IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

ROMAN CORY PRUSH,

Appellant,

v.

Case No. 5D20-1530
LT Case No. 2016-CF-1944

STATE OF FLORIDA,

Appellee.

_____/

Opinion filed November 19, 2021

Appeal from the Circuit Court
for Lake County,
Heidi Davis, Judge.

Terrence E. Kehoe, of Law Office of Terrence E. Kehoe, Orlando, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Kristen L. Davenport, Assistant Attorney General, Daytona Beach, for Appellee.

PER CURIAM.

Following a jury trial, Roman Prush was convicted of one count of lewd or lascivious battery and one count of lewd or lascivious molestation, in

violation of sections 800.04(4)(a) and 800.04(5)(a), (c)2., Florida Statutes (2016), respectively. Prush raises a number of issues on appeal. First, he claims fundamental error in the admission of uncharged sexual acts committed upon the victim, A.H., who was approximately 14 to 15 years old at the time of the offenses. Next, Prush challenges the admission of his Facebook conversations with his former girlfriend in which he allegedly attempted to suborn perjured testimony. He also contends that the State's closing argument included improper statements, rising to the level of fundamental error. Finally, he contends that his trial counsel's failure to object to the uncharged sexual acts and the State's closing argument constitutes ineffective assistance of counsel on the face of the record.

We affirm without discussion the issues relating to the Facebook conversations, the State's closing argument, and the ineffective assistance of counsel claim raised on direct appeal. Additionally, we find no error—let alone fundamental error—in the admission of the uncharged sexual acts committed by Prush against A.H., because that evidence was inextricably intertwined with the underlying charges. See McGee v. State, 19 So. 3d 1074, 1078–79 (Fla. 4th DCA 2009) (finding uncharged acts of oral and attempted anal sex inextricably intertwined with charged offenses of vaginal sex where uncharged acts were "necessary to adequately describe the

events leading up to the charged crimes."); see also Dorsett v. State, 944 So. 2d 1207, 1213 (Fla. 3d DCA 2006) (noting that evidence is inextricably intertwined if it is necessary to "establish the entire context out of which the charged crime(s) arose" (citing Hunter v. State, 660 So. 2d 244, 251 (Fla. 1995))). When uncharged sexual acts are inseparable from the context of the charged offenses, that evidence is admissible as relevant under section 90.402, Florida Statutes (2019). See Griffin v. State, 639 So. 2d 966, 968 (Fla. 1994).

However, we agree with Prush that the judgment contains an apparent scrivener's error with respect to the second count. Prush was charged and convicted under section 800.04(5)(a), (c)2., yet the trial court's judgment reflects a conviction under section 800.04(45A). The State concedes that remand is appropriate for correction of that error.

AFFIRMED; REMAND FOR CORRECTION OF SCRIVENER'S ERROR.

COHEN, EDWARDS and TRAVER, JJ., concur.