IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-55

Filed: 17 December 2019

Wake County, No. 17 CRS 207762

STATE OF NORTH CAROLINA

v.

WENDY JOYCE SWARTZ

Appeal by Defendant from Judgment entered 2 May 2018 by Judge James K. Roberson in Wake County Superior Court. Heard in the Court of Appeals 19 September 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Liliana R. Lopez, for the State.

Jarvis John Edgerton, IV for defendant-appellant.

HAMPSON, Judge.

Factual and Procedural Background

Wendy Joyce Swartz (Defendant) appeals from Judgment entered on 2 May 2018 upon her conviction of Impaired Driving. The Record and testimony elicited at trial tend to show the following:

Around 1 p.m. on 28 April 2017, Defendant was driving down Highway US 1 in Wake County, North Carolina. Charles Ackyord witnessed Defendant veer into the median several times. He called law enforcement to report the erratic driving. Ackyord watched Defendant's truck turn into a shopping center and run over several curbs before exiting the shopping center. Ackyord, still on the phone with the authorities, was asked to follow Defendant from a safe distance until the police arrived. Ackyord complied. Defendant entered a residential area and hit several mailboxes and trashcans before coming to a stop after a trashcan lodged underneath her truck. Officer John Boone (Officer Boone) of the Wake Forest Police Department too arrived on scene at that time.

Officer Boone approached Defendant and observed her eyes were red and glassy with "pinpoint pupils." Officer Boone asked Defendant what was going on and noted her response—that she was on her way to the doctor and got lost—was delivered with slurred speech. Officer Boone then conducted a horizontal gaze nystagmus (HGN) test, part of the standardized field sobriety test battery, on Defendant. He observed six clues indicating Defendant's impairment and decided not to conduct further field tests because of Defendant's self-reported health concerns. Officer Boone considered the outcome of the HGN test, Defendant's slurred speech, her glassy eyes, the report of her erratic driving, and the trashcan under her truck and formed the opinion that Defendant was impaired.

Officer Boone arrested Defendant for Impaired Driving. Officer Boone transported Defendant to the Wake County Detention Center where he obtained a search warrant for a sample of Defendant's blood and an onsite nurse withdrew two vials around 3:45 p.m. Officer Boone reported Defendant was cooperative with authorities.

On 6 March 2018, prior to Defendant's trial, Defendant filed Notice of Involuntary Intoxication and Automatism Defenses. Defendant was tried before a jury in Wake County Superior Court and found guilty on 2 May 2018. Prior to the start of trial, the defense expected to call Elizabeth Camptella, Defendant's daughter-in-law, to testify that she gave Defendant Xanax on 28 April 2017 without Defendant's knowledge.

During pretrial motions on 1 May 2018, the State requested the trial court advise Ms. Camptella of her "right to counsel and the right against self-incrimination[ ]" since she would be "testifying that she either committed a class F or class H felony[.]" The trial court agreed and subsequently called Ms. Camptella to the stand for a voir dire examination. The trial court began its examination:

> THE COURT: . . . Ms. Camptella, in this case involving [Defendant], there has been a document filed. The document filed . . . indicates that the defendant is giving notice that the -- of potential evidence that the [Defendant] involuntarily, unconsciously and unknowingly ingested alprazolam, Xanax essentially --
>
> MS. CAMPTELLA: Correct.

> THE COURT: -- that was given to her in secret by Elizabeth Camptella. Now, you've heard some of the conversation up here, but giving someone a controlled substance, like alprazolam, that's a controlled substance which is a matter -- it's prescribed to individuals and not to be given and distributed or anything of that nature. So if one, in fact, gives or delivers or shares a controlled substance such as the one here to another, that might expose that person to being criminally charged --
>
> MS. CAMPTELLA: Mm-hmm.
>
> THE COURT: -- with an offense. Do you understand that? Don't give me -- don't tell me anything about what you did or didn't do. I just want to make sure you understand what we're talking about.
>
> MS. CAMPTELLA: Yes, sir.
>
> THE COURT: Do you understand that?
>
> MS. CAMPTELLA: Yes, sir.

The trial court then informed Ms. Camptella of the precise criminal repercussions of her potential testimony.

> THE COURT: Do you understand that we're doing -- that one offense would be under [N.C. Gen. Stat. §] 14-401.11, distribution, "It shall be unlawful for any person to knowingly distribute, give away or otherwise cause to be placed in a position of human accessibility any food or edible substance that the person knows to contain a controlled substance," and the controlled substance in this case would be -- that's being referred to alprazolam, or Xanax, and the maximum potential punishment -- that is a class F felony. The maximum potential punishment for that is 59 months in prison. Do you understand that?
>
> MS. CAMPTELLA: I do now, uh-huh.

THE COURT: Additionally, . . . if an individual delivers one of these controlled substances to someone else, just in and of itself, there is a crime under [N.C. Gen. Stat. §] 90-95 for an individual to transfer or deliver, whether you get money back for it or whatever the case may be, a controlled substance . . . . So that offense is a class H felony for that level of drug.

MS. CAMPTELLA: Mm-hmm.

THE COURT: Class H felonies have a maximum potential punishment of 39 months in prison. Do you understand that?

MS. CAMPTELLA: Yes, sir.

. . . .

THE COURT: And here in this particular case, the district attorney is here. This is -- the district attorney's office is the office that's responsible for -- among others, for initiating charges, criminal charges, against individuals. Do you understand that?

MS. CAMPTELLA: Yes, sir.

THE COURT: Do you understand that you have the right to remain silent and that any statement you make may be used against you? Do you understand that?

MS. CAMPTELLA: Yes, sir.

THE COURT: Do you understand you cannot be compelled to give any testimony that might be adverse to your criminal interest?

MS. CAMPTELLA: Yes, sir.

. . . .

THE COURT: Do you understand that if you take the stand, that you -- if you were to take the stand and if you were to testify to something that was a criminal offense, that it would expose you

> to potential criminal charges and potential criminal record and potential sentence by a court? Do you understand that?
>
> MS. CAMPTELLA: Yes, sir.
>
> . . . .
>
> THE COURT: So the question will then come as to are you in a position to say now whether you intend to testify or not testify?
>
> MS. CAMPTELLA: You're asking me if I plan to?
>
> THE COURT: Yes, ma'am.
>
> MS. CAMPTELLA: Yes, I do plan to testify.
>
> THE COURT: As long as you understand what the potential consequences are for you.
>
> MS. CAMPTELLA: Yes, sir.

The next day, during another voir dire examination, Ms. Camptella changed her mind and invoked her privilege against self-incrimination under the Fifth Amendment of the U.S. Constitution.

The trial court exercised its discretion under Rule 403 of the North Carolina Rules of Evidence and did not require Ms. Camptella to take the stand to invoke her Fifth Amendment privilege in front of the jury. With Ms. Camptella's decision not to testify, Defendant sought to admit testimony about the contents of prior, out-of-court statements from Ms. Camptella admitting she gave Defendant Xanax without Defendant's knowledge. During Defendant's voir dire examination, Defendant testified Ms. Camptella informed her on three separate occasions that Ms. Camptella

had given Defendant Xanax without Defendant's knowledge. One of the instances described by Defendant was witnessed by Defendant's sister, Mary Medlock, who testified during a voir dire examination that on 1 May 2018, at the courthouse, she overheard Ms. Camptella say: "Yes, I gave it to her."

The trial court excluded Defendant's testimony regarding Ms. Camptella's prior statements under Rule 804(b)(3) of the North Carolina Rules of Evidence. First, the trial court "[was] not convinced that the declarant, Ms. Camptella, would have known or been aware of criminal liability as to the purported statements[ ]" at the time they were made, instead concluding it was after the "initial inquiry of Ms. Camptella . . . that she at that point knew what the -- her exposure to criminal liability may be." The trial court continued that it was also not convinced "there is sufficient corroboration such that it appears to the Court that circumstances clearly indicate the trustworthiness[.]"

At trial, Irvin Allcox (Agent Allcox), a forensic chemist at the City-County Bureau of Identification, was admitted as an expert in the area of forensic chemistry. Agent Allcox testified as to the results of a chemical analysis on Defendant's blood. The chemical analysis showed the only controlled substance present in Defendant's blood sample was alprazolam, commonly known as Xanax.[1] Agent Allcox testified Xanax is a central nervous system depressant with similar effects as alcohol, such as:

[1] For consistency and ease of reading we will use the drug's common name, Xanax.

sedation, loss of coordination, dizziness, drowsiness, and memory problems. He also testified the half-life of the drug is listed as eleven hours, and "if [Xanax] is in the blood, it's active[.]" He further testified: "I can tell you [Xanax] is an impairing substance; it's a controlled substance. I cannot tell you if someone is impaired because it is in the blood."

Defendant took the stand in her defense. Defendant testified due to her significant health issues, she now takes twelve pills a day.[2] Her daughter-in-law, Elizabeth Camptella, resides with her and administered her medication for years leading up to 28 April 2017. Defendant stated she was never prescribed Xanax and on the morning of 28 April 2017, she did not knowingly take Xanax. Defendant testified that on 28 April 2017, Ms. Camptella administered her medication. She had a doctor's appointment in Wakefield, North Carolina, that day, and she testified that on her way she became lost. She recalled calling her sister to say she was lost; however, she only remembered that day "up to that point." Defendant's next memory was of her son bailing her out of jail.

Defendant testified she was extremely concerned about her lack of memory and made an appointment with a neurologist. After she received the results of her blood test showing Xanax in her system, Defendant testified she began administering her

[2] Defendant testified she has Addison's disease and is in adrenal failure. Defendant also testified she was previously diagnosed with Hodgkin's disease, cervical cancer, and uterine cancer. She further testified she has also suffered two heart attacks and a stroke. (**T p. 210-11**).

medication herself. Defendant testified that her son—Ms. Camptella's husband—had a Xanax prescription and to finding a bottle of Xanax prescribed to Ms. Camptella's mother's dog in her grandson's closet around January 2018.

Defendant's sister, Mary Medlock, also testified for Defendant. Ms. Medlock testified to Defendant's health issues and that Ms. Camptella provided Defendant with her medication. Neither Defendant nor Ms. Medlock were permitted to testify to Ms. Camptella's previous statements admitting that she gave Defendant Xanax without her knowledge. At the close of trial, the trial court denied Defendant's request to submit to the jury instructions on the affirmative defenses of automatism and involuntary intoxication. The trial court's sole instruction to the jury was on the charge of Impaired Driving.

The jury found Defendant guilty of Impaired Driving and the trial court sentenced Defendant to a sixty-day suspended sentence and twelve months of unsupervised probation. As a condition of probation, the trial court ordered Defendant: surrender her driver's license; complete a substance abuse treatment assessment within thirty days; comply with any proposed treatment within 180 days; and complete twenty-four hours of community service. Defendant gave Notice of Appeal in open court.

Issues

There are two issues before this Court: (I) whether the trial court erred in excluding testimony regarding prior statements made by Ms. Camptella as hearsay not subject to the exception for statements against penal interest; and (II) whether the trial court erred in denying Defendant's request to instruct the jury on the affirmative defenses of automatism and involuntary intoxication.

Analysis

I. Rule 804(b)(3)

Defendant contends the trial court erred in excluding testimony regarding Ms. Camptella's prior, out-of-court statements on the basis they constitute inadmissible hearsay. We review the trial court's decision regarding the admissibility of alleged hearsay statements de novo. *See State v. Johnson*, 209 N.C. App. 682, 692, 706 S.E.2d 790, 797 (2011).

Hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." N.C. Gen. Stat. § 8C-1, Rule 801(c) (2017). Generally, "[h]earsay is not admissible except as provided by statute or by [the Rules of Evidence]." *Id.* § 8C-1, Rule 802. In particular, Rule 804 provides an exception, *inter alia*, for hearsay statements made against the declarant's interest if the declarant is deemed "unavailable." *See id.* § 8C-1, Rule 804(a), (b)(3). This statement-against-interest exception provides:

> A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject him to civil or criminal liability, or to render invalid a claim by him against another, that a reasonable man in his position would not have made the statement unless he believed it to be true. A statement tending to expose the declarant to criminal liability is not admissible in a criminal case unless corroborating circumstances clearly indicate the trustworthiness of the statement.

Id. In sum, "Rule 804(b)(3) requires a two-pronged analysis. First, the statement must be deemed to be against the declarant's penal interest. Second, the trial judge must be satisfied that corroborating circumstances clearly indicate the trustworthiness of the statement if it exposes the declarant to criminal liability." *State v. Wardrett*, 145 N.C. App. 409, 414, 551 S.E.2d 214, 218 (2001) (citations and quotation marks omitted).

A. Statement Against Interest

Under the first prong of the Rule 804(b)(3) analysis articulated by this Court, the hearsay statement in question "must actually subject the declarant to criminal liability, and it also must be such that the declarant would understand its damaging potential (i.e. that a reasonable [person] in declarant's position would not have said it unless he [or she] believed it to be true)." *State v. Choudhry*, 206 N.C. App. 418, 422, 697 S.E.2d 504, 508 (2010) (citations and quotation marks omitted).

Here, the parties do not contest the question of whether Ms. Camptella's statements *actually* subjected her to criminal liability. Indeed, from the State's

pretrial request for the trial court to advise Ms. Camptella of her rights and the trial court's subsequent in-depth explanation of the incriminating ramifications of her statements, it is evident from the Record and testimony at trial that Ms. Camptella's statements subjected her to criminal liability.

Rather, the trial court excluded testimony regarding Ms. Camptella's statements on the basis it "[was] not convinced that the declarant, Ms. Camptella, would have known or been aware of criminal liability as to the purported statements," emphasizing instead that it was after the "initial inquiry of Ms. Camptella . . . that she . . . knew what the -- her exposure to criminal liability may be."

First, we agree with the trial court that at the time the statements were made, Ms. Camptella may not have been aware of what her particular criminal liability would be under the specific statutes cited by the trial court—specifically, that she may be subject to Class H and Class F felonies with maximum potential sentences of thirty-nine or fifty-nine months. However, from her testimony during the trial court's voir dire examination, it appears she was aware her prior statements would expose her to criminal liability and thus that they were against her penal interest. The trial court explained:

> THE COURT: . . . . So if one, in fact, gives or delivers or shares a controlled substance such as [Xanax] to another, that might expose that person to being criminally charged --
>
> MS. CAMPTELLA: Mm-hmm.

> THE COURT: -- with an offense. Do you understand that? Don't give me -- don't tell me anything about what you did or didn't do. I just want to make sure you understand what we're talking about.
>
> MS. CAMPTELLA: Yes, sir.
>
> THE COURT: Do you understand that?
>
> MS. CAMPTELLA: Yes, sir.

Thus, although Ms. Camptella did not likely know the precise criminal repercussions of her statements until her voir dire examination with the trial court, her statements indicate she understood her prior statements "might expose [her] to being criminally charged[.]"

The State argues Ms. Camptella's statement, "I do now, uh-huh," is evidence that she did not know the statements were against her penal interest. However, Ms. Camptella's statement, "I do now," was made in response to the trial court's inquiry into whether she knew she was subject to a Class F felony for giving Defendant Xanax. The statement does not indicate Ms. Camptella was unaware of the "damaging potential" of her statement; it shows that she did not know the precise criminal repercussions. Moreover, during that exchange, Ms. Camptella expressed it was her intent to testify at Defendant's trial and that she was aware her testimony subjected her to criminal liability. [**T p. 17**]. It was not until the next day, when questioned again on voir dire, Ms. Camptella invoked her Fifth Amendment right against self-incrimination.

Second, Defendant argues on appeal the trial court erred in applying a subjective standard and basing its ruling on what it perceived to be Ms. Camptella's actual knowledge. We agree. Under Rule 804, the declarant's knowledge of her statements' "damaging potential" is judged by a reasonable-person standard. *See* N.C. Gen. Stat. 8C-1, Rule 804(b)(3) ("[A] *reasonable* man in his position would not have made the statement unless he believed it to be true." (emphasis added)); *see also Choudhry*, 206 N.C. App. at 422, 697 S.E.2d at 508 ("[A] *reasonable* [person] in declarant's position would not have said it unless he [or she] believed it to be true" (emphasis added) (citation and quotation marks omitted)). Thus, when inquiring into the knowledge of the declarant at the time the statement was made as to whether the statement(s) in question were against her penal interest, we look to that of a "reasonable [person] in declarant's position[.]" *Choudhry*, 206 N.C. App. at 422, 697 S.E.2d at 508 (citation and quotation marks omitted). Here, the trial court erred in applying a subjective standard to inquire whether Ms. Camptella knew of her statements' damaging potential.

Applying the reasonable-person standard in Rule 804(b)(3) to the statements made by Ms. Camptella, we conclude a reasonable person in Ms. Camptella's position, when confronted, would not admit slipping a controlled substance, such as Xanax, to another person without his or her knowledge or consent, unless the declarant believed it to be true and would understand the damaging potential of such an admission. As

such, it was error for the trial court to conclude Ms. Camptella would not be aware of the damaging potential of her statements admitting to giving Defendant Xanax without Defendant's consent.

B. Corroborating Circumstances

We next turn to the second prong of the Rule 804(b)(3) analysis, which requires "corroborating circumstances clearly indicate the trustworthiness of the statement." N.C. Gen. Stat. § 8C-1, Rule 804(b)(3). "In order to satisfy the second prong, there needs to be 'some other independent, nonhearsay indication of the trustworthiness' of the statement." *State v. Dewberry*, 166 N.C. App. 177, 181, 600 S.E.2d 866, 869 (2004) (citation omitted). "Factors to be considered include spontaneity, relationship between the accused and the declarant, existence of corroborative evidence, [and] whether or not the declaration had been *subsequently repudiated* . . . ." *Choudhry*, 206 N.C. App. at 423, 697 S.E.2d at 508 (emphasis added) (citations and quotation marks omitted). This Court has also considered a declarant's motive for making the statement in question. *See Dewberry*, 166 N.C. App. at 182, 600 S.E.2d at 870 ("The existence of a motive for declarant to have offered a false statement will be evidence arguing against its admission."). Ultimately, as noted by the Advisory Committee's comments to the Rule, "[t]he requirement of corroboration should be construed in such a manner to effectuate its purpose of circumventing fabrication." N.C. Gen. Stat. § 8C-1, Rule 804, cmt.

Defendant testified at voir dire to three occasions where Ms. Camptella admitted she gave Defendant Xanax without her knowledge. In January 2018, Defendant found an empty bottle of Xanax prescribed to Ms. Camptella's mother's dog in her grandson's closet. It was at that point Defendant testified Ms. Camptella first admitted to giving her Xanax. Prior to that, Defendant testified that she asked Ms. Camptella when she received the results of her blood test and she denied "she gave [her] anything . . . [a]nd she denied it quite a few times until I found the empty bottle." Defendant testified to two other occasions: one a week before trial and then most recently on 1 May 2018 in the courthouse in front of other witnesses.

Defendant argues that there is sufficient corroborating evidence of Ms. Camptella's hearsay statements based on: (1) her assertion of her right against self-incrimination under the Fifth Amendment; (2) her admission that she took part in caring for Defendant; (3) evidence of Ms. Camptella's access to Xanax—including her husband's prescription and the empty bottle of dog Xanax found in her grandson's closet; (4) the results of Defendant's blood test showing Xanax; and (5) Defendant's testimony that she was never taking Xanax and did not know she had been given it. The State argues in opposition, stating: (1) it is a "misapprehension of the law" to use Ms. Camptella's invocation of her Fifth Amendment right as a corroborating circumstance; and (2) Defendant's and Ms. Medlock's hearsay statements are unreliable based on Defendant's testimony at voir dire indicating that Ms. Camptella

had previously denied giving Defendant Xanax prior to Defendant finding the Xanax bottle in her grandson's closet.

This Court has identified relevant factors to analyze the sufficiency of corroborating circumstances, including: spontaneity, relationship of the parties, subsequent repudiation of the statement(s) by the declarant, potential motive of the declarant, and the existence of additional corroborating evidence. *See Choudhry*, 206 N.C. App. at 423, 697 S.E.2d at 508. Here, we recognize Ms. Camptella is married to Defendant's son and that Defendant resides with her son and Ms. Camptella. As Defendant testified, Ms. Camptella assists in providing her care, and at the time of the incident resulting in Defendant's conviction, Ms. Camptella administered her medications.

In *Choudhry*, the motive of the declarant was relevant to this Court's inquiry into corroborating circumstances because the admission of the declarant's statement was self-serving and served to establish a defense for the declarant. *Id.* at 424, 697 S.E.2d at 509. In contrast, the admission of Ms. Camptella's hearsay statements in the case *sub judice* was sought to establish a defense for Defendant; it was not self-serving for Ms. Camptella. Unlike the declarant in *Choudhry*, Ms. Camptella did not seek to establish a defense to her own criminal liability by making the hearsay statements in question to Defendant. Instead, as our analysis under the first prong established, Ms. Camptella's statements subjected her to criminal liability. Thus, we

conclude that Ms. Camptella had no motive to make false statements to Defendant and that this evidence supports the statements' reliability.

We also consider "whether or not the declaration ha[s] been subsequently repudiated[.]" *Id.* at 423, 697 S.E.2d at 508 (citation and quotation marks omitted); *see State v. Tucker*, 331 N.C. 12, 27, 414 S.E.2d 548, 556 (1992) (concluding the trial court erred in precluding statements under Rule 804(b)(3) when "the record [did] not reveal that [the declarant] ever expressly repudiated his [prior] statement" it was "not so inconsistent with his [prior] assertion . . . that the assertion [was] untrustworthy"). The State argues Defendant's hearsay statements are unreliable and untrustworthy because Defendant testified "[s]ometimes [Ms. Camptella] would say yes; sometimes she would say no." Considering the context of Defendant's statement as well as the Record and evidence presented at trial, we do not agree that this establishes the statements' unreliability or untrustworthiness as the State argues.

Defendant testified Ms. Camptella stated the day before trial, in the courthouse, she gave Defendant "Xanax because she was trying to help her . . . ." After making that statement, Ms. Camptella indicated to the trial court during voir dire that she was willing to testify at trial that she gave Defendant Xanax without Defendant's knowledge. The next day, during another voir dire examination, Ms. Camptella invoked her Fifth Amendment right against self-incrimination and

declined to testify. At this point, Defendant sought to have Ms. Camptella's prior statements admitted under Rule 804(b)(3).

The State argues Defendant's statement during voir dire "[s]ometimes [Ms. Camptella] said yes; sometimes she said no[ ]" is a repudiation that supports its contention Defendant's hearsay statements are untrustworthy. However, we decline to conclude Defendant's statement amounts to a repudiation indicating the statements' untrustworthiness. In concluding this, we emphasize that Ms. Camptella's later hearsay statements made to Defendant were not repudiated. To the contrary, Ms. Camptella's alleged admissions in fact repudiate her earlier denials. Defendant's statement "[s]ometimes [Ms. Camptella] said yes, sometimes she said no[ ]" is not a repudiation directly by Ms. Camptella. Defendant sought to testify to her recollection of Ms. Camptella's statements and her encounters with Ms. Camptella. Instead, as Defendant argued, should Ms. Camptella have wanted to repudiate her prior statement, she could have testified that she did not give Defendant Xanax without Defendant's knowledge. Thus, there has been no express repudiation of these statements, which supports their reliability.

The State also argues that Ms. Medlock's hearsay testimony may not be used to corroborate Defendant's hearsay testimony. We agree, noting Defendant does not argue Ms. Medlock's statements are corroborating. Our courts have held "there needs to be 'some other independent, nonhearsay indication of the trustworthiness' of the

statement." *Dewberry*, 166 N.C. App. at 181, 600 S.E.2d at 869 (citation omitted). As such, the trial court correctly did not rely on Ms. Medlock's hearsay testimony as corroborating Defendant's statements.

Lastly, we consider the presence of additional corroborative evidence. Defendant argues finding the empty bottle of Xanax in her grandson's closet as well as her admissible testimony that Ms. Camptella took part in administering her medications is additional corroborative evidence supporting the reliability of the hearsay statements in question. Defendant contends this evidence indicates Ms. Camptella had the opportunity to provide Defendant Xanax without her knowledge. We agree. The presence of a Xanax bottle prescribed to Ms. Camptella's mother's dog supports the contention that Ms. Camptella had access to Xanax, in turn supporting the reliability of Defendant's statements.

Considering the admissibility of Defendant's hearsay statements de novo, we conclude that the trial court erred in denying Defendant's request to admit Defendant's testimony under Rule 804(b)(3) upon declaring Ms. Camptella an unavailable witness. We conclude under the two-prong analysis articulated by our courts, the statements were, in fact, against Ms. Camptella's interest and a reasonable person would know of their damaging potential. *See, e.g.*, *Wardrett*, 145 N.C. App. at 414, 551 S.E.2d at 218. Moreover, we conclude that sufficient

corroborating circumstances exist to indicate the trustworthiness and reliability of the statements. *Id.*

C. Prejudice

"[E]ven when objected to at trial, evidentiary errors are subject to harmless error analysis on appeal." *State v. Williams*, 232 N.C. App. 152, 168, 754 S.E.2d 418, 428 (2014). As such, the Defendant must show that the error was prejudicial. *See State v. Malachi*, 371 N.C. 719, 733-34, 821 S.E.2d 407, 418 (2018). "A defendant is prejudiced . . . when there is a reasonable probability that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises." N.C. Gen. Stat. § 15A-1443(a) (2017). The burden of showing prejudice is on the Defendant. *See id.* § 15A-1443(b).

Here, Defendant argues she was prejudiced by the trial court's exclusion of her hearsay testimony because there is a reasonable possibility the jury would have acquitted her on the charge of Impaired Driving had it heard the evidence. Although we do not know if the jury would have acquitted Defendant upon the admission of this testimony, we agree that the exclusion of Defendant's testimony creates a reasonable possibility of a different result. The exclusion of the Defendant's hearsay testimony prohibited the jury from considering whether Defendant was given Xanax without her knowledge or consent. Indeed, the exclusion of this evidence functionally

deprived Defendant of any possibility her affirmative defenses would be submitted to the jury. Therefore, we conclude Defendant was prejudiced by this error.

II. Jury Instructions

Defendant also contends the trial court erred in denying Defendant's request for jury instructions on the affirmative defenses of automatism and involuntary intoxication. In light of our conclusion the exclusion of Defendant's hearsay testimony constituted prejudicial error, the trial court, after hearing the evidence presented at Defendant's new trial, should consider anew if there is substantial evidence to support Defendant's requested jury instructions on involuntary intoxication and automatism in light of the admissible testimony.

Conclusion

Accordingly, based on the foregoing reasons, we conclude the trial court committed prejudicial error by excluding Defendant's testimony and therefore Defendant is entitled to a new trial.

NEW TRIAL.

Judges ZACHARY and ARROWOOD concur.

Report per Rule 30(e).