NO. COA09-1489

NORTH CAROLINA COURT OF APPEALS

Filed: 6 July 2010

STATE OF NORTH CAROLINA

v. Pitt County
Nos. 08 CRS 54179-80

WILLIAM CHARLES SHIVERS

Appeal by Defendant from judgments entered 22 April 2009 by Judge J. Richard Parker in Pitt County Superior Court. Heard in the Court of Appeals 22 June 2010.

Attorney General Roy Cooper, by Assistant Attorney General Jacqueline M. Pérez, for the State.

Jarvis John Edgerton, IV, for Defendant.

BEASLEY, Judge.

Defendant was indicted for two counts of taking indecent liberties with a child. Defendant was tried for the offenses at the 20 April 2009 Criminal Session of Pitt County Superior Court. A jury found Defendant guilty of both counts of taking indecent liberties with a child. On 22 April 2009, Defendant was sentenced to 38 to 46 months imprisonment. Defendant appeals from the judgments entered. We conclude there is no prejudicial error.

In the summer of 2007, J.L.[1] was fourteen years old and on break from middle school in Pitt County, North Carolina. J.L.

[1]Initials are used to protect the privacy of the juvenile.

lived with her grandparents and two sisters. The family attended church at the Shield of Faith Ministry in Greenville. Defendant, who was fifty-four years old at the time, was the pastor of the church.

One day, outside the church, Defendant informed J.L.'s grandparents that he wanted to purchase some pants for his wife. Defendant asked J.L.'s grandmother if he could take J.L. to the store to assist him in selecting the pants. J.L.'s grandmother agreed. Instead of driving to the store, Defendant drove to a house he owned and had operated as a group home in the nearby town of Grimesland. As Defendant and J.L. entered the empty house, Defendant locked the door, closed the blinds, turned on the television, and told J.L. to sit close to him on the couch. Defendant instructed J.L. to get on top of him and "to start grinding on his leg" as he kissed her ear and lips. Defendant also touched J.L.'s breasts and vagina, under her clothes, penetrating her vagina with his fingers for "[l]ike ten minutes." Eventually, Defendant drove J.L. back to the church, where her grandmother picked her up. J.L. did not tell her grandmother what happened that day.

On another occasion, about a month after the first incident, Defendant called J.L.'s grandmother and invited J.L. to a computer class. Defendant picked J.L. up, and again took her to the house in Grimesland. Once again, no one else was present, and Defendant proceeded to engage in the same sexual acts as the previous incident, including inserting his finger into J.L.'s vagina.

On 20 February 2008, J.L. told her eight grade language arts teacher, Melissa Thomason, about the sexual acts Defendant perpetrated on her. Thomason told J.L. that she would need to speak with the guidance counselor, Amy Love. Thomason remained with J.L. while she was being interviewed by Love. J.L. recounted details that were substantially the same as those she disclosed to Thomason. Love met with J.L. again on 21 February 2008 to follow up on their earlier conversations.

On appeal, Defendant argues that the trial court erred when it allowed, over Defendant's objection, Love to read her notes into evidence from the 21 February 2008 meeting with J.L. The contents of the notes, as read to the jury, are as follows:

> [J.L.] has expressed to me suicidal thoughts. She said she's felt this way since it has--the abuse happened to her. When asked, she said she feels this way about three times a week. When asked how, she said she thinks of getting a knife and cutting herself. She would get the knife from the kitchen and do it either at home when everyone is sleeping or bring it to school to use on herself.
>
> She also said she has thought of getting sleeping pills from her grandmother to overdose with. [J.L.] also said she's not able to sleep, eat, or pay attention in class. She says she feels this way because she is ashamed about what happened to her.

Defendant argues this evidence was inadmissible victim impact evidence and irrelevant in the guilt/innocence phase.

"A trial court errs when it admits irrelevant evidence." *State v. Graham*, 186 N.C. App. 182, 190, 650 S.E.2d 639, 645 (2007), *disc. review denied and appeal dismissed*, 362 N.C. 477, 666 S.E.2d 765 (2008). Evidence is relevant if it has "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 (2009). Generally, all relevant evidence is admissible. N.C. Gen. Stat. § 8C-1, Rule 402 (2009).

"Victim impact evidence includes evidence of 'physical, psychological, or emotional injury, [or] economic or property loss suffered by the victim.'" *Graham*, 186 N.C. App. at 190, 650 S.E.2d at 645 (citing N.C. Gen. Stat. § 15A-833 (2005)). "[V]ictim impact evidence is usually irrelevant during the guilt-innocence phase of a trial and must be excluded." *Id.*

> However, victim impact evidence which tends to show the context or circumstances of the crime itself, even if it also shows the effect of the crime on the victim . . . is an exception to the general rule, and such evidence is relevant and therefore admissible at the guilt-innocence phase, providing, of course, that it is not subject to one of the admissibility exceptions of Rule 402.

Id. at 191, 650 S.E.2d at 646. Moreover, this Court has held victim impact evidence to be relevant when it supports an element of the crime charged. *See State v. Lofton*, 193 N.C. App. 364, 374, 667 S.E.2d 317, 324 (2008).

In this case, Love's notes, which were read into evidence and entered into evidence as State's Exhibit #6, did not show the context or circumstances of the crimes charged. Furthermore, the evidence did not support an element of the crime of indecent liberties with a child. Accordingly, we hold the evidence was

irrelevant at the guilt-innocence phase and it was error for the trial court to admit the evidence.

Having concluded that the trial court erred by admitting Love's notes, we now consider whether it was reversible error which would entitle Defendant to a new trial.

"[R]eversible error exists 'where there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at trial.'" *State v. Williams*, 322 N.C. 452, 456-57, 368 S.E.2d 624, 627 (1988) (quoting N.C. Gen. Stat. § 15A-1443(a) (1983)). "The burden is on the appellant to not only show error, but also to show that he was prejudiced and a different result would have likely ensued had the error not occurred." *Suarez v. Wotring*, 155 N.C. App. 20, 30, 573 S.E.2d 746, 752 (2002).

In this case, prior to Love's testimony, J.L. testified about the emotional impact the incidents with Defendant had upon her. J.L. testified that she feels "real sad and down, and it even makes me feel to the point I get very depressed, like I can't do anything no more." Defendant did not object to this testimony. Furthermore, corroborating evidence was presented regarding the statements J.L. made when she finally disclosed what occurred with Defendant to others. Defendant also admitted picking J.L. up from her grandparents' home and admitted to being alone with J.L. in 2007. We conclude that Defendant has failed to show that a different result would have occurred had the trial court not

admitted Love's notes into evidence. Accordingly, we hold there was no prejudicial error in Defendant's trial.

No prejudicial error.

Judges STEPHENS and ERVIN concur.

Report per Rule 30(e).