NO. COA01-1258

NORTH CAROLINA COURT OF APPEALS

Filed: 4 June 2002

STATE OF NORTH CAROLINA

v. Davidson County
No. 00CRS135

RANDALL SCOTT CRAVER

Appeal by defendant from judgment entered 17 May 2001 by Judge Larry G. Ford in Davidson County Superior Court. Heard in the Court of Appeals 28 May 2002.

*Attorney General Roy A. Cooper, III, by Assistant Attorney General Robert M. Curran, for the State.*

*J. Clark Fischer for defendant-appellant.*

HUNTER, Judge.

Randall Scott Craver ("defendant") was convicted of the statutory rape of his daughter ("the victim") pursuant to N.C. Gen. Stat. § 14-27.7A (1999). The court sentenced defendant to a minimum term of 216 months and a maximum term of 269 months in prison. Defendant appeals. We find no error.

The sole issue on appeal is whether the court erred by admitting evidence under Rule 404(b) of the North Carolina Rules of Evidence ("Rule 404(b)") showing that approximately six months prior to the incident forming the basis of the present charge,

defendant engaged in sexual intercourse with another female relative who was under the age of sixteen.

The victim, who was thirteen years old at the time of the incident forming the basis for the charge, testified that on 25 December 1999 she spent the night at defendant's sister's house. Defendant came into the bedroom where she was sleeping, lay down on the bed behind her, and rubbed her thighs and vaginal area. He removed her jeans and panties and engaged in sexual intercourse with her. Afterward he fell asleep on her bed.

The court also admitted the testimony of the victim's cousin that shortly before her sixteenth birthday in June of 1999, she spent the night at the victim's house. She went into a bedroom to retrieve cigarettes. Defendant approached her, placed his hands between her legs and on her breasts, removed her pants and underwear, and engaged in sexual intercourse with her.

Rule 404(b) provides, in pertinent part:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident.

N.C. Gen. Stat. § 8C-1, Rule 404(b) (1999). Our Supreme Court has interpreted this rule as being one of inclusion of relevant evidence of other crimes, wrongs, or acts, provided that the evidence is offered for a purpose other than "to show that the defendant has the propensity or disposition to commit an offense of the nature of the crime charged." *State v. Coffey*, 326 N.C. 268,

278-79, 389 S.E.2d 48, 54 (1990). The Court has been liberal in upholding the admission of evidence of other sexual offenses when the defendant has been charged with a sex crime. *State v. McCarty*, 326 N.C. 782, 785, 392 S.E.2d 359, 361 (1990).

When evidence is offered to show the existence of a common plan or scheme to sexually abuse adolescent female relatives, as offered by the State in the case at bar, the test of admissibility is "whether the incidents establishing the common plan or scheme are sufficiently similar and not so remote in time as to be more probative than prejudicial under the balancing test of N.C.G.S. § 8C-1, Rule 403." *State v. Frazier*, 344 N.C. 611, 615, 476 S.E.2d 297, 299 (1996). Defendant contends that the two incidents are not sufficiently similar to demonstrate the existence of a common plan or scheme. He argues that the only similarity between the incidents is that they involved teenage girls. He also argues that even if the incidents are similar, the probative value of the evidence is outweighed by the danger of unfair prejudice and that the evidence should have been excluded pursuant to Rule 403 of the North Carolina Rules of Evidence ("Rule 403").

"Under Rule 404(b) a prior act or crime is 'similar' if there are '"some unusual facts present in both crimes or particularly similar acts which would indicate that the same person committed both."'" *State v. Stager*, 329 N.C. 278, 304, 406 S.E.2d 876, 890-91 (1991) (citations omitted). "However, it is not necessary that the similarities between the two situations 'rise to the level of the unique and bizarre.'" *Id.* at 304, 406 S.E.2d at 891 (citation

omitted). "Rather, the similarities simply must tend to support a reasonable inference that the same person committed both the earlier and later acts." *Id.* (emphasis omitted).

Here, the similarities between the two incidents go beyond the mere fact that they involved teenage girls. The incidents occurred in bedrooms of residences where defendant was staying, involved two female relatives who were visiting defendant overnight, and involved similar means of commission, i.e., fondling the girls' genitals followed by removing the girls' pants and panties and penetrating the girls' vaginas with his penis for approximately ten minutes. In both incidents, defendant took advantage of the girls' timidity and fear to engage in sexual intercourse with them. Defendant did not wear a condom and neither girl knew whether defendant ejaculated or not. The incidents occurred approximately six months apart.

We conclude that the foregoing similarities are sufficient to support a finding of a common plan or scheme by defendant to engage in sexual intercourse with visiting adolescent female relatives. We also conclude that the probative value of the evidence outweighed the danger of unfair prejudice pursuant to Rule 403. We hold that the court properly admitted the evidence.

No error.

Judges MARTIN and BRYANT concur.

Report per Rule 30(e).