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**Franklin General Statutes**  
**Article XVI. Crimes and Punishments**

Section 286. Unlawful manufacture, distribution, and possession, etc., of controlled substances.

(a) Except as authorized by this subheading, it is unlawful for any person to manufacture, distribute, or dispense or to possess a controlled dangerous substance in sufficient quantity to reasonably indicate under all the circumstances an intent to manufacture, distribute, or dispense a controlled dangerous substance;

(b) Any person who violates any of the provisions of subsection (a) of this section with respect to a substance classified in Schedules I or II which is a narcotic drug is guilty of a felony and is subject to imprisonment for not more than 20 years, or a fine of not more than \$25,000, or both.

**Franklin Rules of Evidence**

**Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time**

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

**Rule 404. Character Evidence Not Admissible To Prove Conduct; Exceptions; Other Crimes**

(a) Character evidence generally. Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

(1) Character of accused. Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same;

\* \* \* \*

(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 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, provided that upon

request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

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**Rule 608. Evidence of Character and Conduct of Witness**

(a) Opinion and reputation evidence of character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(b) Specific instances of conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness's 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's 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.

The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness's privilege against self-incrimination when examined with respect to matters which relate only to credibility.

**Rule 609. Impeachment by Evidence of Conviction of Crime**

(a) General rule. For the purpose of attacking the credibility of a witness,

(1) evidence that a witness other than an accused has been convicted of a crime shall be admitted if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and

(2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

(b) Time limit. Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect.

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## **Milford v. State**

Franklin Supreme Court (1994)

The appellant, Edward Milford, was convicted of the unlawful possession of cocaine in sufficient quantity to reasonably indicate an intent to distribute. In this appeal he claims that the trial court erred in permitting the introduction of evidence revealing other criminal activity on his part.

On December 12, 1992, three officers of the Franklin State Police executed a search and seizure warrant at the residence of Edward and Lena Milford. At the time of the search, Edward Milford was not at home, although Lena was. The police recovered from a bedroom a large plastic baggie containing five smaller baggies, each of which contained cocaine.

The fact that the appellant was not caught with the contraband in his hands is not legally fatal to proof of possession. Possession and control need not be immediate and direct but may be constructive.

In terms of legal sufficiency, Edward Milford argued that he was not only not in the bedroom from which the cocaine was seized at the time of the search, he was not even in the house. Nothing suggested that the bedroom was his. Nothing made him a more likely possessor of the narcotics than any of the other five residents of the home.

Milford's connection with the house would probably have been enough to permit the State to clear the low hurdle of legal sufficiency, but the margin of clearance would have been narrow. In this case, however, we are not called upon to make these closer decisions, for, despite Mr. Milford's insistence, we are not going to look at the events of December 12 in a vacuum.

If the evidence of December 12, standing alone, might have given rise to arguable ambiguities, the observations of December 10 dissolved those ambiguities. On December 10, Herman J. Grunion, a neighbor of the Milfords for two years and a frequent visitor in their home, went to their home in the company of Mike Wiehl, an undercover State Trooper. In the presence of Wiehl, Grunion purchased directly from Lena Milford a one-eighth-ounce package of cocaine for \$280. Edward Milford was present when the sale was consummated.

This narcotics sale on December 10 was a crime other than the charged possession on December 12. The question for decision is whether it was relevant and important in establishing guilt with respect to the December 12 charge of possession.

The relevance and vital importance of the "other crimes" evidence here in issue looms large. Close proximity between appellant and the cocaine was shown on December 10

even if the connection was less proximate on December 12. The presence of the cocaine was, moreover, shown to be within his knowledge on December 10.

It has long been recognized that evidence of other bad acts, although relevant and having some probative force, presents the problem that it is difficult to prevent a jury from improperly using evidence of other bad acts or giving it more weight than it deserves. The policy that other bad acts should be excluded is driven by two fears. One fear is that jurors will conclude from evidence of other bad acts that the defendant is a "bad person" and should therefore be convicted of the current charge, and the other fear is that jurors will conclude that the defendant deserves punishment for the other bad conduct.

Evidence of other bad acts may, however, be admissible if it is relevant to the offense charged on some basis other than mere propensity to commit crime, and if it passes muster under the ever-present test of balancing relevance against unfair prejudice. The threshold inquiry a court must make before admitting similar acts evidence under Franklin Rule of Evidence §404(b) is whether that evidence is probative of a material issue other than character. Evidence of other crimes may be admitted if it is substantially relevant to some contested issue in the case and if it is not offered to prove the defendant's guilt based on propensity to commit crime or his character as a criminal.

When evidence of other bad acts is relevant for reasons other than general criminal propensity, the trial judge must determine whether the accused's involvement in the other crimes is established by a preponderance of the evidence. If this requirement is met, the trial judge must then carefully weigh the necessity for and probative value of the evidence of other bad acts against any unfair prejudice likely to result from its admission. This approach recognizes that evidence of other bad acts usually has some relevance and that relevant evidence is usually admitted unless some good reason is shown to exclude it.

When a disputed issue involves the accused's state of mind, and especially when the only means of ascertaining that mental state is by drawing inferences from conduct, then prior instances of the conduct of the accused are relevant. Hence, evidence of other offenses is admissible on the trial of the current charge to prove state of mind. To be admissible as relevant, such offenses need not be exactly concurrent. If they are committed within such time, or show such relation to the current charge, as to make connection obvious, such offenses are admissible. Where the other crime is so linked in point of time or circumstances as to show state of mind, the evidence is admissible.

This case is distinguishable from *Mellish v. State* (Franklin Supreme Court, 1992), involving the charge of possession of heroin with the intent to distribute. At issue was the admissibility of evidence that at some

unspecified time in the past, the defendant and the witness had "worked together selling narcotics." This Court held the evidence inadmissible, finding no special relevance, and, indeed, questionable probative value even for criminal disposition. Proof that the accused had previously sold narcotics perhaps as long as five years before the crime charged in the indictment hardly tends to establish a disposition or propensity to commit the offense alleged, let alone an intent to do so. The remoteness in time of prior conduct has always been a consideration in determining relevancy, particularly when prior misconduct is alleged. Passage of time may actually indicate rehabilitation of the person.

In this case, the evidence, although involving other uncharged crimes, was admissible because of the strong inference that could be drawn from such evidence that Milford knowingly possessed the cocaine found on the day of the search and that he possessed it with the intent to distribute it. Evidence of the other offense possessed special relevance transcending mere criminal character. The necessity for the evidence was obvious. Proof of the other acts was clear, convincing, and uncomplicated, and the probative value of the evidence clearly outweighed its potential for unfair prejudice. Accordingly, we affirm.



