

IN THE SUPREME COURT OF TENNESSEE  
AT KNOXVILLE  
January 7, 2003 Session

**STATE OF TENNESSEE v. DARRYL LEE ELKINS**

**Appeal by Permission from the Court of Criminal Appeals  
Criminal Court for Sullivan County  
No. S41,530 R. Jerry Beck, Judge**

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**No. E2001-01245-SC-R11-CD - Filed April 29, 2003**

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JANICE M. HOLDER, J., concurring.

I concur in the result reached by the majority. However, I am unwilling to join the majority's overly broad pronouncement in dicta that "Rule 404(b) would permit the introduction of evidence of subsequent acts to establish one's intent during a prior act in appropriate cases." Rule 404(b) does not "permit" the introduction of "other acts" evidence. Rather, it states that such evidence is not always inadmissible. Rule 404(b) provides that evidence of other crimes, wrongs, or acts may be admissible for purposes other than to prove the character of a defendant only if certain conditions are met: (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; and (3) the court must exclude the evidence if its probative value is outweighed by the danger of unfair prejudice.

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JANICE M. HOLDER, JUSTICE