

SENATE BILL 1797

By McNally

AN ACT to amend Tennessee Code Annotated, Title 24, Chapter 7, Part 1, relative to the admissibility of certain evidence in criminal cases and to enact the “Channon Christian Act”.

WHEREAS, Federal Rule of Evidence 404(b)(1) states that:

(1) Prohibited Uses. 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; and

WHEREAS, most federal courts have interpreted the word “person” in Rule 404(b) to bar admission of anyone’s prior bad acts and not just the accused. United States v. Lucas, 357 F.3d 599, 606 (6<sup>th</sup> Cir. Tenn. 2004); United States v. Williams, 458 F.3d 312, 317 (3d Cir. N.J.,2006); Angushi v. Duerr, 196 F.3d 754, 760 (7<sup>th</sup> Cir. 1999) and; United States v. McCourt, 925 F. 2d 1229, 1232 (9<sup>th</sup> Cir. 1991); and

WHEREAS, Tennessee Rule of Evidence 404(b) reads as follows:

(b) Other Crimes, Wrongs, or Acts. — Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity with the character trait. It may, however, be admissible for other purposes. The conditions which must be satisfied before allowing such evidence are:

(1) The court upon request must hold a hearing outside the jury’s presence;

(2) The court must determine that a material issue exists other than conduct conforming with a character trait and must upon request state on the record the material issue, the ruling, and the reasons for admitting the evidence;

(3) The court must find proof of the other crime, wrong, or act to be clear and convincing; and

(4) The court must exclude the evidence if its probative value is outweighed by the danger of unfair prejudice;

and

WHEREAS, Tennessee Rule 404(b) is substantially similar to the federal rule and on its face, extends the protection of the rule to any person. However, surprisingly, the Tennessee Supreme Court, in State v. Stevens, 78 S.W.3d 817, 836-837 (Tenn. 2002) held that a “person” for purposes of Rule 404(b) means only the defendant; and

WHEREAS, this interpretation seems contrary to Tennessee Code Annotated, Section, 40-38-113, which was enacted to implement Article 1, § 35 of the Constitution of Tennessee, and provides:

40-38-113. Law enforcement agencies shall provide notice of the following information to any victim of crime:

(1) The victim's rights under the Tennessee Constitution, article I, § 35, to be free from intimidation, harassment, and abuse throughout the criminal justice system; and

WHEREAS, often a defense attorney tactic is to attack the victim by introducing evidence of prior acts of the victim, that, although totally irrelevant to the instant offense, are designed to lead the jury to believe that the victim is equally at fault for the offense as the defendant; and

WHEREAS, the language of Tennessee Rule 404(b) is clear and the words should be given their clear meaning which would give all “persons” the benefit of the protection it provides; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the “Channon Christian Act”.

SECTION 2. Tennessee Code Annotated, Title 24, Chapter 7, Part 1, is amended by adding the following as a new section:

24-7-125.

When any statute or rule of court prohibits, restricts, or limits the introduction in a criminal trial of a person's other crimes, wrongs, or acts for the purpose of proving the character of the person in order to show action in conformity with the character trait, "person" means any individual, including a victim, the defendant, a witness, or any other third-party.

SECTION 3. This act shall take effect July 1, 2014, the public welfare requiring it.