

UTAH COURT OF APPEALS

State v. Newberry

Newberry, 2025 UT App 176 (Utah Ct. App. 2025) · No. 20230121-CA · Decided November 28, 2025

SUMMARY

The Utah Court of Appeals affirmed Robert Gilham Newberry’s conviction for unlawful sexual activity with a minor. The court rejected his challenges to the admission of other-acts evidence under Utah Rules of Evidence 404(b) and 403 and his ineffective-assistance claims concerning unobjected-to testimony and testimony about nude Snapchat photographs. The court also concluded that the cumulative-error doctrine did not warrant reversal.

CASE DETAILS

COURT	Utah Court of Appeals
WRITING FOR THE COURT	John D. Luthy; Ryan M. Harris; Ryan D. Tenney
JURISDICTION	Utah Court of Appeals
DECIDED	November 28, 2025
DOCKET	20230121-CA
DISPOSITION	affirmed
PROCEDURAL POSTURE	Newberry appealed his jury conviction for unlawful sexual activity with a minor, challenging the admission of evidence under Utah Rule of Evidence 404(b) and asserting ineffective assistance of counsel.
STANDARD OF REVIEW	Evidentiary rulings under Utah Rule of Evidence 404(b) are generally reviewed for abuse of discretion; interpretation of the Utah Rules of Evidence is reviewed for correctness. Ineffective-assistance claims raised for the first time on appeal are decided as a matter of law. Counsel's tactical decisions are evaluated under a strong presumption of reasonable professional assistance.
PRECEDENTIAL VALUE	published
PARTIES	Robert Gilham Newberry v. State of Utah

TOPICS

- evidence
- criminal procedure
- hearsay
- appellate procedure
- standard of review

PRACTICE AREAS

criminal law

criminal procedure

evidence

ineffective assistance of counsel

appellate procedure

QUESTIONS PRESENTED

1. Whether the district court erred by admitting evidence of Newberry's uncharged masturbation and touching incidents under Utah Rules of Evidence 404(b) and 403.
2. Whether trial counsel rendered ineffective assistance by failing to object to testimony about additional uncharged sexual conduct.
3. Whether trial counsel rendered ineffective assistance by eliciting testimony that Becca and Newberry exchanged nude photographs through Snapchat.
4. Whether cumulative error required reversal.

HOLDINGS

1. Evidence of uncharged but inextricably intertwined sexual conduct against the same child victim is admissible as intrinsic evidence when it shows how the defendant groomed the victim and bears directly on the charged sexual offense; such evidence is not subject to Rule 404(b) because it is not extrinsic 'other' acts evidence.
2. Counsel did not perform deficiently by failing to object to testimony about additional uncharged sexual conduct because an objection reasonably could have been viewed as futile in light of the district court's admissibility ruling and the governing Utah law.
3. Counsel did not render ineffective assistance by eliciting testimony about the exchange of nude photographs because the questioning was a deliberate and reasonably supportable trial strategy aimed at undermining Becca's credibility and highlighting the lack of corroborating phone evidence.
4. The cumulative-error doctrine did not warrant reversal because the court identified no prejudicial error and, at most, one presumed but nonprejudicial error.

KEY QUOTATIONS

“And it is now most properly denominated intrinsic evidence, to which rule 404(b) simply does not apply, so long as the uncharged acts are “inextricably intertwined with the crime that is charged, or if both the charged crime and the prior act are considered part of a single criminal episode.”” (¶ 44)

“Accordingly, we reaffirm that evidence of uncharged but inextricably intertwined sexual conduct against the same child victim is admissible—as intrinsic evidence—because showing how the perpetrator groomed the victim bears directly on the charged sexual offense.” (¶ 46)

“The district court did not err in admitting Becca’s testimony regarding the masturbation incident and the touching incident. Counsel did not render ineffective assistance by not objecting to testimony regarding other incidents of inappropriate comments and contact between Becca and Newberry. Nor did Counsel render ineffective assistance by eliciting Becca’s testimony regarding her exchange of nude photos with Newberry. We therefore affirm Newberry’s conviction.” (¶ 61)

FACTUAL BACKGROUND

Fourteen-year-old Becca traveled with thirty-four-year-old Newberry during a family move from Kansas to Arizona and later traveled with him from Arizona to Utah. During the trips, Newberry made sexual comments, masturbated near Becca while she slept, digitally penetrated her, and engaged in other sexual conduct. In Utah, Newberry had sexual intercourse with Becca in his car, which formed the basis of the charged offense. Becca later disclosed the intercourse to her sister, who informed the grandparents and prompted a police investigation.

PROCEDURAL HISTORY

Newberry was charged with one count of unlawful sexual activity with a minor based on sexual intercourse with the victim in Utah. Before trial, the district court admitted evidence of two uncharged incidents involving the same victim: Newberry's masturbation-related statement and his digital touching of the victim. The jury convicted Newberry, and he timely appealed. The Utah Court of Appeals rejected his evidentiary and ineffective-assistance claims and affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Kufrin, 2024 UT App 86, 551 P.3d 416
- State v. Courtney, 2017 UT App 172, 424 P.3d 198
- State v. Biel, 2021 UT 8, 484 P.3d 1172
- Layton City v. Carr, 2014 UT App 227, 336 P.3d 587
- State v. Smith, 2025 UT App 35, 566 P.3d 811, cert. denied, 570 P.3d 660 (Utah 2025)
- State v. Reed, 2000 UT 68, 8 P.3d 1025
- State v. Verde, 2012 UT 60, 296 P.3d 673
- State v. Green, 2023 UT 10, 532 P.3d 930
- State v. Labrum, 2014 UT App 5, 318 P.3d 1151
- State v. Lucero, 2014 UT 15, 328 P.3d 841
- State v. Thornton, 2017 UT 9, 391 P.3d 1016
- State v. Main, 2021 UT App 81, 494 P.3d 1056
- State v. Truman, 249 P.3d 1169 (Idaho Ct. App. 2010)
- Old Chief v. United States, 519 U.S. 172 (1997)
- United States v. Betts, 911 F.3d 523 (8th Cir. 2018)
- State v. Ard, 361 So. 3d 473 (La. Ct. App. 2022)
- Chaparro v. State, 630 S.E.2d 645 (Ga. Ct. App. 2006)
- State v. Dinkins, 868 S.E.2d 181 (S.C. Ct. App. 2021)
- State v. Hayes, 46 P. 752 (Utah 1896)

- Strickland v. Washington, 466 U.S. 668 (1984)
- State v. Hararah, 2023 UT App 77, 534 P.3d 1129, cert. denied, 540 P.3d 79 (Utah 2023)
- State v. Hards, 2015 UT App 42, 345 P.3d 769
- State v. Soto, 2022 UT App 107, 518 P.3d 157
- State v. Miles, 2020 UT App 120, 472 P.3d 978
- State v. Whitchurch, 2024 UT App 108, 554 P.3d 1166, cert. denied, 564 P.3d 960 (Utah 2025)