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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-923

Filed: 16 July 2019

Edgecombe County, No. 16 CRS 052526

STATE OF NORTH CAROLINA

v.

BOBBY DAVIS HADDOCK, JR.

Appeal by Defendant from Judgment entered 14 February 2018 by Judge Jeffery B. Foster in Edgecombe County Superior Court. Heard in the Court of Appeals 24 April 2019.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Alesia Balshakova, for the State.*

*Richard J. Costanza for defendant-appellant.*

HAMPSON, Judge.

**Factual and Procedural Background**

Bobby Davis Haddock, Jr. (Defendant) appeals from a conviction for Statutory Rape of a Child 15 Years of Age or Younger. The Record before us shows the following:

Defendant was originally arrested and charged on 2 September 2016 with Statutory Rape of a Child under 15 and Contributing to the Delinquency of a Minor.

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The State dismissed the charge of Contributing to the Delinquency of a Minor on 23 November 2016 and instead pursued felony sex-crimes charges. Subsequently, on 5 December 2016, Defendant was charged by indictment with Statutory Rape of a Child 15 Years of Age or Younger and Sexual Activity by a Substitute Parent.

On 13 February 2018, the State and Defendant entered into a written stipulation: on 26 March 2017, the alleged minor victim gave birth to a child, and DNA testing concluded Defendant was the biological father. On 15 February 2018, the State filed a Notice of Dismissal with regard to the charge of Sexual Activity by a Substitute Parent. At trial, Defendant admitted having sexual intercourse with the minor victim. He also admitted that at the time the alleged minor victim was 13 years old.

The jury returned a verdict finding Defendant guilty of Statutory Rape of a Child 15 Years of Age or Younger. The trial court found Defendant to have a Prior-Misdemeanor-Conviction Level III and a Prior-Felony-Record Level VI. Defendant also stipulated to multiple prior convictions. The trial court sentenced Defendant in the presumptive range to a minimum of 483 months and a maximum of 640 months in the custody of the North Carolina Department of Adult Correction. The trial court further ordered Defendant to have no contact with the victim or her family.

**Analysis**

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In his sole argument on appeal, Defendant contends the State's closing argument was grossly improper, resulting in a "fundamentally unfair trial[.]" We, however, do not reach this question because we conclude the evidence of Defendant's guilt is so overwhelming and uncontested that any perceived error by the trial court in failing to interject *ex mero motu* was entirely non-prejudicial.

The standard of review for assessing alleged improper closing arguments that fail to provoke timely objection from opposing counsel is whether the remarks were so grossly improper that the trial court committed reversible error by failing to intervene *ex mero motu*. In other words, the reviewing court must determine whether the argument in question strayed far enough from the parameters of propriety that the trial court, in order to protect the rights of the parties and the sanctity of the proceedings, should have intervened on its own accord and: (1) precluded other similar remarks from the offending attorney; and/or (2) instructed the jury to disregard the improper comments already made.

*State v. Jones*, 355 N.C. 117, 133, 558 S.E.2d 97, 107 (2002) (citation omitted).

In this case, the State gave an extensive closing argument, spanning almost 15 pages of transcript. Defendant did not object to this closing argument during trial. On appeal, however, Defendant contends it was so grossly improper as to have prejudiced the jury. Defendant takes issue with several specific points made by the State in its closing argument. First, Defendant argues he "was belittled for exercising his right to a jury trial." In support of this, Defendant points to cross-examination conducted without objection and closing arguments criticizing Defendant for bringing

the case to trial and requiring the minor victim to testify because he didn't receive a lenient plea deal.

Second, Defendant asserts "the prosecutor subjected [Defendant] to repeated *ad hominem* attacks." For example, Defendant notes the State accused Defendant of being a "selfish, manipulative con man" and a "manipulative con man predator" and called Defendant a "con man" on multiple other occasions. He also argues several references by the State—such as Defendant "weaseling into his testimony that it was her fault and he's not to blame" and "you heard him try to weasel out of that yesterday"—constituted improper argument by comparing him to an animal.

Third, Defendant contends "the prosecutor openly mocked [Defendant]'s religious conversion testimony." Indeed, the State argued in its closing Defendant was "using every means available including invoking the name of the Lord to try to manipulate the outcome of this trial because he wants what he wants."

Defendant alleges the trial court "erred by failing to intervene *ex mero motu* in response to these improper arguments." However, even in doing so, Defendant acknowledges "the weight of evidence offered against [Defendant], including his admissions and his DNA-established paternity of [the victim's] child." Defendant also concedes he faces a higher burden "given the fact defense counsel failed to object to these arguments."

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With respect to these allegedly improper statements at trial, “the applicable standard of review requires us to consider whether these improper arguments deprived defendant of a fair trial.” *State v. Huey*, 370 N.C. 174, 185, 804 S.E.2d 464, 473 (2017). Our Supreme Court has noted, “[i]mproper argument at the guilt-innocence phase, while warranting condemnation and potential sanction by the trial court, may not be prejudicial where the evidence of defendant's guilt is virtually uncontested.” *Jones*, 355 N.C. at 134, 558 S.E.2d at 108. Indeed, “[w]hen this Court has found the existence of overwhelming evidence against a defendant, we have not found statements that are improper to amount to prejudice and reversible error.” *Huey*, 370 N.C. at 181, 804 S.E.2d at 470 (citation omitted).

By Defendant’s concession, the evidence against him was indeed overwhelming. Defendant stipulated to the fact the alleged victim gave birth to a child proven by DNA testing to be his. He admitted at trial to having engaged in sexual intercourse with the minor victim and that she was 13 years old at the time of the offense and he was 56 years old. This stipulation and Defendant’s trial testimony are overwhelming and uncontested evidence Defendant engaged in the conduct charged.

When examining allegedly improper statements or arguments, “[t]he primary focus of our inquiry is not solely on the frequency of the improper arguments or the substance of such statements” but rather “whether the jury relied on the evidence or

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on prejudice enflamed by the prosecutor's statements." *Id.* at 185, 804 S.E.2d at 473 (citation omitted). It is clear here, in light of the overwhelming and uncontroverted evidence that Defendant did in fact engage in sexual intercourse with a child of age 15 years or younger, the jury did not have to rely on the prosecutor's statements. We hold the trial court therefore did not commit prejudicial error in failing to intervene *ex mero motu* during the State's closing arguments.

**Conclusion**

Accordingly, for the foregoing reasons, we conclude there was no prejudicial error given the overwhelming and uncontroverted evidence Defendant engaged in the acts charged, including his own stipulation and trial testimony.

NO PREJUDICIAL ERROR.

Judges DILLON and ARROWOOD concur.

Report per Rule 30(e).