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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-658

Filed: 7 April 2020

Johnston County, Nos. 17 CRS 55493, 55494, 55495

STATE OF NORTH CAROLINA

v.

CORRIE VACHAN LANIER

Appeal by defendant from judgments entered 16 November 2018 by Judge Thomas H. Lock in Johnston County Superior Court. Heard in the Court of Appeals 19 February 2020.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Tamika L. Henderson, for the State.

Center for Death Penalty Litigation, Inc., by David Weiss, for defendant.

ARROWOOD, Judge.

Corrie Vachan Lanier ("defendant") appeals from judgment entered on his convictions for sexual offense with a child, sexual offense in a parental role, and indecent liberties with a child. Defendant contends the trial court plainly erred in admitting testimony by the victim's father regarding the father's background, the victim's developmental disabilities, and the impact the sexual abuse had on the victim

because such testimony was irrelevant, highly prejudicial, and constituted impermissible victim impact evidence. For the following reasons, we find no plain error.

I. Background

On 4 December 2017, defendant was indicted on multiple charges of sexual offense with a child, sexual offense in a parental role, and indecent liberties with a child. On 13 November 2018, defendant was tried by a jury. The State's evidence at trial tended to show the following.

M.F.J.[1] lived in New York with his mother ("mother") and siblings when he was in elementary school. During that time, mother began dating defendant and defendant soon became a father figure to M.F.J. Mother ultimately married defendant, at which point defendant moved into the home with mother and her children. After moving into the home, defendant began sexually abusing M.F.J. In one such incident, defendant kissed M.F.J. and performed oral sex on him in the laundry room of their New York home. Afterwards, defendant told M.F.J. not to tell anyone about what happened. When M.F.J. began attending middle school, the family moved to North Carolina. In North Carolina, defendant continued his sexual abuse of M.F.J., including kissing, oral sex, and several unsuccessful attempts at anal sex.

[1] Initials are used to protect the juvenile's identity and for ease of reading.

On one occasion, mother walked into M.F.J.'s bedroom and discovered defendant had recently performed oral sex on M.F.J. Mother stabbed defendant with a kitchen knife and defendant fled the home. M.F.J. then confessed to his mother that defendant, whom M.F.J. referred to as "Pops," had been sexually abusing him. Defendant subsequently sought medical treatment for his stab wound at a hospital, and the hospital reported the stabbing to the police. Defendant initially lied to the investigating officers and told them he was attacked during an attempted robbery. However, when the police began investigating the alleged robbery, defendant admitted he lied about the robbery and that mother had stabbed him during an argument.

Following the stabbing incident, defendant was temporarily banned from the home, until mother eventually allowed him to return. Defendant's sexual abuse of M.F.J. then resumed, in which he would have M.F.J. watch pornography with him, perform and receive oral sex, masturbate, and attempt anal sex. At some point, M.F.J. confided in his younger brother, E.F., that defendant had been sexually abusing him. M.F.J. also told his mother that defendant had continued the sexual abuse. Defendant again left the home after mother hit him with a piece of wood.

Defendant first sought refuge with Linda Williams-Dunston ("Williams-Dunston"), a pastor at Faith, Love, "N" Overflow Ministries, whom defendant had a close friendship with. Defendant asked Williams-Dunston if he could stay at the

church for a while. When Williams-Dunston questioned him about what happened, defendant told her that "[M.F.J] was doing me." Williams-Dunston asked defendant if he "violate[d]" M.F.J., but defendant said he did not want to talk about it and was getting counseling. Williams-Dunston advised defendant to seek some help and to step down from preaching. She also later reported her suspicions of sexual abuse to the Department of Social Services.

Williams-Dunston, uncomfortable with the idea of defendant staying at the church, instead arranged for defendant to stay at a transition home owned by another church pastor, Ruth Davis ("Davis"). While living at the transition home, defendant spent a lot of time at Davis' nearby home. Defendant confided to Davis that he did not rape M.F.J.; he had tried to "do him" but had been unsuccessful because it was too hard. Defendant further confessed to Davis that he masturbated, watched pornography, and had oral sex with M.F.J. as well. Shaniqua Cribbs ("Cribbs") also overheard defendant tell Davis during a phone conversation that, "[i]t was only oral sex." Davis later reported defendant's sexual abuse of M.F.J. to social services. A social services investigation was initiated after the reports were made by Williams-Dunston and Davis.

M.F.J.'s mother again eventually allowed defendant back into the home. While visiting their father in New York, E.F. and M.F.J. told their father about defendant's prior sexual abuse of M.F.J. so that M.F.J. would not have to return to North

Carolina. Law enforcement was notified and began investigating the claims of sexual abuse. At the time of the trial, M.F.J. was living in New York with his father.

Defendant's evidence tended to show the following. Defendant testified that he did not commit any sexual abuse and that such abuse was physically impossible for him. Defendant weighed between 480 and 550 pounds during the time of the alleged abuse. Due to his substantial weight, he was unable to stand or walk for long periods of time and had difficulty going up and down stairs. Rhonda Small, a church acquaintance, testified defendant probably weighed almost 600 pounds at one point and that he struggled to breath and move around. In addition, defendant had medical issues which impeded his ability to engage in sexual activity, including low levels of testosterone and erectile dysfunction. He was unable to sleep with his wife until three years into their marriage.

After hearing the evidence, the jury convicted defendant of all charges against him. The trial court sentenced him to three consecutive terms of 216 months to 320 months imprisonment. Defendant gave oral notice of appeal in open court.

II. Discussion

Defendant's sole contention on appeal is that the trial court plainly erred when it permitted testimony by M.F.J.'s father ("M.F.S.") about his background, M.F.J.'s developmental disability, and the impact defendant's sexual abuse of M.F.J. had on M.F.J. We disagree.

Defendant acknowledges he did not object to M.F.S.'s testimony at trial, and thereby failed to preserve the matter for appeal. We review unpreserved challenges to the admission of evidence for plain error. Under plain error review, a defendant "must demonstrate that a fundamental error occurred at trial." *State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012). Fundamental error is error that is "so basic, so prejudicial, so lacking in its elements that justice cannot have been done." *State v. Odom*, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983). To show that an error was fundamental, a defendant must show that he was prejudiced, such that, "absent the erroneous admission of the challenged evidence, the jury probably would not have reached its verdict of guilty." *State v. Cunningham*, 188 N.C. App. 832, 835, 656 S.E.2d 697, 699-700 (2008).

Defendant argues M.F.S.'s testimony should not have been admitted because it was irrelevant, highly prejudicial, and essentially amounted to impermissible victim impact evidence. Pursuant to Rule 402 of the North Carolina Rules of Evidence, "[e]vidence which is not relevant is not admissible." N.C. Gen. Stat. § 8C-1, Rule 402 (2019). Relevant evidence is evidence "having 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 (2019). In addition, evidence that is relevant may still be excluded if

its probative value is substantially outweighed by the danger of unfair prejudice. N.C. Gen. Stat. § 8C-1, Rule 403 (2019).

In the present case, the State called M.F.S. to the stand and began by asking him questions about his background, without objection, including "Can you just describe for the jurors a little bit about your life in New York? Were there troubled times that you had and have you – where are you now as opposed to where you were before?" M.F.S. responded by describing how he sold drugs in the past, and that his eventual arrest and conviction for selling drugs was a wake up call which caused him to change his life around. He became an athletic director at the Boys & Girls Club, attended anger-management counseling, and often acted as a liaison between law enforcement and inner-city kids. He further testified that even after he separated from M.F.J.'s mother, he remained involved in his son's life. The State also elicited testimony that M.F.S. recently suffered from a work injury and was out of work at that time.

M.F.S. additionally testified to M.F.J.'s developmental disabilities, explaining that he was born prematurely, has a reading and math level significantly below that of the average person his age, and has A.D.H.D. In addition, M.F.J. "has a hard time understanding certain things, time frames" and relates more to younger children. M.F.S. lastly testified that, prior to sitting through the trial, he had not known the details and extent of the sexual abuse endured by his son at the hands of defendant.

After the abuse, M.F.S. observed that M.F.J.'s behavior changed such that he became more quiet and reserved, distanced himself from friends, and stopped smiling and showing as much emotion as he used to. M.F.J. was currently getting counseling to help him process his feelings.

Defendant contends none of this testimony had any bearing on the issues before the jury or the context of the crimes alleged. In addition, defendant further contends M.F.S.'s testimony regarding the impact the sexual abuse had on M.F.J. amounted to impermissible victim impact testimony. Victim impact evidence refers to evidence of " 'physical, psychological, or emotional injury, [or] economic or property loss suffered by the victim' " or the victim's family. *State v. Graham*, 186 N.C. App. 182, 190, 650 S.E.2d 639, 645 (2007) (quoting N.C. Gen. Stat. § 15A-833 (2019)). "A victim has the right to offer admissible evidence of the impact of the crime, which shall be considered by the court or jury in sentencing the defendant." N.C. Gen. Stat. § 15A-833. Such evidence, however, is generally impermissible during the guilt-innocence phase of trial proceedings, unless it has a tendency to prove the defendant's guilt of the crime charged. *Graham*, 186 N.C. App. at 190, 650 S.E.2d at 645 (citing *State v. Maske*, 358 N.C. 40, 50, 591 S.E.2d 521, 527-28 (2004)).

Here, we agree with defendant that the extensive testimony given by M.F.S. about his life was not relevant. We also agree that testimony regarding the impact of the sexual abuse was impermissible during the guilt-innocence phase of the trial,

as it had no "tend[ency] to show the context or circumstances of the crime itself[.]" *Id.* at 191, 650 S.E.2d at 646. The only portion of the challenged testimony that may have been relevant is that concerning M.F.J.'s developmental disabilities, which explained M.F.J.'s heightened vulnerability and susceptibility to abuse, especially by someone in a parental role. It also was relevant to M.F.J.'s ability to testify in court, as he sometimes had trouble recalling certain details. Even assuming all of the challenged testimony was inadmissible, however, our inquiry does not end there. Because defendant failed to object to the testimony at trial, he must prove not only that the trial court erred in admitting such testimony, but also that, absent such error, the jury probably would have reached a different verdict. *Cunningham*, 188 N.C. App. at 835, 656 S.E.2d at 699-700.

This Court considered a similar issue in *Graham*. There, we held it was error for the trial court to admit irrelevant victim impact testimony, as it did not help to prove whether the defendant committed the charged crime against the victim. 186 N.C. App. at 191, 650 S.E.2d at 646. However, we further held that "[i]n light of the considerable evidence of defendant's guilt, we cannot say as a matter of law that absent the erroneous admission of victim impact evidence, there is a reasonable possibility that the jury's verdict would have been different." *Id.* at 192, 650 S.E.2d at 647. *See also Maske*, 358 N.C. at 49-50, 591 S.E.2d at 528 (assuming the trial court erred in admitting irrelevant testimony by murder victim's sister about the effect of

the crime on her and her children at the guilt-innocence phase of the trial, but holding that admission of the evidence was harmless given ample evidence of the defendant's guilt). Notably, this Court decided *Graham* on a reversible error standard, which requires us to remand for a new trial only if " 'there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached.' " *State v. Williams*, 322 N.C. 452, 456-57, 368 S.E.2d 624, 627 (1988) (quoting N.C. Gen. Stat. § 15A-1443(a) (2019)). Because we review the present case for plain error, defendant's burden here is even heavier.

Defendant argues the present case is more similar to *State v. Bowman*, 188 N.C. App. 635, 656 S.E.2d. 638 (2008). There, the defendant had been convicted of taking indecent liberties with a child, among other charges. *Id.* at 637, 656 S.E.2d at 642. At trial, three witnesses testified about the emotional impact the defendant's prior sexual offenses had on them. *Id.* at 645, 656 S.E.2d at 647. This testimony included tearful statements that the sexual abuse caused the victims to develop drug and alcohol problems, drop out or perform poorly in school, and also negatively affected their sexual and physical interactions with others. *Id.* at 646, 656 S.E.2d at 647. Holding that "[t]here was nothing about the emotional impact of [the] defendant's prior misconduct that shed light on whether [the] defendant was guilty of the crimes charged in the present case" we concluded that the inflammatory nature of the impact evidence and emotions displayed during testimony created a reasonable

probability that, absent the impermissible testimony, the jury would have reached a different result. *Id.*

Contrary to defendant's assertions, the present case is distinguishable from *Bowman* in several important respects. First, the victim impact testimony in *Bowman* concerned that defendant's *prior* sexual offenses of which he had already been convicted, not the sexual offense that he was on trial for. In addition, the witnesses' testimony was visibly emotional and detailed the extremely negative and life-altering ways in which the defendant's actions had impacted them, including heavy substance abuse and diminished academic performance. Lastly, in *Bowman*, three witnesses gave victim impact testimony concerning the defendant's past crimes.

In contrast, in the present case, M.F.S. is the only witness whose testimony is challenged as amounting to victim impact evidence. In addition, his testimony concerned only the crime for which defendant was on trial, and was nowhere near as emotional or inflammatory as the testimony in *Bowman*. Defendant asserts that the trial court's considerate act of asking M.F.S. "[d]o you need a moment or are you ready to go?" before proceeding to cross-examination indicates M.F.S. became emotional while testifying. However, M.F.S. immediately responded that he was "ready to go." This does not compare to the tearful testimony given in *Bowman*. Moreover, M.F.S.'s testimony that M.F.J. became less emotionally expressive and more quiet and

reserved is not of the same inflammatory nature as the impact testimony in *Bowman*. We therefore reject defendant's argument.

In light of the considerable evidence of defendant's guilt, we hold that the erroneous admission of the challenged portions of M.F.S.'s testimony was not a fundamental error such that it amounts to plain error. Indeed, there was substantial evidence aside from M.F.S.'s testimony from which the jury could find defendant was guilty. M.F.J., E.F., Williams-Dunston, Davis, and Cribbs all testified to defendant's guilt. Police testimony also corroborated M.F.J.'s testimony that his mother stabbed defendant after first discovering defendant was sexually abusing M.F.J. Moreover, the jury also heard a recording in which defendant admitted to watching pornography with M.F.J.

Defendant argues he presented evidence of his innocence and evidence casting doubt on the credibility of M.F.J., Davis, and Williams-Dunston. He further asserts that, without M.F.S.'s testimony, there is a reasonable probability the jury would have given more weight to his evidence and rendered a different verdict. To the extent defendant asks this Court to re-weigh evidence, we decline to do so, as determinations of credibility are for the factfinder alone. In addition, though M.F.S.'s testimony may have been irrelevant, for the reasons discussed above, we do not think it was so prejudicial that, "absent the erroneous admission of the challenged evidence, the jury probably would not have reached its verdict of guilty." *Cunningham*, 188

N.C. App. at 835, 656 S.E.2d at 699-700. Accordingly, we reject defendant's argument and find there was no plain error.

III. Conclusion

For the foregoing reasons, we find no plain error.

NO PLAIN ERROR.

Judges DILLON and BERGER concur.

Report per Rule 30(e).