

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e) (3) of the North Carolina Rules of Appellate Procedure.

NO. COA07-1435

NORTH CAROLINA COURT OF APPEALS

Filed: 21 October 2008

STATE OF NORTH CAROLINA

v.

Nash County
No. 06 CRS 53390

SAMUEL GORDON ROBERSON

Appeal by defendant from judgments entered 24 April 2007 by Judge William C. Griffin, Jr. in Nash County Superior Court. Heard in the Court of Appeals 15 September 2008.

Attorney General Roy Cooper, by Assistant Attorney General Catherine E. Jordan, for the State.

Janna D. Allison for the defendant.

Slip Opinion

ELMORE, Judge.

Samuel Gordon Roberson (defendant) appeals from judgments dated 24 April 2007 and entered consistent with a jury verdict finding him guilty of three counts of taking indecent liberties with a child. The trial court sentenced defendant to two consecutive active terms in the presumptive range of twenty-one to twenty-six months imprisonment. The trial court also entered a third consecutive suspended sentence of twenty-one to twenty-six months imprisonment, ordering defendant placed on supervised probation for thirty-six months. Defendant gave notice of appeal in open court.

Defendant argues that the trial court erred by denying his motion in limine to prohibit any mention by the State's witnesses that defendant was a known sex offender and by overruling his objection to the testimony of a deputy with the Nash County Sheriff's Office who stated the father of the victim came to the sheriff's office, expressing concern about defendant being around the victim and her brother because defendant was a known sex offender. Defendant contends the introduction of his sex offender status was unfairly prejudicial in violation of Rule 403 of the North Carolina Rules of Evidence.

At trial, defendant objected to the testimony of Misty Strickland, an Investigator with the Nash County Sheriff's Office. In response to a question as to how she became involved in this case, Investigator Strickland stated, "Well on or about May 19th, 2006, . . . [the victim's father] came to the Sheriff's Office. And he was concerned with [defendant] being around his children due to him being a known sex offender." Defendant had previously filed a motion in limine to keep out any reference to defendant's prior convictions for indecent liberties with a minor and the fact that defendant is a registered sex offender. However, the motion was not found in the court file and not ruled upon by the trial court until after defendant's trial was underway. Defendant's motion was ultimately denied by the trial court, and he took exception to the trial court's ruling.

It is well established that the "[a]dmission of evidence without objection waives prior or subsequent objection to the

admission of evidence of a similar character." *State v. Valentine*, 357 N.C. 512, 525, 591 S.E.2d 846, 857 (2003) (alteration in the original) (quoting *State v. Campbell*, 296 N.C. 394, 399, 250 S.E.2d 228, 231 (1979)). Here, evidence that defendant was a registered sex offender or had a history of criminal sexual activity was introduced at least four other times at trial without an objection by defendant. Further, defendant's trial counsel brought out evidence of defendant's prior convictions and status as a sex offender during his direct examination of Ms. Vinette Woods, a social worker for the Nash County Department of Social Services:

Q. In the course and scope of your employment did you have an occasion last April or May, 2006, to investigate some allegations of improprieties involving Sammy Roberson and [the victim] . . . ?

A. I did.

. . .

Q. What was the allegation that you were . . . investigating?

A. Hum the allegations were that [the victim's mother] was allowing her children to be in the presence of a sex offender. That this person was buying the children things. That there was no food in the house and in fact there was none, no food. That was [sic] the allegations I was there for.

. . .

Q. So what did [the victim's mother] tell you, if anything?

A. . . . As far as the allegations regarding her children in the presence of a sex offender [the victim's mother] said that she knew him and she had known him for quite a while. She knew he had been to jail for inappropriate

touching of children, but she didn't think he had done that.

. . .

Q. So [the victim] basically said that she had never been alone with [the defendant]?

A. She actually said that she knew he had been in trouble for touching other children and she knew that she wasn't to be alone with him. She said that he had told them that he couldn't be alone with them.

Accordingly, defendant has waived his right to appellate review of this issue. *State v. Dennison*, 359 N.C. 312, 608 S.E.2d 756 (2005). These assignments of error are dismissed.

Defendant also argues the trial court erred in denying his motion for a mistrial at the close of all the evidence. Defendant again contends the admission of the evidence of his prior convictions and status as a registered sex offender was unfairly prejudicial and in violation of Rule 403 and the trial court abused its discretion in denying his motion for a mistrial. We disagree.

"The judge must declare a mistrial upon the defendant's motion if there occurs during the trial an error or legal defect in the proceedings . . . resulting in substantial and irreparable prejudice to the defendant's case." N.C. Gen. Stat. § 15A-1061 (2007). However, "a mistrial is appropriate only when there are such serious improprieties as would make it impossible to attain a fair and impartial verdict under the law." *State v. Calloway*, 305 N.C. 747, 754, 291 S.E.2d 622, 627 (1982) (citations omitted). We review the denial of a motion for a mistrial for an abuse of discretion, and defendant "must show the trial court's ruling 'was

so arbitrary that it could not have been the result of a reasoned decision'" *State v. Hagans*, 177 N.C. App. 17, 25, 628 S.E.2d 776, 782 (2006) (quoting *State v. Upchurch*, 332 N.C. 439, 453, 421 S.E.2d 577, 585 (1992)).

In denying defendant's motion for a mistrial, the court stated:

Sometimes damaging evidence is so intertwined with other evidence that [by] necessity it comes in. This is what has happened: The Social Worker . . . testified that she called - the record will reflect what the evidence is. The jury is entitled to know why they went there to begin with. That's what has happened in this case. It's not direct evidence of [defendant]'s prior criminal history. Its underlying rival [sic] of the investigation of the fact people observed him buying gifts for this child knowing that he was registered sex offender among other things. These things precipitated this investigation. You know, the jury is entitled to know what has happened. And what had happen is they have not offered no [sic] direct evidence of his prior conviction under 404(b).

Our Supreme Court has previously held that,

[e]vidence, not part of the crime charged but pertaining to the chain of events explaining the context, motive and set-up of the crime, is properly admitted if linked in time and circumstances with the charged crime, or [if it] forms an integral and natural part of an account of the crime, or is necessary to complete the story of the crime for the jury.

State v. Williams, 355 N.C. 501, 557, 565 S.E.2d 609, 642 (2002) (quoting *State v. Agee*, 326 N.C. 542, 548, 391 S.E.2d 171, 174-75 (1990)). Here, defendant's status as a registered sex offender and his interactions with the victim and her family were the basis for the initial investigation and necessarily introduced to explain the

actions of numerous witnesses. The trial court did not abuse its discretion when it denied defendant's motion for mistrial. This assignment of error is overruled.

No error.

Judges WYNN and GEER concur.

Report per Rule 30(e).