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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-398

No. COA21-578

Filed 7 June 2022

Rowan County, Nos. 16CRS50423; 19CRS53597, 19CRS54721

STATE OF NORTH CAROLINA

v.

DONALD CLAIR REYNOLDS, III, Defendant.

Appeal by Defendant from judgments entered 6 April 2021 by Judge William A. Wood, II, in Rowan County Superior Court. Heard in the Court of Appeals 22 March 2022.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Mary L. Lucasse, for the State.

W. Michael Spivey for Defendant.

GRIFFIN, Judge.

¶ 1 Defendant Donald Clair Reynolds, III, appeals from judgments entered upon his pleas of not guilty to several charges of indecent liberties with a child. Defendant argues the trial court erred by (1) not reviewing all Rowan County Department of Social Services ("DSS") records requested; and (2) limiting the disclosure of DSS and therapy records following an in camera review. We find no error.

I. Factual and Procedural Background

¶ 2 This case arises from a series of alleged acts by Defendant against a minor child, Alice.[1] Prior to trial, Defendant filed a motion for discovery of "evidence, complete recordation, and Brady material." Following the 17 March 2021 motion for discovery, Defendant filed a motion to obtain "[c]ertain law enforcement, DSS, therapist, and school records of alleged victim and parents." Specifically, Defendant's subsequent motion requested: "DSS records relating to the child, her mother, and her father; [t]herapist and Prevent Child Abuse Rowan records reflecting the 'seriously off the wall allegations of the daughter' or other *Brady* material; [and] . . . approximately 100 pages in therapy notes." Defendant requested this information dated from 17 November 2012 to 17 March 2021.

¶ 3 On 18 March 2021, the trial court conducted a hearing on Defendant's motion to obtain records. During the hearing, Defendant provided emails dated from 5 November 2019 to 6 January 2020 to argue for disclosure of DSS records and Alice's therapy records from that time. Defendant argued that content within the emails made him concerned about the "potential influence that one of [the] potential witnesses may have tried to exert over the trial." Defendant stated, "I have a total

[1] We use a pseudonym to protect the anonymity of the child and for ease of reading. *See* N.C. R. App. P. 42(b).

void of information before or after [2019 to 2020], and I only have [the emails] because the District Attorney provided me [with] those emails."

¶ 4 Defendant also argued for the disclosure of all DSS records dating back to 2012 that pertained to Alice, Alice's mother, Alice's father, and any "prospective witnesses." When questioned by the court regarding the breadth of the DSS records requested, Defendant stated only: "[I]'m concerned that I don't know things about 2012, the alleged date of [one] offense."

¶ 5 After the hearing, the trial court entered an order instructing the Rowan District Attorney's Office to produce the following documents for in camera review: (1) DSS records concerning Alice, Alice's mother, and Alice's father from 5 September 2019 to 17 March 2021; and (2) approximately 100 pages of Alice's therapy records. The trial court did not order the production of any documents dated between 2012 and 2019.

¶ 6 Following in camera review, the trial court ordered the disclosure of three pages from the DSS records and therapy records. These records consisted of: (1) pages 3 and 18 of the "Case Log Details" within the DSS records; and (2) page 1 from the "Comprehensive Clinical Assessment" within Alice's therapy records. The court provided these documents to both parties.

¶ 7 On 9 April 2021, a jury found Defendant guilty of three counts of indecent liberties with a child. The trial court consolidated two of the three charges, then

sentenced Defendant to serve two consecutive sentences of nineteen to thirty-two months imprisonment. Defendant timely appeals.

II. Analysis

¶ 8 Defendant brings two arguments on appeal: (1) the trial court erred by limiting in camera review of DSS records to those dated 2019 to 2020; and (2) the trial court erred by disclosing only three total pages of DSS records and therapy records after its in camera review. We address each argument.

A. Substantial Basis for Review of Records

¶ 9 Defendant argues the trial court "erred by not conducting an in camera review of all records requested." Defendant asserts that he was entitled to an in camera review of DSS records "from 17 November 2012 [to] the date of the hearing . . . to determine whether they contained exculpatory information or information material to the defense."

¶ 10 "It is well [] settled that the government has the obligation to turn over evidence in its possession that is both favorable to the accused and material to guilt or punishment." *Pennsylvania v. Ritchie*, 480 U.S. 39, 57 (1987) (citing *United States v. Agurs*, 427 U.S. 97, 106–07 (1976); *Brady v. Maryland*, 373 U.S. 83, 87 (1963)). Our courts have recognized and applied this constitutional principle (the *Brady* rule) to records held by child protective agencies which were gathered in the agency's investigation of a prosecuting witness's claims of abuse. *State v. McGill*, 141 N.C.

App. 98, 101, 539 S.E.2d 351, 355 (2000) (citing *Ritchie*, 480 U.S. at 58). "[J]ustice requires the [trial] judge to order an in camera inspection when a specific request is made at trial for disclosure of evidence in the State's possession that is obviously relevant, competent and not privileged." *State v. Hardy*, 293 N.C. 105, 127–28, 235 S.E.2d 828, 842 (1977). "'Impeachment evidence, . . . as well as exculpatory evidence, falls within the *Brady* rule.'" *State v. Soyars*, 332 N.C. 47, 63, 418 S.E.2d 480, 490 (1992) (quoting *United States v. Bagley*, 473 U.S. 667, 676 (1985)).

¶ 11 Failure to turn over evidence which is favorable and material to a defendant's case violates the defendant's constitutional right to due process. *Hardy*, 293 N.C. at 126, 235 S.E.2d at 841 ("[S]uppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." (quoting *Brady*, 373 U.S. at 87)). "An appellate court reviews conclusions of law pertaining to a constitutional matter de novo." *State v. Bowditch*, 364 N.C. 335, 340, 700 S.E.2d 1, 5 (2010) (citation omitted). "Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *State v. Williams,* 362 N.C. 628, 632–33, 669 S.E.2d 290, 294 (2008) (citations and internal quotation marks omitted).

¶ 12 Nonetheless, "just because [a] defendant asks for an in camera inspection does not automatically entitle him to one. [The d]efendant still must demonstrate that the

evidence sought to be disclosed might be material and favorable to his defense." *State v. Thompson*, 139 N.C. App. 299, 307, 533 S.E.2d 834, 840 (2000). "[A]lthough asking [the] defendant to affirmatively establish that a piece of evidence not in his possession is material might be a circular impossibility, we at least require him to have a substantial basis for believing such evidence is material." *Id.* (stating that, without the substantial basis requirement, defendants would be allowed to "to waste the time and resources of our judicial system by forcing unwarranted fishing expeditions").

¶ 13 In *Thompson*, the defendant argued on appeal that the trial court erred when it refused to conduct an in camera review of medical records. While arguing for disclosure of certain, named medical records, the defendant admitted to the trial court that he was "not specifically aware of any basis to say that there is exculpatory information" in the medical records. *Thompson*, 139 N.C. App. at 307, 533 S.E.2d at 840 (2000). The Court held in *Thompson* that, "[g]iven this admission, [the] defendant has not shown a substantial basis for claiming materiality so as to warrant in camera review of [the victim's] medical records." *Id.*

¶ 14 In this case, the trial court's primary concern while assessing which documents to review was potential improper influence over Alice from other witnesses. Defendant sought to obtain information that could be used to impeach testimony he suspected would be presented at trial. Defendant confirmed to the court that he had "a total void of information before [5 November 2019] or after [6 January 2020]," and

presented only emails dated between 5 November 2019 to 6 January 2020 to justify his concerns about Alice's motivations. Referencing the emails from 2019 to 2020, the court stated, "I don't see anything before [5 November 2019] or beyond [6 January 2020] with regard to the communications between these parties about any influence the mother may be trying to place over the child or anything the mother may have said to the child regarding the case." The court found that Defendant had made a "plausible showing . . . that those documents do perhaps have some relevance or potentially could and there's been an adequate showing or a substantial basis for that." Accordingly, the court ordered production of DSS records from 5 September 2019 to 17 March 2021 for its in camera review.

¶ 15 The emails that Defendant presented to the court provided a substantial basis to warrant in camera review of the DSS records and therapy records from 2019 to 2021. However, Defendant admitted he had no evidence regarding the DSS records from 2012 to 2019. Given Defendant's admission that he had a "void" of information before November 2019, Defendant failed to show a substantial basis of materiality for any documents prior to that date. The trial court did not err by reviewing only DSS records and therapy records from 2019 to 2021.

B. Favorable and Material Records

¶ 16 Defendant also requests that this Court conduct its own review of the DSS and therapist records reviewed by the trial court in camera "to determine whether all information favorable and material to the defense was disclosed."

¶ 17 A defendant charged with sexual abuse of a minor is constitutionally entitled to the disclosure of records held by an investigating child abuse agency if those records relate to the prosecuting witness and are both material and favorable to the defendant's case. *State v. McGill*, 141 N.C. App. 98, 103–04, 539 S.E.2d 351, 356 (2000). "Evidence is material if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *State v. Sheffield*, 2022-NCCOA-216, ¶ 36, ___ N.C. App. ___, ___ S.E.2d ___. A reasonable probability is "a probability sufficient to undermine confidence in the outcome." *Id.* (citation omitted). "Favorable" evidence includes evidence which tends to exculpate the accused, as well as "any evidence adversely affecting the credibility of the government's witnesses." *McGill,* 141 N.C. App. at 102, 539 S.E.2 at 355 (2000) (citing *U.S. v. Trevino,* 89 F.3d 187, 189 (4th Cir.1996)). "In determining whether the suppression of certain information was violative of a defendant's right to due process, the focus should be on the effect of the nondisclosure on the outcome of the trial, not on the impact of the undisclosed evidence on the defendant's ability to prepare for trial." *State v. Hunt*, 339 N.C. 622, 657, 457 S.E.2d 276, 296 (1994) (citing *Agurs*, 427 U.S. at 109).

¶ 18 When a defendant requests disclosure of documents, those documents are first reviewed in camera by the trial court. If the trial judge declines to disclose any of those documents, the trial court then orders the undisclosed documents to be sealed and placed in the appellate record for review by this Court on appeal. *Hardy*, 293 N.C. at 128, 235 S.E.2d at 842. The standard for an appellate court's review of sealed documents reviewed by the trial court in camera is de novo. *State v. Scott,* 180 N.C. App. 462, 463–64, 637 S.E.2d 292, 293 (2006) (citations omitted).

¶ 19 In this case, Defendant is entitled to de novo review by this Court of undisclosed records reviewed by the trial court in camera. We are particularly cognizant of the trial court's primary concern in assessing which documents to review in this case: whether the information within the documents suggested a risk that Alice's allegations were the result of improper influence by other witnesses, namely Alice's mother. Defendant anticipated that Alice's mother would testify at trial, and asserted that information in the DSS records and therapy records could assist in impeachment. Notably, though, Alice's mother did not testify at trial.

¶ 20 After thorough review of the sealed DSS records and therapy records, we are not persuaded that there is a reasonable probability that the outcome of the case would have been different had any additional pages from the DSS records and therapy records been made available to Defendant. The trial court did not err by limiting the documents disclosed to the parties.

III. Conclusion

¶ 21 We hold that the trial court did not err by conducting an in camera review of DSS records from only 5 September 2017 to 17 March 2019. Defendant did not show a substantial basis warranting review of DSS records prior to 5 September 2017. The trial court also did not err by disclosing only the specified pages of DSS records and therapy records. The remaining information contained in the undisclosed records did not constitute evidence that reasonably could have altered the result of Defendant's case.

NO ERROR.

Judges INMAN and MURPHY concur.

Report per Rule 30(e).