

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CACR 09-1076

MICHAEL A. WILLIAMS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 21, 2010

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CR-07-4636]

HONORABLE WILLARD
PROCTOR, JR., JUDGE

AFFIRMED

COURTNEY HUDSON HENRY, Judge

A jury in Pulaski County found appellant Michael A. Williams guilty of rape, for which he received a sentence of forty years in prison. For reversal, appellant contends that the trial court abused its discretion by allowing the State to introduce into evidence two judgment and commitment orders reflecting prior convictions for sex-based offenses. We affirm.

At trial, the victim, T.S., testified that she spent the night with appellant's daughter in the summer of 2004 when she was fourteen years old. She stated that appellant approached her in the bathroom, sat her on the toilet, and inserted his finger in her private area. The State also presented the testimony of appellant's daughter, who testified that appellant touched her private area on many occasions and that DHS removed her from the home in 2001 as a

result of appellant's sexual abuse. Another child, R.R., testified that appellant accosted her in a similar fashion in 2007 when she spent the night with appellant's daughter.

In addition to the foregoing testimony, the State introduced into evidence a 2004 judgment and commitment order reflecting that appellant pled guilty to sexual abuse in the first degree. The State represented that this conviction involved another child in appellant's home. The State also introduced into evidence the 2008 judgment and commitment order in which appellant was found guilty of sexual assault in the first degree for his actions with regard to R.R. Appellant objected to the introduction of these exhibits on the basis of Rule 403 of the Arkansas Rules of Evidence, arguing that the prejudicial effect of the previous convictions exceeded their probative value. The trial court allowed the admission of the judgment and commitment orders under the pedophile exception to Rule 404(b) of the Arkansas Rules of Evidence.

On appeal, appellant argues that the trial court erred by admitting the judgment and commitment orders into evidence because the exhibits lacked sufficient factual detail for the trial court to determine whether they were admissible under the pedophile exception. In support of this argument, appellant relies on the supreme court's decision in *Kelley v. State*, 2009 Ark. 389, 327 S.W.3d 323. There, the court observed that two requirements must be met for the pedophile exception to apply: (1) there must be a sufficient degree of similarity between the evidence to be introduced and the sexual conduct of the defendant; and (2) there must be an intimate relationship between the defendant and the victim of the prior act. The

Cite as 2010 Ark. App. 347

supreme court found error in the trial court's decision to allow documentary proof of Kelley's two prior convictions from Texas for indecency with a child under the age of seventeen years because there was no evidence showing the necessary degree of similarity of Kelley's actions or an intimate relationship between Kelley and the other victims.

In response, the State asserts that appellant's argument is not preserved for appellate review. The State is correct. At trial, appellant objected on the ground that the evidence was unfairly prejudicial and thus inadmissible under Rule 403. He did not argue that the evidence was not admissible because the prosecution made no showing that the prior acts were similar to appellant's present conduct or that appellant shared an intimate relationship with the victims of the prior acts. Our case law is well-settled that a party cannot change the grounds for an objection on appeal but is bound by the scope and nature of the arguments presented at trial. *Lawshea v. State*, 2009 Ark. 600, 357 S.W.3d 901. Therefore, the argument appellant raises on appeal is not preserved for our review.

Affirmed.

GLADWIN and BROWN, JJ., agree.