

# ARKANSAS COURT OF APPEALS

DIVISION IV  
No. CACR12-411

TEDDY ALLEN JONES

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered November 7, 2012

APPEAL FROM THE STONE  
COUNTY CIRCUIT COURT  
[NO. CR-2010-112]

HONORABLE JOHN DAN KEMP,  
JUDGE

AFFIRMED

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## DAVID M. GLOVER, Judge

Teddy Jones was tried by a jury and found guilty of the offense of second-degree sexual assault. He was sentenced to twenty years in the Arkansas Department of Correction. As his sole point of appeal, he contends that the trial court abused its discretion in allowing the State to present testimony from M.P. under the pedophile exception to Rule 404(b) of the Arkansas Rules of Evidence. We affirm.

R.J., Teddy's daughter and the alleged victim of the charges against him, testified that she was fifteen at the time of trial (January 24, 2012). She testified that, in the summer of 2010, she, her siblings, her mother, and Teddy lived in the same house. She said that her dad would sometimes come to her bedroom at night when she was asleep and spend the night in her room with her. She explained that when he entered the room, it would wake her and,

at first, she would “kind of act like I was asleep” and “lie there with [my] eyes closed.” She stated that her father would “lie in my bed right beside me and he would like rub all over my breasts and my stomach and my back.” She said that she did not say anything to him because she was scared and did not know what would happen if she said something. She explained that most of the time, he would rub her stomach and breasts under her shirt; that most of the time she slept in a t-shirt and a pair of shorts; and that she did not know any particular dates, but “it” happened “all through the summer.” She said that one time, “he went down lower and like around my vaginal area,” rubbing mainly on the outside of her vaginal area. She testified that he did not say anything and that she acted like she was asleep. She stated that there were times when he would grab her hand and put it down his shorts; that he made her grab his private area a couple of times, taking her hand and wrapping it around “him” and he would have his hand on top of hers. She said she could not tell if his penis was hard or soft; that one time something came out of his penis—it was “kind of liquidy.” She said that she did not tell her mom or her siblings, that she did not know how her mom would react or whether her mom would believe her, and that everyone else was asleep when these things occurred.

M.P., Teddy’s niece and the witness whose testimony was allowed over his objection, testified that Teddy was her mother’s brother. She said that she had spent a lot of time at Teddy’s house in the past, that she would play with the kids, that she would sometimes spend the night there, and that her mother did not spend the night. She explained that one time

Teddy did something to her when she was at their house on October 5, 2003. She stated that she remembered the date because it was the triplets' birthday the day before and that she was there for the party. She said that she spent the weekend there and that something happened between her and Teddy that weekend. She explained that while she was asleep in the living room, with the kids lying on the floor, he approached her in the early hours of the morning and moved her clothes to the side and raped her. She said that she was thirteen years old when it happened and that she has not been back to the house since then.

Teddy argues that the trial court abused its discretion in allowing M.P. to testify because (1) the State did not establish an intimate relationship between him and M.P., and (2) the alleged acts were not sufficiently similar. We disagree.

In *Hendrix v. State*, 2011 Ark. 122, at 7-8, our supreme court summarized the law applicable to these issues:

The admission or rejection of evidence under Rule 404(b) is within the sound discretion of the circuit court, and it will not be reversed absent a manifest abuse of discretion. According to Rule 404(b), “[e]vidence 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.” Such evidence is permissible for other purposes, “such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” This court’s precedent has recognized a “pedophile exception” to this rule, whereby evidence of similar acts with the same or other children is allowed to show a proclivity for a specific act with a person or class of persons with whom the defendant has an intimate relationship. For the pedophile exception to apply, we require that there be a sufficient degree of similarity between the evidence to be introduced and the sexual conduct of the defendant. There must also be an “intimate relationship” between the perpetrator and the victim of the prior act.

(Citations omitted.)

*1) Intimate relationship*

The *Hendrix* case goes on to explain that “[f]or purposes of the pedophile exception, this court has defined an ‘intimate relationship’ as ‘close in friendship or acquaintance, familiar, near, or confidential.’ This court has recognized an intimate relationship where a perpetrator puts himself in a position to obtain access to a child.” 2011 Ark. 122, at 8 (citations omitted).

Here, it is undisputed that Teddy is M.P.’s uncle. She further testified that she had spent a lot of time at Teddy’s house in the past, that she would play with the kids, and that she would sometimes spend the night there. We conclude that an “intimate relationship” between Teddy and M.P. was established.

*2) Sufficient similarity of acts*

In accordance with the pedophile exception, our courts have also required there to be “a sufficient degree of similarity between the evidence to be introduced and the sexual conduct of the defendant.” We conclude that a sufficient degree of similarity was established in this case.

Here, Teddy was the father of one girl and the uncle of the other. M.P. testified that while she was asleep in the living room, Teddy approached her in the early hours of the morning, moved her clothes to the side, and raped her. She said that she was thirteen years old when it happened. Similarly, R.J. testified that she was fifteen at trial, which would have

made her approximately thirteen at the time of the abuse—the same age as M.P. R.J. explained that her dad would come to her bedroom at night or early in the morning when she was sleeping, that he would lie in her bed right beside her, and that he would do so when everyone else was asleep—conduct very similar to that about which M.P. testified. R.J.’s testimony about what she endured from Teddy differed only in the level of sexual conduct, i.e., sexual groping versus penile penetration. We conclude that the testimony regarding the circumstances surrounding the sexual contact with respect to each girl was sufficiently similar.

We find no abuse of discretion in the trial court allowing M.P. to testify about Teddy’s abusive conduct toward her under the pedophile exception to Rule 404(b).

Affirmed.

GLADWIN and GRUBER, JJ., agree.

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