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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-195

Filed 12 September 2023

Iredell County, Nos. 16CRS55957, 16CRS55158, 16CRS55159, 16CRS55160,
16CRS55161

STATE OF NORTH CAROLINA

v.

DALTON SMALLWOOD, Defendant.

Appeal by Defendant from judgment entered 7 January 2022 by Judge George C. Bell in Iredell County Superior Court. Heard in the Court of Appeals 29 August 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Sondra C. Panico, for the State.

Glover & Petersen, P.A., by James R. Glover, for Defendant-Appellant.

PER CURIAM.

Dalton Smallwood appeals from a judgment after a jury found him guilty of six counts of statutory sex offense and one count of indecent liberties with a minor. On appeal, Mr. Smallwood argues that the trial court erred when it did not redact a

statement by the detective at the end of a recorded conversation that was played for the jury. After careful review, we find no prejudicial error.

I. FACTS & PROCEDURAL HISTORY

Mr. Smallwood originally met Abby¹ at Shepard Baptist Church in Mooresville, North Carolina, when Abby was six years old. In 2008, when Abby was 13, her family joined the Strait Way Baptist Church in Iredell County where Mr. Smallwood was a preacher and Sunday school teacher. Mr. Smallwood began commenting on Abby's appearance and intelligence; additionally, he sent his phone number to her via social media and asked her to call him.

In 2009, Mr. Smallwood initiated a sexual relationship that spanned three years of Abby's early teenage life. Mr. Smallwood made up excuses to see Abby alone so that he could hug and kiss her. Mr. Smallwood asked Abby to meet him in a secluded parking lot near her home where he made her perform fellatio on him. Additionally, Mr. Smallwood penetrated her digitally. Mr. Smallwood asked Abby to meet him at an empty house where Mr. Smallwood performed cunnilingus on Abby and attempted to have vaginal intercourse with her. At trial, Abby testified to multiple encounters between 2009 and 2013 that occurred at Mr. Smallwood's home and different churches where they had vaginal intercourse, he performed cunnilingus on her, and he made Abby perform fellatio on him.

¹ We use a pseudonym to protect the identity of the minor.

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In the fall of 2013, Abby's family moved to Arkansas. Abby did not have contact with Mr. Smallwood until a month before her 18th birthday in 2014, when he called her and asked to come for a visit. During this visit, Abby snuck out of the home and spent the night with Mr. Smallwood. In 2015, after Abby turned 18, Mr. Smallwood asked Abby to marry him. She ultimately told him in late 2015 that she would not marry him.

In July of 2016, Abby told her parents about her interactions with Mr. Smallwood. Abby's father called Mr. Smallwood, who was living in Georgia, and asked him whether the allegations were true. During the conversation, Mr. Smallwood initially denied having sexual relations with Abby, but Mr. Smallwood eventually admitted that he had engaged in a sexual relationship with Abby when she was a minor. Abby's father recorded this phone conversation and provided a copy of the conversation to the police. Abby's father testified that he asked Mr. Smallwood to turn himself in to the Rowan County Sheriff's Office to show his "Godly sorrow." Mr. Smallwood never turned himself in to the police, so Abby and her parents reported the incidents to the Rowan County Sheriff's Office. After Mr. Smallwood was arrested, he texted Abby's father on 16 September 2016 to apologize and ask that Abby's father "please help me and don't send me to jail for the rest of my life."

Detective Janet Weitbrock ("Det. Weitbrock") with the Rowan County Sheriff's Office was assigned to this case in July of 2016. On 6 September 2016, Det. Weitbrock had a telephone interview with Mr. Smallwood; Det. Weitbrock told Mr. Smallwood

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that she was recording the conversation. During the telephone conversation, Mr. Smallwood confessed to having a sexual relationship with Abby when she was a minor. At the end of the taped phone conversation there was the following exchange:

[DET. WEITBROCK]: So, do you have any questions for me?

[MR. SMALLWOOD]: Yes ma'am, I do have an honest question that I would like for you to answer honestly.

[DET. WEITBROCK]: I'll do my best.

[MR. SMALLWOOD]: Ma'am, what am I going to do?

[DET. WEITBROCK]: Probably go to jail, sir[.] For a very long time {pause} Did you want that much honesty?

[MR. SMALLWOOD]: Well ma'am, you-if that's-if that's what you honestly think then, that's what I asked for.

At trial, Mr. Smallwood's attorney objected to the jury hearing this portion of the phone conversation on the basis that it was more prejudicial than probative. The trial court overruled the objection and allowed the jury to hear the entire recording.

The jury found Mr. Smallwood guilty on all seven charges. On the six counts of statutory sex offense, the trial court sentenced Mr. Smallwood to a term of a minimum of 317 months and a maximum of 441 months (26.4 years to 36.8 years). Additionally, on the single count of indecent liberties, the trial court sentenced him to 21 months to 35 months which would run consecutively with the prior sentence. Mr. Smallwood gave oral notice of appeal on the record.

II. ANALYSIS

On appeal, Mr. Smallwood argues that the trial court erred when it allowed the jury to hear Det. Weitbrock’s statement that Mr. Smallwood would “probably go to jail, sir[.] For a very long time.” We discern no prejudicial error.

A. Standard of Review

The standard of review for evidence that was admitted at trial over a defense objection is “whether a reasonable possibility exists that the evidence, if excluded, would have altered the result of the trial.” *State v. McCanless*, 234 N.C. App. 260, 262, 758 S.E.2d 474, 477 (2014). However, the improper admission of evidence, “will not be a reversible error unless it misleads the jury or prejudices the [defendant].” *State v. Watkins*, 77 N.C. App. 325, 328, 335 S.E.2d 232, 235 (1985). The burden of showing such prejudice is on the defendant. N.C. Gen. Stat § 15A-1443(a) (2021); *State v. Alston*, 307 N.C. 321, 339, 298 S.E.2d 631, 644 (1983).

B. Any Error in Admitting the Statement Was Harmless

We do not need to reach the question of whether the trial court erred in allowing the statement under objection to resolve this appeal. Even assuming *arguendo* that the trial court erred in admitting the statement, Mr. Smallwood has not met his burden of showing that the admission of this statement was prejudicial.

The North Carolina General Assembly by statute has established that:

A defendant is prejudiced by errors relating to rights arising other than under the Constitution of the United States when there is a reasonable possibility that, had the

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error in question not been committed, a different result would have been reached at the trial out of which the appeal arises. The burden of showing such prejudice under this subsection is upon the defendant.

N.C. Gen. Stat. § 15A-1443. Even assuming evidence is introduced in error, “evidentiary error does not necessitate a new trial unless the erroneous admission was prejudicial.” *State v. Delau*, 381 N.C. 226, 237, 872 S.E.2d 41, 48 (2022) (quoting *State v. Wilkerson*, 363 N.C. 382, 415, 683 S.E.2d 174, 194 (2009)).

In this case, there was substantial evidence upon which a reasonable jury could find Mr. Smallwood guilty of the charges. The State presented two separate recordings in which Mr. Smallwood confessed to having a sexual relationship with Abby when she was under the age of consent. Mr. Smallwood confessed to Det. Weitbrock in a recorded phone interview, which the State played for the jury. Det. Weitbrock also testified, and the defense counsel had the opportunity to cross-examine her about her investigation and the facts surrounding the interview. Additionally, Mr. Smallwood confessed in a recorded conversation with Abby’s father, which the State played for the jury. Abby’s father testified to the facts surrounding the phone call, and defense counsel had the opportunity to cross-examine him. The jury had the opportunity to consider the credibility of this evidence and testimony. It is the responsibility of the jury to “perform the ultimate function of every trial—determination of the truth.” *State v. Kim*, 318 N.C. 614, 621, 350 S.E.2d 347, 351 (1986).

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Moreover, Abby testified at the trial and provided specific details of the sexual encounters that occurred before she reached the age of consent. The jury had the opportunity to hear her testimony and consider her credibility for themselves. *See State v. Register*, 206 N.C. App. 629, 644-45, 698 S.E.2d 464, 475 (2010) (holding that improper testimony was not prejudicial given the weight of all the other evidence, including the victim's testimony).

The State also introduced, without objection, a text message which Mr. Smallwood sent to Abby's father stating "please help me and don't send me to jail for the rest of my life." This statement is substantially similar to the statement made by Det. Weitbrock at the end of the recorded phone call. This Court has held that a defendant cannot demonstrate prejudice when substantially similar information is admitted without objection. *State v. Mason*, 286 N.C. App. 121, 134, 879 S.E.2d 324, 334-35 (2022) (internal quotation and citations omitted).

Accordingly, we find that even if the statement has been excluded, there is not a reasonable possibility of a different outcome at trial.

III. CONCLUSION

After review of the record, we do not need to reach the issue of whether the statement was properly allowed because we hold that the admission of the statement was not prejudicial.

NO PREJUDICIAL ERROR.

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Panel consisting of:

Judges DILLON, MURPHY, RIGGS.

Report per Rule 30(e).