

**IN THE SUPREME COURT
OF THE STATE OF NORTH DAKOTA**

State of North Dakota,)	
)	Supreme Court No.: 20210306
Plaintiff/Appellee)	
)	
vs.)	
)	District Court No.:25-2019-CR-0165
Connor Bradshaw,)	
)	
Defendant/Appellant.)	

**BRIEF OF APPELLEE
ORAL ARGUMENT REQUESTED**

**ON APPEAL FROM THE CRIMINAL JUDGMENT ENTERED ON THE 5th DAY
OF OCTOBER, 2021 IN MCHENRY COUNTY DISTRICT COURT,
NORTHEAST JUDICIAL DISTRICT, NORTH DAKOTA, THE HONORABLE
MICHAEL P. HURLY PRESIDING.**

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[¶1]

III. STATEMENT REGARDING ORAL ARGUMENT

[¶2] The State is requesting oral argument solely for the purpose of addressing any questions the Court may have regarding the issues herein should the Court not summarily affirm the district court's order.

[¶3]

IV. STATEMENT OF THE ISSUES

[¶4] I. Whether the district court erred in admitting a video recording of the child victim's forensic interview wherein the child disclosed sexual abuse by Bradshaw in both McHenry County and in Ward County with the portions of the video referring to the sexual acts that occurred in Ward County muted.

[¶5]

V. STATEMENT OF THE CASE

[¶6] This case was commenced by the filing of a criminal information charging the Defendant/Appellant, Connor Bradshaw (Bradshaw), with one count of Gross Sexual Imposition alleging that Bradshaw had engaged in sexual acts with victim A.Z. while A.Z. was under the age of 15, specifically that at the time of the offense Bradshaw was eighteen and the victim was five.

[¶7] During the investigation, Bradshaw was interviewed by law enforcement. This interview was recorded by video and audio means. During the interview, Bradshaw made incriminating statements regarding sexual acts he committed against A.Z. in both Ward County and McHenry County. The abuse began in 2018 and continued until Bradshaw sexually abused A.Z. in McHenry County in 2019.

[¶8] In addition, the victim, A.Z., participated in a forensic interview at the Northern Plains Children's Advocacy Center regarding Bradshaw's abuse of her. This interview was recorded by video and audio means. A.Z. disclosed during the interview Bradshaw

had sexually abused her in both Ward County and McHenry County. A.Z. indicated during that interview the last time she was abused was at “Uncle Donnie’s” cabin which is in McHenry County.

[¶9] Prior to trial, the State moved the trial court for its order allowing the victim’s statements made during the forensic interview to be admitted as evidence pursuant to Rule 803(24) of the North Dakota Rules of Evidence pertaining to the admission of a child’s statements about sexual abuse, in this case, the testimony of the forensic interviewer, Shannon Hilfer, and the recording made of the forensic interview. The trial court conducted a hearing on March 23, 2021 to receive evidence in regards to the State’s request. At that hearing, among other things, a copy of the forensic interview recording was submitted to the trial court for consideration of the State’s request.

[¶10] The case proceeded to a jury trial which was held on April 6th through the 8th of 2021. At the beginning of the trial, the trial court reviewed the State’s request to admit the forensic interview and the legal framework for its admission pursuant to Rule 803(24). The court indicated through its findings that the video would be allowed to be admitted.

[¶11] At the pretrial conference, the State notified the trial court of its intent to admit into evidence, during trial, the recording of A.Z. forensic interview and the recording of Bradshaw’s interview with law enforcement. The State further informed the trial court that those recordings contained statements about sexual acts that had occurred in Ward County prior to the McHenry County conduct that was charged in this case. The State, having anticipated defense counsel’s objection to admission of any evidence regarding the sexual acts in Ward County, prepared edited versions of both interviews which muted

those portions of the videos discussing the sexual acts in Ward County. Defense counsel objected to the admission of either the original or edited versions of the recordings at trial.

[¶12] After consideration by the trial court, the State was allowed to seek the admission of the recording of the forensic interview but not the interview by law enforcement of Bradshaw. After further consideration by the trial court, the court concluded that the forensic interview should be redacted as to any statements about sexual acts that had occurred in Ward County out of an abundance of caution.

[¶13] During trial, that State offered the edited video of the forensic interview that was muted as to any sexual acts that had occurred in Ward County during the testimony of Shannon Hilfer, the forensic interviewer. The video was received into evidence and published to the jury. During the playing of the video, defense counsel did not object to any of the statements made as being in violation of the trial court's order to redact statements about sex acts that had occurred in Ward County.

[¶14] The case was ultimately submitted to the jury for deliberation. The jury returned a verdict in favor of the State finding that Bradshaw had committed the offense of Gross Sexual Imposition for his actions of having engaged in sexual acts against five year old A.Z..

[¶15] Following trial, Bradshaw moved for a judgment of acquittal and a new trial. Bradshaw argued there was insufficient evidence to sustain the conviction and that the verdict was against the greater weight of the evidence. These motions were resisted by the State. The trial court denied the relief requested in the motions.

[¶16] The trial court held sentencing on October 5th, 2021 and entered a criminal judgment in the matter. Bradshaw now appeals from the judgment entered.

[¶17] **VI. STATEMENT OF THE FACTS**

[¶18] A.Z. was a five-year-old little girl who, among other things, enjoyed going to the lake at Uncle Donnie's Cabin on Buffalo Lodge Lake. At the cabin, A.Z. had a room she shared with her brother that had bunk beds. Her parents would sleep in a nearby camper. One morning in June of 2019, after spending the night at the cabin, A.Z. told her father something that gave him concern for her safety. Her parents made an appointment for her to be seen by Dr. Eaton who told them a report would be filed with the authorities. A forensic interview was then scheduled for A.Z. at the Northern Plains Children's Advocacy Center. See Trial Transcript at Page 109-115 (hereinafter, Trans. P. L.).

[¶19] Shannon Hilfer, a forensic interviewer conducted a forensic interview of A.Z.. During the interview, A.Z. disclosed that Bradshaw had committed sexual acts against her in both Ward County and McHenry County. (Trans. P. 15 L. 7-9). The acts began in Ward County with oral sex and progressed to the charged conduct in 2019 in McHenry County. (Trans. P. 83 L. 5-12). Specific to McHenry County, A.Z. disclosed Bradshaw had put his boy parts in her girl parts. (Trans. P. 14 L. 22-25).

[¶20] A.Z. disclosed that she was in her room at Uncle Donnie's cabin on the top bunk of the bunk bed when Bradshaw came in the room. (Trans. P. 174 L. 8-19). Bradshaw came up on her bunk, unzipped her Elsa pajamas, put strawberry cream on his boy part and then pushed his boy part into her girl part. Id. When he was done, he just zipped her pajamas back up and left. Id. During the interview, A.Z. clarified with the interviewer what was meant by boy parts and girl parts by reference to anatomical drawings of a boy

and girl. (Trans. P. 177 L. 4-19). A video recording was made of the forensic interview. (Trans. P. 178 L. 11-12).

[¶21] During the forensic interview, law enforcement identified several items for further investigation. Search warrants were obtained for Bradshaw's residence in Minot as well as Uncle Donnie's cabin in McHenry County and simultaneously executed. (Trans. P. 304 L. 5-20). Bradshaw was located at the property in McHenry County when the search warrants were executed. (Trans. P. 308 L. 7-8). During the search at the cabin, law enforcement took numerous pictures, recovered Bradshaw's cell phone, and located a pair of Frozen-Elsa onesie pajamas consistent with those described by A.Z. that she was wearing on the night of the abuse in McHenry County. (Trans. P. 304-319).

[¶22] On Bradshaw's cell phone, law enforcement located two searches relevant to the investigation. The first was a search for "what would happen to a five-year-old girl if raped." The second was a search for "chances of a five-year-old being okay after rape." (Trans. P. 348 L. 11-14).

[¶23] The Frozen pajamas were sent to the state crime laboratory for analysis. Biological fluids, including spermatozoa, were located on the Frozen pajamas. The spermatozoa that were present were separated and compared to Bradshaw's known DNA. It was the forensic scientist's opinion that the DNA profiles developed for Bradshaw's known sample and the spermatozoa were a match and the profile developed from the spermatozoa would not be expected to occur more than once among unrelated individuals in the world population. (Trans. P. 425-428).

[¶24] Following the execution of the search warrants, Bradshaw was interviewed by Detective Richard Juarez and the interview was video recorded. (Trans. P. 349-351).

During the interview, Bradshaw made incriminating statements regarding the charged conduct in this case. (Trans. P. 350-372). Bradshaw also made statement regarding sexual acts he committed against A.Z. in Ward County. (Trans. P. 14 L. 19-21). These acts include oral sex in Ward County with the victim and that he didn't take it a step further until June of 2019 because he didn't have the opportunity. (Trans. P. 83 L. 5-10).

[¶25] Prior to trial, the State moved the trial court for its order allowing the victim's statements made during the forensic interview to be admitted as evidence pursuant to Rule 803(24) of the North Dakota Rules of Evidence pertaining to the admission of a child's statements about sexual abuse, in this case, the testimony of the forensic interviewer, Shannon Hilfer, and the recording made of the forensic interview. The trial court conducted a hearing on March 23, 2021 to receive evidence in regards to the State's request. At that hearing, among other things, a copy of the forensic interview recording was submitted to the trial court for consideration of the State's request.

[¶26] The case proceeded to a jury trial which was held on April 6th through the 8th of 2021. At the beginning of the trial, the trial court reviewed the State's request to admit the forensic interview and the legal framework for its admission. The court indicated through its findings that the video would be allowed to be admitted. (Trans. P. 7-10).

[¶27] At the pretrial conference, the State notified the trial court of its intent to admit into evidence, during trial, the recording of A.Z.'s forensic interview and the recording of Bradshaw's interview with law enforcement. (Trans. P. 14 L. 10-15). Both of the videos had been disclosed in discovery to the defense. The State further informed the trial court that those recordings contained statements about sexual acts that had occurred in Ward County prior to the McHenry County conduct that was charged in this case. (Trans. P.

14-15). The State, having anticipated defense counsel's objection to admission of any evidence regarding the sexual acts in Ward County, prepared edited versions of both interviews which muted those portions of the videos discussing the acts in Ward County. (Trans. P. 14 L. 21-24). Defense counsel objected to the admission of either the original or edited versions of the recordings at trial. (Trans. P. 23 L. 1-3).

[¶28] The State argued that the Ward County acts were not 404(b) evidence and should be admitted as acts in furtherance of the crime, that, if the Ward County acts were 404(b) evidence, testimony regarding the acts would still be admissible under the law, and the playing of the edited videos would provide the Court assurance that nothing prejudicial regarding the Ward County acts would be presented to the jury. (Trans. P. 14-16; P. 95-100). Defense counsel argued that the recordings were unfairly prejudicial, that they included impermissible 404(b) evidence, and they did not have the opportunity to review the edited videos to ensure they agreed all objectional material was muted and, even if it was, the videos would be prejudicial because the jury would wonder what was muted and why they weren't allowed to hear it.

[¶29] After consideration by the trial court, the State was allowed to seek the admission of the recording of the forensic interview but not the interview by law enforcement of Bradshaw. (Trans. P. 53-55). The trial court conducted the analysis required by Rule 404(b) concluding that the video of the forensic interview was admissible pursuant to those requirements. (Trans. P. 53-55). It was the court's order at that time the entire recording of the forensic interview was to be played:

THE COURT: I want the full unredacted version played.

(Trans. P. 55 L. 21-22). The Court ordered the exclusion of the recording of Bradshaw's interview finding it to be unfairly prejudicial to play the redacted version as it would create confusion with the jurors, insinuating that the unedited video was also not to be played because it contained impermissible 404(b) evidence.

[¶30] At the close of proceedings on the first day of trial, prior to the forensic video being offered, the court stated:

THE COURT: But the [forensic interview video], I am concerned about whether or not it should be redacted or not.

(Trans. P. 85 L. 20-21).

[¶31] On the second morning of trial, the court considered the admission of the two videos again. (Trans. P. 93-98). The court reaffirmed its prior order as to the recording of Bradshaw's interview. The trial court now indicated that the State was to seek admission of the redacted version of the forensic interview. In reaching this conclusion the trial court states:

THE COURT: And I am concerned that this - - if this gets - - and, listen, I'm not going to - - I'll be honest with you both. I don't want this to have to be appealed and then brought back and then now she's eight or nine, and then have do it a third time. (referring to the child victim having to testify) . . . I'm going to allow the [forensic interview video] evidence in, but I'm going to give a cautionary instruction and a limiting instruction. And it's going to be redacted to the prior bad acts, out of an abundance of caution for this little girl.

(Trans. P. 97 L. 4-17). The court indicated that it was concerned about the effect of the Aabrekke case, 2011 ND 131, 800 N.W.2d 284, on the issue.

[¶32] During trial, that State offered the edited video of the forensic interview that was muted as to any sexual acts that had occurred in Ward County during the testimony of Shannon Hilfer, the forensic interviewer. (Trans. P. 179-180). The video was received

into evidence and published to the jury. During the playing of the video, defense counsel did not object to any of the statements made as being in violation of the trial court's order to redact statements about sexual acts that had occurred in Ward County. Prior to the video's admission, and out of the presence of the jury, the State read into the record which portions of the video were muted and the purpose for those edits. (Trans. P. 142-143).

[¶33] The State made an offer of proof in regards to the recording of Bradshaw's interview. Pursuant to the court's order, the video was not presented to the jury nor received into evidence for the jury's consideration.

[¶34] Bradshaw was on notice that the State intended to offer the forensic interview video at trial. The video was provided to the defense in discovery. The court had conducted a hearing regarding the admission of the video pursuant to Rule 803(24). Yet, the defense did not object to the video being admitted prior to the morning of trial on the grounds they believed it contained inadmissible 404(b) evidence. The defense was hoping to catch the court and State by surprise at trial and seek exclusion then arguing it contained impermissible 404(b) evidence.

[¶35] Bradshaw now contends that the admission of the redacted forensic interview was reversible error because the trial court should have excluded the video as a discovery violation sanction. Through this appeal, the defense seeks to have this Court punish the State for anticipating the defense's trial objection to the admission of any evidence regarding the sexual acts that occurred in Ward County prior to the charged conduct. This argument is without merit.

[¶36]

VII. LAW AND ARGUMENT

[¶37] The district court appropriately admitted the video recording of the forensic interview at trial. The State had met its discovery obligation of providing a copy of the full unredacted video of A.Z.'s forensic interview. Bradshaw does not contend that he did not receive the full version of the recorded forensic interview. Even if the State committed a discovery violation, Bradshaw has not shown how he was prejudiced by the court excluding evidence regarding further sexual acts he committed against A.Z.. In addition, the entire forensic interview video could have been admitted by the trial court as the victim's statements were not 404(b) evidence and were otherwise admissible.

[¶38] 1. THE DISTRICT COURT DID NOT ERR BY ADMITTING THE VIDEO RECORDING OF A.Z.'S FORENSIC INTERVIEW.

[¶39] The trial court did not abuse its discretion in admitting the video recording of A.Z.'s forensic interview as the video was adequately disclosed to the defense during the discovery phase of the case.

[¶40] a. Standard of Review.

[¶41] A trial court's decision regarding discovery violations will not be reversed on appeal absent an abuse of discretion. State v. Addai, 2010 ND 29, ¶ 41, 778 N.W.2d 555. A court abuses its discretion when it acts in an arbitrary, unreasonable, or unconscionable manner, when it misinterprets or misapplies the law, or when its decision is not the product of a rational mental process leading to a reasoned determination. City of Fargo v. Levine, 2008 ND 64, ¶ 5, 747 N.W.2d 130. The court's decision on a discovery violation is reversible error only if the defendant was denied a substantial right. City of Grand Forks v. Ramstad, 2003 ND 41, ¶ 25, 658 N.W.2d 731. A substantial right has not been

denied unless the defendant was significantly prejudiced by the violation. State v. Blunt, 2011 ND 127, ¶ 11, 799 N.W.2d 363. Further, this Court generally reviews a trial court's evidentiary rulings for an abuse of discretion.

[¶42] b. The State adequately disclosed the video of A.Z.'s forensic interview to Bradshaw.

[¶43] In addressing the State's discovery obligation in criminal cases, this Court has stated:

Rule 16, N.D.R.Crim.P., governs discovery of evidence in criminal cases. City of Grand Forks v. Ramstad, 2003 ND 41, ¶ 16, 658 N.W.2d 731. Under N.D.R.Crim.P. 16(a) and (f), the prosecution must furnish a defendant with statements made by prosecution witnesses and copies of any documents or data within the prosecution's possession, custody, or control if the item is material to preparing a defense, the prosecution intends to use the item in its case-in-chief at trial, or the item belongs to or was obtained from the defendant. The rule also requires the prosecution to disclose requested documents in the possession of other government agencies and is not limited to the materials actually in the prosecution's possession. State v. Sauer, 2011 ND 47, ¶ 8, 795 N.W.2d 331.

Blunt, 2011 ND 127, ¶ 9, 799 N.W.2d 363, 366–67.

[¶44] If the prosecution fails to comply with N.D.R.Crim.P. 16 or an order issued under the rule, the court may apply one of the remedies listed in N.D.R.Crim.P. 16(d)(2), including entering any order that is just under the circumstances. Blunt, 2011 ND 127, ¶ 10, 799 N.W.2d 363. The court has discretion in applying a remedy when a violation of the rule has been shown. Id.

[¶45] ““Rule 16 is not a constitutional mandate, and a violation of the rule results in a constitutionally unfair trial only when “the barriers and safeguards are so relaxed or forgotten the proceeding is more of a spectacle or a trial by ordeal than a disciplined contest.””” Addai, 2010 ND 29, ¶ 42, 778 N.W.2d 555 (quoting State v. Roerick, 557

N.W.2d 55, 56 (N.D.1996)). The court's decision on a discovery violation is reversible error only if the defendant was denied a substantial right. Ramstad, 2003 ND 41, ¶ 25, 658 N.W.2d 731. A substantial right has not been denied unless the defendant was significantly prejudiced by the violation. Id.“If the defendant fails to show he was significantly prejudiced by a discovery violation, a [district] court's failure to exclude evidence or impose other sanctions under N.D.R.Crim.P. 16(d)(2) does not constitute an abuse of discretion.” Id. at ¶ 26.

[¶46] *i. The State did not commit a discovery violation.*

[¶47] The record in this case is clear. A.Z. participated in a forensic interview at the Northern Plain’s Children’s Advocacy Center. That interview was recorded. During that interview, A.Z. disclosed sexual acts that were committed against her by Bradshaw, first occurring in Ward County and then in McHenry County. A copy of that recorded interview was provided to defense counsel during the discovery phase of the case. Further, the trial court conducted a hearing pursuant to Rule 803(24) of the North Dakota Rules of Evidence prior to trial to determine the admissibility of the hearsay statements made in the video recording by A.Z., including admission of the video. The State complied with its discovery obligations by providing a copy of the complete recording to Bradshaw.

[¶48] Anticipating the defense’s objection to admission of any statements regarding the sexual acts that occurred in Ward County, the State prepared an edited version of the video that muted all statements related to acts occurring in Ward County. The existence of this edited video was presented to the court prior to the commencement of trial on the first day the trial was scheduled. The State argued that the statements about the Ward

County sex acts were not those prior bad acts contemplated by rule 404(b), N.D.R.Ev., and were admissible, but that the State did not, at that point, intend to offer the statements made regarding the sexual acts committed in Ward County and that the court could conduct the analysis required by Rule 404(b) if the court deemed necessary for the video to be admitted in its entirety.

[¶49] The defense objected to the admission of the video in its entirety arguing it contained statements which were impermissible prior bad acts and were otherwise irrelevant or unduly prejudicial. The defense objected to the admission of the redacted version as they did not have time to review and were not sure the State's edits were sufficient to safeguard against the alleged impermissible statements. The defense did not specifically argue that there was a discovery violation and the court should exclude the video under Rule 16.

[¶50] The trial court, in making its ruling on the admission of the video, first concluded that the video, in its entirety was admissible, after conducting the necessary analysis pursuant to Rule 404(b) of the North Dakota Rules of Evidence, implicitly finding that the statements regarding the sex acts in Ward County were such evidence. The Court wanted the entire video admitted, not the edited version.

[¶51] On the next morning of trial, the court considered the admission of the video again. (Trans. P. 93-98). The trial court now indicated that the State was to seek admission of the redacted version of the forensic interview. In reaching this conclusion the trial court states:

THE COURT: And I am concerned that this - - if this gets - - and, listen, I'm not going to - - I'll be honest with you both. I don't want this to have to be appealed and then brought back and then now she's eight or nine, and then have do it a third time. (referring to the child

victim having to testify) . . . I'm going to allow the [forensic interview video] evidence in, but I'm going to give a cautionary instruction and a limiting instruction. And it's going to be redacted to the prior bad acts, out of an abundance of caution for this little girl.

(Trans. P. 97 L. 4-17). The court, throughout its evaluation of the admissibility of the videos, indicated that it was concerned about the effect of the Aabrekke case on the issue. See generally, 2011 ND 131, 800 N.W.2d 284.

[¶52] The trial court, on its own, mentally reengineered the State's position for originally indicating it had prepared the redacted versions of the videos, "to safeguard the proceedings herein." (Trans. P. 15 L.1). The Court ordered the State to redact from the full version of the recording all of the statements regarding sexual acts that had occurred in Ward County. As the State had already prepared such an exhibit, that exhibit is what was eventually provided to the jury. If the State had not initially prepared it, there would surely have been a scramble mid trial to redact what the court ultimately concluded should be redacted.

[¶53] "The normal remedy for an otherwise admissible document containing inappropriate information is redaction." State v. Grant, 2009 ND 210, ¶ 21, 776 N.W.2d 209. Out of an abundance of caution, the trial court concluded that the statements made by A.Z. during the forensic interview were inappropriate information contained in an otherwise admissible recording and ordered the statements be redacted. The video previously prepared by the State just so happened to comply with the court's order. It is imperative to note that the defense did not object during the playing of the redacted recording to the jury indicating the State had failed to redact any statements subject to the court's order.

[¶54] The State did not commit a discovery violation and as such the relief requested in this appeal should be denied. See State v. Muhle, 2007 ND 131, ¶ 24, 737 N.W.2d 636 (“Although the trial court may impose sanctions for a failure to comply with Rule 16, including prohibiting the delinquent party from introducing into evidence the material not disclosed under N.D.R.Crim. P. 16(d)(2), before the issue of sanctions becomes relevant there must be a threshold determination that Rule 16 was violated.”).

[¶55] *ii. Even if the State did commit a discovery violation for failing to provide the defense with a copy of the redacted recording, Bradshaw has not alleged or shown that he was prejudiced by the violation.*

[¶56] Even if the State has committed a discovery violation, the defense has not alleged or shown that Bradshaw was prejudiced by the State preparing the redacted version prior to trial. Bradshaw merely alleges in his brief at paragraph 34 that a copy of the redacted video was material to prepare for defense. There is no assertion as to how he was prejudiced by not receiving the redacted version pretrial considering Bradshaw had a copy of the full recording.

[¶57] The State fails to see any prejudice that could arise from the State not seeking to admit what the State argues is otherwise admissible evidence regarding the sexual acts that occurred in Ward County. This becomes exponentially more perplexing when the defense objects to the video being admitted in its entirety because it contains the same statements the State offered to originally exclude in the proposed redacted version. The defense acknowledges they did not desire for the statements regarding sexual acts occurring in Ward County to be presented to the jury as they contended those statements were impermissible prior bad act evidence.

[¶58] At best, Bradshaw argues he was prejudiced by unfair surprise of the redacted video. “‘The proper remedy for unfair surprise is a continuance,’ but one must be requested.” Muhle, 2007 ND 131, ¶ 20, 737 N.W.2d 636 (quoting State v. Hirschhorn, 2002 ND 36, ¶ 9, 640 N.W.2d 439). There was no request by Bradshaw in this matter for a continuance to review the State’s proposed redacted video.

[¶59] Further, after the trial court’s review of the issue, the court ordered that the video could be played but was to be redacted to any prior bad act evidence out of an abundance of caution. If when the State played its redacted version to the jury, it contained any impermissible statements subject to the court’s order to exclude prior bad act statements, the defense surely could have and would have objected. There is no objection in the record during the playing of the video.

[¶60] Further, lack of significant prejudice on behalf of Bradshaw can be shown by the trial court’s erroneous conclusion, on the side of caution, that the statements regarding the sexual acts occurring in Ward County were that kind of evidence contemplated by Rule 404(b) of the North Dakota Rules of Evidence. This Court has repeatedly stated that “prior acts of sexual abuse” are not always independent acts, but are evidence of activity in furtherance of the same criminal activity and that such evidence is not 404(b) evidence. State v. Paul, 2009 ND 120, ¶ 25, 2009 N.W.2d 416; see also, State v. Aabrekke, 2011 ND 131, ¶ 12, 800 N.W.2d 284, State v. Christensen, 1997 ND 57, 561, N.W.2d 631, State v. Dargbeh, 2022 ND 3, ¶ 12, 969 N.W.2d 144 (affirming the rationale in Paul and Christensen stating: “we held that evidence about prior sexual abuse and touching perpetrated by the defendants against their victims was not 404(b) evidence but instead was evidence of activity in furtherance of the charged criminal activity).

[¶61] In this case, the statements made by A.Z. and excluded by the court were exactly this type of admissible evidence; evidence that the grooming process had begun prior to the charged acts in McHenry County, that they progressed to the acts of forcing the victim to engage in oral sex and ultimately to the act of Bradshaw putting his boy parts in A.Z.'s girl parts in McHenry County. These were not independent prior bad acts and statements regarding these acts should have been allowed by the trial court. The court's order to exclude them was beneficial, not prejudicial, to Bradshaw.

[¶62] If Bradshaw was of the belief at trial that more of the video should have been presented to the jury, he had the ability to seek that more of the video be presented to the jury. See generally, State v. Muhammad, 2019 ND 159, 931 N.W.2d 181.

[¶63] Even if there was a discovery violation, Bradshaw has failed to allege or make a sufficient showing of prejudice. "If the defendant fails to show he was significantly prejudiced by a discovery violation, a [district] court's failure to exclude evidence or impose other sanctions under N.D.R.Crim.P. 16(d)(2) does not constitute an abuse of discretion." Ramstad, 2003 ND 41, ¶ 26, 658 N.W.2d 731.

[¶64] *iii. Whether there was a discovery violation was not preserved for appeal.*

[¶65] The State further contends that the issue of whether the court should have excluded the redacted video of the forensic interview was a discovery violation sanction was not sufficiently preserved for appeal. Nowhere in the record is there a request that the court exclude the video on the grounds that the State committed a discovery violation. Nor did Bradshaw seek a sanction at trial for a discovery violation pursuant to Rule 16. The issue was also not raised in the Bradshaw's motion for a new trial.

[¶66] While that State did provide a copy of all discovery materials in its possession in this case to Bradshaw, including the full unredacted video of the forensic interview, the record is devoid of any written request for such discovery; the State having provided it to Bradshaw to ensure the integrity of the case.

[¶67] As this issue was not adequately preserved for appeal, the relief requested by Bradshaw should be denied.

[¶68] **VIII. CONCLUSION**

[¶69] Wherefore, for the reasons stated herein, the State respectfully requests that this Court deny the relief requested by Bradshaw and summarily affirm the Judgment of the District Court.

Dated this 14th day of April, 2022.

/s/Joshua E. Frey

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[¶70]

IX. CERTIFICATE OF COMPLIANCE

[¶71] I, Joshua E. Frey, the undersigned attorney hereby certifies that the Brief of Appellee is in compliance with Rule 32 of the North Dakota Rules of Appellate Procedure and the Appellee Brief contains 21 pages, 22 pages including the Certificate of Compliance.

Dated this 14th day of April, 2022.

/s/Joshua E. Frey

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**IN THE SUPREME COURT
OF THE STATE OF NORTH DAKOTA**

State of North Dakota,)	
)	Supreme Court No.: 20210306
Plaintiff/Appellee)	
)	
vs.)	
)	District Court No.:25-2019-CR-0165
Connor Bradshaw,)	
)	
Defendant/Appellant.)	

CERTIFICATE OF SERVICE

¶1 I, Joshua E. Frey, do hereby certify that on April 14, 2022, I served the following document(s):

- 1) Brief of Appellee

on the Appellant herein, Connor Bradshaw, by and through his attorney of record, Benjamin C. Pulkrabek, by emailing pursuant to North Dakota Rule of Appellate Procedure 25 to:

Pulkrabek@lawyer.com

and by electronically filing said documents through the court’s electronic filing system.

Dated this 14th day of April, 2022.

/s/Joshua E. Frey

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