

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

239

KA 23-00808

PRESENT: WHALEN, P.J., BANNISTER, SMITH, NOWAK, AND DELCONTE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KENNETH T. MOUNTZOUROS, DEFENDANT-APPELLANT.

ALAN P. REED, BATH, FOR DEFENDANT-APPELLANT.

Appeal from a judgment of the Livingston County Court (Kevin Van Allen, J.), rendered April 18, 2023. The judgment convicted defendant, upon a jury verdict, of sexual abuse in the first degree, sexual abuse in the second degree, and forcible touching (two counts).

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting him, upon a jury verdict, of one count each of sexual abuse in the first degree (Penal Law § 130.65 [4]) and sexual abuse in the second degree (§ 130.60 [2]) and two counts of forcible touching (§ 130.52 [1]). We affirm.

Defendant contends that the People's pretrial motion seeking to introduce certain uncharged incidents of sexual abuse committed by defendant against the victim as *Molineux* evidence was an effective concession by the People that the indictment was facially duplicitous. We reject that contention. "An indictment is duplicitous when a single count *charges* more than one offense" (*People v Allen*, 24 NY3d 441, 448 [2014] [internal quotation marks omitted and emphasis added]). *Molineux* evidence, conversely, regards a defendant's *uncharged* crimes or bad acts, admitted under an exception to the general rule prohibiting such proof (see *People v Telfair*, 41 NY3d 107, 114 [2023]). Thus, the People's attempt to introduce uncharged acts of sexual abuse as *Molineux* evidence did not reflect—or, as defendant contends, effectively result in a concession—that the indictment was facially duplicitous. To the extent that defendant raises other contentions regarding the alleged duplicity of the indictment, defendant failed to preserve those contentions for our review (see generally *Allen*, 24 NY3d at 449-450; *People v Woods*, 221 AD3d 1415, 1416 [4th Dept 2023], *lv denied* 40 NY3d 1095 [2024]).

To the extent that defendant contends that the time period alleged in count 1 of the indictment, which charged him with sexual abuse in the first degree, rendered that count defective and subject

to dismissal because it included a time period after which the subject child turned 13 years old, we conclude that the contention lacks merit (see *People v Carter*, 147 AD3d 1514, 1515 [4th Dept 2017], *lv denied* 29 NY3d 1030 [2017]). Count 1 charged defendant with sexual abuse in the first degree by name, with reference to the relevant section of the Penal Law as well as the relevant subdivision containing the age element (see *id.*). In addition, count 1 specifically alleged that defendant committed the act against a child who was, at the time, less than 13 years old, and that allegation was not negated by inclusion of a period of time when the victim was 13 years of age or older (see *id.*).

We likewise reject defendant's contention that County Court erred in admitting in evidence the testimony of the victim regarding uncharged sexual abuse by defendant. Such evidence was admissible in this case "to complete the narrative of the events charged in the indictment . . . , and it also provided necessary background information" (*People v Workman*, 56 AD3d 1155, 1156 [4th Dept 2008], *lv denied* 12 NY3d 789 [2009] [internal quotation marks omitted]; see *People v Bailey*, 239 AD3d 1375, 1375-1376 [4th Dept 2025], *lv denied* 44 NY3d 1009 [2025]; *People v Caballero*, 199 AD3d 1468, 1470 [4th Dept 2021], *lv denied* 38 NY3d 926 [2022], *reconsideration denied* 38 NY3d 949 [2022]). To the extent that defendant contends that the court's instructions to the jury regarding the *Molineux* evidence were inadequate, defendant failed to preserve that contention for our review (see generally *People v Hildreth*, 199 AD3d 1366, 1368 [4th Dept 2021], *lv denied* 37 NY3d 1161 [2022]).

Defendant next contends that he was denied a fair trial when the court provided an allegedly insufficient instruction in response to a prospective juror's comments during voir dire that allegedly tainted certain seated jurors and the pool of prospective jurors. By failing to object to the content of the court's instruction, however, defendant failed to preserve that issue for our review (see generally *People v Gaiter*, 224 AD3d 1384, 1384 [4th Dept 2024], *lv denied* 41 NY3d 1018 [2024], *reconsideration denied* 42 NY3d 970 [2024]; *People v Hall*, 194 AD3d 1372, 1373 [4th Dept 2021], *lv denied* 37 NY3d 972 [2021]; *People v Standsblack*, 162 AD3d 1523, 1527 [4th Dept 2018], *lv denied* 32 NY3d 1008 [2018]).

Defendant further contends that the court erred in permitting the People to elicit testimony from an expert regarding child sexual abuse accommodation syndrome (CSAAS). Contrary to defendant's contention, however, such testimony is admissible to explain to a jury why a child victim might, as did the victim in this case, delay in disclosing sexual abuse (see *People v Nicholson*, 26 NY3d 813, 828 [2016]; *People v Williams*, 20 NY3d 579, 584 [2013]; *People v Young*, 206 AD3d 1631, 1632 [4th Dept 2022]). To the extent that defendant contends that answers given during voir dire established that this particular jury panel did not require CSAAS testimony, the record of jury voir dire does not support defendant's contention (see *Nicholson*, 26 NY3d at 828-829).

Defendant's contention regarding the legal sufficiency of the evidence is not preserved for our review inasmuch as defendant made only a general motion for a trial order of dismissal (see *People v Fowler*, 239 AD3d 1444, 1444 [4th Dept 2025], *lv denied* 44 NY3d 1011 [2025]; see generally *People v Gray*, 86 NY2d 10, 19 [1995]).

Finally, although we conclude that defendant has raised no issue warranting reversal or modification of the judgment, we note that the Livingston County District Attorney failed to file a brief in opposition to this appeal and therefore failed "to perform [her] duty to the people of [her] county" (*People v Maul*, 218 AD3d 1236, 1243 [4th Dept 2023] [internal quotation marks omitted]; see *People v Coger*, 2 AD3d 1279, 1280 [4th Dept 2003], *lv denied* 2 NY3d 738 [2004]). The District Attorney is obligated to file a brief in opposition "unless the appeal is from a judgment which [s]he concedes should be reversed" (*Coger*, 2 AD3d at 1280 [internal quotation marks omitted]). No such concession has been made in this case.