NO. COA12-536
NORTH CAROLINA COURT OF APPEALS

Filed: 6 November 2012

STATE OF NORTH CAROLINA

v. Union County
Nos. 09 CRS 50082-83

EDWIN GEOVANY LOPEZ

Appeal by defendant from judgments entered 12 September 2011 by Judge Christopher W. Bragg in Union County Superior Court. Heard in the Court of Appeals 22 October 2012.

Attorney General Roy Cooper, by Assistant Attorney General David Gordon, for the State.

Appellate Defender Staples Hughes, by Assistant Appellate Defender Charlesena Elliott Walker, for defendant appellant.

McCULLOUGH, Judge.

Defendant appeals from judgments entered upon jury verdicts finding him guilty of one count of first-degree sex offense with a child and two counts of taking indecent liberties with a child. He raises two evidentiary issues for review. We find no prejudicial error.

The State presented evidence tending to show that on 21 December 2008, the victim's grandmother (hereinafter "Grandmother") attended a gathering at the home of her daughter (hereinafter "Mother"). Mother placed her children, including the victim, who was three years old at the time, in the computer room to play while the adults cooked food.

Defendant, a neighbor, came to the house and entered the computer room. Grandmother noticed that the children had become quiet so she walked to the computer room to investigate. She opened the door and saw the victim in defendant's lap straddling his legs while her pants and panties were lowered around her knees. Grandmother froze up and could not move or speak. She saw defendant place one hand between the victim's legs and the other behind the victim's head as he forced his tongue into the victim's mouth. She saw the victim fall to the floor and defendant pick her up, force her mouth open, and place her face to his crotch area. Grandmother saw defendant place the victim back on his lap, stick his tongue into her mouth, and insert two fingers into the child's anus. At this point, Grandmother spoke and made them aware of her presence. Grandmother instructed the victim to leave the room. The victim pulled up her pants and

left the room. Defendant crossed his legs and placed his hand on the computer.

Grandmother returned to the kitchen and Mother and Mother's friend asked what was wrong with her. She told them nothing was wrong.

Grandmother told Mother the next day what she had seen defendant do to the victim. Grandmother also called Ms. Linda McWhorter, who was a speech therapist for another of Grandmother's daughters, and told her about the incident. Ms. McWhorter advised her to report it to the police. Ms. McWhorter subsequently met Grandmother and Mother at the police station. Grandmother gave a statement to the police.

Defendant contends the court committed plain error by allowing (1) Ms. McWhorter to testify that the victim was assessed at the "Tree House," which is "a treatment program for children who have been abused[,]" and (2) by allowing Detective Javier Villarreal of the Monroe Police Department to testify that the Tree House is for "somebody [who] is a victim of a crime like this one, they go to a therapist, especially if it's a child, for therapy and family gets therapy and all that

stuff." He argues the foregoing testimony suggested that these witnesses believed Grandmother's story.

When a defendant does not object to the admission of evidence at trial he must show the trial court committed plain error by admitting the evidence. *State v. Odom*, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983). To show plain error the defendant must demonstrate that the trial court committed a fundamental error which had a probable impact upon the jury's verdict. *State v. Lawrence*, ___ N.C. ___, ___, 723 S.E.2d 326, 334 (2012). This showing has not been made here. The witnesses simply were testifying as to their knowledge of the purpose of the Tree House program. We fail to discern in this evidence any expression of an opinion as to the credibility of Grandmother or as to defendant's guilt or innocence.

Defendant also contends the court erred by overruling his objection to testimony of Grandmother that subsequent to the incident, the victim began soiling her pants and having nightmares. He argues this testimony was not relevant because it had no tendency to show defendant's guilt of the charged crimes.

Assuming *arguendo* that the admission of this testimony was error, defendant cannot meet his burden of showing that the

alleged error is prejudicial. An error is prejudicial when "there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial[.]" N.C. Gen. Stat. § 15A-1443(a) (2011). When evidence of similar import to the challenged evidence is admitted without objection, a defendant loses the benefit of any objection previously or subsequently made, and the defendant may not claim prejudice. *State v. Trull*, 349 N.C. 428, 456-57, 509 S.E.2d 178, 197 (1998). Here, the victim's mother subsequently testified without objection that after 21 December 2008, she observed that her daughter was soiling her pants and that she was continuing to soil her pants at the time of trial almost three years later. Ms. McWhorter also subsequently testified without objection that after 21 December 2008, the victim "started having potty accidents."

Moreover, the evidence of defendant's guilt is strong. Mother corroborated Grandmother's testimony regarding the circumstances surrounding Grandmother's entry into the computer room and her demeanor after Grandmother returned from the computer room. Grandmother also gave consistent statements to Mother, the interpreter, and the police regarding what she had seen. Defendant also gave a statement to the police in which he

acknowledged having the child in his lap but denied doing anything improper.

For these reasons, we hold the alleged error was not prejudicial. *See State v. Gordon*, 316 N.C. 497, 506, 342 S.E.2d 509, 514 (1986) (finding no prejudicial error in a child molestation case where the evidence of guilt was strong and similar evidence was admitted without objection).

No prejudicial error.

Judges HUNTER (Robert C.) and CALABRIA concur.

Report per Rule 30(e).