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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-901

Filed: 16 April 2019

Iredell County, No. 14 CRS 50435

STATE OF NORTH CAROLINA

v.

VINCENT SCOTT CARTER, Defendant.

Appeal by defendant from judgment entered 25 January 2018 by Judge Joseph N. Crosswhite in Iredell County Superior Court. Heard in the Court of Appeals 13 March 2019.

*Attorney General Joshua H. Stein, by Assistant Attorney General Sherri Horner Lawrence, for the State.*

*Leslie Rawls for defendant.*

ARROWOOD, Judge.

Vincent Scott Carter (“defendant”) appeals from judgment entered on his conviction of taking indecent liberties with a child. For the reasons stated herein, we find no error.

I. Background

STATE V. CARTER

*Opinion of the Court*

On 10 March 2014, an Iredell County Grand Jury indicted defendant for one count of taking indecent liberties with a child.

On 23 January 2018, defendant filed a motion *in limine* that the court should “require the State to disclose the names of individuals who [the victim] claims sexual [sic] abused her in the past” “based on North Carolina Rules of Evidence 402, 403, 404, and [*State v. Blazevic*, \_\_ N.C. App. \_\_, 790 S.E.2d 754 (2016) (unpublished)]” Defendant maintained this information should be disclosed because it was relevant to show an alternative explanation of the victim’s sexual knowledge, and to show the victim was not credible. The court issued a preliminary ruling denying defendant’s motion.

The matter came on for trial in Iredell County Superior Court on 23 January 2018, the Honorable Joseph N. Crosswhite presiding. The State’s evidence tended to show as follows.

In 2013 and 2014, Rose<sup>1</sup> lived with her mother, father, and three younger siblings. Her uncle, defendant, lived nearby with his wife, now ex-wife, Kelly Carter (“Ms. Carter”), and two children. Rose often spent Saturday nights at defendant’s house because she performed with a singing group at defendant’s church on Sunday mornings. When Rose stayed at defendant’s house, she slept in a downstairs bedroom. The rest of the family slept upstairs.

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<sup>1</sup> A pseudonym is used throughout the opinion to protect the identity of the juvenile.

After his wife and children went to sleep, defendant would watch movies downstairs with Rose. Defendant began to give Rose foot massages while they watched movies. Eventually, he began to grope other areas of Rose's body while she watched the movies, including her legs, thighs, and bottom. Defendant also kissed Rose's stomach and her back, grabbed her breasts, and kissed her on the mouth at least twice.

Rose told her boyfriend she thought defendant had molested her. Her boyfriend told her to tell her parents about the abuse, which she did in January 2014.

On 25 January 2018, the jury found defendant guilty of taking indecent liberties with a child. The trial court sentenced defendant to 16 to 29 months, suspended for 30 months of supervised probation, subject to an active sentence of 60 days in the custody of the county sheriff as a condition of his probation. The trial court ordered defendant to register as a sex offender for 30 years.

Defendant appeals.

## II. Discussion

Defendant argues: (1) the trial court violated his due process right to exculpatory evidence when it denied his motion "to disclose the identities of individuals previously alleged to have sexually abused the complaining witness in events about which she told various stories[;]" and (2) the trial court abused its discretion by excluding the admission of this same evidence and barring him from

inquiring about this evidence on cross-examination. Defendant failed to preserve either argument.

A. Exculpatory Evidence

First, we consider defendant's argument that the trial court violated his due process right to exculpatory evidence. Despite raising this argument on appeal, defendant never argued that the identities of individuals "previously alleged to have sexually abused the complaining witness" was exculpatory under *Brady v. Maryland*, 373 U.S. 83, 10 L. Ed. 2d 215 (1963) at trial. Instead, he argued the evidence was "relevant, and [ ] goes right to the issue of truthfulness in this case and goes right to [the victim's] credibility." Because "[c]onstitutional issues not raised and passed upon at trial will not be considered for the first time on appeal," *State v. Gobal*, 186 N.C. App. 308, 320, 651 S.E.2d 279, 287 (2007) (citation and footnote omitted), *aff'd*, 362 N.C. 342, 661 S.E.2d 732 (2008) (citing *State v. Lloyd*, 354 N.C. 76, 86-87, 552 S.E.2d 596, 607 (2001)), defendant failed to preserve this argument for appellate review. Therefore, we decline to review this argument for the first time on appeal.

B. Exclusion of the Evidence

Defendant also failed to preserve his second argument that the trial court abused its discretion by excluding the names of individuals "previously alleged to have sexually abused the complaining witness" from evidence and barring him from questioning the victim about her interactions with these unspecified individuals.

Defendant's motion for the State to disclose these names was a motion *in limine*. Rulings on motions *in limine* "are merely preliminary and subject to change during the course of trial, depending upon the actual evidence offered at trial and thus an objection to an order granting or denying the motion 'is insufficient to preserve for appeal the question of the admissibility of the evidence.'" *State v. Hill*, 347 N.C. 275, 293, 493 S.E.2d 264, 274 (1997) (citation omitted). In accordance with this premise, the trial court emphasized it made a preliminary ruling when it denied defendant's motion:

from what I understand now as the facts may be, the Court in its discretion will find that the probative value of that for challenging the credibility at this point is low based on what I think the testimony may be. The prejudicial value, obviously, would be high on that testimony, however, I'm just going to tell you *at this point that that's a preliminary ruling, based on where we are now*. We'll see how the testimony pans out, and if it's something that we need to address later on, I certainly -- I mean, *I'm not putting this on the record now and shutting the door. If it's something we need to address at a later point in time, we can certainly do that*.

(Emphasis added).

Defendant never attempted to obtain a final ruling or to enter evidence at trial related to this motion, therefore, the trial court never made a final ruling on admissibility of evidence related to the names of individuals defendant claims the victim alleged sexually abused her in the past. *See State v. McNeil*, 170 N.C. App 574, 581, 613 S.E.2d 43, 47 (2005) ("[A] decision on a motion *in limine* is not final and

during trial neither party can rest on an earlier ruling[.]” (citation omitted). We also note that, despite defendant’s argument on appeal, this ruling did not bar defendant from attempting to question the victim about her interactions with these unspecified individuals. According to the trial court’s ruling, it would have addressed that issue if it had arisen during the course of trial.

“As this Court has previously stated, a motion *in limine* is insufficient to preserve for appeal the question of the admissibility of evidence.” *Hill*, 347 N.C. at 293, 493 S.E.2d at 274 (citation and internal quotation marks omitted). Given that defendant failed to preserve this issue, we decline to review the substance of the arguments on appeal.

### III. Conclusion

For the forgoing reasons, we find no error.

NO ERROR.

Judges BRYANT and DILLON concur.

Report per Rule 30(e).