duplicate or "secondary" evidence if "it shall appear that the primary evidence for some sufficient cause is not accessible."[46]

In its reasoning, the court of appeals cited case law stating that copies are able to be admitted "over objection" only if the original cannot be properly accounted for.[47] The rationale is that "although original evidence is preferred over secondary evidence, *secondary evidence is not without value*."[48] Thus, if there is no objection made and a copy is appropriately before the fact finder, summary judgment is improper.[49]

This case was not decided under the new Evidence Code, but once again the court facilitated this transitional period by referencing what rule would apply per the 2013 rules.[50] Under the new rules, where O.C.G.A. § 24-5-3[51] has been replaced by O.C.G.A. § 24-10-1003,[52] "[a]

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40. 326 Ga. App. 154, 756 S.E.2d 238 (2014).
41. *Id.* at 154, 756 S.E.2d at 239.
42. *Id.* at 155, 756 S.E.2d at 240.
43. *Id.* at 156, 756 S.E.2d at 240-41 (quoting the trial court).
44. *Id.* at 156, 756 S.E.2d at 241.
45. *Id.* at 157-58, 756 S.E.2d at 242.
46. *Id.* at 156-57, 756 S.E.2d at 242.
47. *Id.* at 157, 756 S.E.2d at 242 (quoting All Risk Ins. Agency v. S. Bell Tel. & Tel. Co., 182 Ga. App. 190, 193-94, 355 S.E.2d 465, 468 (1987)).
48. *Id.*
49. *See id.* at 157-58, 756 S.E.2d at 242.
50. *Id.* at 157 n.6, 756 S.E.2d at 242 n.6.
51. O.C.G.A. § 24-5-3 (2010), *repealed by* Ga. H.R. Bill 24, Reg. Sess. (2011).

duplicate shall be admissible to the same extent as an original unless: (1) A genuine question is raised as to the authenticity of the original; or (2) A circumstance exists where it would be unfair to admit the duplicate in lieu of the original."[53]

B. Police Sketches: "Writings" or Not?

The Georgia Supreme Court answered the above question under the new rules and simultaneously pointed out that the question is moot due to the clarity the new rules provide regarding police sketches.[54] In *Boothe v. State*,[55] the court held that even if the trial court erred in admitting photocopies of police sketches in violation of the best evidence rule under the old rules, the error was harmless.[56] A Clayton County jury convicted Timothy Boothe of malice murder after his girlfriend was found dead in her smoldering house, zip-tied to the bed with her mouth bound in an ace bandage. The medical examiner found in the bandage a blue latex glove that contained the defendant's DNA. The State also admitted copies of two police sketches into evidence.[57]

These sketches are the basis of this case's inclusion in this Article. A witness was riding her bike past the victim's house and saw a Caucasian and an African-American man hanging around the house. They tried to chase her and she got away. Later, she described the men to a sketch artist at the Georgia Bureau of Investigation. At trial, the state never accounted for why copies were to be used in place of the original. Despite the objection by the defendant and no accounting for the originals by the State, copies of the sketches were admitted into evidence.[58]

The supreme court, with Justice Nahmias penning the opinion, held that the inclusion of the sketches may have been in error.[59] He applied the same statute discussed in the case above: O.C.G.A § 24-4-5(a).[60] That "archaic" (as Justice Nahmias described it) former statute required that the original be accounted for before copies were allowed into

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52. O.C.G.A. § 24-10-1003 (2013).

53. *Leslie*, 326 Ga. App. at 157 n.6, 756 S.E.2d at 242 n.6 (quoting O.C.G.A. § 24-10-1003).

54. *See* Boothe v. State, 293 Ga. 285, 288 n.6, 745 S.E.2d 594, 597 n.6 (2013).

55. 293 Ga. 285, 745 S.E.2d 594 (2013).

56. *Id.* at 286, 745 S.E.2d at 595.

57. *Id.* at 286, 745 S.E.2d at 596.

58. *Id.*

59. *Id.* at 289, 745 S.E.2d at 597-98.

60. *Id.* at 288-89, 745 S.E.2d at 597-98; *see also* O.C.G.A § 24-4-5(a) (2010), *repealed by* Ga. H.R. Bill 24, Reg. Sess. (2011).

evidence if a best evidence objection was made.[61] Despite this potential error, the court held that other significant evidence was available to support the finding of guilt, making the sketches irrelevant to the jury's finding.[62]

The court then discussed whether police sketches should be considered "writings" under the former best evidence rule in Georgia, an issue of first impression for Georgia's appellate courts.[63] The court examined the definition of writings to find whether sketches belonged, noting that though documents with words on them are almost always writings under Georgia law, photographs are not considered writings.[64] The court even pointed out a California case, noting that "a sketch, like a handwritten document, is produced by a writing implement and is based on the artist's subjective interpretation of information supplied to the artist as she draws on the page," making the decision a "close question."[65] Ultimately, the court determined the discussion was largely irrelevant based on the court's holding that other evidence, "not . . . the sketches . . . [but instead, the] evidence . . . that he left at the crime scene," was the "main witness" against the defendant.[66]

Justice Melton authored a strong dissent with Justice Benham joining.[67] The justices disagreed with the majority by arguing that the sketches were admitted in error and that error was not harmless.[68] Justice Melton noted, "In order to conclude that the former best evidence rule has no application to the police sketch copies here, we would have to accept the unreasonable proposition that police sketches are more akin to 'photographs' than to 'writings.'"[69] This position is unreasonable, according to the dissent, because there is a clear difference between the two: a writing is captured by hand with a person's perspective while a photograph is "captured by a mechanical device."[70] The dissent also strongly questioned and disagreed with the majority's perspective that the jury did not rely on these sketches, especially because the other

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61. *Boothe*, 293 Ga. at 288, 745 S.E.2d at 597.

62. *Id.* at 289-90, 745 S.E.2d at 598.

63. *Id.* at 288, 745 S.E.2d at 597.

64. *Id.*; *see, e.g.*, Norris v. State, 289 Ga. 154, 158, 709 S.E.2d 792, 796 (2011) (concluding letters are writings); Smith v. State, 236 Ga. 5, 8, 222 S.E.2d 357, 360 (1976) (concluding photographs are not writings).

65. *Boothe*, 293 Ga. at 289, 745 S.E.2d at 597 (citing People v. Garcia, 201 Cal. App. 324, 328 n.1 (1988)).

66. *Id.* at 293-94, 745 S.E.2d at 600-01.

67. *Id.* at 295-99, 745 S.E.2d at 602-05 (Melton, J., dissenting).

68. *Id.* at 295-96, 745 S.E.2d at 602.

69. *Id.* at 296, 745 S.E.2d at 602.

70. *Id.* at 296-97, 745 S.E.2d at 602-03.

evidence was "entirely circumstantial" and could generally be explained through other means.[71]

Importantly, the footnotes from both the majority opinion and the dissent explicitly reference how this case may have been affected by the new Evidence Code's more overt language.[72] The new Evidence Code defines "writing" as "letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, magnetic impulse, or mechanical or electronic recording or other form of data compilation."[73] Thus, the new Evidence Code more clearly articulates the gaps found in the old Evidence Code with regard to writings and recordings under the best evidence rule.

VII. SIMILAR TRANSACTION EVIDENCE

The admissibility of similar transaction evidence has changed slightly under the new rules. In *Latimore v. State*,[74] the court of appeals followed previous precedent regarding similar transaction evidence.[75] There, a jury convicted Maynard Latimore of theft by shoplifting for stealing merchandise from a Home Depot. The evidence showed that a woman repeatedly entered Home Depot stores, purchased items, and then obtained a receipt. Latimore would then enter the same Home Depot stores and leave with the exact items the woman had purchased, but without paying for them. This kind of theft, as it was explained to the jury, is called a "double shop."[76]

Latimore's previous shoplifting convictions were entered into evidence. Each and every previous act involved stealing items from a Home Depot, and most of those convictions involved a "double shop" or attempt to walk out of the store past the cashiers with a receipt in hand despite his failure to purchase the items. Latimore argued that the previous convictions were too different to be admissible because the *items stolen* were different.[77] However, for previous transaction evidence to be

71. *Id.* at 297-99, 745 S.E.2d at 603-05.

72. *See id.* at 288 n.6, 745 S.E.2d at 597 n.6 (majority opinion); *id.* at 295 n.15, 745 S.E.2d at 602 n.15 (Melton, J., dissenting).

73. O.C.G.A. § 24-10-1001(1) (2013). The rule applies to writings, recordings, and photographs. O.C.G.A. § 24-10-1002 (2013).

74. 323 Ga. App. 848, 748 S.E.2d 487 (2013).

75. *Id.* at 850, 748 S.E.2d at 490.

76. *Id.* at 848, 748 S.E.2d at 488-89.

77. *Id.* at 849-50, 748 S.E.2d at 489-90.

admissible, "the proper focus is on the similarities, not the differences, between the separate crime and the crime in question."[78]

Though the former Evidence Code applied to this decision, the court of appeals continued to facilitate the transition to the new Evidence Code by noting the differences in a footnote.[79] In footnote 1, the court stated, "We note that for trials conducted after January 1, 2013, the new Evidence Code permits the admission of similar-transaction evidence for the purpose of proving 'motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident . . . .'"[80] The difference is that these transactions are no longer admissible for the purpose of proving "course of conduct" or "bent of mind."[81]

In a similar case involving a drug trafficking conviction, the court of appeals continued to explain the differences between the new and old Evidence Codes (and once again in the footnotes).[82] There, the defendants appealed their convictions for drug trafficking with several enumerations of error, including one based on admission of similar transaction evidence. The appellants argued that the State should not have been permitted to introduce evidence of a previous North Carolina search of their vehicle that produced nearly $200,000 in shrink-wrapped cash because it was not sufficiently similar to the present crime.[83] The court of appeals examined the similarities between the incidents, pursuant to the standard under the former relevant provision, and held them to be as follows: (1) the cars were registered in Massachusetts, (2) the windows were tinted a dark color, (3) the driver used a single key, (4) the car contained religious insignia throughout, and (5) the car contained compartments with shrink-wrapped items (drugs in one case while the car was traveling north, and cash in the other while the car was traveling south).[84]

The court held that based on the above facts, "proof of the former tends to prove the latter," and thus there was no error in admitting the

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78. *Id.* at 850, 748 S.E.2d at 490 (quoting Muhammad v. State, 290 Ga. 880, 882-83, 725 S.E.2d 302, 304 (2012)).

79. *Id.* at 850 n.1, 748 S.E.2d at 490 n.1.

80. *Id.* (quoting O.C.G.A. § 24-4-404(b)). This language mirrors the federal rules. *See* FED. R. EVID. 404.

81. *Latimore*, 323 Ga. App. at 850 n.1, 748 S.E.2d at 490 n.1 (quoting Betancourt v. State, 322 Ga. App. 201, 206 n.15, 744 S.E.2d 419, 425 n.15 (2013)).

82. *Betancourt*, 322 Ga. App. at 206 n.15, 744 S.E.2d at 425 n.15, *aff'd on other grounds sub nom.* Hernandez v. State, 294 Ga. 903, 757 S.E.2d 109 (2014) (explaining differences between the new and old evidence code).

83. *Betancourt*, 322 Ga. App. at 201, 206-07, 744 S.E.2d at 421, 424-25.

84. *Id.* at 207, 744 S.E.2d at 425.

similar transaction evidence.[85] The court noted the same provisions under the new Evidence Code as noted above regarding admission of evidence for the purpose of proving "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident,"[86] but not for the purpose of proving "course of conduct" or "bent of mind."[87] The court also cited a secondary source explaining that the "primary change" in the rules is the "non-incorporation" of these last two specific categories and the inclusion of "federal rule topics like preparation, plan and additional related grounds as reasons for admitting 'other crimes' evidence."[88]

IX. CONCLUSION

This survey period produced novel and interesting decisions that continue to shape the state of evidence law in Georgia. The appellate courts are continuing to facilitate the transition to the new Evidence Code as they specifically define provisions that have changed under the new Code even when they do not yet specifically apply to the case at hand. The next survey period will likely produce an even larger number of novel interpretations of the new Code as cases are appealed that were originally tried within the effective date for the new Evidence Code.

85. *Id.* (quoting Williams v. State, 261 Ga. 640, 642, 409 S.E.2d 649, 651 (1991)).
86. *Id.* at 206 n.15, 744 S.E.2d at 425 n.15 (quoting O.C.G.A. § 24-4-404(b)).
87. *Id.* (quoting Harvey v. State, 292 Ga. 792, 794, 741 S.E.2d 625, 627 (2013)).
88. *Id.* (quoting CARLSON, *supra* note 27, at 55).