

**FIFTH DIVISION
BROWN, C. J.,
MERCIER, P. J., and EPPS, J.**

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October 9, 2026

In the Court of Appeals of Georgia

A26A1055. JABER v. THE STATE.

EPPS, Judge.

Following a jury trial, Naim Muhamaad Jaber was convicted of aggravated assault, criminal damage to property in the first degree, and possession of a firearm during the commission of a felony. Jaber now appeals from the denial of his motion for a new trial, arguing that the trial court erred in admitting other acts evidence under OCGA § 24-4-404(b) (“Rule 404”) because that evidence was not relevant to any issue in the case. . He further contends that even assuming the relevancy of the prior acts evidence, its probative value was outweighed by the prejudice it caused him. Finally, Jaber contends that the admission of this evidence was not harmless error. For reasons explained more fully below, we agree with Jaber that the trial court erred in

admitting the evidence at issue and that this error was not harmless. We therefore reverse.

“On appeal from a criminal conviction, the defendant is no longer entitled to a presumption of innocence and we therefore construe the evidence in the light most favorable to the jury’s guilty verdict.” *Maddox v. State*, 346 Ga. App. 674, 675 (816 SE2d 796) (2018) (citation and punctuation omitted). So viewed, the record shows that at the time of the incident in question, Jaber owned and operated a furniture store, and the victim owned and operated a car dealership located next to that store. The property on which the dealership sat was owned by Jaber, who had leased it to the victim in October 2022. Although the parties had a written lease agreement requiring the victim to pay monthly rent of approximately \$1000, the victim had never made any rent payments. According to the victim, Jaber had purchased several vehicles from him, and the two men agreed that any rent owed by the victim would be used as a credit towards amounts Jaber owed for the vehicles.

The relationship between Jaber and the victim began to deteriorate in January 2023, after the victim filed a police report accusing Jaber of stealing a car and other property from the dealership. When Jaber returned the allegedly stolen car, he and the

victim got into an argument and Jaber asked the victim to vacate the leased premises. According to the victim, as their argument ended, Jaber threatened to return to the dealership with a gun. Jaber, however, claimed that the argument ended when the victim punched him in the jaw, causing him to lose consciousness.

Following the January 2023 dispute, Jaber and the victim exchanged a number of text messages in which Jaber expressed significant hostility towards the victim, calling him a liar, a coward, and a traitor, and accusing the victim of “sucker punching” him. Additionally, Jaber threatened to have the victim arrested, warned the victim that he would “pay some medical bills,” and told the victim, “so far you’ve been lucky nobody has taken you out. One day you’re going to do it to the wrong person and you will be taken out.” Jaber also continued to insist that the victim vacate the leased property, stating that he wanted the victim “gone as soon as possible.” Finally, Jaber told the victim, “you are a coward[.] I will meet you anywhere if you want, man[.] I will meet you anywhere off my property and the property you lease, but I know you’re not a man[.]” Given his history with Jaber, the victim considered these text messages to be threats.

In March 2023, Jaber drove into the dealership's parking lot in a black Mercedes sedan with tinted windows. Believing the car held a potential customer, the victim went outside and approached the driver's side of the sedan, at which point Jaber rolled down the window. Once the window was down, the victim saw that Jaber was holding a gun, and Jaber asked the victim about his own gun. The victim lied and claimed he was unarmed, explaining that he was afraid if he admitted to having a gun, Jaber would shoot him. Jaber then asked about furniture in the dealership office, apparently claiming he owned it. The victim responded that Jaber should not be on the premises, told Jaber he would have to take the victim to court if he was claiming ownership of the furniture, and asked Jaber to leave.

Following his conversation with the victim, Jaber drove over the grass median separating the auto dealership and the furniture store and into the furniture store's parking lot. According to the victim, Jaber remained in his car and began firing a gun in the victim's direction. The victim took cover behind his own car, and from that position he fired two shots from his own weapon. After Jaber ran out of ammunition, the victim held him at gunpoint until police arrived.

When law enforcement responded to the scene, they found the victim holding a gun and three bullet casings on the ground near the victim's car, which had five to six bullet holes in it. Officers located Jaber inside his Mercedes, with the engine running. Also in the car were a Smith & Wesson revolver, an empty magazine, and a number of shell casings. A GBI ballistics expert determined that five of the bullet casings collected from the scene came from the Smith & Wesson found in Jaber's car, while two of the casings had been fired from the victim's weapon.

Police obtained video footage from three surveillance cameras located in the area of the shooting. Those videos, none of which had audio, showed that Jaber had driven onto the dealership premises, that the victim went out and greeted Jaber, and that the men had a verbal exchange before Jaber drove over the median and into the furniture store's parking lot. Shortly after the Mercedes reached the furniture store, the victim can be seen on video pointing his gun and firing in the direction of the store's parking lot. Because neither Jaber nor his car were visible on the video when the shooting occurred, it was not possible to tell which man fired his weapon first.

Police interviewed two witnesses who were in the vicinity of the shooting, and both witnesses testified at trial. The first witness was working in the furniture store

at the time of the incident and when he heard gunshots, he locked the front door and called police. The witness could not tell where the gunfire was coming from, but he heard someone he believed was the victim shouting at the mail carrier in the parking lot, telling the carrier to get out of the way. The witness unlocked the door and pulled the mail carrier inside and when he did so, he heard the victim yelling, “call the cops.”

The second witness was the victim’s son, who was present at the car dealership on the day in question. When he heard gunfire, the son called police and came out of the dealership office to see his father attempting to take cover behind the Prius. The son first testified that he was unable to say which gun he heard firing first, but later testified that Jaber fired the first shot. The son admitted, however, that he did not tell the responding officers that Jaber initiated the exchange of gunfire.

Jaber was arrested at the scene on a charge of aggravated assault. During their investigation, police learned of a previous dispute between Jaber and a different business associate, Luis Rodriguez, that led Rodriguez to file a police report. Although the report did not result in charges against Jaber, Rodriguez obtained a protective order based on threats Jaber made against him during their dispute. Seeking to admit

evidence of the prior incident at trial pursuant to OCGA § 24-4-403(b), the State filed a motion in limine. Following a hearing at which Jaber opposed the State's motion, the trial court found that the evidence was admissible to show Jaber's intent and motive in committing the alleged crimes.

At trial, Rodriguez testified that before their dispute, he and Jaber had co-owned a car dealership. In May 2020, Rodriguez and his secretary went to meet with Jaber at his furniture store. The two men argued and as Rodriguez prepared to go, Jaber told him he should leave "before [Jaber] put a bullet in my head." Rodriguez's secretary testified that she was present at the meeting between Rodriguez and Jaber in 2020. The secretary confirmed that as she and Rodriguez left the furniture store, Jaber told Rodriguez that the best thing for Rodriguez to do was to leave before Jaber "put a bullet in [his] head." Following the testimony of both Rodriguez and his secretary, the trial court gave a limiting instruction, telling jurors that they were permitted to consider that testimony "only insofar as it may relate to the issue of intent and/or motive in this case and not for any other purpose."

With respect to the charged crimes, Jaber testified that he acted in self-defense, claiming that the victim first shot at him. Specifically, Jaber stated that he had gone

to the dealership that morning to check on the condition of the property, to attempt to collect rent, and to retrieve some furniture stored in the building. Jaber denied that he was holding a gun when he rolled down his window and spoke with the victim, explaining that his gun was stored under the car's front seat. When the victim told him to leave the property, Jaber did so, and drove to the furniture store, where he had an appointment. Before Jaber could park his car, however, the victim began firing at him. Jaber panicked and, in fear for his life, pulled his gun from underneath his car seat so that he could return fire. According to Jaber, he fired blindly, not aiming at anything in particular, and he could not explain how bullets from his gun had hit the victim's car.

Jaber also addressed his aggressive text messages to the victim, acknowledging that he should not have sent them. He explained, however, that he was upset with the victim for hitting him and knocking him out. Jaber further stated that his primary issue with the victim was the victim's failure to pay rent and failure to maintain the leased property.

Finally, Jaber admitted to having a business relationship with Rodriguez and claimed that Rodriguez had "scammed" him out of a considerable amount of money.

Jaber, however, denied threatening to shoot Rodriguez at their June 2020 meeting. Instead, Jaber testified that at the time the men spoke, he was in the furniture store's back room, making repairs to inventory. After the men argued about a planned real estate transaction, Jaber told Rodriguez he should leave the store "before I take this hammer and throw it at you."

Based on the foregoing evidence, the jury found Jaber guilty of the charged crimes. Jaber moved for a new trial, arguing that the trial court erred in allowing evidence concerning the prior incident between him and Rodriguez and that the error was not harmless. Following a hearing, the trial court denied the new trial motion, reiterating its conclusion that the other acts evidence was relevant to Jaber's intent and motive. Jaber now appeals from the trial court's order.

1. Admission of Other Acts Evidence

Rule 404 generally prohibits the introduction of "[e]vidence of other crimes, wrongs, or acts . . . to prove the character of a person in order to show action in conformity therewith." OCGA § 24-4-404(b). Such evidence, however, may be admissible for other purposes, including "proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident," if the

evidence is relevant to proving that other purpose. *Id.* In addition to being relevant to an issue other than the defendant’s character, other acts evidence “must pass the test of OCGA § 24-4-403 (‘Rule 403’) – in that its probative value is not substantially outweighed by the danger of unfair prejudice[.]” *Hall v. State*, 322 Ga. 378, 382 (b) (920 SE2d 58) (2025). Finally, the State must present evidence sufficient to allow “the jury to conclude by a preponderance of the evidence that the accused actually committed the other act.” *Id.* On appeal, we review a trial court’s decision to admit evidence under Rule 404 for “a clear abuse of discretion.” *Parks v. State*, 300 Ga. 303. 305-06(2) (794 SE2d 623) (2016). Such an abuse occurs where a trial court’s evidentiary ruling “misstates or misapplies the relevant law.” *Glasper v. State*, 364 Ga. App. 608, 610 (876 SE2d 11) (2022).

The threshold issue in this appeal is whether the prior acts evidence was relevant to, and therefore admissible for, any proper purpose. Relevant evidence is defined as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” OCGA § 24-4-401. Relevance “is a binary

question – evidence is either relevant or it is not.” *Wilson v. State*, 322 Ga. 76, 85(2) (917 SE2d 726) (2025) (quotation marks omitted).

Here, the State argued, and the trial court found, that the other acts evidence was relevant to Jaber’s intent and motive in committing the charged crimes. On appeal, Jaber disputes this finding, arguing that the evidence was not relevant for any purpose other than to prove his character. We agree with Jaber.

(a) *Motive*

As our Supreme Court has explained:

Motive is the reason that nudges the will and prods the mind to indulge the criminal intent. To properly show motive, the extrinsic evidence must be logically relevant and necessary to prove something other than the accused’s propensity to commit the crime charged. To rule otherwise would make all prior robberies admissible in any robbery case, all prior murders admissible in any murder case, and so on.

Pritchett v. State, 314 Ga. 767, 777(2)(b) (879 SE2d 436) (2022) (citation modified).

Thus, to be relevant to the question of motive in a particular case, the other-acts evidence must “have a specific logical link to the alleged crimes.” *Harris v. State*, 321 Ga. 87, 98(2)(a)(i) (913 SE2d 570) (2025) (quotation marks omitted).

Put another way, if the other-acts evidence actually tends to show the jury that the defendant had a specific reason for committing the charged crime, it is relevant to motive. If, on the other hand, the evidence answers “why” a defendant committed the charged crime with “because that’s what he does,” it is more likely just propensity evidence in disguise.

Id. (citation modified).

Given these principles, our Supreme Court has held repeatedly that evidence is inadmissible under Rule 404(b) where it shows only a “generic” motive underlying the crime – i.e., a motive that relates more to propensity rather than to the specific facts of the case. See *Wilson*, 322 Ga. at 85-86(2)(a)(i) (finding that evidence showing that defendant previously had robbed other victims of expensive items was not relevant to his motive in robbing victim at issue); *Harris*, 321 Ga. at 98-99(2)(a)(i) (holding that trial court erred in admitting other acts evidence to show defendant was motivated to control parties with violence; such evidence showed only a “generic motive” and thus constituted “a classic improper propensity argument”) (punctuation omitted); *Strong v. State*, 309 Ga. 295, 312(1)(d)(2) (845 SE2d 653) (2020) (rejecting State’s argument that evidence of defendant’s “other violent acts was relevant to show that his ‘motive is to control other people’ with violence”; the

evidence identified defendant's "motive to act in far too generic a fashion") (quotation marks omitted); *Kirby v. State*, 304 Ga. 472 , 487(4)(b) (819 SE2d 468) (2018) (reversing admission of other acts evidence and rejecting State's argument that the evidence demonstrated defendant was motivated "to use violence to obtain money and sex," where the State failed to show a "logical and necessary link between" the motive underlying the charged crimes and the motive underlying the prior acts).

Applying our Supreme Court precedent to the case at hand, we conclude the trial court erred in finding that the disputed evidence was relevant to Jaber's motive in firing his weapon at the victim. In making its ruling, the trial court relied on the fact that the prior incident occurred "at the same location" (the furniture store); involved a "sour business relationship" related to a car dealership; and involved "at least the threat by [Jaber] to use a firearm." Although these facts address the similarities between the incident with Rodriguez and the incident at issue, the above-cited case law shows that, standing alone, similarities between prior acts and the charged crimes are insufficient to establish motive for purposes of Rule 404. See *Wilson*, 322 Ga. at 85-86(2)(a)(i); *Harris*, 321 Ga. at 98-99(2)(a)(i); *Strong*, 309 Ga. at 312(1)(d)(2); *Kirby*, 304 Ga. at 487(4)(b). More importantly here, none of the similarities between

the prior act and the charged crimes show why Jaber was motivated to shoot at the victim in this case.¹ And the State’s argument to the contrary – that the evidence showed that Jaber was motivated to react with violence to a strained or soured business relationship – is “the type of propensity argument that Rule 404(b) is designed to preclude.”² *Wilson*, 322 Ga. at 86(2)(a)(i).

(b) *Intent*

To demonstrate the relevance of other acts evidence to the issue of intent, the State is required to show that the other act was committed “with the same state of mind as [a] charged crime.” *Naples v. State*, 308 Ga. 43, 51(2) (838 SE2d 780) (2020). As our Supreme Court has explained, “evidence that an accused [previously] committed an intentional act” is relevant if it “has *some* tendency to make more or less probable that the same defendant committed a similar act with the same sort of

¹ Instead, as the State acknowledged in its opening and closing arguments, motive in this case was shown by the text message exchanges between Jaber and the victim and the testimony of the two men, which showed that Jaber was upset over both the victim’s striking him and the victim’s failure to pay rent and/or vacate the premises.

² Arguably, the other acts evidence does not even support the State’s propensity argument. The prior incident with Rodriguez showed only that previously Jaber had threatened a business partner and not that he had committed violence towards the partner.

intent[.]” *Olds v. State*, 299 Ga. 65, 72(2) (786 SE2d 633) (2016) (emphasis original, punctuation omitted). See also *Bradshaw v. State*, 296 Ga. 650, 657(3) (769 SE2d 892) (2015) (“Where the extrinsic offense is offered to prove intent, its relevance is determined by comparing the defendant’s state of mind in perpetrating both the extrinsic and charged offenses.”) (punctuation omitted).

Here, to prove Jaber committed aggravated assault, the State had to show that Jaber intended to shoot at the victim and either: (1) that he did so in an effort to commit a violent injury; or (2) that when he did so, the victim was placed “in reasonable apprehension of immediately receiving a violent injury.” OCGA § 16-5-20(a) (defining assault). See also OCGA § 16-5-21(a)(2) (aggravated assault occurs when a person assaults with a deadly weapon). The evidence at trial did not show that Jaber’s threat towards Rodriguez involved the same type of intent as an aggravated assault.

A mere threat to do violence does not evidence an intent to assault unless the party making the threat has the present ability to act on that threat. See *Freeman v. State*, 367 Ga. App. 57, 60(1) (885 SE2d 27) (2023). As we have explained, “[t]o support an assault conviction, the injury that a victim apprehends from a defendant’s

act must be ‘imminent and violent.’ The apprehension of future injury is not sufficient to convict the defendant of simple assault.” *In the Interest of T. P.*, 356 Ga. App. 445, 448-449 (847 SE2d 629) (2020) (citation modified). See also *Lewis v. State*, 253 Ga. App. 570, 580-81 (560 SE2d 73) (2002). Here, the State offered no evidence showing that the threat against Rodriguez amounted to an assault. Specifically, the State did not show Rodriguez feared immediate injury as a result of Jaber’s threat. Nor did the State show that Jaber possessed a weapon at the time he made the threat or that he otherwise had the ability to carry out his threat immediately. Consequently, the trial court had no basis to conclude that Jaber’s intent in threatening to shoot Rodriguez was the same as his intent in firing shots towards the victim.

Our conclusion on this issue is reinforced by Jaber’s claim of self-defense. Given that Jaber admitted to firing his weapon towards the victim, the only question for the jury with respect to intent “was whether [self-defense] was the reason for the admitted act.” *Parks*, 300 Ga. at 307(2) (punctuation omitted). The fact that Jaber had threatened Rodriguez during a conversation almost three years prior to the charged assault, however, “had nothing to do with his reason for – his intent in – shooting [towards] the victim.” *Id.* (citation and punctuation omitted) (finding that

defendant's prior assault conviction was not relevant to the issue of his intent in committing aggravated assault against a different victim). In other words, Jaber's intent in threatening Rodriguez was irrelevant to the question of whether he fired his weapon at the victim in self-defense.

Given that the prior acts evidence in question was not relevant to the issue of Jaber's intent and/or motive in committing the charged crimes, the trial court erred in admitting that evidence.³

2. The trial court's admission of the Rule 404 evidence constitutes reversible error unless the State can demonstrate that the error was harmless. *Wilson*, 322 Ga. at 92-93(2)(b) (State bears the burden of showing that nonconstitutional error was harmless). "The test for determining nonconstitutional harmless error is whether it is highly probable that the error did not contribute to the verdict." *Brown v. State*, 303 Ga. 158, 164(2) (810 SE2d 145) (2018). In evaluating the existence of harmless error, "we weigh the evidence as we would expect reasonable jurors to have done so, as opposed to assuming that they took the most pro-guilt possible view of every bit of

³ In light of our holding that the evidence was not relevant, we need not address Jaber's argument that the trial court erred in finding that the evidence's probative value outweighed any potential prejudice its admission caused Jaber.

evidence in the case.” *Id.* Thus, whether the State can meet its burden as to harmless error “is, in part, dependent on how powerful the wrongly admitted evidence was relevant to the overall mix of evidence.” *Wilson*, 322 Ga. at 93(2)(b) (citation and punctuation omitted). Where the State’s evidence is not especially strong, other-acts evidence that “affects the jury’s perception of the defendant and its assessment of his credibility” is less likely to be deemed harmless. *Id.* (citation and punctuation omitted) (wrongly admitted prior-acts evidence was not harmless where the State had little direct evidence connecting defendant to the crime and the prosecution focused on the commonalities between the prior acts and the charged crime at “key points” during the trial). See also, *Strong*, 309 Ga. at 317 (although there was no dispute that the defendant had assaulted the victims by stabbing them, the State’s evidence rebutting defendant’s claim of self-defense was “not overwhelming” and therefore the erroneous admission of Rule 404 evidence was not harmless).

Here, while the State’s evidence was sufficient to convict Jaber of the charged crimes, that evidence was not overwhelming, especially on the critical issue of whether Jaber fired in self-defense.⁴ Indeed, the State’s own brief appears to acknowledge this

⁴ Other than Jaber and the victim, the only witness to testify regarding who initiated the gunfire was the victim’s son. And the son’s testimony on this issue was

fact, with the State arguing that because there were no witnesses who could corroborate the victim's testimony, the prior acts evidence was necessary to rebut Jaber's claim of self-defense. The State's argument makes clear that because Jaber and the victim were the only two witnesses with direct knowledge of who initiated the gunfire, the jury's decision would have hinged, in large part, on its evaluation of each man's credibility. Given that fact, and given the State's emphasis on the Rule 404 prior acts evidence during its closing argument, we find it highly unlikely that evidence showing Jaber's previous threats of violence against a different business partner did not affect the jury's view of Jaber's credibility. Consequently, the State is unable to show that the use of the Rule 404 evidence did not contribute to the verdict. See *Strong*, 309 Ga. at 318(4).

Given that the trial court erred in admitting the disputed evidence, and because that error was not harmless, we reverse the denial of Jaber's new trial motion.

Judgment reversed. Brown, C. J., and Mercier, P. J., concur.

less than clear.