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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-719

Filed: 20 October 2020

Catawba County, No. 17 CRS 932

STATE OF NORTH CAROLINA

v.

ANGELA MINTER PARKER

Appeal by defendant from judgment entered 22 March 2019 by Judge Nathaniel J. Poovey in Catawba County Superior Court. Heard in the Court of Appeals 28 April 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Margaret A. Force, for the State.

Richard Croutharmel for defendant-appellant.

BRYANT, Judge.

Where there was no evidence the trial court's ruling was arbitrary or manifestly unsupported by reason, the trial court did not abuse its discretion in excluding evidence. Moreover, given defendant's own confession, defendant cannot demonstrate prejudice. Accordingly, we find no error.

I. Factual and Procedural Background

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Annie¹ began playing softball at four or five years of age. In middle school, defendant Angela Minter Parker coached Annie's softball team. When Annie went to high school, Shannon Plemmons, a special education teacher and women's softball coach, observed defendant attending Annie's softball games. Plemmons observed that defendant's presence appeared to make Annie uncomfortable. After Annie graduated from high school, she contacted Plemmons. Over the course of their communication, Plemmons saw what she believed to be concerning information in Annie's text messages, which she reported to officials in the school system and to law enforcement.

After investigation by law enforcement, defendant was indicted for statutory sexual offense with a person 15 years of age or younger and taking indecent liberties with a child. Superseding indictments were later entered charging defendant with two counts of statutory sexual offense of a person who is 13, 14, or 15 years old and two counts of taking indecent liberties with a child.

At trial, Annie testified to the conduct which gave rise to the indictments. She testified that defendant first touched her sexually—on her breasts and her vagina—under her clothes in April 2012, when she was 14 years old and in the eighth grade. Annie testified that other such incidents occurred on many occasions at defendant's home and on trips with defendant's family. She testified that she did not tell anyone

¹ A pseudonym is used to protect the identity of the victim, and for ease of reading.

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until she was a freshman in college, at which time she reached out to Plemmons, her high school softball coach.

Detective Russel Boger of the Catawba County Sheriff's Office testified that he interviewed Annie and the interview was video recorded. In the interview, which was played for the jury, Annie identified two specific dates on which offenses occurred: 9 April and 7 July 2012, but she was otherwise unsure of exact dates. Detective Boger also interviewed defendant, and that interview was also video recorded. During the recorded interview, defendant admitted she touched Annie under her clothes but alleged the times differed from those testified to by Annie. Defendant first claimed she did not digitally penetrate Annie but later admitted to touching Annie's clitoris.

The jury returned verdicts finding defendant not guilty of either count of statutory sexual offense and not guilty of one count of taking indecent liberties with a child. The jury returned a guilty verdict against defendant on the remaining count of taking indecent liberties with a child. On the sole guilty verdict, the trial court sentenced defendant in the presumptive range to an active sentence of 16 to 29 months in the custody of the North Carolina Department of Adult Correction. The court further entered judicial findings that the offense was a reportable conviction and a sexually violent offense, involving the physical, mental, or sexual abuse of a minor, and ordered that defendant register as a sex offender for 30 years.

Defendant appeals.

In her sole argument on appeal, defendant contends the trial court erred in excluding evidence. We disagree.

“We review a trial court’s decision to exclude evidence under Rule 403 for abuse of discretion.” *State v. Whaley*, 362 N.C. 156, 160, 655 S.E.2d 388, 390 (2008) (citation omitted). “Abuse of discretion results where the court’s ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988).

At trial, during defendant’s cross-examination of Annie, defendant sought to hand an exhibit to Annie, to which the State objected. The court dismissed the jury and the witness to engage in colloquy with counsel. Defendant revealed that the exhibit at issue was a “set of photographs,” to which the State objected on relevance grounds. The photographs at issue were marked as defendant’s Exhibits numbers three through seven. The State raised no objection to exhibits three and four, but objected on relevance grounds to exhibits five through seven. Defendant explained that these exhibits were photographs depicting Annie’s “[2018] Halloween costume during the period of time that she was mocking the defendant and wanted . . . defendant to go to prison.” Defendant argued that this went “to quite a bit of animous [sic] that she has toward . . . defendant.” The trial court allowed the exhibits to remain part of the record, but sustained the objection pursuant to Rule 403. The

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court noted that “they may be tangentially relevant to show some type of animosity on the part of the victim[,]” but that “that type of animosity is, you know, arguably justified if what she says is true happened.” The court further noted that the photographs “portray the victim in a bad light and that’s putting it mildly[,]” The court ultimately found that the relevance of the photographs was very low, and the prejudicial value very high, and therefore “the danger of unfair prejudice substantially outweighs any probative value.” After the court entered its ruling, defendant attempted to “constitutionalize” her objection, by arguing that the ruling violated defendant’s Sixth Amendment right to confront the witnesses against her, her Sixth Amendment right to competent representation, and her rights to due process under the Fifth, Sixth, and Fourteenth Amendments. On appeal, defendant contends that the trial court’s exclusion of this evidence was error in violation of her constitutional rights.

It is true that the Constitution guarantees a defendant the opportunity to cross-examine the witnesses against her. However, “[g]enerally speaking, the Confrontation Clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.” *Delaware v. Fensterer*, 474 U.S. 15, 20, 88 L. Ed. 2d 15, 19 (1985) (citation omitted); *see also State v. McNeil*, 350 N.C. 657, 677, 518 S.E.2d 486,

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499 (1999) (holding that cross-examination guaranteed by the Confrontation Clause is nonetheless subject to discretionary limitation by the trial court).

In the instant case, defendant was able to cross-examine Annie at length, and in detail. She was not precluded from effective cross-examination, merely precluded from introducing three of defendant's seven photo exhibits during cross-examination of Annie. If defendant wished to introduce other evidence of personal bias by Annie, she had the opportunity to do so.

To the contrary, defendant introduced evidence of Annie's *positive* feelings toward defendant. During Annie's cross-examination, defense counsel asked Annie about a letter she had written to defendant upon her graduation from middle school. In the letter, Annie described herself as "pretty lucky . . . to have such an amazing coach who has my back no matter what[.]" She also described defendant as a "second mom." It is therefore clear that defendant had the opportunity to introduce evidence of Annie's bias either toward or against defendant. Thus, we hold the trial court's ruling did not violate defendant's constitutional right to cross-examine the witness against her.

The trial court's decision to exclude social media photographs of Annie's 2018 Halloween costume was a discretionary one pursuant to Rule 403. In making its ruling the court stated that the photographs were "not relevant to any issue in the case and even if it [wa]s relevant, the danger of unfair prejudice substantially

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outweighs any probative value.” The photographs made no explicit reference to defendant, and were taken two years after Annie first made allegations against defendant. Defendant introduced no evidence, other than the bare allegation that these photographs were intended to mock or attack defendant. We can find no evidence in the record to suggest that the trial court’s determination was “manifestly unsupported by reason” or “so arbitrary that it could not have been the result of a reasoned decision.” Accordingly, we hold that the trial court did not abuse its discretion in excluding this evidence.

Moreover, even assuming *arguendo* that the exclusion of the photographs was error, defendant cannot show prejudice. Annie’s testimony was corroborated by defendant’s own confession to law enforcement. The recording of defendant’s confession was played for the jury. Even had the trial court admitted the excluded photographs and even had the jury found Annie’s testimony to be the result of bias, defendant’s own confession that she touched Annie’s breasts and touched her clitoris was damning. Defendant has failed to show a reasonable likelihood the jury would have reached a different result had she been allowed to examine Annie in regard to the photographs. Thus, defendant has failed to establish prejudice as a result of any purported error.

We hold that the trial court did not abuse its discretion in finding that the photographs were more prejudicial than probative and in excluding them.

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NO ERROR.

Judges YOUNG and BROOK concur.

Report per Rule 30(e).