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NO. COA01-1173

NORTH CAROLINA COURT OF APPEALS

Filed: 6 August 2002

STATE OF NORTH CAROLINA

v.

DENNIS ALEXANDER PLAYER

Randolph County  
Nos. 99 CRS 59, 5029-31,  
11330-31

Appeal by defendant from judgments entered 5 April 2001 by Judge Melzer A. Morgan, Jr. in Randolph County Superior Court. Heard in the Court of Appeals 15 July 2002.

*Attorney General Roy Cooper, by Assistant Attorney General Lisa C. Glover, for the State*

*T.C. McCahan for defendant-appellant.*

WALKER, Judge.

On 3 May 1999, defendant was indicted on charges of crime against nature, sexual activity by a substitute parent, and indecent liberties with a child. On 21 February 2000, defendant was also indicted on charges of manufacture and possession of wire, oral or electronic communication interception device and interception and disclosure of wire, oral, or electronic communications. The case was tried at the 2 April 2001 Criminal Session of Randolph County Superior Court.

The State presented evidence at trial which tended to show the following: The defendant married Tressa Davis Fox on 31 August 1996. Fox had two children from previous relationships, including a daughter, T, who was fourteen years old at the time of trial. Defendant and Fox also had a child together named Taylor.

Sometime in the spring of 1999, Linda Smith, a guidance counselor at T's school, heard rumors that T had a sexual encounter with a boy at the middle school. Eventually, T and her friend came to talk to Smith and T confirmed to Smith that she had sex with another student. Then, Smith testified that T stated "she had been having sexual encounters with [the defendant]." Smith called the Department of Social Services.

Michelle Robbins, a social worker with the Randolph County Department of Social Services (DSS), interviewed T regarding the alleged sexual abuse. T told Robbins that "when she was around eight years old her stepfather raped her." T further stated that she and defendant had oral and sexual intercourse "on a regular basis." DSS contacted the Randolph County Sheriff's Department regarding T's allegations. Lieutenant Thomas L. McIver interviewed T who told Lieutenant McIver that defendant had sexually abused her beginning when she was about eight years old and that the abuse included both sexual and oral intercourse. T stated that the last time defendant had sexual intercourse with her was sometime between Thanksgiving and Christmas in 1998. T told Lieutenant McIver that defendant "put his private part into my vagina" and "moved it in

and out." Lieutenant McIver prepared a written statement regarding the allegations, which was signed by T on 19 February 1999.

On 5 March 1999, Lieutenant McIver discovered a "device for hacking the telephone cord to a recorder" and a container that held a tape recorder beneath Fox's home. Defendant's fingerprints were found on the device, and defendant admitted at trial to purchasing the device because he "needed information to find out something that I needed to find out."

At trial, defendant sought to introduce evidence that the allegations of the abuse did not arise until after defendant had confronted Fox about an adulterous relationship with Charles Norris and that the allegations were part of a plan to "get [defendant] out of the picture" so Fox could continue with her relationship with Norris. The State moved to exclude the evidence. Fox then testified on *voir dire* that the relationship with Norris did not begin until after T made the allegations against defendant. Fox also testified that she never told T to fabricate the allegations. Defendant then testified on *voir dire* that he confronted Fox regarding the adulterous relationship and threatened to take custody of the couple's child, to which Fox responded that she would "ruin" him first. The trial court sustained the State's objection to defendant's proffered testimony.

Defendant was convicted of crime against nature, sexual activity by a substitute parent, taking indecent liberties with a child, first degree rape of a child, assembling or possessing an electronic communication interception device, and interception of

wire or electronic communication without consent. Defendant was sentenced to a term of 288 to 355 months in prison for the rape conviction, a consecutive term of 19 to 23 months for the indecent liberties conviction, and a consecutive term of 29 to 44 months for the sexual activity by a substitute parent conviction. Defendant also received consecutive suspended sentences for his convictions on the charges of crime against nature, possession of an electronic communication device, and interception of electronic communication. He was placed on supervised probation for sixty months. Defendant appeals.

Defendant's sole argument on appeal is that the trial court erred by granting the State's motion *in limine* and prohibiting him from presenting evidence regarding the victim's mother's bad character. Defendant attempted to present evidence that his wife and stepdaughter fabricated the allegation of sexual abuse in order to keep him from gaining custody of his daughter, as well as gaining an unequal division of their marital assets due to her marital misconduct. Defendant contends that he had evidence that his wife was having an affair and that when she was confronted by defendant, she threatened to ruin him.

After careful review of the record, briefs and contentions of the parties, we find no error. In the instant case, the trial court determined that the testimony sought to be introduced by defendant was not relevant and was barred by Rule 403. Our Supreme Court has stated that:

Whether to exclude relevant evidence pursuant to Rule 403 is a decision within the trial

court's discretion and will remain undisturbed on appeal absent a showing that an abuse of discretion occurred. "A trial court may be reversed for an abuse of discretion only upon a showing that its ruling was so arbitrary that it could not have been the result of a reasoned decision."

*State v. Ward*, 354 N.C. 231, 264, 555 S.E.2d 251, 272 (2001) (citations omitted).

This case is similar to *State v. Knight*, 93 N.C. App. 460, 378 S.E.2d 424, *disc. rev. denied*, 325 N.C. 230, 381 S.E.2d 789 (1989). In *Knight*, the defendant sought to introduce evidence to support his theory that his wife fabricated the allegations that defendant had sexually abused his stepdaughters in an attempt to "rid herself of defendant." The trial court excluded the evidence and this Court found no error. The Court concluded that the evidence was irrelevant and barred by Rule 403, noting that the evidence "would only have muddled the evidence worthy of the jury's consideration." *Id.* at 466, 378 S.E.2d at 427. Persuasive to the Court's decision was the fact that the only evidence to support defendant's "subornation theory" came from defendant. *Id.* at 465, 378 S.E.2d at 426. Also, the Court stated that it was "crucial to note" that the allegations of sexual abuse were initiated by a school counselor and not by defendant's wife. The Court stated that "[t]his fact alone is key in refuting defendant's theory and in rendering the evidence submitted in support thereof irrelevant." *Id.* *Cf. State v. Helms*, 322 N.C. 315, 367 S.E.2d 644 (1988).

In the case *sub judice*, in support of its decision barring defendant's evidence, the trial court stated that: (1) "there's no

evidence of an adulterous relationship before the child made the report of the activity between herself and the defendant to a school guidance counselor;" and (2) there was no evidence of any confrontation between defendant and his wife. Thus, as in *Knight*, the only evidence to support defendant's theory was his own self-serving testimony. Moreover, as in *Knight*, defendant's fabrication theory was refuted by the fact that the investigation into the alleged sexual abuse was initiated by a school counselor and not by defendant's wife. The victim only revealed the abuse after being confronted by her counselor on an unrelated matter. Accordingly, we conclude the trial court did not abuse its discretion.

No error.

Judges THOMAS and BIGGS concur.

Report per Rule 30(e).