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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-426

Filed: 5 May 2020

Wake County, Nos. 16 CRS 219028–29

STATE OF NORTH CAROLINA

v.

ISMAEL SANTIAGO RIVERA

Appeal by defendant from judgments entered 18 September 2018 by Judge Paul C. Ridgeway in Wake County Superior Court. Heard in the Court of Appeals 21 January 2020.

*Attorney General Joshua H. Stein, by Assistant Attorney General Zachary Padget, for the State.*

*Jarvis John Edgerton, IV, for defendant.*

DIETZ, Judge.

Defendant Ismael Santiago Rivera appeals from multiple sex offense convictions stemming from his repeated sexual abuse of his girlfriend's juvenile daughter. Rivera argues that the trial court erred by excluding at trial evidence of allegations that the juvenile victim also was sexually abused by her uncle.

The trial court excluded this evidence under Rule 403 of the Rules of Evidence after determining that, although the evidence had “remote” probative value, that value was substantially outweighed by the risk of unfair prejudice and confusion for the jury.

Under the applicable standard of review, we must uphold the challenged ruling as within the trial court’s discretion. The record indicates that the trial court heard lengthy arguments from the parties, carefully weighed the various factors, and ultimately determined that the evidence should be excluded. That decision was not so manifestly arbitrary that it could not have been the result of a reasoned decision, and thus was not an abuse of the trial court’s sound discretion. Accordingly, we find no error in the trial court’s judgments.

### **Facts and Procedural History**

In 2012, Ismael Santiago Rivera began dating J.M.J.’s<sup>1</sup> mother. At the time, J.M.J. was ten years old. Rivera later moved in with J.M.J.’s family.

Several years later, Rivera’s relationship with J.M.J.’s mother deteriorated, and he moved out. In 2016, J.M.J.’s mother discovered J.M.J. cutting herself and sought to understand her daughter’s distress. J.M.J. ultimately explained that Rivera sexually assaulted her several times while he lived with them. J.M.J.’s mother

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<sup>1</sup> We use the initials “J.M.J.” throughout this opinion to protect the identity of the victim.

reported everything she learned to Wake County Child Protective Services. J.M.J. later provided more detailed information to child abuse specialists.

The State charged Rivera with rape of a child by an adult, sexual offense with a child by an adult, and three counts of indecent liberties with a child. At trial, Rivera sought to introduce evidence that J.M.J. also reported that she had been sexually abused by her uncle. The trial court ruled that this evidence was inadmissible under Rule 403 and Rule 412 of the North Carolina Rules of Evidence.

The jury convicted Rivera on all charges and the trial court sentenced Rivera to a prison term of 192 to 291 months for sexual offense with a child by an adult and consolidated his remaining charges for a term of 125 to 210 months. Rivera timely appealed.

### **Analysis**

Rivera argues that the trial court erred by refusing to admit evidence that J.M.J. reported being sexually abused by her uncle. Much of the parties' briefing concerns whether this testimony properly could be excluded under Rule 412 of the North Carolina Rules of Evidence, which governs evidence of past sexual behavior by an alleged victim of a sexual assault.

We need not reach this issue because, although the trial court relied in part on Rule 412 for its ruling, the court also excluded the evidence under Rule 403 after

concluding that its probative value was substantially outweighed by the risk of unfair prejudice and confusion for the jury:

[Rivera's proffered evidence] simply shows that she has made allegations in a medical setting about one person. She's made allegations of her uncle. She's made allegations about the defendant in this case.

...

I understand your argument of sort of the selective prosecution, but I don't believe that that is particularly probative of whether the facts she alleges having occurred to her by this defendant, which is the subject matter of this trial, I find it remotely probative of that issue, that she may have selectively chosen to not report to law enforcement other acts that happened to her.

So for those reasons, and that goes more to the 403 analysis, to the extent there is a probative value, it is substantially outweighed by the prejudicial effect of the evidence of prior sexual activity, and it is furthermore confusing to the jury or likely to be confusing to the jury, so under Rule 403 it would be excluded on that basis as well.

Because we must affirm the trial court if any of the grounds on which the court relied was a proper one, *see State v. Khouri*, 214 N.C. App. 389, 406, 716 S.E.2d 1, 12–13 (2011), we focus our analysis on the trial court's exclusion of this evidence under Rule 403.

Under Rule 403, “[a]lthough 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.” *State v. Triplett*, 368 N.C. 172, 178, 775 S.E.2d 805, 808–09 (2015). “We review a trial court’s decision to exclude evidence under Rule 403 for abuse of discretion.” *Id.* at 178, 775 S.E.2d at 809. “An abuse of discretion results when the court’s ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” *Id.*

Here, Rivera argues that because there may have been “some overlap” between the time period when J.M.J. reported sexual abuse by her uncle and the time period when Rivera lived in J.M.J.’s home, J.M.J. “may have conflated defendant with her uncle when she testified about the various incidents of sexual abuse.” The trial court acknowledged that this was a possibility but found that it was a remote one and thus of low probative value. Specifically, as the State argued in response to Rivera’s objection, no evidence tended to show that J.M.J. actually had confused the events she described concerning her uncle with those she described concerning Rivera. Indeed, there was no evidence that the alleged abuse by J.M.J.’s uncle occurred while Rivera was dating or living with J.M.J.’s mother. As the trial court observed, J.M.J. had “made allegations of her uncle. She’s made allegations about the defendant in this case.” They were, as the court explained, separate, unrelated incidents.

The court therefore found that the probative value of this evidence was substantially outweighed by the risk of unfair prejudice and confusion to the jury. In particular, the separate allegation of sexual assault by J.M.J.’s uncle could cause the

jury to question why J.M.J.'s uncle was not a defendant in the case, or lead the jury to draw impermissible inferences about an alleged juvenile victim who had sexual contact with multiple men.

The trial court's decision that the "remote" probative value of this evidence was therefore "substantially outweighed by the prejudicial effect of the evidence" and that the evidence was "confusing to the jury or likely to be confusing to the jury" falls squarely within the court's discretion under Rule 403. The decision was not "manifestly unsupported by reason" or "so arbitrary that it could not have been the result of a reasoned decision." *Id.* To the contrary, the record indicates that the trial court heard lengthy arguments from the parties, carefully reflected on this decision, and then exercised its discretion to rule in a manner that advanced the interests of justice. Accordingly, under the appropriate standard of review, we cannot disturb that discretionary decision on appeal.

### **Conclusion**

We find no error in the trial court's judgments.

NO ERROR.

Judges TYSON and INMAN concur.

Report per Rule 30(e).