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NO. COA11-1507  
NORTH CAROLINA COURT OF APPEALS

Filed: 19 June 2012

STATE OF NORTH CAROLINA

v.

Rowan County  
Nos. 06 CRS 58602-03

THOMAS BRANT GEE,  
Defendant.

Appeal by defendant from judgments entered 13 March 2009 by Judge John L. Holshouser, Jr., in Rowan County Superior Court. Heard in the Court of Appeals 21 May 2012.

*Roy Cooper, Attorney General, by Jill A. Bryan, Assistant Attorney General, for the State.*

*Glover & Petersen, P.A., by Ann B. Petersen, for defendant-appellant.*

MARTIN, Chief Judge.

Defendant Thomas Brant Gee appeals from judgments entered upon jury verdicts finding him guilty of two counts of first-degree sex offense with a child. We find no error in his trial.

The State's evidence at trial tended to show the following: in 2006, defendant lived in a split-level home in Rowan County with his girlfriend, Yvette Eccles, his parents, and his young

twin nephews. Eccles has two sons, Q.E. and B.J., neither of whom resides with her. In September 2006, Q.E. was twelve years old and in sixth grade; B.J. was eleven. Q.E. was in a special class at school because he was deemed intellectually disabled in the moderate range, functioning at the third- or fourth-grade level. Around 2005, Eccles was diagnosed with schizoaffective disorder and began taking anti-psychotic medication.

On 16 September 2006, Q.E. and B.J. came to visit their mother at the Gee residence, where they planned to spend the night on the lower level of the home, commonly called the basement. On that evening, defendant began drinking gin when he arrived home from work and became very intoxicated. Eccles helped her sons get ready for bed and told them that they could stay awake to play computer games for a little while. She then took her medication and went to sleep.

Defendant remained downstairs in the basement with the children. According to Q.E., defendant touched his penis as he sat in defendant's lap while they played computer games. Defendant also confronted Q.E. in the basement bathroom and performed fellatio on him. During each of these encounters, Q.E. asked defendant to stop, and he did.

Later, Q.E. and B.J. laid down on a pallet in front of the TV to watch football; Q.E lay in the middle with B.J. on one side of him and defendant on the other. At some point, defendant put his head under the covers and began performing fellatio on Q.E. again. B.J. observed defendant's head under the covers. Q.E. told defendant to stop, but he would not, so Q.E. told B.J. to wake up their mother.

Eccles confirmed B.J.'s story with Q.E. and immediately took the children home to their respective residences. Eccles returned to the Gee residence to confront defendant after dropping off her children. Eccles later testified that defendant told her after the incident that he had "rolled over on [Q.E.'s] parts," that he was sorry, had been drinking, it was an accident, and that he "had a tendency at the time." Eccles broke off her relationship with defendant the following day and moved out of the Gee residence. Eccles testified that after she moved out she had no further contact with defendant, excluding when she was subpoenaed to testify in an unrelated civil matter concerning defendant in Charlotte.

On 18 September 2006, Q.E. told a teacher's assistant at his school about the incident. The school notified Q.E.'s guardians and contacted the authorities. A DSS social worker,

Tonya Cook, and Officer S.A. Barnhardt of the Rowan County Sheriff's Office conducted a joint investigation of Q.E.'s claim, obtaining statements from Q.E., Eccles, and defendant. Defendant initially told Cook and Officer Barnhardt that he began feeling sick from drinking while he was at the computer with Q.E. and B.J. and that he did not remember anything after that except lying on the floor on a blanket and waking up to a lot of commotion. Defendant eventually admitted to touching Q.E.'s penis while sitting at the computer, but stated he had no recollection of any instance of fellatio; he clarified, however, he was not denying that it happened or that it could have happened. Defendant told Officer Barnhardt he had been touched inappropriately by his cousin when he was a child. Defendant wrote and signed a statement that

[o]n September 16, Saturday evening, while intoxicated, I performed sexual activities with [Q.E.]. This happened at my parent's house in the basement. Although I don't recall everything that happened, I feel like oral sex was involved and may have happened more than one time that evening.

Thereafter, defendant was indicted by a grand jury on two counts of first-degree sex offense. At trial defendant sought to introduce the testimony of Cathy Crumb, a neighbor, who would testify she saw Eccles at defendant's home on numerous occasions

after the incident in contradiction to Eccles' testimony regarding the last time she saw defendant. The State objected to the testimony, arguing it was extrinsic evidence intended solely to impeach the witness on a collateral matter. The trial court agreed and excluded Crumb's testimony, finding the sole purpose of the testimony was to attack the credibility of the State's witness. After failing to give timely notice of appeal, defendant filed a petition for writ of certiorari in this Court, which granted review.

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In his sole argument on appeal, defendant contends the trial court erred by excluding defense testimony by Cathy Crumb.

Extrinsic evidence is admissible to contradict witness testimony without a special rule of admissibility if the challenged fact is material. *See State v. Bishop*, 346 N.C. 365, 393, 488 S.E.2d 769, 784 (1997). Extrinsic evidence of collateral facts to contradict a witness' testimony, however, is not admissible under North Carolina common law unless probative of bias or hostility. *See State v. Westall*, 116 N.C. App. 534, 548, 449 S.E.2d 24, 32, *disc. review denied*, 338 N.C. 671, 453 S.E.2d 185 (1994). "[A]s a general rule, 'collateral matters' are those which are irrelevant to the issues in the case; they

involve immaterial matters and irrelevant facts inquired about to test observation and memory." *State v. Najewicz*, 112 N.C. App. 280, 289, 436 S.E.2d 132, 138 (1993), *disc. review denied*, 335 N.C. 563, 441 S.E.2d 130 (1994). "Evidentiary errors are harmless unless a defendant proves that absent the error a different result would have been reached at trial." *State v. Ferguson*, 145 N.C. App. 302, 307, 549 S.E.2d 889, 893, *disc. review denied*, 354 N.C. 223, 554 S.E.2d 650 (2001).

Here, defendant has not argued that Crumb's testimony was relevant to a material fact in the case. Rather, defendant only sought to use Crumb's testimony to challenge Eccles' credibility by showing that Eccles may have had an inaccurate recollection of the last time she saw him. Whether Eccles saw defendant after she moved out of the Gee residence is not relevant to a determination of whether defendant abused her son. Thus, Crumb's proposed testimony that she saw Eccles at the Gee residence a few times after the incident is extrinsic evidence of a collateral fact.

In his brief, defendant seems to argue that Eccles had a motive to lie about when she stopped seeing defendant because "she eventually wanted her children back" and therefore, wanted to look "like a responsible mother" by immediately cutting ties

with defendant. However, defendant did not argue that Crumb's testimony showed bias when he tried to introduce the evidence at trial. Even assuming the statement had been properly offered as probative of bias and therefore would fall within an exception to the rule on "collateral" matters, any error in excluding the testimony was non-prejudicial. See *State v. Howell*, 59 N.C. App. 184, 189-90, 296 S.E.2d 321, 324, *disc. review denied*, 307 N.C. 271, 299 S.E.2d 218 (1982). There was sufficient credible evidence in the record to support the jury's verdict, including the testimony of Q.E. and B.J. and defendant's own written statement, so as to preclude the reasonable possibility that a different result would have been reached at trial.

No error.

Judges ELMORE and HUNTER, JR. concur.

Report per Rule 30(e).