ID: (4-Digit Exam Number)
Exam Name: IntegratedEvidence_Galves_F09
Instructor: Galves
Exam Date: December 16, 2009
File Name: -IntegratedEvidence_Galves_F09-091216.xmd

Grade: _____

1)

1. Move to strike because:

Relevancy: In this case, the Defense would argue that the statement is irrelevant because it does not have a tendency to prove anything. The fact that the car was a fast, red sports car, the kind of car that people who like to speed, or race, drive is not relevant because it does not tend to prove that Dave did any one of the criminal charges that have been brought up against him.

The Prosecution, however, may argue that this is relevant, since Dave ran the red light and, if the car is a fast sports car, the kind that people like to speed or race in would show that he was possibly going fast and speeding when he ran the red light.

I would say that based on the fact that relevancy is a low threshold, that this would probably be admissible because it does tend to prove the fact that Dave was speeding, and he was speeding when he ran the red light because he was in a sports car that is going fast.

Lay Opinion: In this case, the Mechanic is saying that the car was one that people who like to speed or race, drive. The Defense would argue that this is an inadmissible lay opinion because it doesn't go to help the jury, and that this is not something like explaining the temperature of the weather or whether or not someone looked to be drunk. In this case, we don't know if he has the possibility to say that based on his lay opinion that he knows that this is a car people buy if they like to speed.

The Prosecution, however, may argue that this is an admissible lay

opinion because he is a guy who works at a car store, and he knows what kinds of cars people drive and what they are used for.

Lack of Knowledge: Based on rule 602, the defense may say that the mechanic has no personal knowledge that the car that Dave drives is a fast red sports car that is used for people who like to speed.

However, I believe the prosecution would be able to argue that he does have some type of knowledge, since he does work in a car store and knows what cars people drive and possibly for what purpose.

2. Move to strike because:

Hearsay: In this case, the Mechanic told the heper that Dave had better get the brakes fixed because they looked bad to him. In this case, we have an out of court statement made by the declarant (the Mechanic), related in court by a witness (himself, the Mechanic), used to prove the truth of the matter asserted by the Declarant. If we are trying to prove that the brakes were bad, then this may be seen as hearsay. However, one may be able to argue that this meets a hearsay exception of Rule 803(3) [then existing mental, physical, emotional impression] because the Mechanic was saying that someone should tell Dave that the brakes may be bad.

Lay Opinion: We may be able to argue that Mechanic is not a lay opinion willing to give an opinion on whether or not the brakes looked bad to him. The other side may argue that there is sufficient evidence here to show that he is an expert and he could give his opinion, even, because he

has worked on cars and knows when breaks are not sufficiently looking good.

3. Move to strike because:

Hearsay: In this case, the Mechanic told Dave that his breaks were faulty and that he had better get them fixed. In this case, we have an out of court statement made by the declarant (the Mechanic, who is also the witness), related in court by a witness (Mechanic), use to prove the truth of the matter asserted by the Declarant. If we're trying to prove that the breaks were faulty, then this would be hearsay and the statement would be inadmissible.

Relevancy: When the Mechanic told Dave that he "better get them fixed", it may be seen as irrelevant, since it doesnt have a tendency to prove anything, since the question asked to the Mechanic was whether or not Dave knew that his brakes were faulty, not what he had said to Dave in response. This goes beyond the question that he was asked. However, a court would probably find that this is relevant because it has a tendency to prove one way or another that the car was faulty, and then I'm not sure how the court would analyze the fact that the answer by Mechanic went beyond the question.

4. Move to strike because:

Hearsay: In this case, Dave told the Mechanic "so the brakes needed repair; well, they have felt a little funny lately." In this case, we have an out of court statement made by the declarant (Dave), related in

court by a witness (the Mechanic), used to prove the truth of the matter asserted by the Declarant.

The Prosecution may argue that this is not hearsay, because him saying "so the brakes needed repair..." is not him making an assertion, an intended communication, to the Mechanic. For all we know, Dave may have been talking to himself and just going on with his everyday life. The Prosecution would try to argue that, since this is not an out of court statement, then the statement does not meet the definition of hearsay and that the statement is inadmissible.

There may be an argument, however, that even if this is meets the definition of hearsay that it should still be admissible. This is because the declarant is a party opponent, and this would constitute as non-hearsay. Under non-hearsay, if the statement is from the party opponent's own mouth, it is still admissible even though it fits the definition of hearsay.

5. Move to strike because:

Hearsay: In this case, the helper is testifying that he heard someone say "Hey, that red sports car just ran a red light and hit that truck! Whoa, that dude driving the sports car must be drunk or something". This is an out-of-court statement made by the declarant (the someone who was talking about the red light and the accident), related in court by a witness used to prove the truth of the matter asserted (that someone ran a red light and hit an truck and that he must have been drunk).

Even if the statement is considered hearsay and should not be admissible, there is a hearsay exception that applies. Under Rule 803(2), if the statement is made as an "excited utterance", and the declarant is

under a stressful situation and does not have any reason to lie about something that she/he saw at the moment, then the statement is admissible based on the exception. Here, we have the fact that they just saw an accident, and that she is in a state of stress by seeing that accident take place.

Another exception of hearsay also applies in this case. Under Rule 803(1), if a statement made by the declarant is a present sense impression, then the statement will be admitted. If the person is just saying "hey that sports car just ran a red light and hit a truck!" that seems to be that the incident just happened, and the person is indicating as a play-by-play what took place. If the exception is met here, then the statement would be admissible as well.

Lay Opinion: The defense may move to strike based on the fact that the person said that he "must have been drunk" and that is something that a lay opinion individual does not have the expertise to say. However, this argument would fail because if someone "appears drunk" and an individual states that based on their observations, it is an acceptable lay opinion.

6. Move to strike because:

Hearsay: In this case, we have an out of court statement made by the declarant (the woman) related in court by a witness to prove the truth of the matter asserted . If we are trying to prove that the defendant ran the red light and hit the truck, then this would be considered hearsay. However, even if it is hearsay, an exception may apply in that there may be 803(2) excited utterance that applies. Since she had just been in a car

accident, she may be under stress and excitment from the stressful event, and may have just stated these things because she was in the moment, and she wouldn't lie about something when she's in a stressful moment.

7. Move to strike because:

Hearsay: Out of court statement (Dave) related in court by a witness (helper) to prove the truth of the matter asserted by the declarant. If we're trying to prove that Dave was at fault for the accident, then this would probably be seen as hearsay, and the statement would be inadmissible.

You may be able to argue that his statement "Oh no, bummer!" is not an assertion, and it was not a statement that was intended to be a communication. In this way, he may be able to argue that it is not hearsay.

However, even if the entire statement "Oh no, bummer! So we are good?" is considered hearsay, the statement may still be admissible under two possible hearsay exceptions: (1) the fact that Dave is a party opponent, and the words came out of his mouth. (2) We may be able to argue that the entire statement was an excited utterance, and he was still under the stress of the fact that there was an accident, and whatever he said was made under the stressful situation. In this case, either one could possibly satisfy as a hearsay exception, and the statement would be admitted.

Relevancy Policy Exception paying for medical expenses: In this case, the defendant may move to strike because the Defendant said "I'll pay for your injureis and everything". The only statement that would be inadmissible if we use Rule 409 here is the fact that they are paying for

medical expenses. This would probably be excluded, but the rest of the statement would be allowed.

Relevancy Policy Exception under Rule 408: The defense may attempt to argue that the entire statement was made as a negotiation settlement for a plea. However, the argument here is that we're not in a civil suit (at this point in time), and this exception would not apply.

8. Move to strike because:

Relevancy to the porn videos: In this case, it's irrelevant to the criminal claims (as well as the civil claims) of the defendant having porn videos in his car. They have nothing to do with the case at issue, and they don't have a tendency to prove any fact one way or another. I believe the court would find the porn videos to be irrelevant and that portion of the statement excluded.

Relevany Policy Exception Rule 411 - No evidence of insurance: In this case, the witness said that there was no insurance in the glove compartment. If the statement is being used to show that the defendant did not have insurance, then the statement would be excluded. However, if the statement were being used to show that the Defendant had ownership over the car, then the statement would be allowed for that particular purpose, and the judge may have to include a 105 limiting instruction to inform the jury that they are only to take into account the statement for ownership purposes.

Hearsay: This is an out of court statement (the witness who saw everything) related to a witness in court (the helper) used to prove the truth of the matter asserted. If we're trying to prove based on the declarant that he had all these things in this car, then it would be considered hearsay. Even if we consider this to be hearsay, and exception may apply in that this may be a present sense impression (Rule 803(1)), where the declarant is just relaying what he is seeing inside the car, and is just stating a play-by-play of what is in the car. If this exception applies, then I would find that the statement would be admissible.

9. Move to strike because:

Hearsay: This is an out of court statement by the declarant (Dave) being related in court by a witness (Helper) to prove the truth of the matter asserted. If we're trying to porve that Dave was at fault for the accident for driving too fast and running the red light, then this would meet the definition of hearsay and be inadmsisible.

However, an exception applies here because the Dave is the declarant and he's a party opponent. Because he's a party opponent, the non-hearsay exception of "words from the party's own mouth" would apply, and the statement would be admissible.

Relevancy Policy Issue Rule 410 - Plea Negotiations: Since we are in a criminal trial, we could try to argue that the statement that Dave made at the scene was about plea negotiations and in that case all of his statement would be inadmissible. However, the Prosecution may argue that this is not a plea negotiation argument, because the police are not the

ones to start plea negotiations, and that should be left up to the District Attorney. I think this would be a close call.

10. Move to strike because:

Hearsay: out of court statement (Dave) related in court by a witness (helper) to prove the truth of the matter asserted. If we are trying to say that the proof of the matter asserted was that he wasn't drunk, then the statement would be considered hearsay and would be inadmissible.

However, the fact that he is a party opponent, the statement (even though meeting the definition of hearsay) would be admissible because of the party opponent "non-hearsay" exception.

Relevancy: One might argue that the statement is not relevant because it talks about him being a good guy and going to chruch and having all good habits and doesn't have a tendency to prove anything. however, it may be considered as being relevant because the statement is showing that he does have good character, which would possibly goes towards the fact that he wouldn't run a red light, and that he wouldn't be harmful to anyone physically. Since relevancy is a low threshold, I would find this to be admissisble.

Inadmissible Character Evidence: It may be possible to argue that the statement made by Dave that was related in court by the helper was inadmissible character evidence under Rule 404(a) because the defendant had not yet opened the door on his good character, and that means that the prosecution's witness can't open the door before he has the ability to.

In this case, the court would probably agree that the statement is inadmissible character evidence beacause the defendant has not yet opened the door.

11. Move to strike because:

Hearsay: out of court statement (Dave's wife) related in court by a witness (helper) to prove the truth of the matter asserted.

First, her statement "Why do you always do stuff like this, Dave?" is a question, not an assertion. We may be able to argue that that particular statement is not hearsay because it doesn't not meet the definition and it should be inadmissible.

Second, the statement, "Last week you were drunk again, trying to mown the lawn. You're pathetic, Dave" would be an out of court statement made by the declarant, and would be considered hearsay if we're trying to prove that Dave had been drunk before. However, we can't really argue that this would be the truth of the matter asserted in court, and that the statement itself should be hearsay.

Relevancy: First, the statement of "yeah it was kind of funny, but also sad" should be irrelevant because it has no tendency to prove anything more or less with the facts of this case. It is probably going to be seen by the court as well as being inadmissible.

Second, the statment of "you were drunk again, trying to mown the law. You're pathetic, Dave" may be seen as irrelevant because it doesn't have a tendency to prove anything more or less with the facts of the case. In this instance, I would argue that at least the statement "you're pathetic,

Dave" shoudl be inadmissible because it really does not have any tendency to prove anything about the case. The portion about "you were drunk again, trying to mow the lawn" may be more of a close call. The fact that he was drunk may have a tendency to prove that since he was drunk then, he may be drunk now. However, it may be inadmissible the portion of him mowing the lawn while being drunk, because that doesn't have a tendency to show anything.

Character: There may be inadmissible character evidence being displayed here in the statement is a specific instance of conduct upon which Dave was drunk on another occastion. If this is the case, then the prosecution can't open up the door on the defendant's bad character until the defendant opens up the door himself. Even if this is a specific instance of conduct, the witness can't state what the specific instance of conduct is: only the witness can ask questions about a specific instance of conduct.

12. N/A - this is a proper question based on being asked what Dave did.

13. Move to strike because:

Inadmissible Character Evidence: The only way that this could be seen as inadmissible character evidence is ONLY for the statement about her "throwing the first punch" because it is a specific instance of conduct that cannot be brought when D opens the door. The only way that this could be brought up is if D attacks P's character is by reputation or opinion.

I would argue that everything else that D has stated would be ok,

since it is character evidence provided int he proper form (he opened the door on her bad character by saying that "he had heard", so it was a reputation; as well, he said that "in his opinion, she probably ran the red light".)

Relevancy: Prosecution may try to argue that her running the red light is irrelevant because Polly was struck by the other car running the red light. however, I think because this is a low threshold, and it could show that she was at fault too by running the red light, this would be admissible.

14. Move to strike because:

Hearsay: This is an out of court statement made by the declarant (Mechanic) related in court by a witness (Helper) to prove the truth of the matter asserted (to prove what would happen if the repair shop din't fix the faulty brakes). In this case, I think this is hearsay. The only possible exception, since Polly is suing the Repair Shop as well, is this is a statement made by a party opponent who is an agent and it's within the scope of employment and he is an employee. Because this exception would apply, I would argue that the statement should initially be admissible.

15. Move to strike because:

Hearsay: We have an out of court statement (the document, the word order) being related in court by a witness (helper) used to prove the truth of the matter asserted, that mechanic saw that the breaks were faulty. In this case, there would be hearsay and the statement should be inadmissible.

Howevever, there may be a possibly hearsay exception that applies

in Rule 803(5) Past Recorded Recollections. To determine this, we must see whether or not the factors are met for the helper to look at the recorded recollection. We have the fact that the helper doesn't have knowledge now, since he said that he doesn't remember exactly what we wrote. He also had knowledge then, from what we can assume based on the facts that he was there and wrote the statement. We don't know if he ever adopted his statement, since we aren't told that he did so and we don't know if the statement was signed. Lastly, we don't have personal knoweldge here because he, himself, did not know if the brakes were faulty and he just wrote something on a piece of paper based on what the mechanic told him to do.

I would say that the past recorded recollection exception would not be met here because the elements have not been met. In this case, the statement would still be seen as hearsay.

Inadmissible Refreshing the Memory of Witness: In this case, we have the words that the witness saw the work order and it said "inspected breaks-repair?" - the fact is, he had the work order in front of him. Under a refreshing the memory of the witness, the document must be taken away before the witness continues to answer. If the statement was in front of the witness when he responded, then this would be inadmissible.

2)

CRIMINAL APPEAL PORTION OF ESSAY

1. Dave was not allowed to have a witness testify that Polly is a drunk, violent person.

This would be an issue as to whether or not the witness' testimony was going to be insufficient character evidence. Based on the Rules of Evidence, if the Defendant or a Defendant's witness is going to attack the bad character of the Victim (Polly), then it can only be through reputation or opinion evidence. In this case, we are not told whether or not the witness was going to testify through opinon or reputation that Polly is a drunk and violent person. I would argue that Dave should have been allowed to have a witness testify that Polly is a drunk, violent person if the witness was going to use opinon and reputation evidence. This would also be considered a "pertinent trait" because it may go to possibly saying that Polly was the one who was an erratic driver and that she was the one who attacked him first (for the physical assault). IF the witness was going to testify through specific instances of conduct of Polly, THEN the witness should not have been able to make that statement.

But nevertheless, the judge should have ruled that the Defendant could at least have a witness testify that Polly is a drunk, violent person. Even if the specific instance of conduct was stricken from the record, Dave should at least have had the opportunity to have a witness testify on his behalf to show Polly's bad character. I believe this would be a successful appeal.

2. The prosecution was allowed to put on evidence that Dave was in the habit of not paying attention when he drives.

This would be a situation as to whether or not Dave being in the "habit" of not paying attention when he drives is actually character evidence and should have been excluded. The difference between a habit and character evidence is that habit illustrates an automatic, non-volitional response, and happens over multiple times. In this case, we have the habit of Dave not paying attention when he drives. We don't have information that Dave possibly does something unique every time that he's driving that makes him not pay attention. Nevertheless, based on the facts provided, the prosecution should not have been allowed to call into evidence the "habit" because this is not really a habit, and this is more like character evidence (that he has a "propensity" to do things). Character evidence is generally inadmissible. Therefore, since Dave had not yet opened the door on his good character, the evidence shouldn't even have been admitted as character evidence.

I think this would be a successful appeal as well.

3. The prosecution was allowed to ask Dave's witness, who had testified that Dave was a "good guy", if that witness was aware that Dave had been accused in the past of raping a woman and physically beating her .

Since the Defendant's witness had opened the door on his good character saying that he was a "good guy", it opens up the door for the prosecution to ask on cross examination about specific instances staying that D had bad character. In this situation, the witness was asked about a

specific instance that Dave had been accused of raping a woman and physically beating her. If there was a good faith effort on part of the Prosecution that this was, in fact, a true instance, and the judge in his discretion believed it was as well, then this would be admissible character evidence because it was asked in the proper format.

However, one may argue that the information about Dave raping a woman and physically beating her may be irrelevant under 401. We would have to see if this information has a tendency to prove anything. In this case, I think that the evidence would be relevant, since it could go to show that since he had physically beaten a woman in the past, that it would be relevant to showing how he did it this time against Polly.

A counter argument to the fact that the information is relevant is to argue the evidence, even though relevant, should not be inadmissible under Rule 403. If the probative value is substantially outweighed by the unfair prejudice, then the statement should not be admissible. The probative value here is high, since we are talking about him being physically abusive towards a woman, and he had also been accused of doing this in the present case. However, I'm not sure how high the probative value is of saying that he raped a woman, since that doesn't necessarily show that he was physically abusive towards the woman when he raped her. The unfair prejudice here is also pretty high, in that the jury may find that a person who has raped and phsyically beat a woman makes him such a bad person that they won't listen to anything else in the situation. As well, he has only been accused, and he was neither convicted nor charged with raping and physically beating a woman. This is unfair prejudice to Dave based on the fact that he was only accused of

doing the acts. I think there is a plausible argument that the evidence (of him accusing in the past of raping a woman and physically beating her) should have been excluded since the probative value is substantially outweighed by the unfair prejudice. I do find this to be a close call, however.

4. The prosecution was allowed to introduce good character evidence of Polly being peaceful after Dave had put on evidence showing that Polly was the first one to strike Dave after they got out of their vehicles.

This comes to being a possible inadmissible character evidence issue. If Dave is saying that Polly was the first one to strike, and this would be a homicide case, this would be an easy case. However, this is NOT a homicide. In this situation, we would have to determine if Dave saying that "polly was the first aggressor" was saying that she had bad character. I think there is a strong argument that this is an indication that she has bad character because once someone indicates that they were the first violent aggressor, then one would infer that means they lack good character if they were violent. If this is the case, then I believe that introducing evidence of Polly being peaceful would be admissible, and that the appeal would be denied.

If, however, we find that Dave saying "Polly was the first aggressor" is not opening the door on her bad character, then the prosecution would not be able to introduce good character evidence of Polly being peaceful, since that would be the prosecution opening the door before the defendant opened the door on her bad character.

Overall, however, I believe that saying that Polly was the first

aggressor leans towards this opening the door on the victim's character that she was violent.

5. Dave's offer to stipulate that his sports car was red with racing stripes was denied and a photo of his sports car at a drag strip was allowed in order to identify the car.

This comes in as to whether or not there is a 403 inadmissibility issue for the photo of his sports car at a drag strip being introduced in order to identify the car. In this case, the probative value of knowing what the car looked like is high, since we would like to identify the car. The unfair prejudice against the defendant, however, is that the picture of the car takes place on a drag strip. That would mean that the jury could make an inference that, because the car was on a drag strip, that the Defendant liked to speed and race in the car and that this would show that he was probably speeding or racing the car at the time of the accident. I think the unfair prejudice in this case is very high, and does in fact substantially outweigh the probative value. The fact that there was an offer of stipulation here to indicate what the car looked like illustrates that Dave wasn't trying to hide behind what his car looked like. Since that's the case, the court should have allowed Dave's offer to stipulate that his sports car was red with racing stripes, because I do not believe that a limiting instruction would have been able to keep the jury from only focusing on identifying the car, and would take into account the various circumstances around the car (the drag strip).

My argument is that the offer of stipulation by Dave should have been admitted in order allow the probative value that the picture would have

given, and exclude the unfair prejudice that was brought on by the car being on a drag strip.

CIVIL APPEALS PORTION OF ESSAY

1. Polly was allowed to put on evidence that the Mechanic was a convicted drug addict and had bad character for lying.

First, I would like to address the bad character for lying. In this case, this would be appropriate under rule 404(a)(3), in which either side in a criminal or civil case can attack the witness' character for truthfulness. The question would be as to how Polly put on evidence that the Mechanic had bad character for lying. If the bad character evidence for lying was based on reputation or opinion, then the evidence based on the bad character for lying would be admissible. If the bad character for lying was based on a specific instance of conduct (aside from the convicted drug addict portion, which i will address in a moment), then the evidence would be inadmissible. Nevertheless, regardless of how the evidence was displayed, Polly has the right at a civil trial to put on evidence that the witness had bad character for lying.

Second, on the evidence that Mechanic was a convicted drug addict, the evidence about whether or not this would be admissible depends on a couple of things. First, since this a witness, we would need to determine if the conviction was one that was a felony (and sentenced to over a year in prison).

If this is a felony conviction, then the conviction would be admissible if it met the Rule 403 balancing test (the probative value of the conviction

substantially outweighed the unfair prejudice). In this case, if we assume that the drug addict was a felony conviction, then we would have to see how much the probative value was in compared to the unfair prejudice. The probative value that comes from this is possibly that the witness had committed a crime before, and that he had disrespect for the law, so his statements were not truthful. The unfair prejudice that comes from this is possibly having the jury hear that this mechanic has a prior felony conviction, although not relating to the case, and that the jury may not want to find his testimony credible. I do not believe that the probative value here would be substantially outweighed by the unfair prejudice. In this case, if it were a felony conviction, then I would argue that the felony conviction evidence would be admissible.

If the conviction of being a drug addict is only a misdemeanor, the conviction would be excluded, since the conviction is not related to a crime based on trustworthiness or fraud.

I think the answer to wehther or not Polly could put on evidence that the Mechanic was a convicted drug addict depends on what the level of crime he was convicted for was.

2. Polly was allowed to testify that Dave sexually groped her and was able to put on a witness that staed Dave had groped her when they worked together 12 years ago.

From the looks of it, this would be admissible based on Rule 415, since P can say that D sexually groped her and that he had groped someoen else too, since Dave isn't protected by rule 404 on character evidence when it comes to a sexual assault. [and rule 415 applies this to

civil cases]

However, Dave may be able to argue that this information is irrelevant, and that if it was relevant, it would be excluded based on the Rule 403 balancing test. I think there's a strong argument that this is irrelevant because Dave is not being charged with sexual assault or child molestation, and in this case there is no suit based on anything that has to do with sexual assault. nevertheless, if the court finds that this would be relevant evidence, then i think the unfair prejudice of the possible prior sexual assault and to someoen else as well would substantially outweigh the probative value of the information. While the probative value would be somewhat high in that it shows he has a bad propensity to do sexual misconduct, the prejudicial effect here is so unfair because it puts the defendant in a situation where the jury is going to ignore the rest of the case and what the case is there to decide, and just find D liable beacause he had sexually assaulted two people before.

I think that this would be a successful appeal because i think the probative value is substantailly outweighed by the unfair prejudice.

3. Polly was allowed to introduce evidence that Dave did not check the brakes on his car even after he was told to do so by the mechanic, but he later fixed the brakes after the accident so that his insurance premiums would not go up.

I believe that this evidence would be found to be inadmissible, and it should not have been introduced into evidence at trial for two reasons.

My first reason is based on Rule 407, subsequent remedial measures. The fact that Polly is saying that he didn't fix his brakes, but

then he did thereafter, would be inadmissible because we don't want people to be disuaded from fixing problems with their car.

My second reason is based on Rule 411, which states that you cannot have evidence of liability, unless you are using it for another reason. In this case, all we know is that Polly is stating that he fixed his car so that his insurance premiums would not go up. By saying that the defendant did not want his premiums to go up is, essentially, stating that he does have insurance and didn't want to have to pay more on his existing insurance. This would be out under Rule 411.

4. Polly was allowed to testify that Dave had two other DUI charges aginst him this year, and that in both of those cases, there was evidence that Dave smoked pot and crack while he was driving.

This seems to be a character evidence issue, as to whether or not the evidence of his past convictions should have been included. In a civil case, character evidence is inadmisible unless the character is an essential element to the claim. In this case, the claim is that she's suing for personal injuries and property damages. In either one of those instances, we don't have information as to whether or not character is an essential elment to the claim. If it WAS an essential element to the claim [character, that is] then we would be able to bring in specific instances of conduct that was extrinsic evidence. But it's not safe to assume that either one of the civil claims require that character is an essential element of the claim.

You could possibly bring in the evidence of Dave doing other past crimes, acts, or wrongdoings under Rule 404(b) if the evidence is being

used in a non-propensity, non-character purpose. It may be possible to argue that the other past crimes tend to show a motive operendi that maybe it's part of his past to drive under the influence with not only alcohol but other drugs. you may also be able to argue that it was used to show his identity, although i do not believe it's unique enough that he's gotten two other DUIs against him with him smoking pot and crack while he was driving. I think these are weak, but they are plausible arguments.

Overall, I do not believe that Polly should have been allowed to testify about two other DUI charges against him and the drugs that he used when he was driving because it seems that it is actually character evidence not part of an essential element of the claim.

5. After Dave put on evidence of Polly having a bad reputation for driving recklessly, Polly put on evidence of Dave having a bad reputation for drunk driving.

This is also goign to be a character evidence issue, since in civil cases character evidence is generally excluded unless the character is an essential element to the claim. In this sitaution, I don't believe that neither Dave being able to put on evidence of Polly having a bad reputation for driving reckless, nor Polly's evidence about Dave should have been admissible. This seems clearly to be inadmissible character evidence of a civil trial.