

**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

FRANCIS DRUMMOND,	§	
	§	No. 667, 2012
Defendant Below,	§	
Appellant,	§	
	§	Court Below: Superior Court
v.	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	
	§	Cr. I.D. No. 1206020028
Plaintiff Below,	§	
Appellee.	§	

Submitted: June 4, 2013

Decided: August 1, 2013

Before **STEELE**, Chief Justice, **BERGER** and **RIDGELY**, Justices.

**ORDER**

This 1<sup>st</sup> day of August, 2013, on consideration of the briefs of the parties, it appears to the Court that:

1) Francis Drummond appeals from his conviction, following a jury trial, of non-compliance with condition of bail. Drummond argues that the trial court abused its discretion in admitting evidence that he was in contact with his wife, Faatemah West, while subject to a Protection From Abuse Order (PFA). We find no merit to this argument and affirm.

2) On May 31, 2012, Drummond was arrested on felony domestic violence charges involving West. The Justice of the Peace conditioned Drummond's bail on him having no contact with West. On the same day, West petitioned for, and the Family Court granted, a PFA order against Drummond. The PFA order was dismissed on June 21, 2012.

3) On June 24, 2012, Wilmington Police Officer Michael DeFelice saw Drummond and West on the street together. West told DeFelice that he had been having contact with West over the past two or three weeks; that he had keys to her house; and that he kept personal items there. Drummond was arrested and charged with non-compliance with condition of bail.

4) At trial, Drummond testified that he thought all the restrictions on his contact with West had been lifted when the PFA order was dismissed. On rebuttal, the State introduced evidence that Drummond had been in contact with West at a time when both the PFA and the no-contact bail condition were in effect.

5) Drummond objected to that evidence and argues, on appeal, that the evidence was not admissible. Under DRE §404(b), prior bad acts may be admissible if they are admitted for a purpose "other than to show a mere propensity or disposition on the part of the defendant to commit the charged crime." Such evidence

“may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . . .”<sup>1</sup>

6) Before admitting the disputed evidence, the trial court undertook a *Getz*<sup>2</sup> analysis, and determined, in addition to the other *Getz* requirements, that the evidence was offered to disprove Drummond’s claim of mistake, and that its probative value was not substantially outweighed by any unfair prejudice.

7) Drummond argues that the evidence did not show the absence of mistake. Rather, it established that Drummond violated the PFA and no contact condition in the past. Thus, according to Drummond, it showed that he had a propensity to violate those orders, a purpose that is not permitted under DRE §404(b).

8) Drummond’s defense was that he did not know he was still under a no contact condition of bail, after the PFA order was dismissed. The fact that Drummond had contact with West before the PFA order was dismissed impeaches his

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<sup>1</sup> DRE §403.

<sup>2</sup> *Getz v. State*, 538 A.2d 726, 734 (Del. 1988).

credibility and tends to disprove his claim of mistake. Both impeachment and the absence of mistake are permitted purposes under DRE §404(b).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger  
Justice