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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-339

No. COA20-421

Filed 6 July 2021

Wake County, Nos. 16 CRS 216558-59, 216562, 216564

STATE OF NORTH CAROLINA

v.

CLAUDE MORDECIA STEVENS, Defendant.

Appeal by Defendant from judgments entered 26 July 2019 by Judge William R. Pittman in Wake County Superior Court. Heard in the Court of Appeals 13 April 2021.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Karen A. Blum, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Katy Dickinson-Schultz, for Defendant-Appellant.*

INMAN, Judge.

¶ 1 Defendant Claude Mordecia Stevens ("Defendant") appeals from two judgments entered after a jury found him guilty of eight counts of statutory rape, four counts of first-degree sex offense, and two counts of indecent liberties, all in connection with the alleged sexual abuse of two twin brothers over a period of several years. On appeal, Defendant contends that the trial court erred in denying his motion

to dismiss the first-degree sex offense charges and in allowing the jury to hear testimony from another alleged victim. After careful review, we hold Defendant has failed to demonstrate error.

## I. FACTUAL AND PROCEDURAL HISTORY

¶ 2 The evidence introduced at trial discloses the following:

¶ 3 Defendant met P.L. ("Mrs. Lowe")[1] and her twin sons B.L. ("Brad") and A.L. ("Adam") at a YMCA pool in the summer of 2007.[2] Brad and Adam were 10 years old and between elementary and middle school. Mrs. Lowe and her sons saw Defendant at the pool often that summer and, over the coming months, visited Defendant at his home. By August of 2007, Defendant hired Mrs. Lowe as his administrative assistant for a school Defendant operated out of his house.

¶ 4 Though Defendant and Ms. Lowe never developed a romantic relationship, Mrs. Lowe grew increasingly trusting of Defendant, including trusting him with Brad and Adam. Mrs. Lowe and her children began to spend time with Defendant at his home after work. Eventually, Mrs. Lowe trusted Defendant enough to allow Brad and Adam to spend the night alone at his home. On these occasions, Defendant, Brad,

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[1] We use pseudonyms for the alleged minor victims and their family members to protect their privacy and for ease of reading.

[2] Although Mrs. Lowe was married to Brad and Adam's father throughout the events discussed in this opinion, he was largely uninvolved in his wife's and sons' personal lives during that time and is therefore omitted from this summary.

and Adam would sometimes sit naked in Defendant's hot tub, and either Brad, Adam, or both would sleep with Defendant in his bed.

¶ 5 Mrs. Lowe and her sons also vacationed with Defendant between 2007 and 2015. For example, in late September 2007, Defendant, Mrs. Lowe, and her sons traveled to Disney World for a week to celebrate the twins' 11th birthday. The Lowes and Defendant later made additional trips, including two cruises and multiple visits to amusement parks. Defendant also took Brad and Adam to bowling tournaments in New York and Illinois. Mrs. Lowe joined her sons on trips when they were young, but she allowed Brad and Adam to travel alone with Defendant as they grew older. Defendant would sometimes share a room with Brad or Adam on these vacations. Brad stayed in Defendant's room on the 2007 trip to Disney World.

¶ 6 When Brad and Adam were in middle school, Defendant began sexually abusing them. Defendant would isolate one of the boys in his bedroom, lock the door, and request a full-body massage in his underwear. Those massages eventually progressed to nude massages ending in fellatio or penetrative anal sex. Defendant sexually abused the boys frequently, including when Mrs. Lowe was present elsewhere in Defendant's house. Defendant also sexually abused Brad and Adam on his many trips with them and their mother.

¶ 7 Defendant stopped abusing Brad when the twins were in their freshman year of high school. Defendant continued abusing Adam after this time.

¶ 8 In the summer of 2016, when he was 19 years old, Brad suffered an emotional breakdown and told his girlfriend about Defendant's sexual abuse. Brad asked Adam if he had also been abused, and Adam disclosed that he had. The twins told their mother about the abuse a short time later, leading her to call police.

¶ 9 In July 2016, Brad and Adam spoke with police and Leigh Howell, a child abuse evaluation specialist at the child advocacy center SAFEchild, about Defendant's abuse. During a forensic interview with Ms. Howell, Brad stated that he thought Defendant began abusing him when he was 11 or 12 years old. A few minutes later in the same interview, Brad told Ms. Howell that he may have been between the ages of 12 and 13 when the abuse started. Adam told Ms. Howell that he was first abused by Defendant at age 12 or 13.

¶ 10 Defendant was subsequently indicted on two counts of indecent liberties with a child, 10 counts of statutory sex offense with a person who is 13, 14, or 15 years old, and 10 counts of first-degree sexual offense with a child.

¶ 11 During a pretrial hearing on 23 July 2019, the State moved under Rule 404(b) of the North Carolina Rules of Evidence to introduce the testimony of a witness, P. L. ("Patrick"), who also claimed to have been abused by Defendant as a boy. Patrick testified that when he was a 12-year-old boy scout, Defendant was one of his assistant scoutmasters and had a good relationship with Patrick's father, who was the troop scoutmaster. Patrick also testified that Defendant groped him during a 1999 scouting

trip. Patrick, Defendant, and another scout were alone together in the woods for an orienteering exercise when Defendant isolated Patrick from the other scout and grabbed Patrick's genitals through his pants for about thirty seconds. When Defendant stopped, Patrick and the other scout ran away from Defendant, and the scouting trip concluded without further incident; Patrick did not report the fondling at that time out of shame. Defendant continued to be friendly with Patrick's parents, and Patrick's family was invited to a New Year's Eve party at Defendant's home later that year. At the party, Defendant told the children in attendance that they should enjoy his hot tub. Patrick's parents considered spending the night at Defendant's house, but Patrick convinced them to take the family home.

¶ 12 Following Patrick's testimony in the pre-trial hearing, the State argued that Patrick could testify at trial under Rule 404(b) based on a common scheme or plan, pointing out the following similarities: (1) Defendant gained access to Brad, Adam, and Patrick by befriending their parents and maintaining a good social relationship with them; (2) the three boys were all around 12 years of age during the events alleged; (3) the boys were of the same sex and race; (4) Defendant invited the children into his home and to spend the night there; and (5) the abuse included fondling the boys' genitals. Defendant's counsel argued that Patrick's testimony was too dissimilar and distant to be admissible and was otherwise unduly prejudicial under

Rule 403. The trial court ultimately agreed with the State and ruled that Patrick could testify in Defendant's trial.

¶ 13 Brad, Adam, and Mrs. Lowe all testified for the State at trial consistent with the above summary, except that Brad and Adam were unable to recall at what age the abuse began However, Brad testified that he believed most of the abuse took place in middle school when he would have been between ages 10 and 13, while Adam told the jury that he was "most likely" 12 years old at the time. Ms. Howell also testified for the State and video recordings of her forensic interviews with the twins were published to the jury.

¶ 14 Patrick testified as a Rule 404(b) witness consistent with his pretrial *voir dire* testimony. Defendant's counsel lodged an objection to Patrick's testimony, which was overruled by the trial court.

¶ 15 After resting its case, the State voluntarily dismissed several charges, namely: (1) two charges of statutory sex offense with a person who is 13, 14, or 15 relating to Brad; (2) two charges of first-degree sexual offense with a child relating to Brad; and (3) four charges of first-degree sex offense with a child relating to Adam. Defendant moved to dismiss the remaining charges, and that motion was denied. Defendant then testified in his own defense; afterwards, the trial court stated that "[a]t the close of all the evidence, the defendant's renewed motion to dismiss . . . is denied," though

it does not appear from the transcript that Defendant made such a renewed motion on the record.

¶ 16 The jury received its charge and found Defendant guilty on all remaining counts. Defendant was sentenced to two consecutive sentences of 240 to 297 months imprisonment and gave notice of appeal in open court.

## II. ANALYSIS

¶ 17 Defendant presents two principal arguments on appeal, asserting the trial court erred in: (1) denying his motion to dismiss the first-degree sex offense charges as to Brad for insufficient evidence; and (2) permitting Patrick to testify under Rules 404(b) and 403. Defendant has failed to demonstrate error under both arguments.

### *1. Standards of Review*

¶ 18 We review the denial of a motion to dismiss for insufficiency of the evidence *de novo*. *State v. Phachoumphone*, 257 N.C. App. 848, 861, 810 S.E.2d 748, 756 (2018). Denial is proper when "there is substantial evidence (1) of each essential element of the offense charged . . . , and (2) of defendant's being the perpetrator of such offense." *State v. Scott*, 356 N.C. 591, 595, 573 S.E.2d 866, 868 (2002). Substantial evidence "is relevant evidence that a reasonable person might accept as adequate, or would consider necessary to support a particular conclusion. In this determination, all evidence is considered in the light most favorable to the State, and the State receives the benefit of every reasonable inference supported by that evidence." *State v. Hunt*,

365 N.C. 432, 436, 722 S.E.2d 484, 488 (2012). Further, "[a]ny contradictions or conflicts in the evidence are resolved in favor of the State, and evidence unfavorable to the State is not considered." *State v. Miller*, 363 N.C. 96, 98, 678 S.E.2d 592, 594 (2009) (citations omitted).

¶ 19 A trial court's decision to admit evidence under Rule 404(b) is likewise reviewed *de novo*. *State v. Beckelheimer*, 366 N.C. 127, 130, 726 S.E.2d 156, 159 (2012). The rule is a "general rule of inclusion," *State v. Coffey*, 326 N.C. 268, 278, 389 S.E.2d 48, 54 (1990), and "such evidence is admissible as long as it is relevant to any fact or issue other than the defendant's propensity to commit the crime." *State v. White*, 340 N.C. 264, 284, 457 S.E.2d 841, 852-53 (1995). The evidence in question is also subject to "requirements of similarity and temporal proximity." *State v. Al-Bayyinah*, 356 N.C. 150, 154, 567 S.E.2d 120, 123 (2002). Those similarities need not be unique but must possess "some unusual facts present in both crimes." *Beckelheimer*, 366 N.C. at 131, 726 S.E.2d at 159 (citation and quotation marks omitted).

¶ 20 Rulings as to admissibility under Rule 403 are, unlike the foregoing, examined for an abuse of discretion. *Beckelheimer*, 366 N.C. at 130, 726 S.E.2d at 159.

***2. First-Degree Sex Offense Charges***

¶ 21 Defendant first asserts that the trial court erred in denying his motion to dismiss the first-degree sex offense charges as to Brad because the State failed to

introduce sufficient evidence showing Brad was under 13 years of age at the time of the offenses. We disagree.

¶ 22 The parties dispute whether Defendant preserved this argument. The transcript does not include an oral motion by Defendant's counsel renewing his motion to dismiss at the close of all evidence. Under Rule 10(a)(3) of the North Carolina Rules of Appellate Procedure, "if a defendant fails to move to dismiss the action . . . at the close of all the evidence, defendant may not challenge on appeal the sufficiency of the evidence to prove the crime charged." N.C. R. App. P. 10(a)(3) (2021). But the record includes a ruling from the trial court demonstrating that such a motion had been made. Specifically, the trial court ruled that "[a]t the close of all the evidence, the defendant's renewed motion to dismiss for insufficiency of the evidence . . . is denied." Because the trial court's statement reflects that a renewed motion to dismiss had been made at the close of all evidence and was subsequently denied, we hold this issue has been adequately preserved.

¶ 23 A defendant is guilty of a first-degree sexual offense "if the person engages in a sexual act with a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim." N.C. Gen. Stat. § 14-27.29 (2019). Because commission of the crime is dependent on the relative ages of the offender and victim, their ages are essential elements of the crime. *In re Griffin*, 162 N.C. App. 487, 494, 592 S.E.2d 12, 17 (2004). Thus, Defendant's motion

to dismiss should have been allowed if substantial evidence failed to show directly or support a reasonable inference that Brad was younger than 13 years old when he was sexually abused by Defendant. *Hunt*, 365 N.C. at 436, 722 S.E.2d at 488.

¶ 24 We hold that the evidence introduced at trial supports a reasonable inference that Defendant committed multiple acts of sexual abuse when Brad was under the age of 13 despite Brad's inability to definitively recall when the abuse began. Brad, Mrs. Lowe, and Adam all testified that they met Defendant in the summer of 2007 when Brad and Adam were ten years old. By September of that year, the four took a trip together to Disney world for the twins' 11th birthday, and Brad stayed in Defendant's hotel room. Though Brad was unable to identify which specific trips included abuse, he testified that Defendant abused him in multiple hotel rooms on numerous trips. Mrs. Lowe testified that they went on a trip with Defendant "[w]henever there was a school vacation basically." Brad testified that he visited Defendant at his house "many times" after the summer of 2007 and—though he did not identify precisely when—that Defendant subjected him to sexual abuse "many times" in Defendant's bedroom. Brad further stated that this abuse began while he was in middle school, and therefore started sometime between ages 10 and 13.[3]

[3] Brad and Adam were between the ages of 10 and 13 in grades six through eight, turning 14 during their freshman year of high school.

¶ 25 Defendant cites precedents establishing that a criminal charge does not survive a motion to dismiss based on ambiguous evidence alone. *See State v. Pierce*, 238 N.C. App. 537, 551, 767 S.E.2d 860, 870 (2014) (holding testimony that was unclear as to date and nature of sex acts did not amount to substantive evidence of the particular sex offense alleged); *State v. Hicks*, 319 N.C. 84, 90, 352 S.E.2d 424, 427 (1987) (holding testimony that was ambiguous as to anal penetration was insufficient to establish first-degree sex offense "absent corroborative evidence . . . that anal intercourse occurred"). Here, however, additional evidence in the record would permit a juror to resolve any ambiguity in Brad's testimony. Mrs. Lowe testified that she and her sons first visited Defendant's home in 2007, when Adam and Brad were ten years old and about to start middle school. Brad stated he engaged with his first sex act with Defendant in middle school. Adam testified that Defendant began abusing him when he "most likely was 12." Adam further testified that Defendant's initial focus was on Brad, telling the jury that "[a]t the beginning it was [Brad] that [Defendant] spent more time with, and that eventually transitioned to me spending more time with him when I was older, a little bit older." The jury also

viewed Brad's forensic interview with Ms. Howell during which he stated the abuse started when he was "like[,] eleven or twelve."[4]

¶ 26 In sum, Brad testified to repeated, frequent abuse and the circumstances in which Defendant would commit that abuse. The evidence is sufficient to show that those circumstances arose while Brad was under the age of 13. Further, Adam testified that he was abused when he "most likely was 12," but that Defendant first focused his attention on Brad and did not turn to Adam until he was "a little bit older." Finally, the jury viewed Brad's forensic interview in which he stated he believed he was abused at age 11 or 12. Taken collectively and when viewed in the light most favorable to the State, witness testimony and corroborative evidence supports a reasonable inference that Defendant sexually abused Brad before he

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[4] Defendant did not request a limiting instruction at the time of admission. Nor does Defendant contend on appeal that Brad's forensic interview cannot be considered as substantive evidence when reviewing the denial of Defendant's motion to dismiss. Even if this interview was introduced as corroborative evidence only, it may be relied upon to support a reasonable inference resolving an ambiguity in the evidence at the motion to dismiss stage. *See, e.g., State v. Rogers*, 316 N.C. 203, 229, 341 S.E.2d 713, 728 (1986) (holding "eyewitness testimony . . . , *when taken with the other corroborative evidence offered by the State*, was sufficient substantial evidence from which the jury could have reasonably inferred that [the] defendant" committed the crime charged (emphasis added)), *overruled on separate grounds by State v. Vandiver*, 321 N.C. 570, 364 S.E.2d 373 (1988); *Phachoumphone*, 257 N.C. App. at 862-63, 810 S.E.2d at 757 ("[T]he State presented overwhelming corroborative evidence from which to reasonably infer that defendant digitally penetrated [the victim]. . . . Accordingly, the trial court did not err in denying defendant's motion to dismiss the first-degree sexual offense with a child charge for insufficient evidence.").

reached the age 13. We therefore hold that trial court did not err in denying Defendant's motion to dismiss.

### *3. The Trial Court Did Not Err in Admitting Patrick's Testimony Under Rules 404(b) and 403*

¶ 27 Defendant also contends that the trial court incorrectly permitted Patrick to testify about his molestation by Defendant on the 1999 boy scout trip. Assuming, *arguendo*, that Defendant's argument is preserved,[5] we hold that Patrick's testimony was properly admitted under Rules 404(b) and 403.

¶ 28 Evidence of prior bad acts may be admitted under Rule 404(b) to show, among other things, a defendant's *modus operandi*. *Beckelheimer*, 366 N.C. at 131, 726 S.E.2d at 159. While the evidence in question must meet "the requirements of similarity and temporal proximity," *Al-Bayyinah*, 356 N.C. at 154, 567 S.E.2d at 123 (citations omitted), our Supreme Court "has been markedly liberal in admitting evidence of similar sex offenses by a defendant." *Beckelheimer*, 366 N.C. at 130, 726 S.E.2d at 159 (citation and quotation marks omitted). Our focus is not on the

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[5] As with Defendant's first argument, the parties dispute whether this issue has been preserved. On review of the transcript, Defendant's counsel objected to Patrick's testimony before the jury. While Defendant's counsel did elicit testimony from Patrick on cross-examination that Defendant fondled Patrick, it appears that Defendant's counsel did so in order to emphasize the dissimilarities between Patrick's allegations and those made by Brad and Adam. Cross-examination for such a purpose does not amount to waiver under our caselaw. *State v. Anthony*, 354 N.C. 372, 408, 555 S.E.2d 557, 582 (2001). Whether this argument was preserved or waived is ultimately immaterial, however, as we hold Defendant has not shown error on the merits.

differences between the evidence and the crimes alleged but on "the similarities noted by the trial court." *State v. Wilson-Angeles*, 251 N.C. App. 886, 893, 795 S.E.2d 657, 664 (2017) (cleaned up).[6]

¶ 29 Here, the State moved to admit Patrick's testimony as evidence of Defendant's *modus operandi*. The prosecutor pointed to numerous similarities between Patrick's testimony and Defendant's alleged abuse of Brad and Adam:

> The State would maintain that . . . the situation with [Patrick] started of similarly in that . . . [D]efendant had a position of trust, that he was known to [Patrick's] family, that he was privy to information that could have allowed him to easily put himself in this situation . . . .
>
> He would abuse these boys all around the same age. [Patrick] told you he was 12. [Adam] and [Brad] range in ages from 11 to maybe 15 or so at the time when we took out these charges, that they were all white males of the same age, that he befriended the parents in both cases, that he invited the children to his home, he invited them to spend the night, that there was touching of genitals . . . .

This argument led the trial court to rule "there are enough similarities" to permit Patrick's testimony. Though the prosecutor noted many commonalities between the testimonies of Patrick, Brad, and Adam, there are even more similarities evident from the record—for example, all three testified that Defendant abused them on trips

[6] Defendant does not argue that Patrick's testimony failed under the temporal proximity requirement of Rule 404(b), and we therefore limit our discussion to Rule 404(b)'s similarity requirement.

where a parent and other children were present by isolating the intended victim from the group before engaging in sexual contact.

¶ 30 Defendant asserts that the above parallels are too generic and insufficiently unique to constitute admissible 404(b) evidence, relying on this Court's decision in *State v. Gray*, 210 N.C. App. 493, 709 S.E.2d 477 (2011). In that case, we held evidence of a prior sexual assault of a minor occurring eighteen years prior to the offense being tried was insufficiently similar "in light of the dissimilarities between the two alleged acts" because the remaining similarities "show[ed] little more than that the alleged perpetrator of both acts was attracted to young children, and that he used the fact that he was a welcome guest in the house where each child was staying to find time alone with that child in order to commit the assaults." 210 N.C. App. at 512-13, 709 S.E.2d at 491. We note, however, that *Gray* was decided a year prior to our Supreme Court's decision in *Beckelheimer*, which reversed a decision of this Court for focusing on the differences instead of "reviewing the[] similarities noted by the trial court." *Beckelheimer*, 366 N.C. at 131, 726 S.E.2d at 159. And, in upholding the trial court's decision to admit prior bad acts evidence under Rule 404(b), the Supreme Court pointed to similarities that are also found in the testimony given by Patrick, Brad, and Adam in this case:

> The trial court found that "the age range of [the 404(b) witness] was close to the age range of the alleged victim," . . . . The trial court found similarities in the

> "location of the occurrence," a finding also supported by the evidence . . . . Finally, the trial court found similarities in "how the occurrences were brought about," . . . . We conclude that these similarities are sufficient to support the State's theory of modus operandi in this case.

*Id.* We also note more pertinent parallels in this case than those present in *Gray*; for example, the defendant in *Gray* was tried for digitally penetrating a young girl's vagina while the 404(b) evidence indicated the defendant had previously forced anal intercourse on a boy. 210 N.C. App. at 512-13, 709 S.E.2d at 491. *Gray* is thus distinguishable and, following *Beckelheimer*, we hold Patrick's testimony was sufficiently similar to show *modus operandi* under Rule 404(b).

¶ 31 We also hold that the trial court did not abuse its discretion in overruling Defendant's objection to Patrick's testimony based on Rule 403. The trial court was mindful of potential prejudice in allowing Patrick to testify, finding that the testimony's "probative value is not outweighed by the potential prejudice given the limiting instruction that the Court would provide to the jury both at the time of offering the evidence and in the jury instructions." Consistent with this finding, the trial court gave a limiting instruction in the course of Patrick's testimony, telling he jury that it was "being received solely for the purpose of showing defendant's motive, opportunity, intent common plan or scheme, lack of consent, identity and absence of mistake or accident. If you believe the testimony, you are not to consider it for any other purpose." It later reiterated that instruction, specific to Patrick's testimony, in

the jury charge. Given the similarities between the crimes being tried and Patrick's testimony, the trial court's careful consideration of potential prejudice on the record, and the limiting instructions given to the jury, we hold the trial court did not abuse its discretion in admitting Patrick's testimony over Defendant's objection under Rule 403. *See, e.g., State v. Hipps*, 348 N.C. 377, 406, 501 S.E.2d 625, 642 (1998) (holding the trial court did not abuse its discretion under Rule 403 in admitting Rule 404(b) evidence when "the record reveals that the trial court was aware of the potential danger of unfair prejudice to [the] defendant[,] . . . was careful to give a proper limiting instruction to the jury . . . [,] [and] the evidence of the prior crime is highly probative").

## III. CONCLUSION

¶ 32 For the foregoing reasons, we hold Defendant has failed to demonstrate error.

NO ERROR.

Judges MURPHY and WOOD concur.

Report per Rule 30(e).