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Dec 12 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of General Sessions

Brian M. Gibbons, Circuit Court Judge

Appellate Case No. 2021-000989

THE STATE, ...RESPONDENT,

v.

BRADLEY MARK CORLEW,.....APPELLANT.

PETITION FOR REHEARING

On December 4, 2024, this Court issued an unpublished opinion that affirmed Appellant Bradley Mark Corlew's convictions and sentences of life imprisonment for criminal sexual conduct (CSC) with a minor in the first degree, twenty (20) years' consecutive imprisonment for CSC with a minor in the second degree, and ten (10) years' consecutive imprisonment for incest. *State v. Corlew*, Op. No. 2024-UP-408 (S.C. Ct. App. filed December 4, 2024). In affirming Corlew's convictions, this Court correctly held that, notwithstanding any trial court errors in granting Respondent's (the State's) pretrial motion seeking to admit several pieces of bad acts evidence pursuant to Rule 404(b), SCRE, and as part of the *res gestae* of the crimes alleged, any such errors were harmless because they could not have reasonably affected the result of the trial.

This Court properly concluded that even if the trial court excluded all references to the other bad acts, the abundant remaining evidence was more than sufficient to establish Corlew's guilt beyond a reasonable doubt.

Underlying that ruling, however, this Court found: (1) Corlew's objection to the bad acts evidence was preserved for appellate review and (2) the circuit court erred in admitting the evidence in the first place. First, the Court held that Corlew's challenge, at least as to the admission of bad acts through publication of the video recordings of forensic interviews with the victims, was preserved for appellate review despite the State's argument to the contrary. The Court then held that although evidence Corlew was violent to his girlfriend, Sarah Lacy (Lacy), was properly admitted, the trial court erred in admitting: (1) evidence of Corlew's abuse towards other children in the home and (2) evidence of other bad acts by Lacy. In regard to Corlew's abuse towards the other children, this Court found the bad acts failed to constitute admissible evidence of a common scheme or plan because "more than mere similarity is required" and the evidence "merely showed Corlew had a propensity to commit sexual crimes against [the victims]." In regard to Lacy's bad acts, this Court found the evidence emphasizing how sexual behavior had been normalized in the home "had little logical connection to the crimes for which [Corlew] was charged." The Court further rejected the State's argument that the evidence was admissible as part of the *res gestae* of the charge crimes because it was "unpersuaded that the State needed the bad acts evidence to prosecute the case." It held a more focused presentation of the victims' forensic interviews, combined with their testimony, would have been sufficient for the jury to reach a decision without the need for additional context to understand Corlew's crimes.

Based on the totality of these rulings, the State respectfully petitions the Court for rehearing pursuant to Rule 221(a), SCACR, on grounds that this Court may have misapprehended or overlooked several important points when finding the bad acts objection was preserved for review and the trial court erred in admitting the bad acts evidence.[1] First, the State submits a more precise consideration of our error preservation rules shows the bad acts objection was not preserved for appellate review because the trial objection was an effort to exclude introduction of the forensic interviews in their entirety rather than an objection to the portions that included reference to the bad acts. Second, long-standing and well-established precedent supports the trial court's decision to admit the bad acts evidence under Rule 404(b), SCRE, as a pattern of continuous illicit conduct which had a logical connection to the charged crimes. Third, additional precedent supports the trial court's decision to alternatively admit the bad acts evidence under the *res gestae* theory of admissibility because it constituted a full presentation of the offenses without unnecessary fragmentation of the contextually relevant explanation of the home environment and the crimes committed in that home. Under such circumstances, the State believes this Court should reconsider both its error preservation finding and its subsequent finding of trial court error in Corlew's case.

A. Relevant Facts & Procedural History

As succinctly set forth by this Court in its opinion:

> This case centers around Corlew's sexual abuse of two victims: Minor 1, Corlew's daughter, and Minor 2, the daughter of Corlew's girlfriend, Sarah Lacy. At the time of trial, both victims were thirteen years old. When the abuse occurred, nine children

[1] Although this Court correctly affirmed Corlew's convictions and sentence, the State is currently seeking rehearing solely for the purpose of best ensuring its procedural and substantive arguments are not waived or foreclosed in any future proceedings that may occur in Corlew's case. *See State v. Black*, 400 S.C. 10, 28, 732 S.E.2d 880, 890 (2012) (instructing an unappealed ruling—regardless of whether it is right or wrong—becomes the law of the case); *cf. State v. Humphries*, 354 S.C. 87, 91, n. 2, 579 S.E.2d 613, 615, n. 2 (2003) (declining to address an additional sustaining ground raised by the State that was founded upon a contention the Court of Appeals incorrectly held the trial judge erred).

> lived in the home with Corlew and Lacy. According to the State, the environment in the home was "sort of a lifestyle to normalize sexual behaviors between [Corlew and Lacy] and their sexual activities, as well as having the children join in on the sexual activities as well."
>
> At trial, Minor 1 and Minor 2 testified in detail about the abuse they experienced in the home. Additionally, the State presented evidence of bad acts to the jury. For example, the jury watched videos of Minor 1's two forensic interviews, during which she stated (1) Lacy used sex toys on Minor 1, (2) Lacy forced Minor 1 to masturbate, (3) Lacy sexually abused Minor 1's brother and on at least one occasion tried to have sex with him, and (4) Corlew and Lacy forced Minor 1's brother to watch them have sex. Minor 2, during her forensic interview, stated that (1) Corlew forced her brother to have sex with Lacy, (2) Corlew would make all the children watch while he and Lacy had sex, (3) Corlew beat Minor 2's brother when Minor 2's brother urinated on himself, (4) Corlew held her while she was forced to have sex with Minor 1's brother, (5) Corlew physically abused Lacy, and (6) two other children in the house were forced to have sex with each other. Minor 1 and Minor 2 also referenced many of these events in their testimony.

State v. Corlew, Op. No. 2024-UP-408 (S.C. Ct. App. filed December 4, 2024).

B. Preservation

In his brief, Corlew argued he adequately preserved the bad acts issue for appeal by objecting when State's Exhibits 1 & 2 (the forensic interviews of the victims) were introduced at trial. (R.p.162). However, that trial objection was clearly *not* a renewal of the objection to the State's in limine bad acts motion, which necessarily, would *only* have been a valid objection to *portions* of those forensic interviews—the portions that referenced the challenged bad acts and not the charged crimes themselves—rather than an objection to the interviews *in toto*. Instead, Corlew's counsel appeared—and under any reasonable interpretation sounded—to be renewing the objection to introduction of the *entirety* of the forensic interviews, particularly when he claimed to only be renewing a single "objection" rather than multiple "objections." Indeed,

when the State asked to "move State's Exhibit Number 1 into evidence," counsel responded: "Previous *objection* as ruled upon," to which the trial court stated: "Yeah. All right. *Objection* overruled." (R.p.162, lines 6-9) (emphasis added). A similar, singularly based and renewed "objection" was repeated in regard to State's Exhibit 2. (R.p.162, lines 20-25). Yet, the *only* pretrial objection Corlew made to the admission of the *entirety* of the interviews was argued at the hearing held on August 18, 2018, in which the trial court was required to review the admissibility of those interviews under S.C. Code § 17-23-175.[2] (R.p.19-p.52). Corlew's counsel challenged the trustworthiness of the statements and argued he was concerned about "coaching" and about "outside influence[s]" suggesting answers for the children in the interview. (R.p.51, line 23-p.52, line 11). The trial court overruled counsel's objection. (R.p.52, lines 12-19). This "coaching" objection is what was renewed at trial, and not the objection to the State's motion to admit particular bad acts described in portions of the statements.

In its opinion, this Court condemned a "hyper-technical" application of the error preservation rule that could "suppress consideration of an otherwise meritorious issue." However here, the State submits no such hyper-technical application is espoused. Instead, counsel simply failed to meet his responsibility to preserve the bad acts issue for appeal by failing to adequately renew his objection, on *this* ground. *I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000); *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750, 759 (1997). A ruling *in limine* is not a final ruling on the admissibility of evidence. *State v. Griffin*, 339 S.C. 74, 528 S.E.2d 668 (2000); *State v. Hughes*, 336 S.C. 585, 521 S.E.2d 500 (1999). A pre-trial ruling on the admissibility of evidence is preliminary, and is subject to change based on

[2] The Code requires that, prior to admitting a prior out-of-court statement of a child under twelve, the trial court must determine, "in a hearing conducted outside the presence of the jury, that the totality of the circumstances surrounding the making of the statement provides particularized guarantees of trustworthiness." S.C. Code Ann. § 17-25-175(A)(4) (Supp. 2014).

developments at trial. *Id.* Unless an objection is made at the time the evidence is offered and a final ruling made, the issue is not preserved for review. *State v. Schumpert*, 312 S.C. 502, 435 S.E.2d 859 (1993), *overruled on other grounds by State v. Stukes*, 416 S.C. 493, 787 S.E.2d 480 (2016).

In the present case, during the in limine motion for bad acts, counsel only made passing reference to sexual misconduct involving children other than the two victims, and counsel did not request any specific redactions for any of the bad acts described in the forensic interviews. R. 28, lines 18-22. Defense counsel did not complain about or request suppression of evidence of physical abuse or sexual abuse perpetuated by Lacy. Further, defense counsel never offered a legitimate argument against *res gestae*, the principal grounds argued in support of admission by the prosecution. The "renewal" of the previous "objection" by defense counsel when the State sought to admit the forensic interviews was entirely based on the prior coaching objection made during the section 17-23-175 hearing, and was clearly an effort to exclude those interviews *in their entirety*. Certainly, the trial court should not be expected to have interpreted that objection as an objection to the piecemeal *res gestae* / Rule 404(b) evidence. Trial counsel, at the very least, had the obligation to renew his objection with enough specificity so the trial court, the parties in this appeal, and this Court would not have to speculate as to which objection—rather than objections—was or were being renewed. Therefore, the bad acts issue was not preserved for review and the State respectfully asks this Court to reconsider its decision to address the merits of this issue in this appeal.

C. Merits

1. Rule 404(b), SCRE – Common Scheme or Plan

In the instant case, both the charged and uncharged conduct constitute individual manifestations of the same common scheme or plan to sexualize and normalize sexual activity within the household between the adults and the children. The common scheme was to create a cascade of debauchery within the household for Corlew and Lacy's joint venture for degenerate gratification, culminating in the charged sexual assaults. This uncommon, constant, and extreme normalization of sexual activity *was* Corlew's scheme. As such, it was admissible evidence in the sound discretion of the trial court under Rule 404(b), SCRE.

In *State v. Weaverling*, 337 S.C. 460, 469, 523 S.E.2d 787, 791 (Ct. App. 1999), this Court favorably quoted Supreme Court precedent that held the common scheme or plan exception "is generally applied in cases involving sexual crimes, where evidence of acts prior and subsequent to the act charged in the indictment is held admissible as tending to show continued illicit intercourse between the same parties." (quoting *State v. Whitener*, 228 S.C. 244, 265, 89 S.E.2d 701, 711 (1955)); *see also State v. McClellan*, 283 S.C. 389, 392, 323 S.E.2d 772, 774 (1984) (holding the "prosecutrix's testimony regarding prior attacks was admissible under [the common scheme] exception to show the continued illicit intercourse forced upon her by Appellant.").

In *State v. Tutton*, 354 S.C. 319, 328, 580 S.E.2d 186, 191 (Ct. App. 2003), this Court again held, favorably citing both *Weaverling* and *McClellan*, that common scheme or plan evidence is admissible when there is a *pattern of continuous illicit conduct*, because the pattern "clearly supports the inference of the existence of a common scheme or plan, thus bolstering the probability that the charged act occurred in a similar fashion." Five years later, this Court

similarly affirmed the admission of prior bad act evidence, finding "a clear pattern of escalating sexual abuse" satisfying the requirements of the common scheme or plan exception. *State v. Kirton*, 381 S.C. 7, 36, 671 S.E.2d 107, 122 (Ct. App. 2008). In *Tutton*, this Court observed:

> Sex crimes may be unique in this respect because they commonly involve the same victims engaged in repeated incidents occurring under very similar circumstances. The reason for the general admissibility of such evidence under these circumstances is self-evident – where there is a pattern of continuous conduct shown, that pattern clearly supports the inference of the existence of a common scheme or plan, thus bolstering the probability that the charged act occurred in in a similar fashion. . . . Where there is a pattern of continuous misconduct, as commonly found in sex crimes, that pattern supplies the necessary connection to support the existence of a plan. Presumably, this is so because the same evidence that establishes the continuous nature of the assaults will generally suffice to prove the existence of the common scheme or plan as well. In *Weaverling* and *McClellan*, **the sheer volume of repeated occurrences**, together with the close similarities in the assaults, evidenced a pattern of continuous illicit conduct.

Tutton, 354 S.C. at 328-29, 580 S.E.2d at 191 (emphasis added).

In the instant case, no doubt the sheer multitude of sexualized activity constituting both charged conduct and bad acts evidenced a clear pattern of continuous illicit conduct and showed the logical connection required by our supreme court in *State v. Perry*, 430 S.C.24, 842 S.E.2d 654 (2020). The trial court properly admitted the bad act evidence under Rule 404(b), SCRE, after appropriately balancing the probative value of the evidence against its prejudicial effect. Therefore, the State respectfully asks this Court to reconsider its finding of trial court error regarding Rule 404(b), SCRE.

2. *Res Gestae*

In his opening statement, the solicitor explained in stark and clear terms the environment that Corlew created, an environment where he was able to perpetrate a multitude of sexual

assaults on both victims. (R.p.67-p.68). This environment included the bad acts addressed by this Court. The State submits all the extrinsic acts were admissible as *res gestae*, because they provided context to the crimes and constituted a full presentation of the offenses without unnecessary fragmentation of the contextually relevant explanation of the home environment and the crimes Corlew was able to commit in that home. The presence of dildos and pornography, the physical abuse and neglect, the defecation and urination, and the other acts committed in front of or involving other children, were all contemporaneous with the charged acts and part of the grooming of the two victims. Also, the evidence helped explain the necessity for conducting forensic interviews of all the children and the circumstances of their disclosures.

"The *res gestae* theory recognizes evidence of other bad acts may be an integral part of the crime with which the defendant is charged, or may be needed to aid the fact finder in understanding the context in which the crime occurred." *State v. King*, 334 S.C. 504, 512, 514 S.E.2d 578, 582 (1999). This Court held that to constitute part of the *res gestae* of an offense, it is important the extrinsic acts have a close temporal proximity to the charged crime. *State v. Martucci*, 380 S.C. 232, 258, 669 S.E.2d 598, 612 (Ct. App. 2008). "Even though a defendant is not charged with every crime committed during a criminal transaction, every aspect of it relevant to the crime charged may be presented at trial." *Altman v. State*, 495 S.E.2d 106, 108 (Ga. Ct. App. 1997); *State v. McGee*, 408 S.C. 278, 288, 758 S.E.2d 730, 735-36 (Ct. App. 2014) ("When evidence is admissible to provide this full presentation of the offense, there is no reason to fragmentize the event under inquiry by suppressing parts of the *res gestae*.") (internal quotation marks omitted) (quoting *State v. Preslar*, 364 S.C. 466, 474, 613 S.E.2d 381, 385 (Ct. App. 2005)).

In the instant case, the extrinsic acts consisted of conduct either Minor 1 or Minor 2 observed or was subjected to. The acts were in close proximity to or contemporaneous with the charged acts. The physical abuse explains why neither child disclosed the sexual abuse they suffered until forensic interviews precipitated only by Lacy's accusations of physical abuse by Corlew and admissions of her own acts. Further, Son's sexual abuse was witnessed by the victims, and what they witnessed served to normalize sexual behavior in the household, as did the adult sexual behavior between Corlew and Lacy, which was done in front of the victims. Additionally, Lacy's conduct, including urination, defecation, and nudity would be acts by her and not Appellant, but does further normalize sexual behavior due to the ensuing exposure of genitals and normalization of the excretion of fluids: urine, defecation, and ultimately ejaculate.

While a "more focused presentation of the victims' forensic interviews" was certainly possible, it would have fragmented the context of the crimes, leading to confusion ranging from questions about how the assaults could have occurred in a household where two adults and nine children were often present, to questions about why the victims would have delayed disclosure of the horrendous abuse. The trial court did not abuse its discretion in admitting the bad acts as part of the *res gestae*. Consequently, the State respectfully asks this Court to reconsider its finding of trial court error regarding the *res gestae* theory of admissibility.

D. Conclusion

For all the foregoing reasons combined with the reasons articulated in the State's brief and during oral argument before this Court, the State respectfully requests that this Court grant this petition for rehearing, reconsider and rehear this matter pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, vacate its prior opinion, and issue an order affirming Corlew's

convictions and sentence on grounds that: (1) the argument was not preserved for appellate review and/or (2) the trial court did not err in admitting any of the bad acts testimony, both under Rule 404(b), SCRE, and as part of the *res gestae*, but retaining this Court's conclusion that any possible error was harmless beyond a reasonable doubt.

Respectfully submitted,

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December 12, 2024

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PROOF OF SERVICE

I, Susan Spencer, Legal Assistant, hereby certify that I have served the *Petition for Rehearing*, dated December 12, 2024, on Appellant by sending an electronic copy via email to Sara E. Shipe, counsel of record for Appellant, at the address listed for counsel in AIS:

I further certified that all parties required by Rule to be served have been served. This 12th day of December, 2024.

Susan Spencer

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From: Susan Spencer
Sent: Thursday, December 12, 2024 2:58 PM
To: sshipe@sccid.sc.gov
Cc: Ben Aplin; Warren, Kaylynn
Subject: The State v. Bradley Mark Corlew (2021-000989)
Attachments: CORLEW Bradley - Petition for Rehearing.pdf

Good Afternoon Ms. Shipe,

Attached please find a Petition for Rehearing in The State v. Bradley Mark Corlew (2021-000989). This document will be filed to the Court of Appeals today via the AIS OneDrive system. If you will, please confirm receipt.

Thank you.

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