NO. COA11-153
NORTH CAROLINA COURT OF APPEALS

Filed: 6 December 2011

IN THE MATTER OF: M.C.

Durham County
No. 09 JB 000269

Appeal by juvenile from orders entered 10 February 2010 and 10 June 2010 by Judge Marcia H. Morey in Durham County District Court. Heard in the Court of Appeals 18 August 2011.

Attorney General Roy Cooper, by Special Deputy Attorney General Belinda A. Smith, for the State.

Paul Y. K. Castle for the juvenile.

ELMORE, Judge.

M.C. (the juvenile) argues that the trial court erred by admitting testimony by a witness when the prosecution did not turn over documentation of its pretrial interviews with that witness. The juvenile asserts that the prosecution violated the rules of discovery as set forth in N.C. Gen. Stat. § 15-903(A)(1) and that the trial court compounded the error by

admitting the testimony over objection. Because § 15-903(A)(1) does not apply to this case, we disagree.

On 23 September 2009, the State filed two delinquency petitions against the juvenile in Durham County. The petitions alleged that the juvenile had committed first degree rape and first degree kidnapping when he was fourteen years old. At the adjudication hearing, the State called the victim's nephew, J.C., as a witness. The trial court asked the prosecutor if she had any written interview statements made by this witness, and the prosecutor replied that she did not. The juvenile objected, and the trial court overruled the objection.

On appeal, the juvenile points to N.C. Gen. Stat. § 15A-903(a)(1) to support his argument that the prosecutor was required to reduce any conversation with a witness to writing and to turn over that writing to the defense as part of discovery. Section 15A-903(a)(1) requires the State to reduce oral statements to written or recorded form, "except that oral statements made by a witness to a prosecuting attorney outside the presence of a law enforcement officer or investigatorial assistant" are not "required to be in written or recorded form unless there is significantly new or different information in

the oral statement from a prior statement made by the witness." N.C. Gen. Stat. § 15A-903(a)(1) (2009).

However, we need not determine if this exception applies to the case at hand because the entire statute section does not apply to the case at hand. Section 15A-901, the first section in Article 48, "Discovery in the Superior Court," states that "[t]his Article applies to cases within the original jurisdiction of the superior court." N.C. Gen. Stat. § 15A-901 (2009). The superior court does not have original jurisdiction over juvenile delinquency matters. Instead, the district court has original jurisdiction over delinquent juveniles. N.C. Gen. Stat. §§ 7B-1501(4), 7B-1601(a) (2009). Accordingly, § 15A-903 does not apply to juvenile delinquency cases.

The Juvenile Code has its own discovery provision, N.C. Gen. Stat. § 7B-2300, which does not require the State to reduce oral statements to written or recorded form. *See* N.C. Gen. Stat. § 7B-2300 (2009). On appeal, the juvenile does not make any argument as to § 7B-2300, but, upon our own review of the statute, we conclude that the trial court did not err by permitting the State to offer a witness whose prior conversation with the prosecutor was not reduced to writing or recording and turned over to the juvenile.

Accordingly, we hold that the juvenile received a trial free from error.

As a final note, we admonish counsel for failing to follow Rules 3, 3.1, 4(e), and 9 of our Rules of Appellate Procedure. Rule 3(b)(1) protects the identities of persons under the age of eighteen in juvenile matters pursuant to N.C. Gen. Stat. § 7B-2602, including this matter. *See* N.C.R. App. P. 3(b)(1) (2011). Rule 3(b) states that "the identity of persons under the age of eighteen at the time of the proceedings in the trial division shall be protected pursuant to Rule 3.1(b)." *Id.* Rule 3.1(b) requires the parties to reference juveniles in covered cases only by their initials or pseudonyms in briefs, petitions, and other filings. N.C.R. App. P. 3.1(b) (2011). These substitution and redaction requirements do not apply to settled records on appeal, but any filing "not subject to substitution and redaction requirements shall include the following notice on the first page of the document immediately beneath the title and in uppercase typeface: FILED PURSUANT TO RULE [3(b)(1)] . . .; SUBJECT TO PUBLIC INSPECTION ONLY BY ORDER OF A COURT OF THE APPELLATE DIVISION." *Id.*; *see also* N.C.R. App. P. 9(a) (2011). In addition, Rule 3.1(b) provides:

> Filings in cases governed by this rule that are not subject to substitution and

> redaction requirements will not be published on the Court's electronic filing site and will be available to the public only with the permission of a court of the appellate division. In addition, the juvenile's address and social security number shall be excluded from ***all*** filings, documents, exhibits, or arguments with the exception of sealed verbatim transcripts submitted pursuant to Rule 9(c).

Id. (emphasis added).

Here, counsel failed to include the required notice on any of the briefs or the record. As a result, the record, which contains identifying information about the juvenile and his underage rape victim, was published on the Court's electronic filing site.[1] Counsel also failed to remove the juvenile's address from the record. Protecting the identity of covered juveniles on appeal is paramount, particularly when one of the juveniles is an underage rape victim, ***see*** N.C.R. App. P. 4(e) (2009). Counsel should take care not to repeat these errors in the future.

No error.

Judges CALABRIA and STEELMAN concur.

Report per Rule 30(e).

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[1] The record has since been removed from the electronic filing site.