

ARKANSAS COURT OF APPEALS

DIVISION I

No. CR-25-717

JOHN WALTON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered September 23, 2026

APPEAL FROM THE CRAIGHEAD
COUNTY CIRCUIT COURT,
WESTERN DISTRICT
[NO. 16JCR-24-938]

HONORABLE CHRIS THYER,
JUDGE

AFFIRMED

STEPHANIE POTTER BARRETT, Judge

John Walton appeals the July 24, 2025, sentencing order of the Craighead County Circuit Court sentencing him to eighty-six years' imprisonment. Following a jury trial, the jury sentenced Walton to forty years' incarceration for rape, twenty years' incarceration for sexual assault, and six years' incarceration for sexual indecency. Walton additionally received 2 ten-year sentencing enhancements for committing an offense in the presence of a child under Arkansas Code Annotated section 5-4-702 (Repl. 2024). The jury recommended Walton's sentences run consecutively, to which the circuit court agreed. On appeal, Walton argues the circuit court (1) abused its discretion in not excluding the State's Rule 404(b) witnesses pursuant to the pedophile exception under Arkansas Rules of Evidence 404(b) and 403 and (2) erred by allowing the sentencing enhancement for a crime committed in the presence of a child under Arkansas Code Annotated section 5-4-702 to be applied as a

separate enhancement to multiple offenses that were part of a single criminal episode. We affirm.

I. Relevant Background

On July 20, 2024, thirteen-year-old Minor Victim (“MV”) accompanied Walton, his wife Jennifer, and their children on a trip to Lake Charles. MV knew the Waltons through her friendship with their daughter, MC1, and the families lived within walking distance of one another. MV had previously visited the Walton residence and traveled with the family without incident.

After returning from Lake Charles, MV and MC1 attended a birthday party. When Walton and Jennifer later picked them up, MV observed that Walton appeared intoxicated, giggly, and “out of it.” Back at the Walton residence, the children and adults swam in the family’s above-ground pool. MV testified that, while they were playing in the pool, Walton approached her from behind, placed his hands on her, and moved his hands from her stomach to her chest. She further testified that he touched her vagina both over and underneath her one-piece swimsuit and, at times, rubbed her. MV also observed Walton near a shed with his swim trunks lowered to his thighs and his exposed penis in his moving hands.

The group eventually went inside. Walton, who had been drinking vodka, entered the house stumbling. MV helped him to the bathroom and later brought him a towel after he called for one. Walton subsequently emerged wearing a robe and playfully pushed MV’s head. MV pushed him back and ran into the bathroom, intending to lock the door. After

she believed Walton had walked away, she opened the door, but Walton pushed his way inside and closed the door behind him.

According to MV, Walton pushed her against the bathroom door, grabbed her face, and kissed her with his tongue. He then placed her hand on his exposed, erect penis. When MV attempted to remove her hand, Walton placed it back on his penis. Walton pulled MV toward the floor, raised her shirt, moved her bra, and placed his mouth on her breast. He then placed his hand underneath her leggings and underwear and rubbed between the folds of her vagina.

Walton's daughter MC2 testified she saw Walton chase MV into the bathroom and later saw them kissing. MC2 ran to the backyard and told Jennifer what she had seen. Jennifer immediately returned to the house with MC2. MV testified that MC2 initially attempted to open the bathroom door but could not because Walton was holding it closed. Walton's hand remained inside MV's pants until Jennifer entered the bathroom.

When Jennifer entered, MV was on the floor near the sink, and Walton was on the floor near the bathtub. Jennifer directed MV to leave the bathroom and pushed Walton backward into the bathtub as he attempted to stand. MV initially told Jennifer only that Walton had kissed her because she was shaken and had difficulty discussing what had occurred. Jennifer separated MV from Walton and remained with MV and the children until MV's mother arrived.

When MV's mother and stepfather, Michael Bova, arrived to pick her up, MV entered their vehicle shaking uncontrollably and initially refused to speak. On the drive home, she disclosed that Walton had kissed her. Bova returned to the Walton residence to

confront Walton, and the two men became involved in a physical altercation. After Bova learned that the allegations involved conduct beyond kissing, he contacted the Jonesboro Police Department.

Officer Faith Kelemen responded to MV's residence during the early-morning hours of July 21. MV disclosed that Walton had entered the bathroom and kissed her but omitted portions of the incident. MV later explained she initially left out details because she remained shaken, found the incident difficult to discuss, and did not know how to describe what had occurred.

Within the next several days, MV participated in a forensic interview at the Children's Advocacy Center. Detective Adam Hampton watched the interview and thereafter contacted Walton, who voluntarily appeared at the police department with Jennifer. During his recorded interview, Walton stated he began drinking during the afternoon and remembered swimming until it became dark, but he did not remember the events that followed. He stated Jennifer told him MV claimed he kissed her, but he maintained that he could not see himself engaging in such conduct. When confronted with the additional allegations, Walton repeatedly denied that he would have committed the acts but continued to state that he could not remember what happened.

At trial, Jennifer testified Walton consumed approximately one-half gallon of 100-proof vodka and was stumbling, although he could generally move around on his own. She denied observing inappropriate conduct in the pool and testified MV appeared comfortable and playful with Walton before the bathroom incident. Jennifer further testified that, when she entered the bathroom, MV said Walton had tried to kiss her and nothing else had

occurred. Jennifer acknowledged, however, that she immediately separated MV from Walton because she believed that was appropriate under the circumstances.

The State also presented testimony concerning Walton's prior acts. Lillian Hadley testified that, when she was approximately ten or eleven years old, Walton groped her breasts and vagina while throwing her in a swimming pool. She also testified she saw him masturbating near an abandoned house. Hadley's sister, Adrienne Atkins, testified Walton touched her underneath her swimsuit in her vaginal area when she was approximately eight or nine years old and that she also saw him masturbating near an abandoned house. Hailey Dunham, Walton's niece, testified Walton began touching her breasts and vaginal area when she was approximately eight years old and masturbated in her presence on multiple occasions. The circuit court instructed the jury that this evidence could not be used to establish Walton's character or show he acted in conformity with it but could be considered for purposes including motive, opportunity, intent, plan, knowledge, or absence of mistake or accident.

At the close of the State's case, Walton moved for directed verdicts on the charged offenses, arguing, among other things, the State failed to prove the penetration necessary to establish rape and MV's accounts were inconsistent. The circuit court denied the motions. Walton presented Jennifer's testimony but elected not to testify.

The jury found Walton guilty of rape, second-degree sexual assault, and sexual indecency with a child. It separately found that both the rape and the second-degree sexual assault were committed in the presence of a child. The jury recommended sentences of forty years for rape, twenty years for second-degree sexual assault, six years for sexual indecency

with a child, and ten years for each child-presence enhancement. It further recommended that all terms run consecutively. The circuit court accepted the jury's recommendations and imposed an aggregate sentence of eighty-six years' imprisonment.

II. *Discussion*

A. Arkansas Rule of Evidence 404(b)'s Pedophile Exception

Walton first argues the circuit court abused its discretion in not excluding the State's Rule 404(b) witnesses pursuant to the pedophile exception under Arkansas Rules of Evidence 404(b) and 403. However, before addressing the merits of his argument, it is pertinent to first determine if it is preserved for appellate review. Here, in making its Rule 404(b) rulings, the circuit court admitted the witness testimony under the pedophile exception but also under alternative Rule 404(b) grounds—specifically, lack of mistake. On appeal, Walton challenges only the findings made under the pedophile exception; he fails to address the circuit court's independent ruling regarding lack of mistake. When a circuit court bases its decision on multiple independent grounds, and an appellant challenges only one of those grounds on appeal, we can affirm without addressing the merits of the argument. *See Williams v. State*, 2015 Ark. App. 245, 459 S.W.3d 814 (citing *Breeden v. State*, 2013 Ark. App. 522). Therefore, we affirm on this basis.

However, we note that even if Walton had addressed each ground relied on by the circuit court, his argument would still fail. Challenges to evidentiary rulings are reviewed under the abuse-of-discretion standard. *Hortenberry v. State*, 2017 Ark. 261, 526 S.W.3d 840. The abuse-of-discretion standard is a high threshold that does not simply require error in the circuit court's decision but requires the circuit court act improvidently, thoughtlessly,

or without due consideration. *Id.*; *Holland v. State*, 2015 Ark. 341, 471 S.W.3d 179. Additionally, an evidentiary decision will not be reversed absent a showing of prejudice. *Hicks v. State*, 2017 Ark. 262, 526 S.W.3d 831.

Pursuant 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 he acted in conformity therewith.” Such evidence is permissible for other purposes, however, “such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” *E.g., Duvall v. State*, 2018 Ark. App. 155, at 5, 544 S.W.3d 106, 110. “Under Ark. R. Evid. 404(b), evidence of other crimes will be admitted if it has independent relevance, and its relevance is not substantially outweighed by the danger of unfair prejudice.” *Jones v. State*, 349 Ark. 331, 339, 78 S.W.3d 104, 110 (2002). Evidence is independently relevant if it tends to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without evidence. *Cluck v. State*, 365 Ark. 166, 226 S.W.3d 780 (2006).

Arkansas appellate courts recognize a “pedophile exception” to Rule 404(b) “that allows the State to introduce evidence of the defendant’s similar acts with the same or other children when it is helpful in showing a proclivity for a specific act with a person or class of persons with whom the defendant has an intimate relationship.” *Duvall*, 2018 Ark. App. 155, at 6, 544 S.W.3d at 110. The rationale for the exception is that such evidence helps to prove the depraved sexual instinct of the accused. *Jeffries v. State*, 2014 Ark. 239, 434 S.W.3d 889. Further, it is admissible to show the familiarity of the parties, disposition, and antecedent conduct toward one another and to corroborate the testimony of the victim, *see*

Fields v. State, 2012 Ark. 353, at 6, and to show motive, intent, or plan. See *Holland, supra*. Also, “Rule 404(b) makes no distinction between substantiated and unsubstantiated conduct, or between charged and uncharged conduct. This court has explicitly held that our application of the pedophile exception does not require that the prior act be charged or substantiated.” *Holland*, 2015 Ark. 341, at 8, 471 S.W.3d at 185.

While the State may introduce evidence of unsubstantiated prior allegations to show an accused’s “proclivity to offend,” there are three essential restrictions on the pedophile exception. See *Baumann v. State*, 2018 Ark. App. 564, at 6, 566 S.W.3d 494, 499. “First, courts require there be a sufficient degree of similarity between the evidence to be introduced and the sexual conduct of the defendant.” *Id.* (quoting *Holland*, 2015 Ark. 341, at 8, 471 S.W.3d at 185). Physical similarities between the alleged victim and the Rule 404(b) witness such as age and gender are relevant when there is not “identical” conduct toward each by the accused. See *Stewart v. State*, 2011 Ark. App. 658, at 7, 386 S.W.3d 583, 587. Second, it is necessary “that there be an ‘intimate relationship’ between the perpetrator and the victim.” *Holland*, 2015 Ark. 341, at 7, 471 S.W.3d at 184. The relationship must be one “close in friendship or acquaintance, familiar, near, or confidential.” *Eubanks v. State*, 2009 Ark. 170, at 4–5, 303 S.W.3d 450, 453. This standard is not strict; the act of babysitting has been found to satisfy the “intimate relationship” criterion. See *Morrison v. State*, 2011 Ark. App. 290, at 4. Third, evidence admitted pursuant to Rule 404(b) must not be too separated in time, making the evidence unduly remote. *Holland*, 2015 Ark. 341, at 8, 471 S.W.3d at 185. “[A] reasonableness standard is

used to determine whether a crime remains relevant rather than a specific time limit.” *Id.* at 9, 471 S.W.3d at 185.

Here, Walton focuses his argument on the lack of intimate relationship between him and the Rule 404(b) witnesses. As stated above, this standard is not strict. *See Morrison*, 2011 Ark. App. 290, at 4. In discussing the requirement of an intimate relationship, our supreme court stated,

We have noted that the misnomer, “intimate relationship,” does not necessarily require the child live in the home of the accused. We have defined an “intimate relationship,” for lack of a better phrase, as close in friendship or acquaintance, familiar, near, or confidential. We have admitted the testimony of a child living in the same household or staying as an overnight guest in the perpetrator’s home. We further have admitted evidence against a perpetrator who babysat a child, or who gained access to the child.

Parish v. State, 357 Ark. 260, 270, 163 S.W.3d 843, 849 (2004) (citations omitted). Arkansas courts have further adopted the position that a relationship is sufficient to trigger the pedophile exception if the sexual abuse occurs when the victim is in the perpetrator’s care or under his authority. *Berger v. State*, 343 Ark. 413, 420, 36 S.W.3d 286, 290 (2001).

Here, Hadley and Atkins, who were minors at the time, recalled being friends with Walton’s children and being sexually assaulted by him in the pool Hadley even recalled that Jennifer was inside the house when the assault occurred. Hadley and Atkins were minor children in Walton’s home whom he had access to and authority over. For these reasons, the Rule 404(b) witness testimony was properly admitted in accordance with the pedophile exception.

Even if evidence of prior allegations of sexual abuse meets the criteria for the pedophile exception to Rule 404(b), it is still subject to potential exclusion under Rule 403

if the probative value of the evidence is substantially outweighed by the danger of unfair prejudice. *Holland, supra*. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Ark. R. Evid. 403.

Here, Walton argues the testimony of all the Rule 404(b) witnesses should have been excluded, or at least reduced, as being more prejudicial than probative. Specifically, he states that each witness's testimony was reduced to a "mini trial" and with the amount of Rule 404(b) evidence presented to the jury, "conviction was a foregone conclusion," and "any jury would have simply been repulsed." However, considering this evidence in the context of the pedophile exception, it was properly admitted to show Walton's proclivity to engage in specific acts with a certain class of persons—here, the molestation of minor girls in his home and in his pool. The circuit court did not abuse its discretion by admitting the Rule 404(b) evidence under the pedophile exception. Additionally, the circuit court properly concluded that the probative value of the Rule 404(b) evidence was not substantially outweighed by its prejudicial effect to render it inadmissible under Rule 403. Rule 403 instructs that relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, but it is axiomatic that evidence offered by the State is often likely to be prejudicial to the accused and "should not be excluded unless the accused can show that it lacks probative value[.]" *Chunestudy v. State*, 2012 Ark. 222, at 6, 408 S.W.3d 55, 60. The circuit court properly considered and determined the Rule 404(b) evidence was highly probative because it was relevant evidence of Walton's depraved

sexual instinct to target minor females. While Walton argues the Rule 404(b) evidence was “far more prejudicial than probative,” the “fact that evidence is prejudicial to a party is not reason, in itself, to exclude evidence.” *Branstetter v. State*, 346 Ark. 62, 74, 57 S.W.3d 105, 113 (2001).

B. Sentencing Enhancement

Next, Walton argues the circuit court erred by applying the sentencing enhancement for committing an offense in the presence of a child pursuant to Arkansas Code Annotated section 5-4-702 to multiple qualifying offenses arising from a single criminal episode.

Although our appellate courts have not squarely addressed whether section 5-4-702 permits a separate enhancement for multiple qualifying offenses committed during the same criminal episode, the plain language of the statute supports the circuit court’s application of the enhancements here. Sentencing in Arkansas is entirely a matter of statute. *Donaldson v. State*, 370 Ark. 3, 257 S.W.3d 74 (2007). Arkansas Code Annotated section 5-4-104(a) (Supp. 2025) provides that “[n]o defendant convicted of an offense shall be sentenced otherwise than in accordance with this chapter.” See *White v. State*, 2012 Ark. 221, 408 S.W.3d 720. Thus, when the law does not authorize the particular sentence pronounced by the circuit court, that sentence is unauthorized and illegal. *State v. Fountain*, 350 Ark. 437, 88 S.W.3d 411 (2002).

The question before us, then, is one of statutory interpretation: whether section 5-4-702 authorizes an enhancement for each qualifying offense committed in the presence of a child or instead limits the enhancement to a single application when multiple qualifying offenses arise from one criminal episode. This court reviews issues of statutory interpretation

de novo because it is for this court to decide the meaning of a statute. *See Stivers v. State*, 354 Ark. 140, 118 S.W.3d 558 (2003). We construe criminal statutes strictly, resolving any doubts in favor of the defendant. *See id.* We also adhere to the basic rule of statutory construction, which is to give effect to the intent of the legislature. *See id.* We construe the statute just as it reads, giving the words their ordinary and usually accepted meaning in common language, and if the language of the statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion to resort to rules of statutory interpretation. *See id.* We will not add words to convey a meaning that is not there. *Our Cmty., Our Dollars v. Bullock*, 2014 Ark. 457, 452 S.W.3d 552.

Section 5-4-702(a) provides that a person who commits certain enumerated offenses, including rape and sexual assault, “may be subject to an enhanced sentence of an additional term of imprisonment of not less than one (1) year and not greater than ten (10) years if the offense is committed in the presence of a child.” Ark. Code Ann. § 5-4-702(a). The enhanced portion of the sentence must be served consecutively to “any other sentence imposed,” and the defendant is not eligible for early release on parole or community correction transfer during the enhanced portion of the sentence. *Id.* § 5-4-702(d), (e).

The language of section 5-4-702 is offense based. The statute identifies specific offenses and provides for additional punishment when “the offense” is committed in the presence of a child. It does not speak in terms of a criminal episode, course of conduct, prosecution, or case. Nor does it provide that when a defendant commits more than one qualifying offense during the same criminal episode, those offenses merge into a single offense for purposes of the enhancement.

That omission is significant. Walton’s interpretation would require us to read into section 5-4-702 a limitation that the General Assembly did not include—effectively, that only one enhancement may be imposed for all qualifying offenses arising from the same criminal episode. We decline to add such language to the statute. Had the General Assembly intended to limit the enhancement to one application per criminal episode, it could have done so. Instead, the statutory inquiry is whether *the offense* for which the enhancement is sought is one enumerated in section 5-4-702 and whether *that offense* was committed in the presence of a child. When a defendant is convicted of multiple qualifying offenses and each offense satisfies those statutory requirements, each offense provides an independent basis for the enhancement. The fact the offenses occurred during the same criminal episode does not change the character of those convictions as separate offenses.

Our supreme court’s decision in *Tucker v. State*, 2023 Ark. 69, 664 S.W.3d 428, while not directly resolving this question, is consistent with that interpretation. In *Tucker*, the defendant received both a child-presence enhancement and a firearm enhancement in connection with his first-degree-murder conviction. The supreme court rejected his argument that the enhancements could not be stacked. In doing so, the court emphasized that section 5-4-702 requires the child-presence enhancement run consecutively to “any other sentence imposed.” Although *Tucker* involved multiple enhancements attached to one underlying offense rather than the application of the same enhancement to multiple qualifying offenses, it demonstrates that section 5-4-702 contains no general prohibition against cumulative punishment when the statutory requirements for the enhancement are satisfied.

Likewise, *State v. Colvin*, 2013 Ark. 203, 427 S.W.3d 635, reflects the General Assembly's decision that the punishment authorized by section 5-4-702 is additional to the punishment imposed for the underlying offense. In *Colvin*, the supreme court held a circuit court lacked authority to suspend the enhancement because doing so was inconsistent with the statutory requirement that the enhanced sentence be served consecutively. *Colvin* reinforces that courts must give effect to the additional punishment prescribed by section 5-4-702 when its statutory requirements are met.

Therefore, because each of Walton's underlying offenses independently qualified under section 5-4-702 and was committed in the presence of a child, the circuit court was authorized to impose a separate enhancement for each offense. We affirm.

Affirmed.

HARRISON and BROWN, JJ., agree.