IN THE SUPREME COURT OF THE STATE OF DELAWARE

DONNIE RAY HAWKINS,	§	
	§	No. 257, 2005
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of the
	§	State of Delaware in and for
v.	§	Sussex County
	§	
STATE OF DELAWARE,	§	No. 0411002216A
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: March 29, 2006
Decided: July 11, 2006

Before **STEELE**, Chief Justice, **HOLLAND**, **BERGER**, **JACOBS**, and **RIDGELY**, Justices, constituting the Court *en Banc*.

O R D E R

This 11th day of July 2006, it appears to the Court that:

1) Defendant-Appellant, Donnie R. Hawkins challenges his convictions for alleged offenses against his wife and eight-year old stepdaughter.[1] Hawkins claims the Superior Court erred (1) when it admitted alleged prior misconduct

[1] Defendant was convicted of: Possession of a deadly weapon during the commission of a felony (2 counts), in violation of 11 Del. C. § 1447; aggravated menacing (2 counts), in violation of 11 Del. C. § 602(b); driving under the influence of alcohol, in violation of 21 Del. C. § 4177(a); unlawful imprisonment second degree (2 counts), in violation of 11 Del. C. § 781; assault third degree, in violation of 11 Del. C. § 611(1); disorderly conduct, in violation of 11 Del. C. § 1301(1)(a); endangering the welfare of a child, in violation of 11 Del. C. § 1102(a)(4); driving after judgment prohibited, in violation of 21 Del. C. § 2810; and offensive touching (2 counts), in violation of 11 Del. C. § 601.

evidence into the State's case-in-chief and (2) when it denied him the opportunity to cross-examine his wife about a non-related shooting incident that occurred thirteen years previously. We find no reversible error and affirm.

2) On November 3, 2004, Hawkins cursed at his wife, Carol Hawkins, ("Carol"), and hit her. At approximately 2:00 p.m. that day, Hawkins got out his pocketknife and held it to her, saying he was going to kill her and that she would not live through the day. Carol's daughter, Becky, returned home from school at approximately 3:30 p.m. to find her mother crying. Her mother told her not to talk to Hawkins and to run when she had the chance, but Becky refused to leave. Becky later explained that Hawkins was drunk and "acting mean."

3) At approximately 6:10 p.m. Matthew Collins and Joe Littleton stopped at the home to ask about a car advertised for sale in front of it. Collins testified that he and Littleton entered the house after either Hawkins or Carol invited them in. When Hawkins turned his back to them, Carol and Becky screamed, "He has a knife. He is trying to kill us." Collins saw Hawkins make "a swinging motion to frighten them back," but did not see a knife. Collins testified that Hawkins then told them to "Get the fuck out!" to which Becky replied, "Don't leave us!" The two men left the home and called 911. As they were leaving, they saw Hawkins pulling Carol out of the house by her hair. Becky testified that before going out to the car, Hawkins threw Carol on the ground, punched her and

kicked her. Hawkins then put his wife and stepdaughter in his truck and drove away.

4) After the 911 call, the Delaware State Police intercepted Hawkins, Carol and Becky and arrested Hawkins. Trooper Justin Galloway testified at trial that Carol's lip was "busted open" and she was covered with scratches and defensive marks. "[Hawkins] grabbed her so hard that you could see the imprint of a human hand on her arm and already caused bruising from where he had been grabbing her, tugging on her." A blood alcohol test of Hawkins returned a reading of 0.190. Trooper Galloway explained that he searched Hawkins at the traffic scene but found no weapon. When Trooper Galloway returned to the Hawkins' residence there appeared to be a blood-like substance on the kitchen floor and it also appeared that someone had fallen. Trooper Aaron C. Blair testified that it was apparent that there had been a fight in the home. At the residence, Becky gave the State Police the knife Hawkins used.

5) At trial, Carol also testified that she left Hawkins in early 2004 because he had routinely beaten her and drank alcohol. Counsel for Hawkins objected to this testimony of prior bad acts because it would be "extremely prejudicial." The Superior Court then conducted a *Getz* analysis.[2] The prosecutor offered two explanations to satisfy *Getz* and admit the evidence of prior bad acts.

[2] *See Getz v. State*, 538 A.2d. 726 (Del. 1988).

First, the prosecutor explained "for the jury to have any understanding why he would have gone to the extreme that he did, I have to lay some background that this wasn't unusual, that he had often been very bad, but I don't think he had ever been this bad." Second, the prosecutor explained the evidence would show why Carol never reported the abuse to the police: "he told her if she ever got him arrested, he would find her and he would kill her." Defense counsel responded that:

> it's not necessary to show motivation. He's on trial on the issues of did this happen or did it not happen. They have eyewitnesses to certain conduct, certain events…. The State is using this information to show that he's a mean drunk, … he did it on this date in question because he done [sic] it in the past.

6) After applying *Getz*, the Superior Court limited the timeframe of the evidence of prior alleged misconduct, but admitted the evidence for the purpose of explaining the relationship between the parties and Hawkins' motivation to beat his wife. The trial judge said: "I think [the prior bad acts evidence] puts the relationship between the partiers in a more meaningful and understandable context certainly for the jury. So I think it is something that is material." Under the second *Getz* prong, the Court ruled that "motive" is a "sanctioned purpose," and the prior bad acts showed that in the past, Hawkins' motive to beat his wife had been "little things." Under the third *Getz* prong, the Court ruled that the prior bad acts were supported by plain, clear, and conclusive evidence. Under the fourth

Getz prong, the Court ruled that uncharged acts within six months of the charged acts are not too remote in time. Finally, the Court balanced "the probative value … against the unfairly prejudicial effect, and … look[ed] at nine factors," concluding that the probative value outweighed the prejudice.

7) After the ruling allowing prior bad acts evidence, Carol testified before the jury in more detail. She said that during the spring of 2004 Hawkins drank heavily and "come, smack me around, say the house wasn't clean enough, and call me names in front of my daughters;" she said Hawkins called her daughters names, hit her, and tried to run her over with his car. Becky also testified about the incidents occurring in spring 2004 while she lived with her mother and Hawkins.

The Superior Court gave the following limiting instruction to the jury:

> Ladies and gentlemen of the jury, you have heard testimony about matters that allegedly upset the defendant. You have also heard testimony about the defendant's alleged drinking and alleged abusive behavior towards Carol Hawkins and others. These are matters that allegedly happened sometime before November 3, 2004. You must not use such evidence as proof that the defendant is a bad person, and, therefore, probably committed the offenses with which he is charged.
>
> You must not consider such evidence to conclude that the defendant has a certain character or a certain character trait, and to further conclude that he acted in conformity to the trait or character with respect to the offenses charged in this case.
>
> Such evidence about prior conduct before November 3, 2004 was offered by the State for the purpose of explaining the relationship between the defendant and Carol Hawkins, and for showing any

> motive on the part of the defendant to commit the alleged offenses. You must consider this evidence only for the purposes I just mentioned. You assign to it such weight as you determine it deserves.
>
> And again, I am talking about things that allegedly happened prior to November 3, 2004. The events of that day are treated differently and they allegedly form the basis of the charges in the indictment.

8) Hawkins testified in his own defense. He said he did not have a knife on November 3, 2004, did not intend to terrorize his wife and 8-year-old stepdaughter, did not force them to stay in their house, did not swing anything at his wife and stepdaughter, did not hit or kick his wife, and did not drag his wife out to the truck by her hair. In short, he denied that the alleged offenses ever happened.

9) Hawkins' first claim is that under Delaware Rule of Evidence 404(b), the Superior Court abused its discretion when it admitted the prior misconduct evidence.[3] Specifically, Defendant contends that his wife's testimony of alleged misconduct in the spring of 2004 was not material to any issue in dispute and was unduly prejudicial.

10) D.R.E. 404(b) does not permit evidence of prior misconduct to "support a general inference of bad character." However, the Rule states evidence

[3] Del. R. Evid. 404(b).

> Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.

is admissible to show "motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident," or for another purpose other than to prove character, so long as the *Getz* test is satisfied.[4] The analysis set forth by this Court in *Getz* requires that the evidence of prior misconduct:

> (1) be material to an issue or ultimate fact in dispute in the case (if the state elects to present such evidence in its case-in-chief it must demonstrate the existence, or reasonable anticipation, of such a material issue);
> (2) be introduced for purposes sanctioned by D.R.E. 404(b) or any other purpose not inconsistent with the basic prohibition against evidence of bad character or criminal disposition;
> (3) be proved by plain, clear and conclusive evidence;
> (4) not be too remote from the charged offense; and
> (5) the court must balance the probative value against its unfairly prejudicial effect, as required by D.R.E. 403.[5]

Once the Court decides this evidence is admissible, the Court must instruct the jury concerning the limited purpose for its admission.[6]

11) This Court recently reiterated in *Barnett v. State* that bad act evidence must be relevant to an issue in dispute in the present case.[7] Here, defendant contends that his motive was not an issue that arose in the State's case-in-chief, and the State was not required to prove Defendant's motive. This was not a case where Hawkins conceded his action, but attempted to explain it with a benign

[4] 538 A.2d at 734.
[5] *Id*. (emphasis added).
[6] *Id*. (emphasis added).
[7] 893 A.2d 556 (Del., Feb. 9, 2006) (citing *Getz v. State*, 538 A.2d. 726 (Del. 1988)).

motive.[8] Here, Hawkins claimed that the charged acts on November 3, 2004 did not happen. His motive was not in dispute and even if it was, his prior bad acts did not show a motive for his conduct on November 3, 2004. We conclude that the admission of the other crimes evidence was an abuse of discretion.[9]

12) Although the Superior Court's admission of prior misconduct was an abuse of discretion, a reversal is not required when the error is harmless beyond a reasonable doubt.[10] Here, the testimony of the eyewitnesses and the responding police officers overwhelmingly corroborated the testimony of Carol. This was not a close case, as in *Barnett.*[11] We are satisfied that the Superior Court's error in admitting the evidence of prior misconduct was harmless beyond a reasonable doubt.

13) Defendant's second claim is that the Superior Court erred when it denied his motion to cross examine the complaining witness about a prior unrelated incident in which she shot and killed a man in a domestic dispute. Thirteen years before trial, Carol shot and killed the father of her fourteen-year-old daughter, but was exonerated based upon self-defense. Hawkins contends that

[8] *See, e.g., Vanderhoff v. State*, 684 A.2d 1232 (Del. 1996) (defendant used a flashlight to view a child's vaginal area, but contended his motive was not sexual).
[9] *See Barnett*, 893 A.2d at 559.
[10] *Barnett v. State*, 893 A.2d 556, 559 (Del. 2006) (quoting *Van Arsdall v. State*, 524 A.2d 3, 25 (Del. 1987)).
[11] 893 A.2d 556.

Carol's specific act was relevant to her credibility. The Superior Court ruled that the evidence was not relevant.

14) Delaware Rule of Evidence 608(b) generally prohibits the use of specific instances of conduct for the purpose of attacking a witness' credibility other than conviction of a crime as provided in Rule 609.[12] The evidence proffered was in clear violation of DRE 608(b). We find no merit to this claim.

NOW THEREFORE, IT IS ORDERED THAT the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/Henry duPont Ridgely
Justice

[12] Del. R. Evid. 608(b). Specific instances of conduct.

> Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified. (emphasis added)