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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-15

Filed: 17 September 2019

Brunswick County, No. 12CRS056233

STATE OF NORTH CAROLINA

v.

ROLAND EVAN KING, SR., Defendant.

Appeal by Defendant from judgment entered 29 June 2018 by Judge Claire V. Hill in Brunswick County Superior Court. Heard in the Court of Appeals 21 August 2019.

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

Richard J. Costanza for the Defendant.

DILLON, Judge.

Defendant Roland Evan King, Sr., appeals from a judgment finding him guilty of taking indecent liberties with a child. We conclude that Defendant had a fair trial, free of reversible error.

I. Background

STATE V. KING

Opinion of the Court

In 2012, Defendant was charged with two counts of taking indecent liberties with his thirteen year-old niece, Kelly.¹ In June 2018, Defendant was tried by a jury.

At trial, Kelly testified regarding the incidents for which Defendant was being tried. The State also offered the testimonies of one of Kelly's friends, Kelly's sister, Kelly's school counselor, and the investigating detective.

The State sought to elicit the testimony of Defendant's sister-in-law, Victoria. Victoria would testify that while she lived with Defendant and his wife, she was the victim of inappropriate touching, penetration, and misconduct by Defendant. Initially, the trial court ruled that Victoria's testimony was inadmissible as the conduct occurred in 1991 and 1995 and, therefore, was not close enough in time to the case at hand.

However, after Defendant called his wife to testify that he was a good husband and father and that Victoria never reported any inappropriateness by Defendant, the State was permitted to call Victoria as a rebuttal witness. Defendant objected to all testimony by Victoria. Specifically, Victoria testified that, in approximately 1994, she told Defendant's wife that Defendant "got in the bed with [her] and stuck his hand in [her] panties and stuck his finger in [her] vagina." Victoria testified that after telling Defendant's wife this, Defendant's wife "beat [her] and scream[ed] at [her]."

¹ We refer to the victim by a pseudonym to protect her identity.

After a jury trial on the matter in June 2018, Defendant was found guilty of both charges. Defendant timely appealed.

II. Analysis

On appeal, Defendant argues that the trial court erred in admitting Victoria's testimony as rebuttal evidence under Rule of Evidence 405. N.C. Gen. Stat. § 8C-1, Rule 405 (2018). We review this alleged evidentiary error for an abuse of discretion. *See State v. Davis*, 317 N.C. 315, 318, 345 S.E.2d 176, 178 (1986).

Rule of Evidence 405 sets the parameters for when and how evidence of a defendant's character may be admitted. N.C. Gen. Stat. § 8C-1, Rule 405. Generally, proof of a defendant's character is limited to "testimony as to reputation or by testimony in the form of an opinion." N.C. Gen. Stat. § 8C-1, Rule 405(a). However, subsection (b) of Rule 405 allows evidence "of specific instances of [the defendant's] conduct" to be admitted if the defendant's character or character trait "is an essential element of [the underlying] charge, claim, or defense[.]" N.C. Gen. Stat. § 8C-1, Rule 405(b).

Whether a defendant's character is an essential element in a case is determined by the underlying crime or defense at issue. However, a defendant may "put his character in issue by having witnesses testify concerning his reputation for peacefulness, a 'pertinent trait of his character.'" *State v. Gappins*, 320 N.C. 64, 70, 357 S.E.2d 654, 658-59 (1987) (concluding that the State's questions "about specific

STATE V. KING

Opinion of the Court

instances of conduct by the defendant, in an effort to rebut [] prior testimony as to the defendant's character for peacefulness . . . were properly admitted").

In the present case, Defendant elicited testimony about his character and, thus, opened the door to cross-examination of his character. Essentially, once Defendant's wife testified that Defendant was a "[f]antastic" husband, a "[g]reat" man, and a "loving and caring" father, the State was allowed to rebut such testimony. *Id.* Moreover, Defendant's wife testified regarding an incident between herself and Victoria, and the cause and occurrences of such event, thereby allowing the State to expound on such information by eliciting testimony from Victoria.

Assuming *arguendo* that the trial court erred in allowing Victoria to testify, we conclude that Victoria's testimony did not prejudice Defendant to the extent that the jury's verdict would have been different. The testimonies of Kelly, her friends, her sister, and her school counselor were ample evidence to convict Defendant.

Defendant's wife's testimony opened the door to evidence "of specific instances of [Defendant's] conduct" as contemplated by Rule of Evidence 405. N.C. Gen. Stat. § 8C-1, Rule 405(b). Therefore, we conclude that the trial court did not abuse its discretion in allowing Victoria to testify despite its prior ruling that Victoria's testimony was inadmissible under Rule 404(b). *See* N.C. Gen. Stat. § 8C-1, Rule 404(b) (2018) (permitting "[e]vidence of other crimes, wrongs, or acts . . . for other

STATE V. KING

Opinion of the Court

purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake” if the evidence is similar and close in time).

III. Conclusion

The trial court did not abuse its discretion in allowing Victoria to testify regarding the events in the front yard and her opinion of Defendant. *Gappins*, 320 N.C. at 70, 357 S.E.2d at 658-59; N.C. Gen. Stat. § 8C-1, Rule 405(b).

NO ERROR.

Judges ZACHARY and YOUNG concur.

Report per Rule 30(e).