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NO. COA13-763
NORTH CAROLINA COURT OF APPEALS

Filed: 3 December 2013

STATE OF NORTH CAROLINA

v.

Alamance County
No. 08 CRS 53045

JOE LEE ALBRIGHT,
Defendant.

Appeal by defendant from judgment entered 18 December 2012 by Judge F. Lane Williamson in Alamance County Superior Court. Heard in the Court of Appeals 18 November 2013.

Roy Cooper, Attorney General, by Natalie Whiteman Bacon, Assistant Attorney General, for the State.

Richard J. Costanza, for defendant-appellant.

MARTIN, Chief Judge.

Defendant Joe Lee Albright appeals from the judgment entered after a jury found him guilty of taking indecent liberties with a child. Defendant contends the trial court erred by admitting as substantive evidence photographs of the victim A.G.¹ We find no error.

¹ Although the victim was an adult at the time of the trial, she was a minor at the time of the offense and we use her initials

Defendant met A.G. when she was twelve years old, while defendant was dating her mother. A.G. had previously been sexually assaulted by another man and was taking psychiatric medication when defendant met her. Defendant was made aware of her history and medication. When A.G. was fifteen years old, defendant had sex with her for the first time and took suggestive photographs of her.

During A.G.'s trial testimony, the State proffered three photographs of A.G. taken by defendant, which depicted A.G. wearing lingerie and positioned in sexual poses. A.G. testified that two of the photographs were taken in defendant's home, based on the backgrounds and her familiarity with defendant's home. The photographs were admitted as substantive evidence over defendant's objection and published to the jury. A.G. testified that defendant took the photographs with her own camera, and estimated that defendant was in his late forties at the time. Several years later, when a sheriff's deputy searched defendant's home, he found nude photographs of girls, although none of A.G. Based on his experience searching defendant's home, the deputy recognized the background in the three

herein to protect her privacy.

photographs of A.G. admitted at trial as areas of defendant's home.

During deliberations, the jury requested that the trial court allow them to examine the three photographs of A.G. that were admitted into evidence. The trial court republished the photographs with the consent of both parties. The jury found defendant guilty of indecent liberties with a child, but not guilty of statutory rape or sexual offense. The trial court sentenced defendant to 15 to 18 months imprisonment, and defendant appeals.

Defendant's sole argument on appeal is that the trial court erred by admitting the photographs as substantive evidence without proper authentication. We disagree.

"Any party may introduce a photograph, video tape, motion picture, X-ray or other photographic representation as substantive evidence upon laying a proper foundation and meeting other applicable evidentiary requirements." N.C. Gen. Stat. § 8-97 (2011). Photographs may be admitted as substantive evidence "when they are a fair and accurate portrayal of the place in question and are sufficiently authenticated." *Sellers v. CSX Transp., Inc.*, 102 N.C. App. 563, 565, 402 S.E.2d 872,

873 (1991); see also N.C. Gen. Stat. § 8C-1, Rule 901(a) (2011). Consequently, “[i]n order for a photograph to be introduced, it must first be properly authenticated by a witness with knowledge that the evidence is in fact what it purports to be.” *State v. Murray*, ___ N.C. App. ___, ___, 746 S.E.2d 452, 455 (2013) (quoting *State v. Lee*, 335 N.C. 244, 270, 439 S.E.2d 547, 560, cert. denied and reh’g denied, 513 U.S. 891, 1035, 130 L. Ed. 2d 162, 532 (1994)).

In this case, A.G.’s testimony sufficiently establishes the authenticity of the photographs and supports their admission as substantive evidence. A.G. testified that defendant took the photographs of her when she was fifteen years old. A.G. also identified defendant’s home as the background in two of the photographs, and the deputy later corroborated her testimony. A.G.’s testimony thus constitutes first-hand knowledge of the authenticity of the photographs, both in terms of their content and the fact that defendant took the photographs. Defendant’s reliance on cases specifically addressing the admissibility of video evidence is unavailing. Accordingly, we hold that the trial court properly admitted the photographs as substantive evidence.

No error.

Judges HUNTER, JR. and DILLON concur.

Report per Rule 30(e).