

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-677

Filed 18 June 2024

Wake County, Nos. 20 CRS 219569, 20 CRS 219570

STATE OF NORTH CAROLINA

v.

SHAUN RYAN MORTON, Defendant.

Appeal by defendant from judgments entered 13 October 2022 by Judge Stephan Futrell in Wake County Superior Court. Heard in the Court of Appeals 15 May 2024.

*Attorney General Joshua H. Stein, by Assistant Attorney General Jason P. Caccamo, for the State.*

*Drew Nelson for defendant-appellant.*

PER CURIAM.

Defendant Shaun Ryan Morton was found guilty by a jury of one count of statutory sex offense and other sexual crimes in connection with encounters he had with a minor under the age of sixteen. After arresting judgment on two of the convictions, the trial court sentenced Defendant to a term of imprisonment. Defendant appeals.

Defendant argues the trial court erred by allowing the State to present evidence regarding Defendant's prior conviction for sexual battery on a child.

Evidence of certain prior convictions may be admissible under Rule 404(b) of our Rules of Evidence. Our Supreme Court instructs that we review a trial court's determination as to whether a prior conviction falls within the scope of Rule 404(b) *de novo*. *State v. Beckelheimer*, 366 N.C. 127, 130, 726 S.E.2d 156, 159 (2012). However, since Rule 404(b) is a "clear general rule of inclusion," after concluding that a prior conviction falls within Rule 404(b), we then must determine whether the trial court abused its discretion by concluding that the probative value of the prior conviction outweighs any unfair prejudice under Rule 403. *Id.*

Here, though, Defendant does not argue that the conviction does not fall within the parameters of Rule 404(b). Rather, he merely contends on appeal that the trial court erred in its Rule 403 determination.

In the present case, the trial court conducted a balancing test after hearing arguments regarding presentation of the 404(b) evidence to the jury. The trial court allowed the jury to hear about the prior conviction but provided a limiting instruction to mitigate any danger of unfair prejudice. Specifically, the trial court instructed the jury that it "may consider [the evidence] only for the limited purpose for which it was received" (*i.e.*, to show Defendant's identity, motive, intent, and opportunity to commit the crime—not to show whether Defendant had a propensity to commit the crime). *See State v. Barnett*, 223 N.C. App. 450, 456, 734 S.E.2d 130, 135 (2012)

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*Opinion of the Court*

(“Limiting instructions mitigate the danger of unfair prejudice to the defendant.”).

Based on our review of the record, we cannot say that the trial court abused its discretion by allowing the jury to hear evidence of Defendant’s prior conviction.

NO ERROR.

Panel consisting of Chief Judge DILLON and Judges ZACHARY and ARROWOOD.

Report per Rule 30(e).