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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1026

Filed: 3 July 2018

Wake County, No. 15CRS206409

STATE OF NORTH CAROLINA

v.

CHRISTOPHER GEORGES DEGAND, Defendant.

Appeal by defendant from judgments and order entered on or about 27 January 2017 by Judge Kendra D. Hill in Superior Court, Wake County. Heard in the Court of Appeals 16 April 2018.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Anne M. Middleton, for the State.

Glover & Petersen, P.A., by James R. Glover, for defendant-appellant.

STROUD, Judge.

Defendant appeals judgments for two counts of sexual offense with a child and order for satellite-based monitoring and registration. We determine there was no error with defendant's convictions and remand the satellite-based monitoring order.

I. Background

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The substance of defendant's crimes is not at issue on appeal so we limit this background to the relevant procedural issues. Defendant was indicted for sexual offense with a child by an adult. The State made a pre-trial motion to close the courtroom during the minor victim's testimony; the trial court granted the motion over defendant's objection. Defendant was convicted by a jury of four counts of sexual offense with a child and ordered to register as a sex offender and enroll in satellite-based monitoring ("SBM"). Defendant appeals.

II. Public Trial

Defendant first contends that "granting the State's motion to close the courtroom during the testimony of [the minor victim] with the sole exception of allowing her mother to remain was a violation of . . . [defendant's] right to a public trial guaranteed by the State and Federal Constitutions." (Original in all caps.) "This Court reviews alleged constitutional violations *de novo*. Pursuant to the Sixth Amendment of the United States Constitution, a criminal defendant is entitled to a 'public trial.' U.S. Const. amend. VI." *State v. Comeaux*, 224 N.C. App. 595, 598, 741 S.E.2d 346, 349 (2012). Similarly, Article 1, Section 18 of the North Carolina Constitution provides that "[a]ll courts shall be open[.]" N.C. Const. art. 1, § 18.

North Carolina General Statute § 15-166 provides

[i]n the trial of cases for rape or sex offense or attempt to commit rape or attempt to commit a sex offense, the trial judge may, during the taking of the testimony of the prosecutrix, exclude from the courtroom all persons except

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the officers of the court, the defendant and those engaged in the trial of the case.

N.C. Gen. Stat. § 15-166 (2017). This Court has explained the requirements for closure of the courtroom:

[b]efore a trial court may allow a courtroom closure pursuant to N.C. Gen. Stat. § 15–166, however, the court must comply with the rule set forth in *Waller* . . . which requires the following:

(1) the party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced;

(2) the closure must be no broader than necessary to protect that interest;

(3) the trial court must consider reasonable alternatives to closing the proceeding; and

(4) the trial court must make findings adequate to support the closure.

While the trial court need not make exhaustive findings of fact, it must make findings sufficient for this Court to review the propriety of the trial court’s decision to close the proceedings.

Comeaux, 224 N.C. App. at 600, 741 S.E.2d at 350 (citations, quotation marks, and brackets omitted).

Defendant challenges *only* the first prong of *Waller* regarding an “overriding interest” to close the trial. *Id.* Defendant relies on *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 73 L. Ed. 2d 248 (1982), in contending that the State did not demonstrate nor did the trial court find an “overriding interest” to close the trial. *Comeaux*, 224 N.C. at 600, 741 S.E.2d at 350. But in *Globe*, the defendant specifically “challenge[d] that portion of the trial court’s order, approved by the Supreme Judicial

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Court of Massachusetts, that holds that § 16A requires, *under all circumstances*, the exclusion of the press and general public during the testimony of a minor victim in a sex-offense trial.” *Id.* at 602, 73 L.E.2d at 254 (emphasis added). *Globe* explained,

[a] trial court can determine on a case-by-case basis whether closure is necessary to protect the welfare of a minor victim. Among the factors to be weighed are the minor victim’s age, psychological maturity and understanding, the nature of the crime, the desires of the victim, and the interests of parents and relatives.

Id. at 608, 73 L. Ed. 2d 258 (footnotes omitted).

The focus in *Globe* was not, as defendant contends, a “test” for when a courtroom may be closed, but a requirement of closure in all cases automatically. *See Globe*, 457 U.S. 596, 73 L. Ed. 2d 248. In other words, *Globe* does not allow the *required* closure of a courtroom, and North Carolina General Statute § 15-166 complies with *Globe* since it allows the trial court to exercise discretion. *See* N.C. Gen. Stat. § 15-166; *see generally Globe*, 457 U.S. 596, 73 L. Ed. 2d 248. In addition, the trial court did exercise its discretion in deciding to order the closure:

In my discretion, I am going to grant the [S]tate’s motion to close the courtroom given the nature of the testimony, including specific testimony with regard to allegations that the alleged victim performed fellatio, the age of the alleged victim at the time, allegations of anal penetration, the nature of those subject matters, and the sensitivity of those subject matter with a young child talking about those things.

The Court finds that closing the courtroom here, that there is compelling interest to do so and that the additional witnesses in the courtroom could impact and

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limit the ability of the minor to be forthcoming or complete in testimony.

The Court also notes that given that the allegation is of a sexual abuse by a relative, that that would add to the potential of difficulty in testifying in any embarrassment that might come from that with the defendant being the cousin as well as the care taker of the alleged victim.

The trial court plainly enumerated the overriding or, as the court stated, “compelling interest” of the concern that the young victim would not be able to testify in a “forthcoming or complete” manner regarding the graphic nature of the abuse if many people were present in the courtroom, especially because the offenses were likely to be embarrassing and it was a relative who had abused her. Defendant also argued that the State failed to present empirical evidence the minor victim would be harmed by testifying in open court, but this type of evidence is not required. This argument is overruled.

III. SBM and Registration

Defendant next contends “the trial court erred by ordering lifetime sex offender registration and satellite monitoring based on a finding that . . . [he] was convicted of an aggravated offense when, as a matter of law, his conviction was not for an aggravated offense.” (Original in all caps.) The State agrees with defendant, noting that a box on the order was checked indicating the trial court found an “aggravated offense,” but defendant’s crimes do not meet the definition of under North Carolina General Statute § 14-208.6(1a). The State contends the trial court should have

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checked the box indicating defendant had been convicted of “sexual offense with a child[.]” (Original in all caps.) We remand for correction of the SBM and registration order.

IV. Conclusion

We conclude there was no error in defendant’s trial. We remand for correction of the SBM and registration order.

NO ERROR; REMANDED in part.

Chief Judge McGEE and Judge BERGER concur.

Report per Rule 30(e).