

NO. 46688-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON, Respondent

v.

JUAN CARLOS MADRAZO-MUNOZ, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.13-1-01840-3

BRIEF OF RESPONDENT

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A. ANSWERS TO ASSIGNMENTS OF ERROR

I. THE TRIAL COURT DID NOT DENY MR. MADRAZO-MUNOZ HIS RIGHT TO A FAIR TRIAL BY EXCLUDING EVIDENCE.

II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY EXCLUDING EVIDENCE THAT MR. MADRAZO-MUNOZ PROFFERED TO PURPORTEDLY EXPLAIN THE VICTIM'S SEXUAL KNOWLEDGE.

B. STATEMENT OF THE CASE

I. PROCEDURAL HISTORY

Juan Carlos Madrazo-Munoz was charged by second amended information with two counts of Child Molestation in the First Degree for two incidents of sexual contact with J.N.S. between June 1, 2010, and September 1, 2010. CP 108-09. The State also provided notice that it would be seeking a sentence above the standard sentencing range based on the aggravating circumstance that “[t]he defendant used his . . . position of trust and/or confidence to facilitate the commission of the current offense” pursuant to RCW 9.94A.535(3)(n). CP 108-09. The case proceeded to trial before The Honorable David Gregerson, which commenced on August 5, 2014, and concluded on August 7, 2014, with the jury’s verdict. CP 174-77; RP 130-428.

The jury found Mr. Madrazo-Munoz guilty as charged, to include the aggravating factor for each count, and the trial court sentenced him to a standard range sentence of 96 months. CP 174-77, 207-218; RP 426-28, 436. Mr. Madrazo-Munoz filed a timely notice of appeal. CP 226.

II. STATEMENT OF FACTS

The defendant, Juan Carlos Madrazo-Munoz, and his wife Katrina Madrazo¹ were very good friends with Jenny Thomas. RP 139-141, 151-52, 189, 198-200. In fact, those three and their kids were so close they basically considered themselves family. RP 139-141, 189, 199-200, 210. Because they were so close, Ms. Thomas's two children, including her daughter, J.N.S., spent a lot time at the Madrazo household and would often spend the night. RP 140-42, 149, 151-52, 199-200, 210-11. J.N.S. referred to Mr. Madrazo-Munoz as Uncle Carlos. RP 151, 189, 200, 260, 283.

Around Christmastime in 2010, Ms. Thomas asked J.N.S., who was 10 at the time, if anyone had touched her inappropriately. RP 141-42, 144, 149, 151, 258, 261, 269. J.N.S. responded by telling her mother that Mr. Madrazo-Munoz had. RP 141-42, 151. Following the disclosure, a distraught Ms. Thomas called her best friend, Bernice Crotty, and asked

¹ Mr. Madrazo-Munoz and Ms. Madrazo separated in 2011 but apparently up to the time of the trial they remained married. RP 198, 220.

her to come over to the home. RP 142, 185-86, 190. When Ms. Crotty arrived, she observed J.N.S. and Ms. Thomas crying. RP 186. J.N.S. disclosed to Ms. Crotty what had happened to her at the hands of Mr. Madrazo-Munoz. RP 187-88.

Upset, Ms. Thomas and Ms. Crotty drove to the Madrazo home to confront Mr. Madrazo-Munoz. RP 143, 191. They arrived after midnight and did not speak with Mr. Madrazo-Munoz, but did tell Ms. Madrazo about J.N.S.'s accusations. RP 143, 191, 200, 215-16. When speaking with Ms. Madrazo, Ms. Thomas was crying, shaking, and upset. RP 200-01. Ms. Thomas told Ms. Madrazo that she would be calling the police, and Ms. Madrazo responded to her by stating "do what you have to do." RP 143, 191. Ms. Thomas called 911. RP 143, 187.

An officer responded to Ms. Thomas's house and spoke with Ms. Thomas and J.N.S. RP 174-76. The officer testified that when he was initially speaking with J.N.S. she came across as bright and talkative, but when talking about the incident with Mr. Madrazo-Munoz her demeanor suddenly changed. RP 175. When talking about the incident, J.N.S. put her head down and started crying so heavily she was unable to continue talking with the officer. RP 175. Both Ms. Thomas and Ms. Crotty were present for, and were able to hear, J.N.S.'s disclosure to the officer. RP

160, 178-180, 187-88. They reported that what she told the officer was consistent with what she told them. RP 160, 178-180, 187-88.

J.N.S. disclosed what happened to two other people. RP 280, 304. She told her grandmother, Shelly Thomas, that Mr. Madrazo-Munoz put his hands down her pants and played with her private parts and that she had asked him to stop. RP 280, 283. Shelly Thomas testified that J.N.S. was crying and very upset when she was talking about what had happened. RP 281. J.N.S. also told Sergeant Barbara Kipp what Mr. Madrazo-Munoz did to her and with Sergeant Kipp's help demonstrated to Sergeant Kipp how Mr. Madrazo-Munoz had touched her by rubbing her vagina with his fingers. RP 304-06, 314. Sergeant Kipp testified that J.N.S. told her that this happened on two occasions and that the morning after each incident that Mr. Madrazo-Munoz made a comment to effect of him being proud of her for using her manners. RP 305, 315.

J.N.S. testified at trial that twice while sleeping over at the Madrazo household she had woken up to Mr. Madrazo-Munoz laying behind her with his hands down her pajama pants and his hand on her vagina. RP 251-254, 256-58, 275. J.N.S. was 8 or 9 when the incidents occurred. RP 255. J.N.S. also testified that she told Mr. Madrazo-Munoz to stop on one occasion and that he did. RP 276. Furthermore, J.N.S. testified that on one of the following mornings that Mr. Madrazo-Munoz

said “[J.N.S.] was really nice last night. She had manners.” RP 257. J.N.S.’s mother, grandmother, and Ms. Crotty all testified that following J.N.S.’s disclosure her behavior changed dramatically. RP 148, 188, 284. They reported that J.N.S.’s grades suffered, she began wetting her bed much more frequently, she gained weight, and she became more withdrawn and angry. RP 148, 162-63, 188-89, 284-85, 288. J.N.S would also “freak out” in public if she saw somebody that looked like Mr. Madrazo-Munoz. RP 285.

III. EVIDENTIARY ISSUE

Mr. Madrazo-Munoz sought on numerous occasions to admit into evidence, through Ms. Madrazo, that at one point in the past Mr. Madrazo-Munoz found a cell phone belonging to Ms. Thomas, which contained images of Ms. Thomas performing oral sex on a male, in a backpack that J.N.S. had brought over to Madrazo household. RP 69-76, 152-59, 223-30. Mr. Madrazo-Munoz argued that the cell phone pictures provided an alternate source of J.N.S.’s precocious sexual knowledge. RP 69-76, 152-159, 230-234. Mr. Madrazo-Munoz’s offer of proof, through Ms. Madrazo, established that (1) neither of them confronted J.N.S. or Ms. Thomas about the phone or the pictures on the phone; (2) the phone was placed in a cupboard inaccessible to the children and never returned to Ms. Thomas; (3) neither of them had knowledge of whether J.N.S. viewed the

pictures on the phone, whether J.N.S. knew how to access the pictures on the phone, or that she even knew that the phone was in the backpack she had brought to their house. RP 223-30.

Notably, Mr. Madrazo-Munoz made the following two comments regarding the admission of the purported evidence:

[I]f the State is willing to waive that argument [(precocious sexual knowledge)], and they're not going to raise it, then fine."

...

It's for precocious knowledge, Your Honor. I mean, that's what – that's what the argument is all about is precocious knowledge. If the State is going to waive the precocious knowledge argument and say but for Mr. Madrazo molesting the child, fine. *Then I don't need it.*

RP 231, 233 (emphasis added). The trial court adhered to its earlier ruling and stated that "under either [ER 401], the proffered evidence is in fact irrelevant, or if it is relevant, the relevance – the probative value is so thin in comparison with the risk of unfair prejudice, confusion or misleading of the jury or other considerations under [ER 403] that the objection is properly sustained." RP 76, 155, 158-59, 234. Consequently, the trial court did not allow Ms. Madrazo to testify about the found cell phone or its contents. RP 234. Moreover, no evidence was introduced suggesting that J.N.S. had precocious sexual knowledge nor did the State at any point argue that J.N.S. had such knowledge. RP 379-87, 407-416.

C. **ARGUMENT**

I. **THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT PREVENTED MR. MADRAZO-MUNOZ FROM INTRODUCING IRRELEVANT EVIDENCE.**

“Questions of relevancy and the admissibility of testimonial evidence are within the discretion of the trial court, and we review them only for manifest abuse of discretion.” *State v. Aguirre*, 168 Wn.2d 350, 361, 229 P.3d 669 (2010); *State v. Martin*, 169 Wn.App. 620, 628, 281 P.3d 315 (2012) (“The admissibility of evidence is within the sound discretion of the trial court and an appellate court will not disturb that decision unless no reasonable person would adopt the trial court's view.”) (citations omitted). When a trial court’s ruling on such matters of evidence is in error, reversal will only be required “if there is a reasonable possibility that the testimony would have changed the outcome of trial.” *Aguirre*, 168 Wn.2d at 361 (citing *State v. Fankouser*, 133 Wn.App. 689, 695, 138 P.3d 140 (2006)).

Here, the trial court properly concluded that Mr. Madrazo-Munoz’s proffered evidence—a cell phone found in a backpack that J.N.S. brought to the Madrazo home, which was Ms. Thomas’s and contained pictures of her performing oral sex on a man—was not relevant and that even if it did contain some probative value, that such value was substantially

outweighed by concerns of unfair prejudice. RP 234. Given that there was no evidence that J.N.S. knew that the phone was in her backpack, knew how to access the pictures on the phone, or ever saw the pictures, it cannot be said that the evidence of the existence of such pictures² on the cell phone at all illuminated an issue at trial. RP 223-30.

Furthermore, Mr. Madrazo-Munoz explicitly conceded that if the State did not advance an argument suggesting that J.N.S. had precocious sexual knowledge as a result of Mr. Madrazo-Munoz's crimes against her that he "then" did not "need it [(the purported cell phone evidence)]." RP 233. Because the State did not advance such an argument, Mr. Madrazo-Munoz has no basis by which to complain about the exclusion of the evidence. Considering the above, the trial court did not abuse its discretion in prohibiting the introduction of the cell phone evidence.

Moreover, even if the trial court erred in excluding the evidence, there is not a reasonable possibility that the testimony would have changed the outcome of trial. The introduction of the cell phone evidence could not have impacted J.N.S.'s credibility, especially in the light of the consistency of her story, the corroboration of that consistency, and the fact that she alleged Mr. Madrazo-Munoz touched her vagina with his hands and the pictures allegedly depicted an adult female performing oral sex on

² No phone or pictures were ever produced. The offer of proof was just the assertions of Ms. Madrazo. *See generally* RP.

an adult male. The drastic difference in these sexual acts elucidates the irrelevancy of the evidence even if J.N.S. had seen the alleged pictures.

D. CONCLUSION

For the reasons argued above, Mr. Madrazo-Munoz's convictions should be affirmed.

DATED this 11th day of June, 2015.

Respectfully submitted:

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