Circuit Court for Anne Arundel County
Case No. C-02-CR-21-000509

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 357

September Term, 2022

NATHANIEL LEONARD WILLIAMS

v.

STATE OF MARYLAND

Berger,
Leahy,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: February 12, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms with Rule 1-104(a)(2)(B). Md. Rule 1-104.

Following a jury trial in the Circuit Court for Anne Arundel County, Nathaniel Leonard Williams ("Williams"), appellant, was convicted of sexual abuse of a minor by a family member, second-degree rape, third-degree sexual offense, fourth-degree sexual offense, unnatural or perverted sexual practice, and second-degree assault. The circuit court sentenced Williams to fifty years of imprisonment, with all but twenty years suspended, followed by a five-year term of supervised release. On appeal, Williams presents a single question for our review, which we rephrase slightly as follows:[1]

> Whether the circuit court erred in admitting evidence of prior uncharged sexual acts that Williams allegedly perpetrated upon the same victim in another jurisdiction.

For the reasons explained herein, we shall affirm.

FACTS AND PROCEDURAL HISTORY

The incident giving rise to this appeal occurred in 2020, when Williams's then fourteen-year-old daughter, S.W., accused Williams of sexually abusing her on multiple occasions.[2] Following the COVID-19 outbreak in 2020, Williams and S.W.'s mother, Ms. E., began splitting custody of their two children – S.W. and her brother, E.W. When S.W. and E.W. stayed with their father, they attended virtual school from Williams's apartment in Glen Burnie, Maryland, where Williams lived with his wife, Ms. W., as well as S.W.'s

[1] Williams's original question presented reads as follows:

> Did the trial court err in admitting sexual propensity evidence?

[2] We refer to the victim and other individuals by their initials in order to protect their privacy.

step-siblings and half-sibling. S.W. testified that one night while she was staying at Williams's apartment, he texted her to join him in the living room while the other occupants of the apartment were in their bedrooms. S.W. met him in the living room, where Williams was drinking alcohol. Although S.W. tried to leave the living room, Williams made her sit on the couch and forced her to perform oral sex on him.

Approximately one-to-two weeks later, on September 11, 2020, S.W. and E.W. were once again staying with Williams and attending virtual school. Williams was also home in the Glen Burnie apartment, along with S.W.'s three step-siblings, one half-sibling, and two of Ms. W.'s cousins. During S.W.'s lunch break, Williams asked S.W. to come into his bedroom. Williams touched S.W.'s thighs, repeatedly prevented her from leaving the bedroom, and ignored her pleas for him to stop touching her. Eventually, Williams went into the bathroom to take a shower and S.W. left the bedroom. After Williams showered and dressed, he called S.W. back into his bedroom, where he forced her onto his bed. Williams proceeded to vaginally rape S.W. while her two-year-old half-sibling slept on the other end of the bed.

About a week later, on September 20, 2021, S.W. told her mother that Williams had sexually assaulted her. S.W., E.W., and Ms. E. went to the Anne Arundel County Police Department to report Williams. At the station, S.W. sat for an interview with Detective Justin Downey of the Criminal Investigation Division. S.W. alleged that the two incidents discussed above were not the only times Williams had touched her sexually. S.W. estimated that Williams vaginally raped her at least five times and forced her to perform

oral sex on him at least twice in the Glen Burnie apartment. S.W. later testified that Williams started touching her sexually when she was approximately eight years old, when she was living with Williams and her great-grandmother in Washington, D.C. The incidents of abuse in Washington, D.C. involved Williams forcing S.W. to perform oral sex and engage in anal intercourse.

On April 2, 2021, a grand jury indicted Williams on eight charges of criminal activity occurring from August 1, 2020 through September 11, 2020 in Anne Arundel County, Maryland: sexual abuse of a minor by a family member, sexual abuse of a minor as a continuing course of conduct, first-degree rape, second-degree rape, third-degree sexual offense, fourth-degree sexual offense, unnatural or perverted sexual practice, and second-degree assault.

Williams's trial commenced on September 21, 2021. Prior to opening statements, the State *nolle prossed* the count of sexual abuse of a minor as a continuing course of conduct. Additionally, Williams made a motion *in limine* seeking to exclude S.W.'s testimony about the alleged sexual abuse perpetrated in Washington, D.C. prior to August 1, 2020. Williams argued that this testimony constituted inadmissible evidence of prior crimes that did not fall within the sexual propensity exception articulated in *Vogel v. State*, 315 Md. 458 (1989). The court originally ruled in favor of the defense, but the State urged the Court to review *Vogel* before reaching its conclusion on the motion *in limine.* After reviewing *Vogel,* the court concluded that the challenged testimony was admissible and denied Williams's motion *in limine*.

Following opening statements, the State called S.W. as its first witness. S.W. gave detailed testimony about the two specific incidents of abuse discussed above that occurred between August 1, 2020 and September 11, 2020. She also testified that her father repeatedly abused her in Washington, D.C. starting when she was approximately eight years old, and that Williams had told her that these activities were "just a way of fathers and daughters bonding with each other." Williams did not object to this testimony while S.W. was on the stand. S.W.'s testimony was followed by testimony from other State witnesses including E.W., Ms. E., Ms. W., Detective Justin Downey of the Anne Arundel County Police Department, and Ms. E.'s daughter and S.W.'s step-sister, I.D. Following the State's presentation of evidence, Williams moved for a judgment of acquittal as to all counts, which the court denied.

Williams took the stand as the sole defense witness and denied ever engaging in sexual conduct with S.W. Following his testimony, Williams renewed his motion for judgment of acquittal as to all counts, which the court once again denied. When the court reviewed jury instructions with counsel, Williams renewed his motion for judgment of acquittal as to the first-degree rape charge. The court granted this motion, leaving the following counts for the jury's consideration: sexual abuse of a minor by a family member, second-degree rape, third-degree sexual offense, fourth-degree sexual offense, unnatural or perverted sexual practice, and second-degree assault. The jury returned a verdict of guilty on all counts.

On September 27, 2021, Williams moved for a new trial based on the court's admission of S.W.'s testimony alleging that Williams sexually abused her while living in Washington, D.C. prior to August 1, 2020. The court denied Williams's motion. Williams was ultimately sentenced to fifty years of incarceration, with all but twenty years suspended, followed by a five-year period of supervised probation.[3] This timely appeal followed.

DISCUSSION

On appeal, Williams argues that the circuit court erred in admitting S.W.'s testimony regarding the alleged sexual abuse perpetrated by Williams in Washington, D.C prior to August 1, 2020. Generally, evidence of a defendant's other crimes or bad acts is inadmissible to prove that the defendant is guilty of the charged offense or to prove the defendant's propensity to commit criminal acts. *See* Md. Rule 5-404(b); *Streater v. State*, 352 Md. 800, 806 (1999); *Straughn v. State*, 297 Md. 329, 333 (1983). Nonetheless, evidence of a defendant's other crimes or bad acts may be admissible if the evidence has "special relevance – that it 'is substantially relevant to some contested issue and is not offered simply to prove criminal character.'" *Wynn v. State*, 351 Md. 307, 316 (1998) (quoting *State v. Taylor*, 347 Md. 363, 368 (1997)). Indeed, Maryland Rule 5-404 provides that evidence of "other crimes, wrongs, or acts" may be admissible to prove "motive,

[3] Williams was sentenced to twenty years of incarcerations for sexual abuse of a minor by a family member; twenty years for second-degree rape, which was fully suspended; and ten years for third-degree sexual offense, which was also fully suspended. Williams's remaining convictions were merged for sentencing.

opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident[.]" Md. Rule 5-404(b). This, however, is not an exhaustive list. *Id.*

Generally, this Court reviews trial court rulings on the admissibility of evidence under an abuse of discretion standard. *Vielot v. State*, 225 Md. App. 492, 500 (2015) (citing *Hopkins v. State*, 352 Md. 146, 158 (1998)). Under this standard, we will generally not reverse a trial court's ruling on the admissibility of evidence "unless the evidence is plainly inadmissible under a specific rule or principle of law or there is a clear showing of an abuse of discretion." *Portillo Funes v. State*, 469 Md. 438, 479 (2020) (quoting *Merzbacher v. State*, 346 Md. 391, 404–05 (1997)).

One well-established category of evidence with special relevance is evidence of prior sexual acts by a defendant charged with sexual crimes. In *Vogel v. State*, the Supreme Court of Maryland held:

> It is abundantly clear that this Court has recognized the exception to the rule excluding evidence of prior crimes when (1) the prosecution is for sexual crimes, (2) the prior illicit sexual acts are similar to that for which the accused is on trial, and (3) the same accused and victim are involved.

Vogel, *supra*, 315 Md. at 465. The Court also concluded that, "in order to be admissible for the limited purposes enumerated in the appropriate exception . . . evidence [of the collateral offenses] must be clear and convincing to the trial judge." *Id.* at 467 (quoting *Cross v. State*, 282 Md. 468, 478 (1978)).

In Williams's motion *in limine* seeking to exclude S.W.'s testimony about the sexual acts that allegedly occurred in Washington, D.C. beginning when S.W. was eight years old,

Williams argued that S.W.'s testimony did not meet the three requirements articulated in *Vogel.* First, Williams contended that the alleged sexual acts were not sufficiently similar to the crime being charged. Second, Williams argued that the state's proffer to include S.W.'s testimony was not sufficient to prove by clear and convincing evidence that the alleged sexual abuse occurred. Third, Williams asserted that the probative value of the challenged testimony did not outweigh the danger of unfair prejudice. Finally, Williams contended that the state should have provided proper notice that it intended to include sexual propensity evidence at trial so that defense counsel could have requested a pre-trial hearing on the matter.

Relying on *Vogel*, the circuit court ultimately concluded that S.W.'s testimony regarding the abuse she allegedly suffered in Washington, D.C. was under the *Vogel* exception as sexual propensity evidence. On appeal, Williams suggests that the court erred in relying on *Vogel* because *Vogel* and its progeny were superseded by the Maryland General Assembly's 2018 enactment of Section 10-923 of the Courts and Judicial Proceedings Article of the Maryland Code. Md. Code (2006, Repl. Vol. 2020) § 10-923 of the Courts and Judicial Proceedings Article ("CJP"). CJP § 10-923 provides that, in a criminal trial for specific sexual offenses,[4] "evidence of other sexually assaultive behavior by the defendant occurring before or after the offense for which the defendant is on trial

[4] The provisions of CJP § 10-923 apply when the defendant is on trial for one of the following offenses: (1) a sexual crime under Title 3, Subtitle 3 of the Criminal Law Article ("CL") of the Maryland Code; (2) sexual abuse of a minor under CL § 3-602; and (3) sexual abuse of a vulnerable adult under CL § 3-604. CJP §§ 10-923(a), (b).

may be admissible, in accordance with this section."[5] CJP § 10-923(b). The statute requires the State to file a motion of intent to introduce evidence of sexually assaultive behavior[6] at least ninety days before trial, or later if authorized by the court. *Id.* § 10-923(c). Furthermore, the statute provides that the court may admit such evidence if it finds and states on the record that:

> (1) The evidence is being offered to:
>
> (i) Prove lack of consent; or
>
> (ii) Rebut an express or implied allegation that a minor victim fabricated the sexual offense;
>
> (2) The defendant had an opportunity to confront and cross-examine the witness or witnesses testifying to the sexually assaultive behavior;

[5] "Sexually assaultive behavior" is defined as any act that would constitute:

> (1) A sexual crime under Title 3, Subtitle 3 of the Criminal Law Article of the Maryland Code;
>
> (2) Sexual abuse of a minor under CL § 3-602;
>
> (3) Sexual abuse of a vulnerable adult under CL § 3-604.
>
> (4) A violation of 18 U.S.C. Chapter 109A; or
>
> (5) A violation of a law of another state, the United States, or a foreign country that is equivalent to an offense under item (1), (2), (3), or (4)[.]

CJP § 10-923(a).

[6] The statute also requires the court to hold a hearing outside of the presence of the jury to determine the admissibility of the sexually assaultive behavior. CJP § 10-923(d).

(3) The sexually assaultive behavior was proven by clear and convincing evidence; and,

(4) The probative value is not substantially outweighed by the danger of unfair prejudice.

CJP § 10-923(e).

Williams contends that the trial court erred by relying on *Vogel* rather than CJP § 10-923 in denying Williams's motion *in limine* to exclude S.W.'s testimony about the alleged incidents of abuse that took place in Washington, D.C. Williams further argues that the CJP § 10-923 required the exclusion of the contested testimony because the statutory requirements for admitting sexual propensity evidence were not satisfied. Unsurprisingly, the State disagrees. First, the State challenges Williams's framing of Maryland law regarding the admissibility of sexual propensity evidence. The State asserts that CJP § 10-923 did not supplant or abrogate the common law exception to the general rule excluding evidence of other crimes, as developed in *Vogel* and its progeny. Second, the State argues that the contested testimony was admissible under *Vogel*, CJP § 10-923, and Maryland Rule 5-404(b).

Preliminarily, the State argues that this Court need not consider Williams's arguments because they are waived. For the reasons explained below, we agree.

A. Williams failed to preserve his argument for appellate review because he failed to contemporaneously object to the challenged testimony at trial.

Preliminarily, the State asserts that Williams waived his argument because he objected to the sexual propensity evidence on different grounds at trial than he does on appeal. "Ordinarily, an appellate court will not decide any other issue unless it plainly

appears by the record to have been raised in or decided by the trial court[.]" Md. Rule 8-131(a); *see also Klauenberg v. State*, 355 Md. 528, 541 (1999) ("It is well settled that when specific grounds are given at trial for an objection, the party objecting will be held to those grounds and ordinarily waives any grounds not specified that are later raised on appeal."). At trial, Williams argued that the evidence was inadmissible under *Vogel*. Indeed, Williams concedes that "[n]either the prosecutor, nor defense counsel, nor the court mentioned [CJP § 10-923]" at trial. Similarly, Williams argued in his motion for a new trial that the evidence was inadmissible under *Vogel* without citing to CJP § 10-923. The State, therefore, contends that Williams waived his argument that the challenged evidence was inadmissible under CJP § 10-923 by failing to raise that argument at trial.

The State also argues that Williams waived his argument by failing to renew his objection to the challenged evidence during S.W.'s testimony at trial. Indeed, depending on how the trial court rules on a motion *in limine* to exclude evidence, a party may be required to take additional steps to preserve an admissibility issue for appellate review. If a trial judge grants a party's motion *in limine* to exclude evidence and "instruct[s] counsel not to proffer the evidence again during trial, the proponent of the evidence is left with nothing to do at trial but follow the court's instructions." *Prout v. State*, 311 Md. 348, 356 (1988), *superseded by rule on other grounds,* Md. Rule 1-502, *as recognized by Beales v. State*, 329 Md. 263 (1993). Therefore, "[u]nder these circumstances . . . the proponent's objection is preserved for review without any further action on his part." *Id.* By contrast, "when a trial judge makes a final ruling on a motion *in limine* to admit evidence, the party

opposing the admission of the evidence must subsequently object at trial when the evidence is offered to preserve his objection for appeal." *Reed v. State*, 353 Md. 628, 635 (1999) (citing *Prout*, *supra*, 311 Md. at 356–57)).

Williams concedes that he did not lodge a contemporaneous objection at trial. Nevertheless, Williams argues that his argument is preserved, and relies on the Supreme Court of Maryland's decision in *Watson v. State*, 311 Md. 370 (1988). In *Watson*, the circuit court denied Watson's motion *in limine* seeking to exclude evidence of his prior attempted rape and theft convictions. *Id.* at 372, n.1. The trial judge reiterated his ruling on the motion *in limine* immediately prior to the State's cross-examination of Watson, during which the State elicited testimony about Watson's prior convictions. *Id.* Watson, however, did not renew his objection when this testimony was elicited. The Court in *Watson* reiterated the general rule that, "when a trial judge makes a final ruling on a motion *in limine* to admit evidence, the party opposing the admission of the evidence must subsequently object at trial when the evidence is offered to preserve his objection for appeal." *Id.* (citing *Prout*, *supra*, 311 Md. at 356–57)). The Court concluded, however, that "requiring Watson to make yet another objection only a short time after the court's ruling to admit the evidence would be to exalt form over substance." *Id.* The Court, therefore, held that Watson's argument was preserved despite the lack of a contemporaneous objection. *Id.*

Watson, therefore, provides an "exception to the general requirement of contemporaneous objection for preservation" regarding an admissibility issue for appeal.

Clemons v. State, 392 Md. 339, 361 (2006). Notably, this Court, however, has recognized that the Supreme Court's ruling in *Watson* "is a narrow one and applies only when the prior ruling by the court . . . is in close proximity to the point where the offending evidence was introduced." *Jamsa v. State*, 248 Md. App. 285, 310 (2020) (citing *Norton v. State*, 217 Md. App. 388, 396 (2014), *aff'd* 443 Md. 517 (2015)). Indeed, we have emphasized that it was "the temporal closeness between the court's reiteration of its ruling on the motion *in limine* and the State's use of the [challenged evidence] that mandated the result in *Watson.*" *Hickman v. State*, 76 Md. App. 111, 118 (1988).

The Supreme Court of Maryland applied the *Watson* exception in *Clemons v. State*, *supra,* 392 Md. at 361–63. *Clemons* involved the denial of a motion *in limine* through which the defendant sought to exclude an expert's comparative bullet lead analysis (CBLA) testimony. *Id.* At a pretrial hearing, Clemons agreed to defer consideration of his motion until trial. *Id.* at 347. At trial, before the expert was called as a witness, Clemons challenged the admissibility of the CBLA evidence. *Id.* at 348–49. The trial court allowed Clemons to conduct a voir dire examination of the expert prior to ruling on Clemons's motion. *Id*. Following this voir dire, the circuit court denied Clemons's motion, "[o]verruling defense counsel's objection to the witness's qualifications and the general acceptance of the scientific process that was the subject of his testimony[.]" *Id.* at 352. The court, therefore, admitted the witness as an expert and allowed him to give CBLA testimony. *Id.* Immediately following the court's ruling, the expert gave his CBLA testimony and Clemons did not object. *Id.* at 352–53.

The Court concluded that Clemons's argument regarding the admissibility of the CBLA evidence was preserved despite the lack of a contemporaneous objection. *Id.* at 363. In its ruling, the Court relied on *Watson*, concluding:

> [B]ased on the proximity of Clemons's objection and the trial judge's ruling regarding the admissibility of the [CBLA] evidence, we find no reasonable basis for distinguishing the present case from that before us in *Watson*. Therefore, we determine that to require Clemons to restate his objection minutes after he originally made it would be to elevate form over substance and conclude that Clemons preserved the issue of the admissibility of [the] expert testimony regarding CBLA and its implications for appellate review.

Id. at 363.

This Court has also applied the *Watson* exception in three notable cases. In *Jamsa v. State*, we concluded that no contemporaneous objection was required to preserve a party's argument when the trial court's ruling on the party's motion *in limine* was made immediately before the witness gave the challenged testimony. *Jamsa, supra,* 248 Md. App. at 311. In *Norton v. State*, the circuit court's denial of a defendant's motion *in limine* and the challenged expert testimony were separated only by the brief testimony of another witness, which lasted only six pages of transcript. *Norton*, *supra*, 217 Md. App. at 395–97. Due to the "temporal proximity" between the court's ruling and the challenged testimony, we concluded that no contemporaneous objection was required to preserve the appellant's admissibility argument for appeal. *Id.* Finally, in *Dyce v. State*, we held that no contemporaneous objection was required when the denial of a motion *in limine* and the challenged testimony elicited on cross-examination were only separated by direct examination of that witness. 85 Md. App. 193, 196–98 (1990).

Based on our consideration of these cases, we now turn to the procedural posture of this case and conclude that the exception articulated in *Watson* does not apply in this appeal. Unlike the trial court in *Watson*, the circuit court did not reiterate its ruling denying Williams's motion *in limine* prior to the State's direct examination of S.W., during which she testified about the alleged sexual abuse perpetrated by Williams in Washington, D.C. Critically, the challenged testimony did not occur in "close proximity" to the court's ruling on the motion *in limine.* Following the court's ruling, the court issued its preliminary instructions to the jury and both parties presented their opening statements. Furthermore, our review of the record reflects that S.W. gave approximately forty transcript pages worth of testimony before she testified about the alleged abuse that took place in Washington, D.C. In total, the judge's decision denying the motion *in limine* and S.W.'s challenged testimony are separated by more than sixty pages of transcript.

The cases discussed *supra* in which the *Watson* exception applied were all characterized by a "temporal closeness" between the court's ruling allowing the challenged testimony to be admitted and the time when the testimony was actually given. Where, as here, such "temporal closeness" did not occur, the *Watson* exception does not apply.

Williams further argues that CJP § 10-923 "does not suggest in its text or in the legislative history that a defendant must renew their objection to the evidence at trial." Additionally, Williams contends that, because the State did not adhere to the advance notice requirements of CJP § 10-923, no contemporaneous objection was required because "the onus was on the State to properly notice its intent to introduce this evidence, not the

defense to affirmative block it." We are unpersuaded. Williams is unable to point to any provision of the statute, case law, or other law to support the contention that CJP § 10-923 somehow disrupts the well-established contemporaneous objection requirement discussed here. We, therefore, conclude that Williams was required to object to S.W.'s testimony in order to preserve his argument regarding the admissibility of the sexual propensity evidence.[7]

B. We decline to exercise our discretion to engage in plain error review of Williams's unpreserved arguments.

Williams argues that, even if the issue is not preserved, this court should exercise its discretion to engage in plain error review of the of trial court's admission of S.W.'s testimony regarding prior alleged abuse. This Court reserves the undertaking of plain error review only when the circumstances of the case are "compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial." *Savoy v. State*, 420 Md. 232, 243 (2011) (quoting *State v. Hutchinson*, 287 Md. 198, 203 (1980)). Indeed, "appellate review under the plain error doctrine '1) always has been, 2) still is, and 3) will continue to be a rare, rare phenomenon.'" *Hammersla v. State*, 184 Md. App. 295, 306 (2009) (quoting *Morris v. State*, 153 Md. App. 480, 507 (2003)). This Court has previously noted that "a consideration of plain error is like a trip to Angkor Wat or Easter Island. It

[7] Because we conclude that Williams's argument is waived based on his failure to contemporaneously object to S.W.'s testimony, we need not address the State's argument that Williams waived his argument by objecting to the challenged evidence on different grounds on appeal than he did at trial.

is not a casual stroll down the block to the drugstore or the 7–11." *Garner v. State*, 183 Md. App. 122, 152 (2008), *aff'd*, 414 Md. 372 (2010).

A threshold requirement for engaging in plain error review is that "the error must have affected the appellant's substantial rights, which in the ordinary case means he must demonstrate that it 'affected the outcome of the [trial] court proceedings.'" *Rich v State*, 415 Md. 567, 578 (2010) (quoting *Puckett v. United States*, 556 U.S. 129, 135 (2009)). Williams fails to argue how the exclusion of the challenged evidence would have impacted the outcome of the trial. Even without S.W.'s testimony regarding the sexual abuse that Williams allegedly perpetrated against S.W. in Washington, D.C., there was ample evidence to support a conviction of the crimes charged. S.W. gave extensive and detailed evidence of multiple incidents of sexual abuse that occurred in Maryland between August 1, 2020 and September 11, 2020. Her siblings, E.W. and I.D., and her mother testified about the day S.W. finally disclosed the incidents of abuse to Ms. E. Ms. W. also testified, indicating that she had been concerned about the existence of an "inappropriate relationship" between Williams and S.W. as early as 2018. Williams was the sole defendant for the defense and denied ever having engaged in sexual conduct with his daughter, S.W.

In our view -- even without S.W.'s testimony about the alleged incidents of abuse that took place in Washington, D.C. -- the jury heard ample testimony to support a conviction for the crimes charged. As such, we cannot conclude that any alleged error by

the circuit court in admitting S.W.'s testimony about prior alleged abuse impacted the outcome of the trial. Accordingly, we decline to engage in plain error review.

For these reasons, we affirm.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.