University of Baltimore Law Forum

Volume 29
Number 1 *Fall 1998*

Article 23

1998

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Recommended Citation

Burnett, Stacey E. (1998) "Recent Developments: Wynn v. State: Absence of Mistake Exception Applies to the General Rule Excluding Evidence of Prior Crimes Where Defendant Raises the Defense of Mistake for the Same Crime for Which He Is on Trial," *University of Baltimore Law Forum*: Vol. 29 : No. 1 , Article 23.
Available at: http://scholarworks.law.ubalt.edu/lf/vol29/iss1/23

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Wynn v. State

ABSENCE OF MISTAKE EXCEPTION APPLIES TO THE GENERAL RULE EXCLUDING EVIDENCE OF PRIOR CRIMES WHERE DEFENDANT RAISES THE DEFENSE OF MISTAKE FOR THE SAME CRIME FOR WHICH HE IS ON TRIAL

By Stacey E. Burnett

The Court of Appeals of Maryland held that to apply Maryland Rule of Evidence 5-404(b), the absence of mistake exception regarding evidence of other acts or crimes, the defendant must make some claim or raise the defense that the crime for which he or she is on trial was committed by mistake. *Wynn v. State*, 351 Md. 307, 718 A.2d 588 (1998). Furthermore, the crime or act committed by mistake must be the same crime or act for which he or she is on trial. In this case, the absence of mistake exception did not apply because the defendant did not claim he committed the crime charged, housebreaking, by mistake; he only claimed he received stolen goods by mistake, which was not the crime for which he was on trial. Therefore, the court opined that the State illegally entered evidence of the defendant's past housebreaking convictions. In so concluding, the court reaffirmed Maryland Rule 5-404(b) by limiting the State's use of prior crimes and barring the State from attempting to expand the application of the rule.

As a result of breaking into five separate dwellings, James Othel Wynn ("Wynn") was charged with various offenses involving five different victims. The State prosecuted the offenses in three separate trials in the Circuit Court for Montgomery County. At the first trial, the state did not present absence of mistake evidence, and Wynn was acquitted of all charges. At the second trial, Wynn was tried for crimes against victims Michael Maples and Charles Garrison ("Garrison"). The State presented evidence of past crimes committed by Wynn, and he was convicted. The third trial, in which evidence of past crimes was also admitted, involved charges for crimes against victim Michael Quigley ("Quigley"). Admittance of evidence from the third trial was the only issue presented before the court of appeals.

At the third trial, Wynn's attorney, as a preliminary motion, moved in limine to exclude evidence of the Maples and Garrison housebreakings. Before the defendant was able to argue the basis for his motion, the court allowed the State to proffer its argument in favor of allowing the evidence. The State argued that since Wynn claimed to have innocently purchased the property stolen from Quigley's home at a flea market, the defendant implied that he obtained Quigley's property by mistake. The State further argued that because Wynn implicitly raised the issue of mistaken possession, the evidence of other crimes should have been allowed to show the absence of mistake, pursuant to the exception in Rule 5-404(b). The trial court agreed with the State and allowed evidence of the Garrison housebreaking.

At trial, asserting that he never raised the mistake of defense, Wynn objected to the State calling Garrison as a witness. The court overruled the objection and allowed Garrison to describe the housebreaking and theft of his residence. During the defense's case, Wynn himself did not testify, but offered evidence that he purchased the items taken from Quigley's residence at a flea market without knowing the goods were stolen. At no time did Wynn claim he entered Quigley's home or that he committed a housebreaking by mistake. Wynn, in fact, claimed he did not commit the crime at all. Wynn was convicted of all charges and

appealed to the Court of Special Appeals of Maryland, where the conviction was affirmed.

The issue before the Court of Appeals of Maryland was whether the trial court properly allowed the State to use evidence of prior crimes pursuant the absence of mistake exception of Rule 5-404(b). *Wynn*, 351 Md. at 316, 718 A.2d at 592. The court began its analysis by examining Maryland Rule of Evidence 5-404(b) which sets forth, in part, that evidence of prior crimes, wrongs, or acts shall not be offered to prove character or to show conformity with the crime charged unless the purpose of the evidence is to show absence of mistake. *Id.*

The court then reviewed under what situations the absence of mistake exception is applicable. *Id.* at 325, 718 A.2d at 597. Most relevant to the instant case, the court noted, is the scenario involving a defendant who admits to committing the crime, but claims to have done so by mistake. *Id.* The State may then offer evidence of other similar crimes as proof that the defendant did not accidentally or mistakenly commit the charged offense, thereby showing the absence of mistake. *Id.*

In further determining the proper application of the absence of mistake exception, the court examined case law from Maryland and other jurisdictions, including *Hoes v. State*, 35 Md. App. 61, 368 A.2d 1080 (1977). *Wynn*, 351 Md. at 326, 718 A.2d at 597. The court in *Hoes* held that where a defendant does not raise mistake as a defense, but does argue facts that could be construed as mistake, the court may apply the absence of mistake exception. *Id.* (citing *Hoes*, 35 Md. App. 61, 368 A.2d 1080). The defendant in *Hoes* was charged with assault with attempt to maim while using a shotgun. *Id.* at 326, 718 A.2d at 597. Asserting a defense of mistake, Hoes claimed that the shotgun accidentally misfired, but, since Hoes had shot the same victim several years prior to the trial at issue, the court permitted the State to use the prior crime to show absence of mistake. *Id.* (citing *Hoes*, 35 Md. App. at 62, 368 A.2d at 1082). The court, however, distinguished *Hoes* from *Wynn.* Unlike Hoes' assertion that he shot the victim by mistake, the crime for which Hoes was on trial, Wynn claimed that he never entered the Quigley house, not that he entered the Quigley house by mistake. *Id.*

The court then cited *Emory v. State*, 101 Md. App. 585, 647 A.2d 1243 (1995), in which evidence of absence of mistake was not admissible. *Wynn,* 351 Md. at 327, 718 A.2d at 598. In *Emory*, the court rejected the application of the absence of mistake exception, finding that the defendant did not raise mistake as a defense in that he did not argue that his alleged involvement with the crime charged was a mistake. *Id.* (citing *Emory*, 101 Md. App. at 608, 647 A.2d at 1255).

The court also cited *McKinney v. State*, 82 Md. App. 111, 570 A.2d 360 (1990), in which the defendant ambiguously hinted towards the defense of mistake, but never asserted one. *Wynn,* 351 Md. at 328, 718 A.2d at 589. The court in *McKinney* held that without an assertion of a mistake defense and no evidence from which such a defense may be inferred, there is "no material fact to be established by the other crimes evidence," and therefore, the absence of mistake exception does not apply. *Id.* (citing *McKinney*, at 125, 570 A.2d at 367).

A proper application of absence of the mistake exception, the court explained, is found in *State v. Brogan*, 272 Mont. 156, 900 P.2d 284 (1995). In *Brogan*, the defendant allegedly violated a state statute by having wild elk on his farm. *Wynn*, 351 Md. at 328, 718 A.2d at 589. Asserting a defense of mistake, Brogan claimed that the elk mistakenly came onto his property when he left his gate open. *Id.* at 329, 718 A.2d at 599. In allowing evidence of prior crimes and bad acts, the court in *Brogan* held that the evidence was relevant to show absence of mistake. *Id.*

Based upon its comprehensive review of prior case law, the court held that for the absence of mistake exception to apply, "the defendant generally must make some assertion or put on a defense that he or she committed the act for which he or she is on trial, but did so by mistake." *Id.* at 330-31, 718 A.2d at 599-600. In so holding, the court found that the

absence of mistake exception did not apply in the present case. *Id.* at 331, 718 A.2d 600. First, the court determined that Wynn did not assert that he entered Quigley's home by mistake, but rather, that he never entered Quigley's residence. *Id.* Thus, the court concluded, Wynn did not raise the defense of mistake to the crime charged. *Id.* Second, the crime Wynn claimed to have mistakenly committed was receiving stolen goods, not housebreaking or theft, the crimes for which he was tried. *Id.* at 332, 718 A.2d at 600. Therefore, the crime or bad act committed by mistake was not the same crime or bad act for which the defendant was on trial. *Id.* Thus, in the instant case, the court reasoned that the State should have been precluded from introducing evidence of prior housebreaking convictions at trial. *Id.*

The court's holding in *Wynn v. State* restricts the use of evidence of past crimes against a defendant by specifically outlining under what circumstances the absence of mistake exception applies. Evidence of prior acts is highly prejudicial toward defendants as juries may conclude "once a thief, always a thief." Further, where evidence is presented that a defendant committed a similar crime or act in the past, juries may conclude that he or she must have committed the crime for which he or she is presently being tried. Therefore, safeguards such as the elements set forth by the court protect the defendant by keeping the jury focused on the current trial. If, however, the defendant opens the door by asserting the defense of mistake to the crime charged, he is risking the introduction of prior similar crimes even with a limiting instruction. Defense attorneys need to carefully weigh whether using the defense of mistake is prudent where the defendant has been previously convicted of similar crimes.