IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. PD-1247-18

SIDNEY WORK, Appellant

v.

THE STATE OF TEXAS

ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW FROM THE THIRD COURT OF APPEALS MILLS COUNTY

KEASLER, J., announced the judgment of the Court and filed an opinion, in which HERVEY, YEARY, and SLAUGHTER, JJ., joined. NEWELL, J., filed a concurring opinion, in which RICHARDSON, J., joined. KELLER, P.J., and KEEL and WALKER, JJ., concurred.

O P I N I O N

Sidney Work, on trial for possessing methamphetamine and tampering with evidence, objected to evidence of his prior drug use and related criminal record. Work argued that this evidence served no purpose other than impugning his character and

prejudicing the jury against him.[1] The trial judge disagreed with Work, finding that the evidence had some non-character relevance and that it was not overly prejudicial. In this opinion, we must decide whether the trial judge's evidentiary ruling was within the "zone of reasonable disagreement."[2] We conclude that it was.

I. BACKGROUND

On the night of June 2, 2015, Deputy James Purcell of the Mills County Sheriff's Office was patrolling a stretch of U.S. Highway 183, just south of Goldthwaite, Texas. Sometime around 10 o'clock, Purcell initiated a traffic stop on a speeding pickup truck. When Purcell approached the truck, he saw a gaunt, nervous-looking man, whom he would soon identify as Sidney Work, in the driver's seat. Riding in the passenger seat was Work's common-law wife, Marla Morgan.

Purcell asked Work and Morgan for some identification. Each produced a Texas I.D. Card. Purcell immediately noticed that Work and Morgan's physical appearances had changed from when their I.D. pictures were taken. The people in the pictures looked reasonably healthy and put-together; the people in the truck looked sickly and emaciated, with "drawn-up faces" and "sunken-in eyes." Purcell began to suspect that Work and Morgan were drug addicts.

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[1] TEX. R. EVID. 404(b), 403.

[2] *E.g.*, *Montgomery v. State*, 810 S.W.2d 372, 391 (Tex. Crim. App. 1990) (op. on reh'g).

Purcell asked Work if he could search the truck for contraband. Work consented. Eventually, Purcell found a coffee cup situated between the truck's center console and the passenger seat. Inside the coffee cup were two baggies—one containing marijuana, the other containing a substance that Purcell suspected was an illegal drug. That suspicion would soon be confirmed by field testing—it was methamphetamine. Purcell placed Work and Morgan under arrest and explained their rights.

While on scene, Purcell and fellow Mills County sheriff's deputy Johnny Brown asked Work about the methamphetamine. During that questioning, a police dispatcher informed the deputies about Work's extensive criminal record, which included multiple felony drug offenses. Work and the deputies discussed Work's criminal record and his history with substance abuse. This interrogation, along with the information provided by dispatch, was recorded on two in-car cameras.

At Work's trial for possession of a controlled substance and tampering with evidence, Work objected to several snippets of the recordings, on the grounds that they were irrelevant, unfairly prejudicial, and offered only to smear his character.[3] Most, but not all, of Work's objections targeted audible discussions of his criminal record. The trial judge sustained many of Work's objections, but he overruled Work's objections as to the following items.

- At one point in the video, Brown asks Work about his criminal record. Work responds that he has previously been arrested "for drugs."

[3] *See* TEX. R. EVID. 401, 402, 403, 404(b).

- At another point, during a conversation between Brown and Work about Work's history with drugs, Work tells Brown that he has a prior felony conviction.

- At another point, Purcell asks Work whether he knows his *Miranda* rights.[4] Work responds, "yes, sir." Purcell says that he "figured that" Work had been read his rights before.

- Later on, Purcell asks Work about his prior drug use. Work admits he had used marijuana earlier that day, but claims not to have used methamphetamine in "three or two and a half months."

Contemplating these items in light of Rule 404(b), the trial judge concluded that they were probative of Work's "knowledge, intent, [and] identity."[5] He also opined that they tended to rebut the defensive theory advanced in Work's opening statement: that Morgan alone had possessed the methamphetamine, unbeknownst to Work. As for Rule 403, the trial judge found that the probative force of these items was not substantially outweighed by their potential for unfair prejudice. Finally, at Work's request, the trial judge ordered the jury to consider these items only "in determining the [defendant's] knowledge, intent, [or] identity, [or] to rebut a defensive theory," and "for no other purpose."[6] The jury ultimately convicted Work of both offenses.

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[4] *See Miranda v. Arizona*, 384 U.S. 436 (1966).

[5] *See* TEX. R. EVID. 404(b)(2).

[6] *See* TEX. R. EVID. 105(a).

In an unpublished opinion, the Third Court of Appeals affirmed the trial judge's evidentiary rulings.[7] Regarding Rule 404(b), the court held that the trial judge did not abuse his discretion to find that the challenged evidence was probative of Work's knowledge of, and intent to possess, the methamphetamine found in his vehicle.[8] As for Rule 403, the court of appeals agreed with the trial judge that the probative force of this evidence was not substantially outweighed by the risk of unfair prejudice.[9]

Work ultimately filed the instant petition for discretionary review,[10] in which he challenges the court of appeals' admissibility analysis. As he did in the court below, Work argues that his criminal record and history of drug use were relevant only "under a propensity or character conformity rationale: Because he was a drug addict, he must have known the contraband was there."[11] Alternatively, he contends that even if this evidence was marginally relevant apart from a character-conformity rationale, its probative value as such was dwarfed by its potential for unfair prejudice.

II. LAW

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[7] *See Work v. State*, No. 03-18-00244-CR, 2018 WL 2347013, at *12 (Tex. App.—Austin May 24, 2018) (mem. op., not designated for publication).

[8] *See id.* at *10.

[9] *See id.* at *12.

[10] *See Ex parte Work*, No. WR-89,091-01, 2018 WL 5624022, at *1 (Tex. Crim. App. Oct. 31, 2018) (*per curiam*) (not designated for publication) (granting Work an out-of-time petition for discretionary review).

[11] Appellant's Brief on the Merits at 18.

A. Rule 404(b).

Texas Rule of Evidence 404(b) provides: "Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character."[12] However, such evidence "may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident."[13]

Rule 404(b) is often characterized as regulating the admissibility of "propensity" evidence. Under that characterization, Rule 404(b) is often thought to work as follows: If a party offers evidence of an extraneous act solely to suggest that the actor has a "propensity" for immoral or illegal conduct, the evidence is objectionable under Rule 404(b)(1). If the proponent can show that the evidence is relevant for some other, "non-propensity" purpose under Rule 404(b)(2), it may be admitted for that purpose. But the opponent can still insist that the trial judge expressly limit the jury's consideration of this evidence to this "non-propensity" purpose.

But by its terms, Rule 404(b) does not seek to regulate the admissibility of "propensity" evidence—at least not as such. By its terms, it purports only to regulate the admissibility of character-conformity evidence. And in that capacity, it is a "rule of

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[12] TEX. R. EVID. 404(b)(1).

[13] TEX. R. EVID. 404(b)(2).

inclusion rather than exclusion."[14] It follows that for extraneous-bad-act evidence to run afoul of Rule 404(b), the evidence must be shown to bear, not just on the actor's "propensity" to engage in a certain kind of conduct, but more specifically on his "character."[15] In this context, "character" means "a generalized description of a person's disposition, or of the disposition in respect to a general trait, such as honesty, temperance or peacefulness."[16] It refers to "moral qualities," not mere "physical characteristics."[17]

In separating character-conformity evidence from character-free evidence, Rule 404(b) incorporates the well-known concept of relevance.[18] Under our Rules, evidence is relevant if it has any tendency to make a fact of consequence more or less probable than it would be without the evidence.[19] So, to be relevant, a piece of evidence need not prove the fact in controversy by itself. If the evidence even incrementally adds to, or subtracts

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[14] *De La Paz v. State*, 279 S.W.3d 336, 343 (Tex. Crim. App. 2009) (quoting *United States v. Bowie*, 232 F.3d 923, 929 (D.C. Cir. 2000)).

[15] *Id.* ("The rule excludes only . . . evidence that is offered (or will be used) solely for the purpose of proving bad character and hence conduct in conformity with that bad character.") (citations omitted).

[16] *E.g.*, *Wheeler v. State*, 67 S.W.3d 879, 882 n.2 (Tex. Crim. App. 2002).

[17] 1 Steven Goode & Olin Guy Wellborn III, *Texas Practice—Guide to the Texas Rules of Evidence* § 404.2 (4th ed. 2020).

[18] *See, e.g.*, *Montgomery v. State*, 810 S.W.2d 372, 387 (Tex. Crim. App. 1991) (op. on reh'g).

[19] TEX. R. EVID. 401.

from, the proof of a consequential fact, it is relevant. "It is sufficient if the evidence provides a small nudge toward proving or disproving a fact of consequence."[20]

In the context of Rule 404(b), this means that if extraneous-bad-act evidence contributes even incrementally to a permissible character-free inference, Rule 404(b) does not bar its admission.[21] This is true even if the evidence might also lead to a character-conformity inference.[22] In that case, the opponent's remedy under Rule 404(b) is a limiting instruction, not exclusion.[23] The only instance in which Rule 404(b) makes evidence flatly inadmissible is when the evidence, stripped of any character-conformity rationale, fails to satisfy even the threshold standard of relevancy.[24]

In deciding whether a given item of evidence is relevant, a trial judge must "rely in large part upon its own observations and experiences of the world, as exemplary of common observation and experience."[25] Trial judges are thus given enormous discretion to rule on relevancy matters as they will—guided by the law to be sure, but also by their own reasonable "perceptions of common experience."[26] They will be reversed only when

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[20] *Gonzalez v. State*, 544 S.W.3d 363, 370 (Tex. Crim. App. 2018) (citations omitted).

[21] *See Montgomery*, 810 S.W.2d at 387.

[22] *See id.*

[23] *See* TEX. R. EVID. 105(a).

[24] *See Montgomery*, 810 S.W.2d at 387.

[25] *Id.* at 391.

[26] *See id.*

they abuse that discretion, by reaching a conclusion that is outside the "zone of reasonable disagreement."[27] A reviewing court should therefore disturb a trial judge's relevancy ruling only when it can "say with confidence that by no reasonable perception of common experience" was the evidence even marginally probative of a consequential fact.[28]

The same is true of a trial judge's Rule 404(b) rulings. "Whether extraneous-offense evidence has relevance apart from character-conformity, as required by Rule 404(b), is a question for the trial judge. An appellate court owes no less deference to the trial judge in making this decision than it affords him in making any other relevancy determination."[29]

B. Rule 403.

Rule 403 instructs a trial judge to "exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence."[30] The upshot in this context is that, when it comes to evidence supporting both a character-free inference and a character-conformity inference, Rule 403 will sometimes operate to exclude what Rule 404(b) would only limit.[31] If the "unfair prejudice" of the

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[27] *Id.*

[28] *Id.*

[29] *Moses v. State*, 105 S.W.3d 622, 627 (Tex. Crim. App. 2003) (citing *Montgomery*, 810 S.W.2d at 391).

[30] TEX. R. EVID. 403.

[31] *Cf. Montgomery*, 810 S.W.2d at 387 (recognizing that a trial judge's discretion to admit evidence on a limited basis under Rule 404(b) is "subject only to [his] discretion

character-conformity inference "substantially outweigh[s]" the permissible character-free inference, Rule 403 directs the trial judge to exclude the evidence.[32]

In deciding whether to exclude evidence under Rule 403, a trial judge must balance

> (1) the inherent probative force of the proffered item of evidence along with (2) the proponent's need for that evidence against (3) any tendency of the evidence to suggest decision on an improper basis, (4) any tendency of the evidence to confuse or distract the jury from the main issues, (5) any tendency of the evidence to be given undue weight by a jury that has not been equipped to evaluate the probative force of the evidence, and (6) the likelihood that presentation of the evidence will consume an inordinate amount of time or merely repeat evidence already admitted.[33]

These considerations "may well blend together in practice."[34]

Like Rule 404(b), Rule 403 favors the admission of relevant evidence.[35] So here again, an appellate court should "rarely" overturn a trial judge's Rule-403 ruling—only when it has found "a clear abuse of discretion" on the trial judge's part.[36] If the trial judge's ruling was within the "zone of reasonable disagreement," it should be upheld.[37]

III. ANALYSIS

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nevertheless to exclude it if its probative value is substantially outweighed by the danger of unfair prejudice") (citing TEX. R. EVID. 403).

[32] *See* TEX. R. EVID. 403.

[33] *Gigliobianco v. State*, 210 S.W.3d 637, 641–42 (Tex. Crim. App. 2006).

[34] *Id.* at 642.

[35] *See, e.g.*, *De La Paz*, 279 S.W.3d at 343 (citations omitted).

[36] *Montgomery*, 810 S.W.2d at 392 (quoting *United States v. Maggitt*, 784 F.2d 590, 597 (5th Cir. 1986))

[37] *See id.* at 391.

A. Drug conviction.

We will begin by examining Work's admission to Purcell that his criminal record included a felony conviction. Given the nature of Work and Purcell's conversation at that point, the court of appeals characterized this exchange as Work admitting to Purcell that he had a prior felony conviction "for drug possession."[38] Neither party quibbles with that characterization here.

As previously discussed, the trial judge instructed the jury not to consider extraneous-bad-act evidence for any purpose except (1) determining the extent of Work's knowledge and intent, (2) discerning the identity of the offender, or (3) rebutting a defensive theory. Work seems to assume that these admissibility theories all relate to the charge that Work intentionally or knowingly possessed methamphetamine. But in this case, Work was not only charged with possessing the methamphetamine found in his truck—he was also charged with tampering with that methamphetamine with the intent to impair its availability as evidence against him.[39] The trial judge's limiting instruction did not preclude the jury from using this extraneous-bad-act evidence in determining Work's involvement in the tampering offense, either alone or as a party.

Within the zone of reasonable disagreement, a trial judge might rationally conclude that Work's prior felony drug-possession conviction gave him an incrementally greater

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[38] *Work*, 2018 WL 2347013, at *9 & n.3.

[39] *See* TEX. PENAL CODE 37.09(a)(1) (delineating the offense of "Tampering With or Fabricating Physical Evidence").

motive to cover up his involvement in a subsequent felony drug-possession offense. That is because, in light of Work's prior felony drug-possession conviction, a factfinder could rationally impute to Work the concern that the instant drug-possession offense would be more severely punished than it might have been without that prior conviction. Even setting aside Work's knowledge (or ignorance) of the applicable recidivist-sentencing statutes, a factfinder could rationally impute to Work the simple fear that, within a given range of punishment, sentencers are less likely to extend lenience to same-offense recidivists. Either way, compared with someone who had no prior controlled-substance conviction, Work's motive to distance himself from the instant drug-possession offense was incrementally greater.

Furthermore, it was the State's burden to prove that Work altered, destroyed, or concealed the methamphetamine "with intent to impair its availability as evidence" against him. Evidence that Work had a motive to cover up his involvement in a drug offense would, by character-free inference, reduce the likelihood that the drugs were in the coffee cup for some reason other than an intentional act to impair their availability as evidence. For instance, the jury might have otherwise thought that the methamphetamine was in the coffee cup all along—that it had been hidden there even before Work and Morgan knew that an investigation was "pending or in progress."[40] Evidence that Work had much to lose from its being discovered might logically be seen as decreasing the likelihood of this scenario. And, although the trial judge's limiting instruction did not include the

[40] TEX. PENAL CODE 37.09(a)(1).

admissibility theory that this evidence was probative of Work's "motive," it expressly included the theory of "intent."[41] So, under a theory of admissibility expressly "applicable to the case,"[42] we conclude that the trial judge did not abuse his discretion in overruling Work's Rule-404(b) objection to this evidence.

Neither, we conclude, did the trial judge abuse his discretion in overruling Work's Rule-403 objection to the fact of his prior conviction. Within the zone of reasonable disagreement, a trial judge might conclude that this evidence was highly probative of Work's motive, and thus intent, to commit the charged tampering offense. A trial judge could also reasonably conclude that the State's need for this evidence was great, given Work's defensive posture that Morgan alone knew about, and thus tampered with, the methamphetamine, and the relative scarcity of evidence to rebut that defense. Furthermore, a trial judge could reasonably conclude that this evidence carried little risk of turning the jury's deliberation into an irrational, confused, or myopic affair. Drug convictions, while no doubt unseemly, do not produce the kind of reflexive moral outrage that other kinds of convictions (*e.g.*, sexual offenses, or offenses against children) likely would.[43] Finally, given the brevity of Work's statement to Purcell, a judge might reasonably conclude that

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[41] *See* TEX. R. EVID. 404(b)(2)

[42] *See, e.g.*, *Bowley v. State*, 310 S.W.3d 431, 434 (Tex. Crim. App. 2010) ("If the trial judge was correct under any theory of law applicable to the case, we will uphold the judge's decision.") (citations omitted).

[43] *See, e.g.*, *Narvaiz v. State*, 840 S.W.2d 415, 429 (Tex. Crim. App. 1992) (when ruling on a Rule-403 objection, the trial judge should consider the tendency the evidence has to "encourage resolution of material issues on an improper emotional basis").

it would not consume an inordinate amount of time. Considering these factors, the trial judge's decision to admit evidence of Work's prior felony conviction was within the zone of reasonable disagreement.

B. Drug arrest and *Miranda* comments.

It is doubtful whether, in light of Work's prior drug arrest, a factfinder could rationally conclude that Work had an incrementally greater motive to tamper with evidence of drugs inside his vehicle. It is even more doubtful that Work's knowledge of his *Miranda* rights had relevance under this rationale. We will therefore assume *arguendo* that these items ought to have been excluded, either under Rule 404(b) or Rule 403.

Even under that assumption, their admission was utterly harmless.[44] Nothing in Work's remarks about his prior arrest "for drugs" suggested that this arrest was distinct from the one culminating in his prior felony conviction.[45] So, given that evidence of that conviction was already lawfully before the jury, it would have come as no great shock to the jury that Work had previously been arrested "for drugs." For the same reason, the jury could have fairly surmised that Work knew his *Miranda* rights, even without him expressly admitting as much. At least in common understanding, the road to conviction begins with

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[44] *See, e.g.*, *Davison v. State*, 405 S.W.3d 682, 691–92 (Tex. Crim. App. 2013) (observing that there are rare exceptions to our institutional practice of reviewing only "decisions" of the courts of appeals, one of which is that when the "proper resolution" of any remaining appellate issue is "clear," we may exercise our discretion to resolve that issue ourselves, "in the name of judicial economy").

[45] *Cf. Work*, 2018 WL 2347013, at *10 ("[N]othing in that exchange indicated that Work had been arrested for any offense other than the drug offense that Work previously admitted to and that the district court determined was admissible under Rule 404(b).").

an arrest, and arrests are accompanied by *Miranda* warnings. We conclude that the trial judge's decision to admit these items, even if erroneous, was harmless under the appropriate standard of review.[46]

C. Within the zone of reasonable disagreement, a jurist could rationally conclude that drug addiction is not a Rule-404(b) "character" trait.

That leaves one final item of evidence for us to consider: Work's admission to Purcell that, as recently as "three or two and a half months" prior to the instant arrest, he had used methamphetamine. We must first decide whether a trial judge, viewing this evidence through a Rule-404(b) prism, might reasonably conclude that it had relevance apart from a character-conformity rationale. Work frames this as an inquiry whether this evidence was probative of anything other than the fact that he is "an addict"—suggesting that, if not, Rule 404(b) would mandate its exclusion. In turn, this suggestion rests on the following premise: Not only is drug addiction a "character" trait in contemplation of Rule 404(b), its status as such is so far beyond dispute that a contrary conclusion would be outside the zone of reasonable disagreement.

At the outset, we reject this premise. On the contrary, we consider it squarely within the zone of reasonable disagreement for a trial judge to regard drug addiction as an illness—and as such, separate from the afflicted person's "moral qualities."[47] We note, in

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[46] *See* TEX. R. APP. P. 44.2(b).

[47] *See* 1 Steven Goode & Olin Guy Wellborn III, *Texas Practice—Guide to the Texas Rules of Evidence* § 404.2 (4th ed. 2020).

this regard, the United States Supreme Court's decision in *Robinson v. California*.[48] In *Robinson*, the Court struck down as unconstitutional a statute criminalizing the "status . . . of being addicted to the use of narcotics."[49] Much of the Court's reasoning was devoted to the proposition that "narcotic addiction is an illness."[50] The Court observed that punishing an addict solely on account of his addiction would be like "mak[ing] it a criminal offense for a person to be mentally ill, or a leper, or to be afflicted with a venereal disease."[51] To do so "would doubtless be universally thought to be an infliction of cruel and unusual punishment."[52]

Despite the disparate subject matter, we read *Robinson* to support our conclusion that a trial judge might rationally regard drug addiction as something more akin to an illness, or even a "physical characteristic," than a true "moral qualit[y]."[53] A person who suffers from this illness is constituted in such a way that, in the prolonged absence of certain chemical compounds, he experiences a powerful desire to re-introduce those compounds into his body. Nothing about this biochemical process, a trial judge might reasonably conclude, speaks to the person's capacity for honesty, temperance, peacefulness, and the

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[48] 370 U.S. 660 (1962).

[49] *Id.* at 665.

[50] *See id.* at 667.

[51] *Id.* at 666.

[52] *Id.*

[53] *See* 1 Steven Goode & Olin Guy Wellborn III, *Texas Practice—Guide to the Texas Rules of Evidence* § 404.2 (4th ed. 2020).

like. Addiction might provide a motive for a person to be dishonest, intemperate, or violent, but even so, that does not make addiction morally comparable to dishonesty, intemperateness, violence, or any other such quality. There are, it hardly needs to be said, honest addicts, peaceful addicts, even temperate addicts (*i.e.*, those with the willpower to resist their addictive urges). Within the zone of reasonable disagreement, a trial judge might conclude that although an addiction can influence a person's decision making along these lines—whether to be honest, whether to be peaceful, *et cetera*—the person still has the ability to choose his own actions. And it is this choice, not the influence upon it, that ultimately reveals the afflicted person's character.

It might be argued that admitting addiction evidence in a drug-possession case is actually in tension with *Robinson*, because allowing the State to use addiction evidence to prove that an addict possessed illegal drugs is tantamount to punishing the addict for his addiction. We do not share this concern. *Robinson* also contemplates that it would violate the Eighth Amendment for the State to punish one of its citizens solely for contracting the "common cold."[54] But does that mean that in a prosecution to determine, say, whether a person stole common-cold medication from a drug store, the Eighth Amendment prohibits the State from introducing evidence that the person was suffering from the common cold during the time period in question? Suffice it to say that we do not think that this is so. It may very well be that addiction is often perceived as normatively different from the common cold—just as it is unquestionably different from left-handedness and having quick

[54] *See Robinson*, 370 U.S. at 667.

reflexes.[55] But that is not the determinative inquiry. The question is whether, within the zone of reasonable disagreement, a trial judge could rationally regard evidence of a drug addiction as something other than a naked indictment of the afflicted person's character. And for all the reasons just explained, we think that, rationally, he could.

It might also be objected that drug addiction is nothing more than a propensity for drug use—conduct that the State has declared unlawful, and that many within our society consider morally repugnant.[56] But in the first place, as we have already observed, it is an oversimplification to say that Rule 404(b) prohibits "propensity" evidence as such. It is concerned instead with the naked suggestion that, on such-and-such occasion, a person acted in conformity with his "character."[57] And, for the reasons just explained, the inference that a person acted in conformity with a drug addiction could rationally be seen as a character-free inference. Furthermore, even assuming that Rule 404(b) prohibits the inference that a person has a "propensity" for criminal conduct,[58] it is within the realm of common experience for a trial judge to conclude that the urge to commit a crime, even a constant such urge, is not the same thing as a "propensity" for criminality. How the addict

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[55] *See* 1 Steven Goode & Olin Guy Wellborn III, *Texas Practice—Guide to the Texas Rules of Evidence* § 404.2 (4th ed. 2020).

[56] *See, e.g.*, Michael Davis, *Addiction, Criminalization, and Character Evidence*, 96 Tex. L. Rev. 619, 651 (2018).

[57] *See* TEX. R. EVID. 404(b).

[58] *See, e.g.*, *Owens v. State*, 827 S.W.2d 911, 914 (Tex. Crim. App. 1992) ("Under [Rule] 404(b) extraneous offense evidence may be admissible only if it tends to prove a material fact in the State's case, apart from its tendency to demonstrate an accused's general propensity for committing criminal acts.")

responds to his urges might reveal a propensity for criminality, the logic might reasonably go,[59] but at least in cases of drug addiction, the urges themselves do not.

That is not to say that it is outside the realm of common experience for a trial judge to regard drug addiction as a character trait in contemplation of Rule 404(b). Many trial judges would, and some legal observers do,[60] regard it precisely as such, and we should not be understood to classify that view as irrational or outside the zone of reasonable disagreement. We also acknowledge that this issue is a complicated one. Its proper resolution in individual cases has elicited, is eliciting, and will likely continue to elicit widely divergent views. But that is all the more reason to say that a trial judge's advised judgment in these matters, as long as it lies within the bounds of reason, is entitled to deference. And we are simply unwilling to condemn as irrational the view that drug addiction, being an illness, is as unrevealing of a person's character as any other chronic illness. That being the case, evidence of a person's acting in conformity with a drug addiction does not necessarily lead to a character-conformity inference. Within the zone of reasonable disagreement, it could be regarded as evidence of the person acting in conformity with a non-character trait.

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[59] *Cf. Powell v. Texas*, 392 U.S. 514, 535 (1968) (rejecting the thesis "that chronic alcoholics . . . suffer from such an irresistible compulsion to drink and to get drunk in public that they are utterly unable to control their performance of either or both of these acts and thus cannot be deterred at all from public intoxication.").

[60] *See* Davis, 96 Tex. L. Rev. at 651.

With this in mind, we turn to the evidence at issue here: Work's admission that, approximately three months ago, he had used methamphetamine. If only by a "nudge," this evidence rationally supports the inference that, at the time of the alleged offense, Work was addicted to the use of methamphetamine. This inference, if credited, would have enabled the jury to rationally surmise that Work knew about, and intended to possess, the methamphetamine in his truck. That is not because this evidence showed that Work was acting in conformity with his "character," as that term is used in Rule 404(b), but rather, what could reasonably be regarded as a character-neutral trait. The trial judge's limiting instruction included the Rule-404(b)-approved "knowledge" and "intent" theories of admissibility, so those theories applied to the case. As a result, we find no abuse of discretion in the trial judge's admitting this evidence over Work's Rule-404(b) objection.

We come at last to the trial judge's decision to admit this evidence over Work's Rule-403 objection. This ruling presents what is, for us, the closest and most difficult decision in this proceeding. Nevertheless, with the understanding that Rule 403 favors the admission of relevant evidence over its exclusion, we find no abuse of discretion in the trial judge's ruling.

Within the zone of reasonable disagreement, a trial judge could consider this evidence to be highly probative of Work's knowledge of, and intent to possess, the methamphetamine in his truck. That is because a person who desires to use methamphetamine could rationally be viewed as likelier to be in knowing possession of that substance than someone who has no such desire. The force of this inference is not diminished by the fact that, in this case, there may have been another methamphetamine

addict in the vehicle. To be sure, if Morgan was also addicted to the use of methamphetamine, then the likelihood that she knew about the methamphetamine was likewise increased. But Work and Morgan's culpable mental states with respect to the methamphetamine were not mutually exclusive. Considering evidence of their possible drug addictions, both Work and Morgan were likelier to have known about, and been in joint possession of, the methamphetamine.

A judge could also rationally conclude that the State's need for this evidence was, if not great, then at least not so minuscule as to warrant outright exclusion. It is true that the State had some other, non-extraneous-bad-act evidence tending to show that Work was a drug addict.[61] For instance, there was evidence that Work's physical appearance had changed from being relatively healthy-looking to sickly and gaunt. But, especially since the jury might have felt insufficiently justified in making that logical leap based on physical appearances alone, evidence that Work had recently used drugs would serve to make this inference meaningfully stronger.

A trial judge could reasonably conclude that this evidence carried little risk of confusing the jury as to the main disputed issue in the case: whether Work intended to possess, or at the very least knew about, the methamphetamine in his truck. The evidence was straightforward, quickly stated, and mostly served to solidify a possibility that the jury

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[61] *Montgomery*, 810 S.W.2d at 390 ("When the proponent has other compelling or undisputed evidence to establish the proposition or fact that the extraneous misconduct goes to prove, the misconduct evidence will weigh far less than it otherwise might in the probative-versus-prejudicial balance.").

was surely already aware of. For similar reasons, a trial judge could rationally conclude that presenting this evidence would not consume an inordinate amount of time.

It must be acknowledged that this evidence carried some risk of unfairly prejudicing the jury against Work. In the first place, although this evidence supported the character-free inference that Work was struggling with a drug addiction, it also supported the character-impugning inference that, three months prior, Work lacked the fortitude to resist his addictive urges. And there is certainly a risk that the jury would use that inference to conclude that, on this occasion, Work was acting in conformity with the character trait he previously displayed: being weak-willed. Secondly, even as to the character-free fact of Work's drug addiction, there is some risk that that fact would unduly dominate the jurors' deliberative efforts. It is possible that as soon as the jurors learned that Work had recently used methamphetamine, it would refuse to acknowledge any other relevant evidence, including faults in the prosecution's case, or affirmative evidence of Work's innocence.

But even while acknowledging that these risks exist, we cannot say that the trial judge's valuation of them as less than "substantial," in comparison to the evidence's legitimate probative value, was outside the zone of reasonable disagreement. Here again we observe that, while drug addiction is often looked upon with some mixture of pity, aversion, and fear, it does not elicit the kind of reason-overpowering horror that other kinds of addictions (*e.g.*, an addiction to killing, or an addiction to child pornography) likely would. Within the zone of reasonable disagreement, a trial judge could conclude that a drug addiction is not so far beyond the pale that jurors could not be trusted to cabin their initial, "gut" reactions to it, and focus instead on its logical, character-free implications.

Balancing these competing concerns, we conclude that the trial judge did not abuse his discretion in admitting evidence of Work's prior drug use over Work's Rule-403 objection. However, we caution that evidence may be deemed relevant and not-overly-prejudicial on one set of facts and yet irrelevant or intolerably prejudicial on another. As we have said before, the process of determining the admissibility of evidence "cannot be wholly objectified."[62] Furthermore, to say that a trial judge acted within his discretion to rule one way is not necessarily to say that he would have abused his discretion to rule otherwise. In our estimation, the zone of reasonable disagreement here was wide enough to have accommodated either of the possible rulings in this case—limited admittance or total exclusion. The trial judge decided to admit the evidence at issue, subject to an appropriate limitation, and that was his lawful prerogative. Our holding should not be understood to go beyond that simple fact.

IV. CONCLUSION

We affirm the court of appeals' judgment.

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[62] *Montgomery*, 810 S.W.2d at 391.