FIFTH DIVISION
MCFADDEN, C. J.,
HODGES, J. and SENIOR APPELLATE JUDGE PHIPPS

September 24, 2019

In the Court of Appeals of Georgia

A19A0956. VAUGHN v. THE STATE.

HODGES, Judge.

Stephen Vaughn, III was convicted by a jury of seven counts of child molestation and two counts of aggravated child molestation against the daughters of his live-in girlfriend. The trial court denied Vaughn's motion for new trial, and Vaughn now appeals, contending that (1) the trial court erred in improperly admitting evidence of his molestation of another victim on the grounds that it was intrinsic evidence; and (2) OCGA § 24-4-414 is unconstitutional because it impermissibly shifted the burden to him to prove his innocence on the separate pending allegations of molestation against him. For the reasons that follow, we find no error and affirm.

"On appeal from a criminal conviction, a defendant no longer enjoys the presumption of innocence, and the evidence is viewed in the light most favorable to

the guilty verdict." (Citation omitted.) *Walker v. State*, 349 Ga. App. 188 (825 SE2d 578) (2019).

So viewed, the evidence shows that Vaughn had a romantic relationship and moved in with a woman who had three underage daughters. Vaughn abused the oldest of the three victims (the "First Victim") in numerous ways. Vaughn threatened the First Victim with harm to her family if she told anyone, so she did not immediately report the abuse. She also believed she was protecting her younger siblings from Vaughn's abuse by going along with it.

Unbeknownst to the First Victim, Vaughn was also abusing her younger siblings (the "Second Victim" and the "Third Victim") . These victims also did not immediately report Vaughn's abuse. Eventually, the victims disclosed their abuse to each other. All three girls told their mother about the abuse, but the First Victim recanted because she was scared of getting in trouble. The other two victims did not recant, but their outcry was ignored. The victims tried to protect each other from Vaughn by sleeping in the same room or the same bed and locking doors, but Vaughn was not deterred.

The abuse of all three girls continued, but eventually the First Victim confided to a pastor who was a friend of the family. On the advice of that pastor, the First

Victim recorded a conversation between herself and Vaughn wherein their relationship was discussed as the First Victim informed Vaughn that she no longer wanted the relationship to be sexual.

Subsequently, Vaughn and the mother of the victims engaged in a marriage counseling conference call during which time the First Victim got on the phone. She begged her mother not to be mad at her and started vomiting. At that point, the Second Victim, who was standing next to the First Victim, grabbed the phone and disclosed the abuse again to her mother.

Vaughn was indicted in Gwinnett County for the crimes committed against the Second Victim and Third Victim.[1] Specifically, he was indicted for seven counts of child molestation and two counts of aggravated child molestation. The State filed a notice of intent to introduce evidence of the acts of molestation committed against the First Victim. The trial court permitted the introduction of such evidence on the grounds that it was intrinsic evidence and that it was admissible under OCGA § 24-4-414. Vaughn was tried by a jury and convicted on all counts. He moved for a new trial, which the trial court denied. Vaughn now appeals.

[1] Vaughn was separately tried and convicted for crimes committed against the First Victim in Fulton County. This Court previously upheld those convictions in an unpublished opinion. *Vaughn v. State*, Case No. A19A0512 (aff'd June 21, 2019).

1. Vaughn alleges that the trial court erred in admitting evidence related to the First Victim as intrinsic evidence. We find this enumeration has been waived.

Prior to the trial of this case, the State sought a ruling from the trial court that the First Victim could testify on the grounds that her testimony was admissible both as intrinsic evidence and under OCGA § 24-4-414.[2] In response, Vaughn argued that the evidence was more prejudicial than it was probative because the case for the crimes committed against the First Victim was stronger than the cases for the crimes committed against the other victims. Vaughn did not respond to the State's contention that the testimony of the First Victim was admissible as intrinsic evidence.

Georgia law is clear, however, that "in order to raise on appeal an impropriety regarding the admissibility of evidence, the specific ground of objection must be made at the time the evidence is offered, and the failure to do so amounts to a waiver of that specific ground." (Citation and punctuation omitted.) *Hurt v. State*, 298 Ga. 51, 53-54 (2) (779 SE2d 313) (2015). Consequently, this issue has been waived and presents nothing for our review. See *Williams v. State*, 277 Ga. App. 106, 108 (2)

[2] OCGA § 24-4-414 (a) provides, in relevant part, that "[i]n a criminal proceeding in which the accused is accused of an offense of child molestation, evidence of the accused's commission of another offense of child molestation shall be admissible and may be considered for its bearing on any matter to which it is relevant."

(625 SE2d 509) (2005) ("We are a court for the correction of errors of law committed by the trial court where proper exception is taken, and we will not consider issues and grounds for objection, even of a constitutional magnitude, which were not raised and determined in the trial court.") (citation omitted).

2. Vaughn also alleges that OCGA § 24-4-414 is unconstitutional because it shifts the burden to him to prove his innocence in separate pending allegations. This enumeration provides nothing for us to review.

Vaughn initially filed this appeal in the Supreme Court of Georgia. See Ga. Const. of 1983, Art. VI, Sec. VI, Par. II (1). However, our Supreme Court transferred Vaughn's appeal to this Court, finding:

> Because appellant's constitutional challenge to the statute was not raised until his (second amended) motion for new trial, the claim was not preserved for ordinary appellate review. See *State v. Herrera-Bustamante*, [304 Ga. 259, 262 (2) (a) (818 SE2d 552) (2018)]. Appellant does not contend that his constitutional claim is subject to plain error review as a challenge to an evidentiary ruling, see OCGA § 24-1-103 (d), and in any event, he does not articulate even a colorable claim of plain error. The two pages of his brief addressing his constitutional claim cite only the general federal and state constitutional due process provisions he says should be considered and a case involving burden-shifting in the jury instruction context; he does not identify any authority that even arguably applies clearly and directly to

> the trial court's admission of evidence under OCGA § 24-4-414. See *Simmons v. State*, 299 Ga. 370, 374 (788 SE2d 494) (2016) ("'An error cannot be plain where there is no controlling authority on point . . . '" (citation omitted)). Accordingly, appellant's untimely challenge to the constitutionality of OCGA § 24-4-414 is insufficient to invoke this Court's constitutional question jurisdiction, and as no other basis for the exercise of this Court's jurisdiction is apparent from the record, we hereby transfer this appeal to the Court of Appeals.

As a result, this enumeration is without merit because "[t]he Supreme Court's determination in [its] transfer order is final and binding." (Citation omitted.) *Employees' Retirement Sys. of Ga. v. Harris*, 303 Ga. App. 191, 195 (2) (692 SE2d 798) (2010). See also *Amos v. State*, 298 Ga. 804, 807-808 (2) (783 SE2d 900) (2016) ("a constitutional attack on a criminal statute may not be raised for the first time on motion for new trial. Even where an untimely constitutional challenge is addressed on its merits by the trial court, [we] will decline to entertain the issue on appeal.") (citations omitted); *In re D. H.*, 283 Ga. 556, 557 (3) (663 SE2d 139) (2008) (Georgia's appellate courts "will not pass upon the constitutionality of a statute when the challenge was not directly and properly made in the trial court and distinctly ruled on by the trial court.") (citation omitted).

Judgment affirmed. McFadden, C. J., and Senior Appellate Judge Herbert E. Phipps, J, concur.