

IN THE UTAH COURT OF APPEALS

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State of Utah,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellee,	)	
	)	Case No. 20050909-CA
v.	)	
	)	F I L E D
Ronald Craig Lindberg,	)	(November 2, 2006)
	)	
Defendant and Appellant.	)	<span style="border: 1px solid black; padding: 2px;">2006 UT App 443</span>

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Sixth District, Manti Department, 041600057  
The Honorable K.L. McIff

Attorneys: John Walsh, Salt Lake City, for Appellant  
Mark L. Shurtleff and Marian Decker, Salt Lake City,  
for Appellee

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Before Judges Bench, Billings, and Davis.

BENCH, Presiding Judge:

Defendant Ronald Craig Lindberg appeals his convictions of rape, a first degree felony, see Utah Code Ann. §§ 76-5-402, -406(10) (2003), unlawful sexual activity with a minor, a third degree felony, see Utah Code Ann. § 76-5-401.2 (2003), and two class A misdemeanor counts of furnishing alcohol to a minor, see Utah Code Ann. § 32A-12-203(3) (2003).

Defendant first claims that the trial court erred by limiting his cross-examination of the State's rebuttal witness William Clark. At trial, Clark admitted to having a sexual relationship with one of the victims prior to the events that led to Defendant's convictions. However, the trial court prevented Defendant from questioning Clark about where Clark and the victim had sex. Defendant argues that the answers to the proposed questions would have exposed Clark's bias against Defendant and would have allowed Defendant to fully argue his theory of the case to the jury.

Rule 608(c) of the Utah Rules of Evidence allows for the bias of any witness to be shown by "examination of the witness or by evidence otherwise adduced." Utah R. Evid. 608(c). The right

to cross-examine regarding bias is limited, however, by rule 403 of the Utah Rules of Evidence. See State v. Hackford, 737 P.2d 200, 203 (Utah 1987). Rule 403 permits the exclusion of relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." Utah R. Evid. 403. "It is always preferable to have express findings in the record so that we can understand the trial court's reasons for barring such cross-examination." Hackford, 737 P.2d at 204 (citing State v. Patterson, 656 P.2d 438, 438 (Utah 1982)). Here, the record reflects that the trial court balanced the probative value of the potential testimony against the dangers of unfair prejudice. Specifically, the trial court found that the testimony regarding the location of the sexual encounter would be only tangentially probative and would likely divert the jury's attention from the main issues of the case. In so ruling, the trial court noted that the questions Defendant was permitted to ask Clark were sufficient to bring any potential bias to the attention of the jury. Therefore, the trial court properly excluded the testimony under rule 403. Further, the partial exclusion of Clark's testimony did not unduly impair the defense; Defendant was able to argue his theory of the case to the jury based on the testimony of defense witnesses, including Defendant's former wife.

Defendant claims for the first time on appeal that his constitutional rights were violated by the trial court's limitation of his cross-examination of Clark. The Sixth Amendment "'guarantees the right of an accused in a criminal prosecution "to be confronted with the witnesses against him."'" State v. Gonzales, 2005 UT 72, ¶48, 125 P.3d 878 (quoting Davis v. Alaska, 415 U.S. 308, 315 (1974) (quoting U.S. Const. amend. VI)). The Utah Supreme Court has held that the right to expose a witness's bias and motive for testifying is an important component of the Confrontation Clause. See Patterson, 656 P.2d at 439. With limited exceptions, however, a reviewing court will not consider issues raised for the first time on appeal. See In re Schwenke, 2004 UT 17, ¶34 n.6, 89 P.3d 117. Because none of the exceptions apply to this case, we decline to consider Defendant's Sixth Amendment claims. See id.

Defendant next contends that the trial court erred by rejecting his claim of prosecutorial misconduct. "Generally, the test for determining whether a prosecutor's statements are improper and constitute error is whether the remarks called to the jurors' attention matters which they would not be justified in considering in reaching a verdict." State v. Emmett, 839 P.2d 781, 785 (Utah 1992) (quotations and citations omitted). Defendant challenges the State's closing arguments suggesting

that Defendant moved his sleeping children from his bed before engaging in the charged acts with the victims, and then placed the children back in his bed after the victims left. The record shows that there was testimony concerning the children's sleeping arrangements favorable to Defendant's case, but the record also indicates possible credibility issues with some of the same testimony. The trial court determined that the prosecutor's comments merely presented a theory based on evidence properly before the jury and did not call the jury's attention to matters it was not allowed to consider. We agree.

Finally, Defendant challenges the sufficiency of the evidence at trial. "[A]s a general rule, a defendant must raise the sufficiency of the evidence by proper motion or objection to preserve the issue for appeal." State v. Holgate, 2000 UT 74, ¶16, 10 P.3d 346. We agree with the State that Defendant did not preserve this issue in either his motion to arrest the judgment or his motion for a new trial. We therefore decline to address the merits of this claim.

For the foregoing reasons, we affirm Defendant's convictions.

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Russell W. Bench,  
Presiding Judge

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WE CONCUR:

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Judith M. Billings, Judge

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James Z. Davis, Judge