

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**NO. 2019-KA-00967-COA**

**KEVIN SYLVESTER WILLIAMS**

**APPELLANT**

**v.**

**STATE OF MISSISSIPPI**

**APPELLEE**

DATE OF JUDGMENT: 04/24/2017  
TRIAL JUDGE: HON. KATHY KING JACKSON  
COURT FROM WHICH APPEALED: JACKSON COUNTY CIRCUIT COURT  
ATTORNEY FOR APPELLANT: OFFICE OF STATE PUBLIC DEFENDER  
BY: HUNTER NOLAN AIKENS  
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL  
BY: ASHLEY LAUREN SULSER  
DISTRICT ATTORNEY: ANGEL MYERS McILRATH  
NATURE OF THE CASE: CRIMINAL - FELONY  
DISPOSITION: AFFIRMED - 12/15/2020  
MOTION FOR REHEARING FILED:  
MANDATE ISSUED:

**BEFORE BARNES, C.J., GREENLEE AND WESTBROOKS, JJ.**

**GREENLEE, J., FOR THE COURT:**

¶1. A jury in the Circuit Court of Jackson County convicted Kevin Sylvester Williams of one count of sexual battery and one count of fondling. For the sexual-battery conviction, the court sentenced Williams to thirty years, with twenty years to serve, in the custody of the Mississippi Department of Corrections (MDOC). For the fondling conviction, the circuit court sentenced Williams to serve fifteen years in the custody of the MDOC. The court ordered the sentences to run concurrently and placed Williams on ten years of post-release supervision. Williams filed a motion for judgment notwithstanding the verdict or, alternatively, a new trial. The circuit court denied Williams' motion. Subsequently, Williams

filed this appeal challenging the evidentiary ruling of the circuit court allowing two minor victims' testimony under Mississippi Rules of Evidence 403 and 404(b). Finding that the issue raised by Williams is without merit, we affirm his convictions and sentences.

### **FACTS AND PROCEDURAL HISTORY**

¶2. This case involves Williams' interactions with three minor victims, J.J., D.B., and A.J.<sup>1</sup> All three minors ranged in age from thirteen to sixteen years old during the time of the alleged acts. These acts eventually led to Williams' indictment for fondling and sexual battery of A.J. Williams was later indicted separately for fondling J.J. and D.B. At trial, J.J. and D.B. testified for the State in support of Williams' conviction for fondling and sexual battery of A.J.

¶3. On July 30, 2014, J.J. filed a report with the Pascagoula Police Department alleging that her step-father, Williams, had sexually abused her between her sixth- and ninth-grade years. After filing the report, Detective Kimberly Stevens met with J.J. At that time, A.J. and D.B. were developed as potential witnesses and, later, victims. A.J. and D.B. admitted that Williams, who served as their school's police officer, had sexually abused them during their sophomore year at Moss Point High School. A.J. and D.B. claimed they would "hang out" in Williams' office sometimes during lunch and their last class period. During this time, Williams would allegedly touch both girls on their buttocks and breasts. A.J. also informed Detective Stevens that she would sometimes leave campus with Williams to grab lunch. On one occasion, she claimed that Williams offered her two hundred dollars to have sex with

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<sup>1</sup> The Court of Appeals declines to identify sexual-assault victims. To protect their privacy and identities, the minor victims in this case will be referred to by their initials.

him. A.J. accepted, and Williams took her to a property located near Highway 57 in Ocean Springs where they had sex. After the incident, Williams returned A.J. to school. She alleged that he again propositioned her, but she declined.

¶4. With respect to A.J., a Jackson County grand jury indicted Williams on one count of sexual battery by a person in a position of trust and one count of touching a child for lustful purposes. Prior to trial, the State filed a motion to allow testimony under Mississippi Rule of Evidence 404(b). The State sought to use the testimony of J.J. and D.B. as evidence of Williams' prior bad acts "to prove motive, intent, opportunity, and plan under Rule 404(b)." After a hearing, the circuit court granted the State's request to admit J.J.'s and D.B.'s testimony under *Derouen*<sup>2</sup> and Rule 404(b).

¶5. At trial, J.J., D.B., and A.J. testified regarding Williams' misconduct. J.J. testified that Williams would check her out of school and take her to his mother's apartment, where he would "suck on her breasts while he masturbated." J.J. testified that the abuse stopped after she told her mother. D.B. testified that during her tenth-grade year, Williams began to make inappropriate comments about her body. D.B. claimed that she and A.J. would go to Williams' office once or twice a week. During these periods, he would feel their breasts and buttocks. D.B. also testified that Williams twice offered her money to have sex with him, but she declined.

¶6. Williams testified in his own defense and denied any wrongdoing regarding J.J., D.B., or A.J. At the conclusion of trial, the jury found Williams guilty as charged. The circuit court

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<sup>2</sup> *Derouen v. State*, 994 So. 2d 748, 756 (¶20) (Miss. 2008).

sentenced Williams as stated above.

¶7. On appeal, Williams argues that the circuit court erred by allowing J.J. and D.B. to testify regarding Williams' prior acts of sexual misconduct with them. Specifically, he argues that the circuit court failed to filter the evidence through Mississippi Rule of Evidence 403 and make a finding that the danger of unfair prejudice substantially outweighed the evidence's probative value.

### **STANDARD OF REVIEW**

¶8. "Relevancy and admissibility of evidence are largely within the discretion of the [circuit] court, and reversal may be had only where that discretion has been abused." *White v. State*, 742 So. 2d 1126, 1134 (¶29) (Miss. 1999). The court must examine the reason for admitting certain evidence where issues of admissibility are questioned. *Hill v. State*, 797 So. 2d 914, 917 (¶15) (Miss. 2001). Furthermore, the circuit court's discretion must operate within the parameters of the Mississippi Rules of Evidence. *Johnston v. State*, 567 So. 2d 237, 238 (Miss. 1990). Reversal is appropriate only when the circuit court's abuse of discretion results in prejudice to the accused. *Hill*, 797 So. 2d at 917 (¶15).

### **DISCUSSION**

¶9. We must decide whether the circuit court erred by allowing evidence of prior misconduct under Rules 403 and 404(b). At trial, the State introduced testimonial evidence from J.J. and D.B. concerning Williams' sexual misconduct with them as minors. According to statements given to the police, J.J. alleged that Williams had sexually molested her between her sixth- and ninth-grade years. She explained that Williams would remove her

from school premises unannounced, bribe her, and take her to his mother's home. He then proceeded to molest her by touching her breasts while he masturbated.

¶10. D.B., a classmate and friend of A.J., testified that Williams would call her and A.J. out of class. They would go into his office where he would feel the girls' breasts and buttocks. D.B. claimed that Williams propositioned both her and A.J. for sex on multiple occasions. While D.B. denied having sexual intercourse with Williams, she testified A.J. accepted Williams' offer and engaged in sex with him. When these incidents occurred, all girls were of similar age, ranging from thirteen to sixteen years old. While J.J. attended the local middle school, D.B. and A.J. attended Moss Point High School. The State argued that J.J.'s and D.B.'s testimony was only offered to prove Williams' motive, intent, opportunity, and plan under Rule 404(b).

¶11. Our evidentiary rules set forth the test that evidence of prior bad acts must meet to be admissible. *Hargett v. State*, 62 So. 3d 950, 953 (¶8) (Miss. 2011). Under Rule 404(b), “[e]vidence of a crime, wrong, or other act” is inadmissible character evidence. M.R.E. 404(b)(1). However, if the evidence is used for other purposes, such as “proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident,” it may be admitted. M.R.E. 404(b)(2).<sup>3</sup>

¶12. Williams contends the circuit court erred by allowing the admission of J.J.'s and D.B.'s testimony at trial. He argues that the probative value of the girls' testimony was substantially outweighed by the danger of confusing and misleading the jury with

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<sup>3</sup>The other purposes listed in Rule 404(b) are not exclusive. *See* M.R.E. 404 advisory committee note.

“voluminous evidence” of his “interactions with and alleged abuse of the girls.”

¶13. Where evidence of other sexual misconduct is concerned, our supreme court has held that “evidence of a sexual offense, other than the one charged, which involves a victim other than the victim of the charged offense for which the accused is on trial,” may be considered by the jury “if properly admitted under Rule 404(b), filtered through Rule 403, and accompanied by an appropriately-drafted limiting or cautionary instruction . . .” *Derouen*, 994 So. 2d at 756 (¶20). Therefore, relevant evidence such as proof of other crimes or acts of a defendant may be admitted under Rule 404(b) as long as “it is still subjected to the requirement that evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice” under Rule 403. *Adams v. State*, 794 So. 2d 1049, 1055 (¶14) (Miss. Ct. App. 2001) (quoting *Flowers v. State*, 773 So. 2d 309, 318 (¶25) (Miss. 2000)).

¶14. In *Derouen*, the court reasoned that “[s]ex crimes against children are furtive, secret events usually lacking evidence other than the conflicting testimony of the defendant and the victim. The only viable proof of motive, intent, plan, knowledge, identity, or absence of mistake or accident may be the pattern of abuse suffered by others at the hands of the defendant.” *Derouen*, 994 So. 2d at 754-55 (¶17). The court further clarified that “overwhelming similarities between prior instances of sexual misconduct and the charged offense undeniably bring the testimony of these other victims within the purview of admissibility under Rule 404(b).” *Green v. State*, 89 So. 3d 543, 550 (¶17) (Miss. 2012).

¶15. J.J.’s and D.B.’s allegations resemble the offense charged and, therefore, were

admissible under Rule 404(b). All of the girls were around the same age when Williams' alleged abuse took place. While J.J. did not know A.J. and D.B. personally, her testimony both corroborated D.B.'s and A.J.'s allegations of Williams' prior inappropriate behavior and served as evidence of his plan to engage in sexual contact with young girls. He served in a position of trust as a family member to J.J. and as the resource officer for both D.B. and A.J. Williams removed both J.J. and A.J. from school premises in his school-issued vehicle, and he routinely checked D.B. and A.J. out of class during lunch or their last class.

¶16. The similarities between A.J.'s allegations and Williams' alleged inappropriate behavior with other minor victims meet the test that J.J.'s and D.B.'s testimony was admissible under Rule 404(b). The testimony of all three girls, specifically D.B. and J.J., establish a common plan, motive, and opportunity.

¶17. Although J.J.'s and D.B.'s testimony is admissible under Rule 404(b), *Derouen* requires that the evidence be "filtered through Rule 403." *Derouen*, 994 So. 2d at 756 (¶20). Williams argues that the probative value of the testimony was substantially outweighed by its prejudicial effect.

¶18. Under Rule 403, the circuit court has the discretion to bar the admission of relevant evidence "if its probative value is substantially outweighed by the danger of . . . unfair prejudice, confusing of the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." M.R.E. 403. "Even when the [circuit] court determines under Rule 403 that prejudice substantially outweighs the probative value of particular evidence, it remains within the [circuit] court's discretion to determine whether to

exclude the evidence, since Rule 403 does not mandate such an exclusion.” *Boggs v. State*, 188 So. 3d 515, 522 (¶19) (Miss. 2016) (quoting *Baldwin v. State*, 784 So. 2d 148, 156 (¶27) (Miss. 2001)).

¶19. The circuit court did not exercise its discretion to bar this relevant evidence. The evidence’s probative value was not substantially outweighed by unfair prejudice, confusion, or any other Rule 403 considerations. Specifically, the circuit court ruled:

Based on the proposed testimony of D.B. and J.J., the Court finds the allegations to be sufficiently similar to the Defendant’s alleged conduct in this case so as to make it admissible under *Derouen* as evidence of the Defendant’s motive and opportunity. The Defendant was in a statutorily-designated position of trust or authority at the time of the abuse of A.J., D.B.[,] and J.J. The girls were relatively close in age. Lastly, the types of and circumstances surrounding the abuse are alike.

¶20. Our supreme court recently held that where evidence “demonstrate[s] . . . the defendant’s means of accomplishing pedophilic sexual activities on past occasions bear substantial resemblance to each other and with the present offense, which serve[s] as proof of motive and a common plan or scheme,” such evidence should survive the Rule 403 relevance/prejudice analysis. *Alford v. State*, 238 So. 3d 11, 13 (¶3) (Miss. Ct. App. 2018) (quoting *Boggs*, 188 So. 3d at 520 (¶13)). Here, all acts testified to by these three young girls bore a “substantial resemblance to each other.” *Id.* The circuit court determined that J.J.’s and D.B.’s testimony identified a common plan or scheme by Williams in which he used his position of trust to take advantage of young girls. J.J.’s and D.B.’s testimony was prejudicial to Williams only to the extent it established his motive, intent, opportunity, and plan under Rule 404(b). Further, the jury was instructed that it could consider J.J.’s and D.B.’s testimony

only for specific purposes. Therefore, there was no danger of misleading or confusing the jury.

### CONCLUSION

¶21. The circuit court did not abuse its discretion in finding that the testimony was admissible under Mississippi Rules of Evidence 403 and 404(b). For the above reasons, we affirm Williams' convictions and sentences.

¶22. **AFFIRMED.**

**BARNES, C.J., CARLTON AND WILSON, P.JJ., WESTBROOKS, McDONALD AND McCARTY, JJ., CONCUR. LAWRENCE, J., NOT PARTICIPATING.**