NO. COA07-1155

NORTH CAROLINA COURT OF APPEALS

Filed: 1 July 2008

STATE OF NORTH CAROLINA

v. Brunswick County
Nos. 05 CRS 57170
06 CRS 878
CHRISTOPHER WILLIAMS 06 CRS 4421

Appeal by Defendant from judgments entered 5 February 2007 by Judge Ola M. Lewis in Brunswick County Superior Court. Heard in the Court of Appeals 19 March 2008.

Attorney General Roy Cooper, by Assistant Attorney General Laura E. Crumpler, for the State.

Hosford & Hosford, P.C., by Geoffrey W. Hosford and R. Clarke Speaks, for Defendant.

STEPHENS, Judge.

Defendant Christopher Williams was indicted on three counts of indecent liberties with a child, six counts of statutory rape, and one count of solicitation of a child by computer to commit a sexual act. The case came on for trial at the 29 January 2007 Criminal Session of Brunswick County Superior Court.

During the trial, the State took a voluntary dismissal of two of the counts of indecent liberties. After hearing the State's evidence, Defendant moved to dismiss the remaining charges. The trial court denied the motion. Defendant then presented evidence

and subsequently renewed his motion to dismiss, which was also denied.

The jury found Defendant guilty of one count of statutory rape, one count of indecent liberties, and one count of solicitation of a child by computer to commit a sexual act.

The trial court sentenced Defendant to an active term of 256 to 317 months in prison, followed by a suspended 6 to 8 month term, with 5 years of supervised probation. Defendant appeals.

I. Evidence at Trial

The victim ("Jennie")[1] met Defendant in the summer of 2005 at the First Baptist Church of Boiling Springs Lakes where Defendant worked in the children's ministry. Defendant was 27 yeas old at the time and Jennie was 13. Defendant and Jennie began speaking regularly at church and exchanged email addresses. In June of 2005, the two started communicating via telephone and computer.

On 14 June 2005, Defendant and Jennie planned to attend a church meeting together. After Defendant picked Jennie up from her house, they went to the firehouse and kissed. They then went to Defendant's house where they saw Defendant's father before going to the church meeting for about 45 minutes. After leaving the meeting, they went to a lot in the woods where Defendant put out a blanket, got down on it, and suggested that Jennie take off her clothes. They then had sexual intercourse.

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[1] In consideration of this Court's priority of protecting the identity of minor children, a pseudonym has been used to identify the victim.

A week or two after this encounter, Defendant and Jennie planned for her to spend the night with him. Jennie told her parents she was staying overnight at a girlfriend's house, and then walked up the road to Mill Creek Baptist Church where Defendant picked her up. They first drove to the beach, and then to Defendant's parents' house, where Defendant lived upstairs. Defendant and Jennie had sexual intercourse and slept at Defendant's parents' house. Defendant drove Jennie home the next day about mid-morning.

Jennie began sneaking out at night to meet Defendant after her parents had fallen asleep. Defendant would pick her up down the street from her house. Jennie testified that on one occasion they had intercourse at Mill Creek Baptist Church on the playground. On another occasion, they had intercourse at the building site of the First Baptist Church of Boiling Springs Lakes. The two began meeting once or twice a week until November, and Jennie testified that every time they met, they had intercourse. Defendant also told Jennie that it "would be nice to have a threesome" with her younger sister, who was six or seven at the time.

Around Thanksgiving, Jennie's parents caught her trying to sneak out of the house. They went to the Brunswick County Sheriff's Department and eventually took Jennie with them. In December 2005, Detective Vincent Saponaro of the Brunswick County Sheriff's Office interviewed Defendant. The interview was recorded by videotape. In the interview, when Defendant was asked if he had sex with Jennie, Defendant answered, "Yes, sir; I did."

II. Extending the Court Session

By his first assignment of error, Defendant contends the judgments of conviction are null and void because they resulted from jury verdicts entered out of term without any orders extending the term of Superior Court.

A trial court's extension of a session of court is governed by N.C. Gen. Stat. § 15-167, which provides:

> Whenever a trial for a felony is in progress on the last Friday of any session of court and it appears to the trial judge that it is unlikely that such trial can be completed before 5:00 P.M. on such Friday, the trial judge may extend the session . . . . Whenever a trial judge continues a session pursuant to this section, he shall cause an order to such effect to be entered in the minutes, which order may be entered at such time as the judge directs, either before or after he has extended the session.

N.C. Gen. Stat. § 15-167 (2005).

In *State v. Locklear*, 174 N.C. App. 547, 621 S.E.2d 254 (2005), the felony trial was not completed by the last Friday of the criminal session and the trial court extended the trial to the following Monday. Although the record did not contain a written order specifically referencing N.C. Gen. Stat. § 15-167 and stating that the session was extended thereunder, this Court determined that there were "sufficient statements made by the trial court in the record to comply with N.C. Gen. Stat. § 15-167 and to effectively extend the court session." *Id.* at 550, 621 S.E.2d at 256. Those statements were reflected in the transcript from Friday, 9 July 2004, as follows:

THE COURT: . . . It is Friday afternoon, after three o'clock[.] . . . So, in my discretion, and I do apologize that you will need to come back on Monday, but, in my discretion, I'm going to let you go for the day but you will need to be back here on Monday. Now, on Mondays, we don't start at 9:30. We start at 10:00. And what will happen on Monday, that should be the last day, one way or the other in this case. But, as I told you at the outset, I can't make any guarantees, one way or the other, but you do need to be here Monday. You do need to be here at 10:00 o'clock. . . . As I indicated, please be mindful that the starting time on Monday is 10:00 instead of 9:30. When you come back on Monday, I ask that you come back to the same room that you've been coming back to.

. . . .

THE COURT: It will give you an opportunity over the weekend to look at it to just make sure there's no error, omission or anything else that we need to clarify Monday morning. . . . Anything else we need to take up today? State or Defendant?

[THE STATE]: No, Your Honor.

[DEFENDANT]: No, Your Honor.

THE COURT: All right then, as I understand it, Monday morning we will basically conclude the charge conference and at that time move forward.

. . . .

THE COURT: . . . Anything else we need to take up at this time?

[THE STATE]: No, Your Honor.

[DEFENDANT]: No, sir.

THE COURT: All right, have a good weekend and I'll see you Monday.

(Court is recessed for the day at 4:00 p.m.)

The trial court reconvened the following Monday at 10:00 a.m. The transcript from Monday, 12 July 2004, read in pertinent part:

> (July 12, 2004 - 10:00 a.m.)
>
> THE COURT: Good morning. Let the record reflect we are back in court. Twelve members of the jury are here but they are not in the courtroom.
>
> . . . .
>
> THE COURT: All right. The charge conference is closed. Are there any other issues to take up on the record at this time before we proceed with closing arguments? Anything from the State?
>
> [THE STATE]: No, sir.
>
> THE COURT: Anything from the Defendant?
>
> [DEFENDANT]: No, Your Honor.

Id. at 550-51, 621 S.E.2d at 256-57. This Court explained that "[w]hile it would have been the better practice for the trial court to expressly set forth in the minutes a formal order extending the court session, we hold that the trial court, in making repeated announcements in open court without objection from defendant, satisfied N.C. Gen. Stat. § 15-167." *Id.* at 551, 621 S.E.2d at 257.

In this case, the jury was impaneled during the 29 January 2007 criminal session. The session was set to expire the afternoon of Friday, 2 February 2007. However, as the trial was not finished by that point, the trial judge extended the session to the following Monday, 5 February 2007. The transcript from Friday, 2 February 2007, reads in pertinent part:

> THE COURT: All right, ladies and gentlemen of the jury, at this time we are going to take the weekend recess. The court's going to ask you to please return Monday morning at 9:30. You'll convene in the jury room and then we'll call you in and resume the trial.
>
> . . . .
>
> (The jury is recessed for the weekend at 4:15 P.M. and leaves the courtroom.)
>
> THE COURT: Anything else from the State, outside the presence of the jury?
>
> [THE STATE]: Your honor, we know it's the defendant's decision not to testify; I just think that there should be inquiry.
>
> THE COURT: Yes, Ma'am. Anything else from the defendant?
>
> [DEFENDANT]: Not at this time, Your Honor.
>
> . . . .
>
> THE COURT: Mr. Sheriff, if you will be so kind, sir, as to recess us until Monday morning at 9:30.
>
> (The court is recessed for the day at 4:30 P.M.)

The trial court reconvened the following Monday at 9:00 a.m. The transcript from Monday, 5 February 2007, reads in part:

> (February 5, 2007 - 9:00 A.M.)
>
> Charge Conference
>
> . . . .
>
> THE COURT: Okay. Now the jury - do we have all of the jury here?
>
> . . . .
>
> BAILIFF: The jurors are here, Judge.
>
> THE COURT: They are here?

> BAILIFF: Yes, Ma'am.
>
> . . . .
>
> THE COURT: . . . They're all here?
>
> BAILIFF: Yes, Ma'am.
>
> THE COURT: Okay. Is the State ready with it's [sic] closing?
>
> [THE STATE]: Yes, Your Honor.
>
> THE COURT: And is the defendant ready with closing?
>
> [DEFENDANT]: Yes, Your Honor.
>
> . . . .
>
> THE COURT: Okay. Let's get the jury in, please, sir. . . .
>
> . . . .
>
> . . . You can get the jury.
>
> (The jurors return to the courtroom.)
>
> THE COURT: Good morning, Ladies and Gentlemen.
>
> JURORS: Good morning, Your Honor.
>
> THE COURT: I trust that you had a good weekend. Thank you for your patience with us this morning. Ladies and Gentlemen, all of the evidence has been presented. It is now time for the final arguments of the lawyers.

Here, as in *Locklear*, even though the record did not contain a written order specifically referencing N.C. Gen. Stat. § 15-167 and stating that the session was extended thereunder, the trial court made numerous references in front of the jury and the attorneys about extending the session to the following Monday. While we agree that "it would have been the better practice for the trial court to expressly set forth in the minutes a formal order

extending the court session," *Locklear*, 174 N.C. App. at 551, 621 S.E.2d at 257, we conclude that, as in *Locklear*, in making repeated announcements in open court without objection from Defendant, the trial court satisfied the requirements of N.C. Gen. Stat. § 15-167 and effectively extended the court session. This assignment of error is overruled.

III. Motion to Dismiss

Defendant next argues that the trial court erred in denying his motion to dismiss for insufficiency of the evidence because the State failed to present any evidence that the Christopher Williams sitting at the defense table was the perpetrator of the offenses charged.

When a defendant moves to dismiss based on insufficiency of the evidence, the trial court must determine whether there is substantial evidence (1) of each element of the crime charged and (2) that the defendant is the perpetrator. *State v. Scott*, 356 N.C. 591, 573 S.E.2d 866 (2002). "Substantial evidence is evidence from which any rational trier of fact could find the fact to be proved beyond a reasonable doubt." *State v. Alston*, 131 N.C. App. 514, 518, 508 S.E.2d 315, 318 (1998) (quotation marks and citation omitted). "The evidence must be viewed in the light most favorable to the State, and the State must receive every reasonable inference to be drawn from the evidence." *State v. King*, 343 N.C. 29, 36, 468 S.E.2d 232, 237 (1996) (citation omitted).

At the beginning of the trial, the trial court stated to the jury:

> I inform you that the Defendant in this case is Mr. Christopher Williams. Sir, if you'll please stand and face the members of the jury so that they can see you? Thank you, very much. You may be seated.

The trial court went on to describe the charges against Defendant and to name Jennie as the victim.

At the beginning of direct examination of Jennie, the prosecutor asked, "[D]o you know the [D]efendant?" Jennie replied, "Yes, ma'am; I do." Jennie then testified that she met Defendant in the summer of 2005 in the children's ministry at her church, the First Baptist Church in Boiling Springs Lakes. At first they just exchanged "random passing comments[,]" but then "it became more of like a thing that we would do every week[.]" They exchanged email addresses and telephone numbers and "if . . . he was going to see me, and I was going to go over to his house and we were going to have sex, we'd plan it over the internet or over the phone." She further testified that on 14 June 2005, Defendant picked her up at her house to drive her to a church meeting. They stayed at the meeting for about 45 minutes and then "went to this lot in the woods and [] had sex." When asked who she had sex with, Jennie replied, "Chris." Jennie's friend ("Colby")[2] testified that he knew Defendant from the youth ministry at the First Baptist Church in Boiling Springs Lakes. Colby also testified that Jennie admitted that she was talking to "Chris" on the computer and that she had been having sex with Defendant.

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[2] A pseudonym has been used to identify this witness.

Additionally, Jennie's mother testified that she knew Defendant from the First Baptist Church in Boiling Springs Lakes. She testified that in the summer of 2005, Defendant had picked Jennie up from their house to take her to a church meeting, that she was concerned that Jennie and Defendant had been emailing each other, and that Jennie had told her that "the person she was having sex with was Chris."

We conclude that this evidence is substantial evidence from which any rational trier of fact could find beyond a reasonable doubt that the Christopher Williams sitting at the defense table was the perpetrator of the charged offenses. Defendant's argument is without merit and is thus overruled.

IV. Polling of the Jury

By Defendant's next assignment of error, he contends the trial court committed reversible error by allowing the clerk to poll the jurors with one question as to whether they assented to the verdicts both in the jury room and in the courtroom, in violation of Article I, Section 24 of the North Carolina Constitution and N.C. Gen. Stat. § 15A-1238.

The North Carolina Constitution ensures to each criminal defendant the right to a unanimous jury verdict. N.C. Const. Art. I, § 24. As a corollary to this right, a defendant has a constitutional right, upon timely request, to have the jury polled. *State v. Young*, 77 N.C. 498, __ S.E. __ (1877). Furthermore, pursuant to N.C. Gen. Stat. § 15A-1238:

> Upon the motion of any party made after a verdict has been returned and before the jury

> has dispersed, the jury must be polled. The judge may also upon his own motion require the polling of the jury. The poll may be conducted by the judge or by the clerk by asking each juror individually whether the verdict announced is his verdict. If upon the poll there is not unanimous concurrence, the jury must be directed to retire for further deliberations.

N.C. Gen. Stat. § 15A-1238 (2007). The purpose of the jury poll is

> to give each juror an opportunity, before the verdict is recorded, to declare in open court his assent to the verdict which the foreman has returned, and thus to enable the court and the parties to ascertain *with certainty* that a unanimous verdict has been in fact reached and that no juror has been coerced or induced to agree to a verdict to which he has not fully assented.

State v. Asbury, 291 N.C. 164, 169, 229 S.E.2d 175, 177 (1976) (quotation marks and citation omitted). A court, in assuring the unanimity of verdicts, is concerned with each juror's assent to the verdict both in the jury room and then in open court. *Asbury*, *supra*.

In *State v. Norris*, 284 N.C. 103, 199 S.E.2d 445 (1973), this Court found the following questions sufficient to determine the juror's assent to the verdict at the relevant time periods:

> [COURT]. You have reported to the Court a verdict of guilty of rape and guilty of kidnapping. Was this your verdict?
>
> [JUROR]. Yes.
>
> [COURT]. Is this now your verdict?
>
> [JUROR]. Yes.
>
> [COURT]. Do you still agree and assent thereto?
>
> [JUROR]. Yes.

Id. at 107, 199 S.E.2d at 447-48.

In *Asbury*, although the clerk polled the jury using the above three questions, the Court determined that both "[t]he second and third questions referr[ed] to the present in-court state of mind of the juror" so only two questions were necessary to determine each juror's assent to the verdict in the jury room and in open court. *Asbury*, 291 N.C. at 170, 229 S.E.2d at 178.

In *State v. Rowsey*, 343 N.C. 603, 472 S.E.2d 903 (1996), *cert. denied*, 519 U.S. 1151, 137 L. Ed. 2d 221 (1997), the trial court properly conducted the jury poll[3] where the trial court polled each juror individually by asking, "[Y]our foreman has announced that the verdict of the jury is is [sic] that the defendant [] be sentenced to death, was that your verdict and do you still agree to that as being your verdict in this case?" *Id.* at 622, 472 S.E.2d at 913.

In this case, as in *Rowsey*, the clerk asked each juror, "Is this your verdict and do you still assent thereto?" Although Defendant contends that "[t]wo separate inquiries were required, pursuant to *Asbury* and *Norris*[,]" neither case law nor statute mandates the use of any specific method for polling the jury as long as each juror is polled individually, *State v. Boger*, 202 N.C. 702, 163 S.E. 877 (1932), in a manner "designed to find out if the

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[3] The trial court properly conducted the individual jury poll mandated by N.C. Gen. Stat. § 15A-2000(b) which states that "upon delivery of the sentence recommendation by the foreman of the jury, the jury shall be individually polled to establish whether each juror concurs and agrees to the sentence recommendation returned." N.C. Gen. Stat. § 15A-2000(b) (2007).

juror assented in the jury room and still assents in open court to the jury verdict." *Asbury*, 291 N.C. at 170, 229 S.E.2d at 178.

Here, the clerk posed a question to each juror individually that was designed to find out if the juror assented to the verdict in the jury room and in open court. Furthermore, there was no evidence that any of the jurors expressed any hesitation or confusion when polled by the clerk, and no evidence that any juror did not understand that he could dissent. Accordingly, the trial court properly conducted the individual jury poll and Defendant's argument is overruled.

V. Jury Instruction

Defendant next argues that the trial court erred in giving the jury an instruction on confessions rather than admissions. Jury instructions must be "based upon a state of facts presented by some reasonable view of the evidence." *State v. Lampkins*, 283 N.C. 520, 523, 196 S.E.2d 697, 699 (1973). This Court reviews the trial court's choice of jury instructions for abuse of discretion. *State v. Nicholson*, 355 N.C. 1, 558 S.E.2d 109, *cert. denied*, 537 U.S. 845, 154 L. Ed. 2d 71 (2002). "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. Wilson*, 313 N.C. 516, 538, 330 S.E.2d 450, 465 (1985) (citation omitted).

An instruction on confessions is appropriate where a defendant has made a voluntary statement at a time when he was not testifying at trial, "by which he acknowledge[d] certain conduct of his own

constituting [a] crime for which he is on trial; a statement which, if true, disclosed his guilt of that crime." *State v. Cannon*, 341 N.C. 79, 89, 459 S.E.2d 238, 245 (1995) (quotation marks and citation omitted). An instruction on admissions is appropriate where there is evidence which tends to show that the defendant has admitted a fact or facts relating to the crimes charged. N.C.P.I.--Crim. 104.60 (2005).

In this case, Defendant was charged with statutory rape. Statutory rape is defined as "vaginal intercourse or a sexual act with another person who is 13, 14, or 15 years old and the defendant is at least six years older than the person[.]" N.C. Gen. Stat. § 14-27.7A (a) (2005). Defendant, who was 27 years old, admitted to having sexual intercourse with Jennie, who was 13 years old at the time. Although Defendant argues that his statement "was of a general nature and did not constitute a specific confession to the multiple offenses charged[,]" his statement acknowledges conduct of his own which constituted statutory rape, a crime for which he was on trial. Accordingly, as the trial court's decision to instruct the jury on confessions was based upon a reasonable view of the evidence, the trial court did not abuse its discretion in instructing on confessions rather than admissions. Defendant's argument is overruled.

VI. Revocation of Bond

By Defendant's next assignment of error, he contends the trial court erred in revoking his bond on its own motion.

N.C. Gen. Stat. § 15A-533(b) provides that "[a] defendant charged with a noncapital offense must have conditions of pretrial release determined, in accordance with [N.C. Gen. Stat. §] 15A-534." N.C. Gen. Stat. § 15A-533(b) (2005). In the instant case, pretrial conditions were set and Defendant was free on bond. "For good cause shown any judge may at any time revoke an order of pretrial release[,]" N.C. Gen. Stat. § 15A-534(f) (2005), and "has discretionary power to order a defendant into custody during the progress of a trial." *State v. Perry*, 316 N.C. 87, 108, 340 S.E.2d 450, 463 (1986). A ruling committed to the trial court's discretion will be reversed on appeal only upon a showing that the trial court abused its discretion. *State v. Cameron*, 314 N.C. 516, 335 S.E.2d 9 (1985). To demonstrate an abuse of discretion in a court's decision to revoke bond, the defendant must overcome the presumption that the court properly exercised its discretion in so ruling. *State v. Jefferson*, 68 N.C. App. 725, 315 S.E.2d 744, *appeal dismissed and cert. denied*, 311 N.C. 766, 321 S.E.2d 151 (1984). Furthermore, even if the trial court abused its discretion, the defendant must show that the actions of the trial court prejudiced his defense. *State v. Suggs*, 130 N.C. App. 140, 502 S.E.2d 383 (1998).

> Before exercising its discretionary power to order a criminal defendant into custody during the trial of a case, a trial court should, at a minimum, carefully consider whether there is some indication that defendant will fail to reappear if not placed in custody; whether there is a danger of injury to, or intimidation of, witnesses if defendant remains free; whether there are less restrictive alternatives to incarceration,

> such as requiring a secured bond which would guarantee the defendant's appearance as required; and whether incarceration of defendant during the trial would unduly interfere with the ability of defendant to consult with counsel or to prepare his defense. If, after considering the above factors together with any other relevant circumstances of the case, the court elects to place a defendant in custody during trial, the record should reflect the reasons for the court's action.

Id. at 142-43, 502 S.E.2d at 385 (citation omitted).

Defendant had been free on bond for the entire year leading up to the trial and for the first week of the trial. On Friday afternoon, after all of the evidence had been presented, the trial court revoked Defendant's bond, stating:

> The court has listened intently to all of the evidence that has been presented thus far and the court, on it's [sic] own motion, sir, is at this point in time, going to revoke the bond of the defendant over this weekend recess. Anything on behalf of your client, sir?

In response, Defendant advised the court that he had not violated any of the conditions of his pretrial release; there was no indication that Defendant was a danger to the community or a flight risk; Defendant had been out on bond for more than a year and had reported to every court date; and in the year after his arrest, Defendant had not attempted to contact Jennie or in any way intimidate her as a witness. Additionally, Defendant had planned visitation with his son over that weekend.

After hearing Defendant on the matter, the trial court maintained its decision and ordered Defendant into custody. While the court stated that it had "listened intently to all of the

evidence that ha[d] been presented thus far[,]" the record is devoid of any evidence of the trial court's reasoning or any evidence that the trial court even considered alternatives to incarceration. Furthermore, the uncontroverted representations of Defendant rebut the presumption that the trial court properly exercised its discretion in revoking Defendant's bond and ordering him into custody. We thus determine that the trial court abused its discretion as "good cause" was not shown for the court's decision to revoke Defendant's bond over the weekend recess.

Having found error, we must determine whether such error prejudiced Defendant. Defendant argues that the trial court's actions prejudiced him as "[t]he jury, who had possibly seen [Defendant] around the courthouse during the trial, undoubtably knew that he was not in jail." The change in Defendant's custodial status, he argues, sent a clear message to the jury that, "for some reason, [Defendant] was now in custody." Defendant asserts that "the change in custodial status had to be apparent to the jury and prejudicial to [his] defense." However, the record contains no indication that any juror knew whether Defendant was or was not in custody at any point during the trial, whether the change in Defendant's custodial status was apparent to any juror, or, if so, whether the change sent a prejudicial message to any juror. Furthermore, there is no evidence that the trial court's actions unduly interfered with Defendant's ability to consult with counsel or to prepare his defense. *State v. Albert*, 312 N.C. 567, 324 S.E.2d 233 (1985). Accordingly, as Defendant has failed to carry

his burden of showing prejudice as a result of the trial court's error in revoking his bond, this assignment of error is overruled.

VI. Authentication of Evidence

Defendant next assigns error to the trial court's admission into evidence of instant messages purportedly exchanged between Defendant and Jennie. Specifically, Defendant alleges the State failed to properly authenticate the evidence.

Pursuant to N.C. Gen. Stat. § 8C-1, Rule 901:

> (a) The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.
>
> (b) By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:
>
> > (1) Testimony of Witness with Knowledge. – Testimony that a matter is what it is claimed to be.
> >
> > . . . .
> >
> > (4) Distinctive Characteristics and the Like. – Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

N.C. Gen. Stat. § 8C-1, Rule 901 (2005).

In *State v. Taylor*, 178 N.C. App. 395, 632 S.E.2d 218 (2006), transcripts of text messages sent to and from the telephone number assigned to the victim's company-issued cellular telephone were admitted into evidence. The defendant argued that the State failed to properly authenticate the messages as no showing was made of who

actually typed and sent the text messages. However, as "[t]he messages include[d] information that the person would be driving a 1998 Contour, and the sender self-identified himself twice as 'Sean,' the victim's first name[,]" *id.* at 414, 632 S.E.2d at 230-31, this Court concluded that "[t]he text messages contain[ed] sufficient circumstantial evidence that tend[ed] to show the victim was the person who sent and received them." *Id.*

In this case, Jennie testified that she and Defendant sent emails and instant messages to each other often. She testified that his email address was the one on the messages and that the details in the exchanges were details only the two of them knew about, such as having sex together and her going on birth control. Although Defendant was free to offer evidence that he was not the person who wrote or received the messages, he offered no such evidence. As in *Taylor*, the instant messages in this case contained sufficient circumstantial evidence to support a finding that Defendant was the person who exchanged the messages with Jennie. Accordingly, Defendant's argument is overruled.

VII. Relevant Evidence

By Defendant's final assignments of error, he contends the trial court erred in permitting the State to elicit irrelevant and prejudicial evidence on the cross-examination of Defendant's witnesses.

Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be

without the evidence." N.C. Gen. Stat. § 8C-1, Rule 401 (2005). While relevant evidence is generally admissible, irrelevant evidence is inadmissible. N.C. Gen. Stat. § 8C-1, Rule 402 (2005). However, relevant evidence is inadmissible if its probative value is outweighed by its prejudicial effect. N.C. Gen. Stat. § 8C-1, Rule 403 (2005). Generally, the decision to admit or exclude evidence pursuant to Rule 403 is left to the trial court's sound discretion and will only be overturned for an abuse of discretion. *State v. Patterson*, 149 N.C. App. 354, 561 S.E.2d 321 (2002). "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988) (citation omitted).

Defendant objected to the following question asked of his pastor by the State:

> Q. Sir, do you think it is appropriate for a 27-year old man to have sexual intercourse with a 13-year old child?
>
> A. Do I think that's appropriate? No. No, I don't.

Defendant also objected to the following exchange between the State and Defendant's father:

> Q. Okay. What about "if I was trying to torture you, I would be rubbing the head of my cock on your nipple while I gave your thighs a tongue bath?" Would that be typical conversation of your son?
>
> . . . .
>
> Q. Now, sir, do you think that that is appropriate language for not just your son,

> but for any 27-year old man to use on a 13-year old child?
>
> A. No, ma'am.

Defendant argues that the prosecutor's "questions were not designed to elicit relevant evidence[,]" and that, instead, the questions were only designed to "discredit his witnesses." "A witness may be cross-examined on any matter relevant to any issue in the case, including credibility." N.C. Gen. Stat. § 8C-1, Rule 611(b) (2005). By the time Defendant's pastor and father testified, the State had already introduced both the videotaped interview in which Defendant admitted to having sexual intercourse with the 13-year-old victim and the instant message from which the prosecutor read. However, on direct examination these witnesses testified to the effect that Defendant was not the type of person who could have committed the alleged acts. As the prosecutor's questions were designed to discredit the witnesses's knowledge of Defendant's character, the evidence was relevant and thus admissible under Rule 402.

Defendant further asserts that the evidence should have been excluded pursuant to Rule 403 because the prosecutor's questions "were designed to do nothing but inflame the prejudice of the jury." However, since the videotaped interview and text messages had already been properly admitted into evidence and, thus, the jury was aware of the content of the questions, the questions were not unduly prejudicial. Accordingly, Defendant has failed to show the trial court abused its discretion in admitting the evidence, and his argument is overruled.

We hold Defendant received a fair trial, free of prejudicial error.

NO PREJUDICIAL ERROR.

Judges McGEE and TYSON concur.

Report per Rule 30(e).