

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 66957-5-I
Respondent,)	
)	DIVISION ONE
v.)	
)	UNPUBLISHED OPINION
BARUTI HOPSON,)	
)	
Appellant.)	FILED: August 20, 2012

Grosse, J. — Even though evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person and to show he or she acted in conformity with that character, it is admissible for other purposes, i.e., to illustrate a complete description of the events of the crime that did occur. Here, the evidence that the minor victim lived with other prostitutes in the defendant’s home and had recruited one of those prostitutes to work for the defendant was relevant to the crime of promoting commercial sexual abuse of a minor. And because none of the remaining issues raised by the defendant are meritorious, we affirm.

FACTS

Baruti Hopson was charged with two counts of promoting commercial sexual abuse of a minor,¹ three counts of third degree rape of a child,² and one count of second degree assault.³ The victim for all counts was J.S., who at the

¹ RCW 9.68A.101(1). “A person is guilty of promoting commercial sexual abuse of a minor if he or she knowingly advances commercial sexual abuse of a minor or profits from a minor engaged in sexual conduct.”

² RCW 9A.44.079.

time of the charged acts was between 15 years, 6 months and 15 years, 10 months old.

J.S. lived with her parents and older sister in Auburn. In March 2010, J.S. left a note for her parents and ran away to “find herself.” J.S. met a girl named Candace who introduced her to prostitution. Nine days later, J.S. turned herself in to the police and returned home.

J.S. kept a cell phone which she hid from her parents. Candace sent J.S. a text message asking her to go to California. J.S. agreed to meet Candace at the Auburn transit center. Candace arrived in a car with two men and another girl. J.S. went with them to a motel. Ace, Candace’s pimp, arrived and took both J.S. and Candace to another motel room on Aurora, the Knights Inn. Realizing that Candace had neither a car nor the money to buy tickets for a bus trip to California, J.S. agreed to prostitute herself to obtain tickets for the California trip.

While at the Knights Inn, Candace told J.S. that she was in love with Hopson, and further, that she might be pregnant by him. J.S. stayed with Candace at the Knights Inn for two days, working as a prostitute. Business was obtained through online advertisements that Candace placed. J.S. and Candace quarreled over a \$120 fee J.S. had collected. Wishing to leave, J.S. called Hopson who eventually took her to his apartment in SeaTac.

J.S. told the then 31-year-old Hopson that she was 18 and had dropped out of eleventh grade. J.S. testified that her game plan was to make enough money to get to California. According to J.S., Hopson told her he was a pimp

³ RCW 9A.36.021(1)(g).

and could help her out.

Hopson posted advertisements daily on backpage.com. One of the advertisements for J.S. contained a photograph taken by Hopson, which showed J.S. posing on a pool table. Hopson paid for the advertisements and the hotel rooms. Once J.S. memorized the prepaid credit card number, she would sometimes post the advertisements.

J.S. worked anywhere from two to five times a week earning approximately \$1,000, which would go to Hopson. J.S. knew she had to give Hopson the money she made or he would get angry with her.

J.S. testified that Hopson rapped about being a pimp. Hopson provided J.S. with new clothes that they picked out together. In the event something went wrong with one of the customers, J.S. had a pre-typed text message ready to go to Hopson so he could help. J.S. always told customers that she was 18 and if asked for identification, she made excuses as to why she did not have any with her. J.S. was told not to mention Hopson if she was stopped by the police. If Hopson was present, she was to tell the police that he was her boyfriend.

J.S. testified that Hopson taught her how to check to see if the customer was a police officer by asking the person to touch her. J.S. was to always make sure that the customer knew they were paying for her time, not for having sex with her. After completing the transactions, J.S. would return to Hopson who would tell her he loved her. J.S. testified that Hopson wanted J.S. to be safe because, at the end of the day, she was with him.

In August, one of J.S.'s customers turned out to be a pimp who lured her away from Hopson for the weekend. While working for this other pimp, J.S. was arrested by Officer Tor Kraft, who posed as a customer. Because J.S. looked much younger than 18, Officer Kraft detained J.S. in an attempt to discover her identity. J.S. said her name was Lisa Robins and gave a date of birth that made her 18. J.S. returned to Hopson telling him she had been in jail the entire weekend. J.S. showed him the notice of trespass, which indicated her age as 18. Hopson proposed getting her a fake identification.

When J.S. returned to Hopson he had another girl, Goldie, living with him. Goldie also worked for him. Previously J.S. had tried to recruit Goldie for Hopson, but was unsuccessful. J.S. testified that Hopson would have her call girls so that he could manage them. Goldie, whose real name was Brianna, was 19 years of age. Over objections, the court admitted backpage.com advertisements for Goldie requesting customers. Once the documents were admitted, the court permitted J.S. to testify that the advertisements were placed by Hopson. J.S. saw Hopson placing advertisements for Goldie on backpage.com. Goldie slept in the bed with Hopson and J.S. When asked how she felt about that, J.S. testified that her feelings did not matter because Hopson did not like girls who were jealous of other girls, so why express her displeasure when she could just keep her mouth shut and be happy. Goldie remained with Hopson for about two months.

On one occasion, Hopson struck J.S. in the face when she did more with

a customer than Hopson wanted her to do. Hopson then made J.S. get in the back seat of the car while she was telling him she was done with him. Blood was gushing from her nose where he had hit her. Hopson reached back and squeezed J.S.'s throat as hard as he could, while looking right into her eyes. J.S. testified that she was frightened. J.S. entered the apartment, took a shower, and told Hopson she was leaving. But she did not do so because she loved him.

Approximately a week after Hopson struck her, J.S. left Hopson. She went to meet a friend in Everett but was arrested for shoplifting. She gave the police the same name of Lisa Robins that she had previously given Officer Tor. J.S. tried to contact Hopson several times by telephone but was unable to reach him. When she was released, Goldie was waiting outside. Hopson was waiting nearby in a car. J.S. told Goldie that she did not want to go back with them. J.S. tried to find her friend but was unable to do so. She then called Hopson and returned to him. Hopson had added another girl, Candita, who stayed for approximately two weeks, and although Hopson also posted Candita on [backpage.com](#), she did not receive any responses to those advertisements.

J.S. arranged to meet a potential date at the Silver Cloud Hotel across from Safeco Field. Hopson drove her to the hotel. The date identified himself as a police officer and arrested J.S. J.S. told him that Hopson was her boyfriend, and denied having sex with him. Another officer arrested Hopson in the hotel's parking lot. At the time, Hopson had \$590 in cash in small bills.

J.S. initially stated that Hopson thought she was 18 and that she did not

give him any money, except periodically she would give him some to help out with the rent. After about a week in juvenile hall, J.S. changed her mind and told police the truth about her circumstances. J.S. signed a plea agreement agreeing to testify against Hopson in order to get a deferred sentence.

Hopson testified that he only knew J.S. as Lisa May Robins. He asserted that J.S. came and went as she pleased, and that J.S. told him that she was 18. Age came up within the first few minutes of conversation. J.S. showed Hopson a notice of trespass issued on July 4, which showed her date of birth to be November 21, 1991, making her 18 years old. He also saw paperwork from Everett on the shoplifting charge, which also had a birth date indicating J.S. was 18. Hopson admitted giving her his credit card number. He was aware that she was posting advertisements for prostitution on the Internet. Hopson said Goldie was a friend of his who stayed in her own room in the three-bedroom apartment. Candita came with her children and stayed for about three days. Hopson denied having sex with J.S. He testified that he did not want to have sex with J.S. because she was a prostitute. Hopson denied ever hitting J.S. He admitted driving J.S. to places approximately 20 times knowing that J.S. was prostituting herself. He testified that he made his money from selling "weed" and the cash the police discovered on him came from that enterprise. He denied ever receiving money from J.S.

Hopson did admit that he had an Internet account and an Apple® computer. Police were able to connect that computer and Internet account with

charges from backpage.com for advertisements that stated the three women were available for dates.

Hopson testified that Goldie and Candita were prostitutes. Hopson described pimping as someone getting money from someone else who was selling their body. Hopson admitted to writing rap lyrics describing himself as a pimp, but denied the lyrics were autobiographical. He testified that the lyrics were not relevant to his life and that it was just a much in demand genre of music known as pimp music.

The jury convicted Hopson on all six counts.

ANALYSIS

Hopson argues that the trial court erred in admitting evidence of Hopson's association with two other women who lived with him, worked as prostitutes, and who, like J.S., used his credit card and computer for posting advertisements for dates. He argues that this evidence was not admissible under ER 404(b), was not relevant, and that, even if relevant, any probative value was outweighed by its prejudicial effect. Prior to trial, Hopson objected to the admission of this evidence. The trial court found the evidence to be relevant and admissible under the res gestae exception to ER 404(b). Evidence of other misconduct under ER 404(b) is not admissible to show a defendant is a "criminal type."⁴ ER 404(b) provides:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation,

⁴ State v. Brown, 132 Wn.2d 529, 570, 940 P.2d 546 (1997).

plan, knowledge, identity, or absence of mistake or accident.

In addition to the exceptions enumerated in ER 404(b), other misconduct is also admissible as res gestae evidence to “complete the story of the crime on trial by placing it in the context of nearby and nearly contemporaneous happenings.”⁵ As noted in State v. Brown, “[w]here another offense constitutes a ‘link in the chain’ of an unbroken sequence of events surrounding the charged offense, evidence of that offense is admissible ‘in order that a complete picture be depicted for the jury.’”⁶ Res gestae evidence, unlike most ER 404 (b) evidence, is not evidence of unrelated prior criminal activity but rather a part of the crime charged.⁷ And in State v. Lillard, the court stated that under the res gestae exception to ER 404(b), “evidence of other crimes or bad acts is admissible to complete the story of a crime or to provide the immediate context for events close in both time and place to the charged crime.”⁸ The purpose of ER 404(b) is to prevent the State from implying that a defendant is guilty because he or she is a criminal person who would be likely to commit the charged crime. It is not to prevent the State from introducing evidence that may establish an essential element of its case.

Where the trial court has identified a proper purpose to admit the evidence, we review its ruling for an abuse of discretion.⁹ Discretion is abused if

⁵ Brown, 132 Wn.2d at 576 n.106 (quoting 1 McCormick on Evidence § 190, at 799 (John W. Strong, ed., 4th ed. 1992)).

⁶ 132 Wn.2d 529, 571, 940 P.2d 546 (1997) (quoting State v. Tharp, 96 Wn.2d 591, 594, 637 P.2d 961 (1981)).

⁷ State v. Sublett, 156 Wn. App. 160, 196, 231 P.3d 231 (2010).

⁸ 122 Wn. App. 422, 432, 93 P.3d 969 (2004).

⁹ State v. Fisher, 165 Wn.2d 727, 745, 202 P.3d 937 (2009).

the trial court's decision is manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.¹⁰

The trial court did not err in admitting the evidence concerning Goldie and Candita. Both women lived with J.S. during the time period of the charged crimes. J.S. tried to recruit women for Hopson, including Goldie. After J.S. was arrested and released, Hopson used Goldie to try and convince J.S. to return to him. J.S.'s testimony regarding these women completed a picture of the story about the crimes and provided the jury with the context of the events surrounding J.S.'s time with Hopson, i.e., the enterprise.

Hopson argues that the trial court failed to analyze and balance the proffered evidence and did not weigh its prejudicial effect against its probative value. But the court identified the *res gestae* exception to ER 404(b) and conducted a colloquy with both counsel for the prosecution and the defense regarding the evidence's probative value and possible prejudicial effect. Indeed, in response to the prosecutor's query whether the court would find that the offer of proof was more probative than prejudicial, the trial court noted that it provided context to a jury for determining whether Hopson was acting to promote J.S.'s engaging in commercial sex.¹¹

Although the trial court did not consider other reasons for the admission of the evidence, this evidence was also admissible because it established an

¹⁰ State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

¹¹ See State v. Hughes, 118 Wn. App. 713, 725, 77 P.3d 681 (2003) (no error where record reflects trial court accepting arguments of one of the parties with regard to the weight of probative value and prejudice).

element of the crime and rebutted Hopson's testimony that he was not a pimp. Evidence of a prior bad act is admissible if the prior bad act establishes an element of the present charge.¹² Here, the "to convict" instruction provided that the State was required to prove that Hopson "knowingly advanced the commercial sexual abuse of J.S." Jury instruction 10 defines the ways in which a defendant can accomplish the crime. One of those is to "operate[] or assist[] in the operation of a house or enterprise for the purposes of engaging in commercial sexual abuse of a minor." The posting and housing of other prostitutes in the apartment during the same time J.S. resided there is relevant to operating a "house." Additionally, J.S.'s recruitment of others to work for Hopson can be viewed as an expansion of the enterprise.

The evidence was also admissible to rebut Hopson's testimony that he was not a pimp, received no money from prostitution, and tried to discourage J.S. from engaging in prostitution. The fact that Hopson housed two other women for prostitution was relevant to rebut his claim that he was not a pimp.

Finally, any error was harmless. The erroneous admission of evidence under ER 404(b) is harmless unless there is a reasonable probability that the error materially affected the outcome of the case.¹³ Here, the testimony of both J.S. and Hopson irrefutably established that he acted as J.S.'s pimp. Hopson's own testimony established that he drove J.S. to liaisons, knew J.S. was using his credit card to post advertisements for those liaisons, posted advertisements

¹² State v. Magers, 164 Wn.2d 174, 182, 189 P.3d 126 (2008).

¹³ State v. Halstien, 122 Wn.2d 109, 127, 857 P.2d 270 (1993).

himself, and paid for the motels. J.S. testified that Hopson acted as her pimp, took posed pictures of her for advertisements on the Internet, paid for those advertisements with a credit card, drove her to the liaisons, and paid for the motel rooms.

Hopson also objected to J.S.'s testimony that Candace thought she was pregnant by Hopson. The testimony regarding Candace's possible pregnancy was elicited in response to a question from the prosecutor inquiring how Candace came to know Hopson. Candace was the prostitute whom J.S. met the first time she ran away from home, and it was Candace who called J.S. to entice her to come back into the world of prostitution by promises of a trip to California. Counsel objected to the question, and the court found the testimony was offered for the information that Candace conveyed to J.S., not for the truth of its content. Moreover, Hopson did not request a limiting instruction.

Lastly, Hopson argues that the prosecutor committed misconduct during closing argument by referring to the heinous nature of the crime and its long lasting effect on the victim, J.S. To establish prosecutorial misconduct during closing argument, a defendant must prove that the challenged comments were both improper and prejudicial in the context of the entire record and circumstances at trial.¹⁴ This court reviews "a prosecutor's comments during closing argument in the context of the total argument, the issues in the case, the evidence addressed in the argument, and the jury instructions."¹⁵ Jurors are

¹⁴ State v. McKenzie, 157 Wn.2d 44, 52, 134 P.3d 221 (2006); State v. Hughes, 118 Wn. App 713, 727, 77 P.3d 681(2003).

¹⁵ State v. Boehning, 127 Wn. App 511, 519, 111 P.3d 899 (2005).

presumed to follow the court's instructions.¹⁶

Defense counsel argued in opening that Hopson believed at all times that J.S. was 18 years of age and that it was she who made the decision to become a prostitute by deciding to “live like an adult, act like an adult, and [make] people believe she was an adult.” When defense counsel cross-examined J.S., he highlighted the fact that J.S. worked as a prostitute before she even knew of Hopson's existence. Hopson testified that he took care of J.S. and that by driving her to her assignments he was providing safety she would not have if she lived on the streets.

In closing, the prosecutor made the following argument:

[O]ne of the things that – that – many people would take away from this case is, why did this girl stay with him? Why? Why would she - why wouldn't she go back to her parents? And you heard me ask [J.S.] that question and she – you know, I think she fumbled with that answer a bit – she wasn't really sure, I think with the distance and the time that has passed she was able to reflect back and see how stupid it was for her to leave like she did. But ladies and gentlemen, she is a 15 year old and the Defendant is a 32 year old adult. And as we will talk about the law, and what our legislature what - the will of the people have passed with this law, we account for that. We account for the poor judgment of a 15 year old. We account for the bad choices teens may make some times, and we hold the adult responsible. We hold the adult responsible, who takes it upon himself to facilitate and promote and profit from that child and her body, being out on the street, exposing herself to all those things we heard about in this trial. Starting at the very top - murder, rape, robbery, assault, pregnancy, sexually transmitted disease, and I daresay, ladies and gentlemen a lifetime - a lifetime of knowing what for four or five months, this child has done. A lifetime of knowing five years from now, 10 years from now, 35 years from now.

[Defense Counsel]: Objection, Your Honor, to improper argument.

¹⁶ State v. Stein, 144 Wn.2d 236, 247, 27 P.3d 184 (2001).

The Court: Overruled.

[Prosecutor]: This is not a fact, these five months of her life will be with her for her life. You cannot erase them. And you cannot erase the fact that the Defendant manipulated her, used her, profited from her **(PAUSE)** because he could.

The mere fact that the prosecutor refers to the nature of a crime and its effect on the victim is not improper where such remarks do not appeal to the passions and prejudice of the jury.¹⁷ A review of the entire argument here invalidates any argument that the prosecutor had the intent to appeal to the passions and prejudice of the jury. The remarks objected to were brief, occurred toward the beginning of closing argument, and constituted only a small part of the argument.¹⁸ When viewed in that context, the remarks become more akin to an explanation of why J.S., who remained with Hopson for five months, did not leave him and return to her home. Indeed, J.S. testified that it made her feel good when Hopson told her he loved her.

Hopson also argues that the prosecutor committed misconduct in his rebuttal when he argued that “it matters” what Hopson did to J.S. This rebuttal was in direct response to defense counsel’s closing argument in which the defendant argued that it did not matter whether Hopson had sex with J.S. when considering the crime of promoting commercial sexual abuse of a minor. Hopson’s relationship with J.S. was a motivating factor for her prostitution. Under the circumstances here, there was no misconduct.

¹⁷ State v. Borboa, 157 Wn.2d 108, 122-23, 135 P.3d 469 (2006).

¹⁸ State v. Rafay, No. 55217-1-I, 2012 WL 2226989, at *44-45 (Wash. Ct. App. June 18, 2012).

Statement of Additional Grounds

Hopson raises several claims in his pro se statement of additional grounds submitted under RAP 10.10. He argues that the trial court abused its discretion in admitting or excluding evidence. This court reviews the trial court's decision to admit or exclude evidence for an abuse of discretion.¹⁹ The trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or reasons.²⁰

First, Hopson argues that the court improperly admitted his rap song lyrics about being a pimp and in making him read them to the jury. The evidence was appropriately admitted as relevant to impeach Hopson's denial of his knowledge of pimping.²¹

Next, he argues that the trial court erred in not admitting defense exhibit 25, a notice of trespass given to J.S. under the name of Lisa Robins, showing that her date of birth indicated she was 18 years of age. But that exhibit was admitted during cross-examination of Officer Kraft.

Nor is there any merit to Hopson's three claims of prosecutorial misconduct. He claims the State's questioning him on scripture and his song lyrics was irrelevant and violated his constitutional rights to freedom of religion and free speech. J.S. testified that Hopson quoted scripture to her after he assaulted her, particularly those verses depicting the male as the head of the household. This was relevant to show the control Hopson exerted over J.S.

¹⁹ State v. Demery, 144 Wn.2d 753, 758, 30 P.3d 1278 (2001).

²⁰ Junker, 79 Wn.2d at 26.

²¹ State v. Warren, 165 Wn.2d 17, 31, 195 P.3d 940 (2008).

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Hopson identified the song lyrics at trial as something he wrote about pimping.

This was relevant to rebut Hopson's assertion that he was not a pimp.

Finally, Hopson argues that there was insufficient evidence to convict him of the three counts of third degree rape. He argues that there was no evidence presented that he knew J.S. was only 15 years old. He does not dispute that J.S. was in fact only 15. J.S. testified that Hopson believed she was 16 and that she held herself out to be 18 years of age. J.S. was particularly young looking. When defense counsel sought to dismiss the charges because J.S. testified that Hopson knew her only as a 16-year-old, the trial court found that whether a reasonable person looking at J.S. and the pictures taken of her from that time period would be convinced that J.S. was even 16 was a question for the jury to decide. It is not a defense that the defendant did not know, only if a reasonable person would not know.

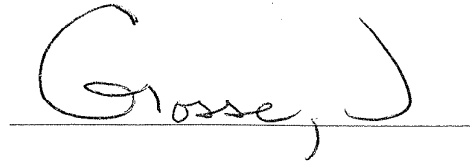
Additional evidence of a flyer with J.S. as a missing endangered child that contained J.S.'s correct age was submitted at trial. Although there was no direct testimony that Hopson saw that flyer, he did take J.S. to public telephones out of the area to contact her parents. The weight, credibility, and persuasiveness of the evidence are matters for the trier of fact and are not subject to review by this court.²²

In addition to the six grounds enumerated in his statement of additional grounds, Hopson has submitted five statements of additional authorities. These submissions do not cite authority, but rather are additional arguments for alleged

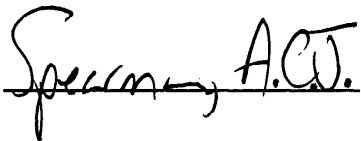
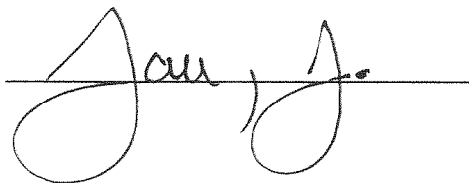
²² State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

errors that occurred during trial. RAP 10.8 provides in pertinent part that a statement of additional authorities “should not contain argument, but should identify the issue for which each authority is offered.” Hopson’s statement of additional authorities is nothing more than an assertion of eight more argumentative and meritless grounds for appeal. Because these additional filings do not comply with the rule, we will not address them.

We affirm the judgment and conviction.

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WE CONCUR:

A handwritten signature in cursive script, reading "Sperry, A.C.", written over a horizontal line.A handwritten signature in cursive script, reading "Jau, J.", written over a horizontal line.