

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA20-692

Filed 07 February 2023

Durham County, Nos. 18 CRS 1769, 52421

STATE OF NORTH CAROLINA

v.

COREY OLIVER SMITH

Appeal by defendant from judgments entered 22 November 2019 by Judge Michael J. O’Foghludha in Durham County Superior Court. Heard in the Court of Appeals 6 October 2021.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Jasmine McGhee, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Wyatt Orsbon, for defendant-appellant.

ZACHARY, Judge.

Defendant Corey Oliver Smith appeals from judgments entered upon a jury’s verdicts finding him guilty of first-degree kidnapping and attempted human trafficking of a minor involving sexual servitude. After careful review, we vacate the judgments entered upon Defendant’s convictions and remand to the trial court for

further proceedings.

Background

On the evening of 8 April 2018, the department manager of the McDonald's on Miami Boulevard in Durham noticed two women entering and exiting the restaurant and its bathroom. She also noticed a man in a van in the parking lot exit his vehicle, enter the McDonald's, look around for something, and then leave without returning. The manager determined that "something about them just didn't feel right[.]" so she approached the bathroom door and asked the women "what was going on, were they all right." The shorter one replied, "There's a man outside trying to kidnap us." They asked the manager for the address of the restaurant and called 9-1-1.

District Sergeant Chad Johnson of the Durham City Police Department was the first officer on the scene. The dispatcher informed Sgt. Johnson that "a female that locked herself in the McDonald's bathroom" had "said she'd been kidnapped for the purposes of prostitution," and that "the suspect was on the scene in the parking lot in an orange SUV, black male wearing a black shirt and possibly armed." Upon his arrival to the McDonald's parking lot, Sgt. Johnson observed an orange van driven by a black male in a black shirt. Sgt. Johnson approached the driver, later identified as Defendant, and detained him until additional officers arrived.

Law enforcement officers spoke with the two women, who were visibly "shaking" but seemed "almost . . . happy to see" the officers. According to Sgt. Johnson, the older woman "did all the speaking" when the officers arrived, while the

younger female “appeared to be more withdrawn” and “sort of . . . like huddled down.” Sgt. Johnson was instructed to determine “if all parties involved would be willing to come to headquarters willingly on their own free will.” Once Defendant was transported from the scene, the women left the bathroom; at that time, officers were able to identify the women as 31-year-old “Rachel” and 16-year-old “Amy.”¹ The next day, 9 April 2018, Defendant was charged by magistrate’s order with two counts of second-degree kidnapping.

Amy subsequently testified for the State during a probable cause hearing held on 30 April 2018 in Durham County District Court. At the hearing, Amy gave her account of how she met Defendant. She testified that she had been living with her father for some time, but “about a week” before 8 April she ran away from his house to her sister-in-law’s house “for like four or five hours” before eventually meeting up with Rachel. She testified that she had previously run away from her father’s house and that, at that time, he had thought she had gone to her sister-in-law’s house. After she met up with Rachel, the two came across Defendant’s profile on a social media dating site.

On 16 July 2018, a Durham County grand jury returned indictments charging Defendant with two counts of first-degree kidnapping, as well as one count each of human trafficking of an adult (Rachel) and human trafficking of a minor (Amy). The

¹ Pursuant to N.C.R. App. P. 42(b), we identify the alleged victims in this case using the pseudonyms adopted by the parties.

matter was initially calendared for trial on 21 October 2019. On 17 October 2019, the State dismissed the charges relating to Rachel because she could not “be located for trial.” The trial was continued, and on 21 October 2019, the grand jury returned superseding indictments charging Defendant with first-degree kidnapping and attempted human trafficking of a minor—offenses solely relating to Amy. That same day, the State filed a motion to declare Amy unavailable for trial and to admit into evidence her testimony from the April 2018 probable cause hearing.

On 12 November 2019, Defendant’s case came on for trial in Durham County Superior Court before the Honorable Michael J. O’Foghludha. During pretrial motions, the State presented the court with a superseding motion to declare Amy unavailable, detailing its continued efforts to locate the witness and procure her live testimony for trial.

After reviewing the State’s superseding motion and the transcript of Amy’s testimony from the probable cause hearing, the trial court received evidence and arguments of counsel regarding the State’s efforts to locate Amy and procure her presence at Defendant’s pending trial. The trial court ultimately determined that (1) the State made reasonable efforts to locate Amy, (2) Amy was unavailable for trial, and (3) Defendant had an adequate opportunity to cross-examine Amy during the April 2018 probable cause hearing. Accordingly, and over Defendant’s objections, the trial court ruled that Amy’s prior testimony from the probable cause hearing would be admissible at Defendant’s trial.

Defendant renewed his objection to the admission of Amy's prior testimony when the State moved to introduce and publish this evidence during trial; again, the trial court overruled Defendant's objection.

On 21 November 2019, the jury returned its verdicts finding Defendant guilty of first-degree kidnapping and attempted human trafficking of a minor involving sexual servitude. During sentencing, the trial court determined that Defendant was a Prior Record Level V offender based on five out-of-state convictions, and sentenced Defendant to consecutive terms of imprisonment in the custody of the North Carolina Division of Adult Correction: 127 to 213 months for attempted human trafficking, followed by 89 to 167 months for kidnapping. The trial court further ordered Defendant to enroll as a sex offender for a period of 30 years and entered a permanent no-contact order prohibiting Defendant from having any further contact with Amy for the remainder of his life.

Defendant gave oral notice of appeal from the judgments in open court.

Discussion

On appeal, Defendant first argues that the trial court's admission of Amy's prior testimony from the April 2018 probable cause hearing violated his federal and state constitutional rights to confrontation. After careful and thorough review of the record, we agree. Accordingly, we vacate the judgments entered upon Defendant's convictions and remand to the trial court. Moreover, because our conclusion on this issue is dispositive, we do not reach Defendant's remaining arguments on appeal.

A. Confrontation Clause

The Sixth Amendment to the United States Constitution guarantees, *inter alia*, that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him[.]” U.S. Const. amend. VI. The Confrontation “Clause binds the States through the Fourteenth Amendment.” *Hemphill v. New York*, 595 U.S. ___, ___ n.3, 211 L. Ed. 2d 534, 544 n.3 (2022). Our North Carolina Constitution also provides a similar protection. N.C. Const. art. I, § 23 (“In all criminal prosecutions, every person charged with crime has the right . . . to confront the accusers and witnesses with other testimony . . .”).

In the landmark decision of *Crawford v. Washington*, the United States Supreme Court held that the Confrontation Clause bars the “admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination.” 541 U.S. 36, 53–54, 158 L. Ed. 2d 177, 194 (2004); *see also State v. Lewis*, 361 N.C. 541, 545, 648 S.E.2d 824, 827 (2007).

The *Crawford* test comprises three “separate and sequential” steps:

[T]he trial court must first make a determination of whether the relevant evidence is testimonial in nature; if the trial court determines that the evidence is testimonial, then it must determine whether the declarant witness is unavailable for trial; only upon finding in the affirmative for the first two inquiries must the trial court make a determination concerning the defendant’s prior opportunity to cross-examine the declarant witness.

State v. Clonts, 254 N.C. App. 95, 126, 802 S.E.2d 531, 552 (2017) (emphases omitted), *aff'd in part and disc. review improvidently allowed in part*, 371 N.C. 191, 813 S.E.2d 796 (2018) (per curiam).

Similarly, on appeal, this Court reviews an alleged violation of the defendant's right to confrontation to "determine: (1) whether the evidence admitted was testimonial in nature; (2) whether the trial court properly ruled the declarant was unavailable; and (3) whether [the] defendant had an opportunity to cross-examine the declarant." *State v. Allen*, 265 N.C. App. 480, 488, 828 S.E.2d 562, 568–69 (citation omitted), *appeal dismissed and disc. review denied*, 373 N.C. 175, 833 S.E.2d 806 (2019). As with most alleged constitutional errors, we review de novo a trial court's determination regarding "whether the right to confrontation was violated." *State v. Seelig*, 226 N.C. App. 147, 154, 738 S.E.2d 427, 433 (citation omitted), *disc. review denied*, 366 N.C. 598, 743 S.E.2d 182 (2013). When conducting de novo review, this Court "considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *State v. Biber*, 365 N.C. 162, 168, 712 S.E.2d 874, 878 (2011) (citation and internal quotation marks omitted).

In the present case, the testimonial nature of the evidence at issue—Amy's testimony during the April 2018 probable cause hearing—is undisputed.² During the

² Because the precise meaning of "testimonial" was not at issue in *Crawford*, the Supreme Court postponed "for another day any effort to spell out a comprehensive definition" of the term. 541 U.S. at 68, 158 L. Ed. 2d at 203. The Court explained, however, that "[w]hatever else the term covers,

pretrial motions hearing, however, there was significant argument concerning the second and third steps of the *Crawford* analysis: (1) Amy’s unavailability for trial, and (2) Defendant’s opportunity for cross-examination during the 2018 probable cause hearing. These are now the central, dispositive issues on appeal.

Although the trial court did not enter a written order on the State’s motion to declare Amy unavailable and to admit her prior testimony, the court rendered oral rulings, including findings of fact, on each of the issues above.

Assuming, *arguendo*, that the trial court did not err in ruling that Amy was unavailable for purposes of the Confrontation Clause, we turn to the adequacy of Defendant’s prior opportunity to cross-examine the unavailable witness.

Defendant asserts that his opportunity to cross-examine Amy during the April 2018 probable cause hearing was constitutionally inadequate “because his motive to question her at the hearing was not sufficiently similar to his motive for questioning

it applies at a minimum to prior testimony at a preliminary hearing, before a grand jury, or at a former trial; and to police interrogations.” *Id.*

Our Court has construed *Crawford* to apply to testimony received at a probable cause hearing under N.C. Gen. Stat. §§ 15A-606 and -611. *State v. Ross*, 216 N.C. App. 337, 345, 720 S.E.2d 403, 408 (2011), *disc. review denied*, 366 N.C. 400, 735 S.E.2d 174 (2012); *see also State v. Joyner*, 284 N.C. App. 681, 877 S.E.2d 73, *appeal and petition for disc. review filed*, No. 278P22-1 (N.C. Sept. 6, 2022).

After exhaustive review of the record in this case, we note that no party has ever disputed that Amy’s prior sworn testimony was, in fact, *testimonial*. Indeed, unlike the second and third requirements of the *Crawford* test—both of which were subject to vigorous debate during the pretrial motions hearing—the testimonial nature of Amy’s prior statements was never contested below; accordingly, the trial court made no findings or conclusions on this issue. Moreover, the State does not challenge the testimonial nature of Amy’s prior statements in its brief to this Court, a final implicit concession of the issue. *See* N.C.R. App. P. 28(b)(6), (c). Therefore, we will address the first step of the *Crawford* test—“whether the evidence admitted was testimonial in nature[.]” *Allen*, 265 N.C. App. at 488, 828 S.E.2d at 568—no further.

her at trial, because the trial court limited cross-examination at the hearing, and because he had not yet been provided any discovery at the time of the probable cause hearing.”

By contrast, the State’s entire appellate argument on this significant constitutional issue seems contingent upon its successful defense of the trial court’s determination that Amy was unavailable for trial. Following three pages of argument in support of the trial court’s ruling on Amy’s unavailability, the second prong of the *Crawford* test, the State summarily concludes its Confrontation Clause analysis as follows:

The second and third prong[s] of admissibility require the testimony . . . be given at “a preliminary stage of the same cause” and Defendant be represented by counsel at the prior hearing. [*State v.*] *Rollins*, 226 N.C. App. [129,]134, 738 S.E.2d [440,]445 [(2013)]. Further, testimonial evidence is admissible when the declarant is “unavailable to testify, and the defendant had a prior opportunity for cross examination.” *Crawford v. Washington*, 541 U.S. 36, 54, 158 L. Ed. 2d 177, 194 (2004). All requirements are met in the instant case.

Here, as outlined above, the State made an adequate showing of a good-faith effort to procure [Amy] for trial, allowing the trial court to determine [her] unavailability. The testimony from [Amy] at issue was given at a probable cause hearing in April of 2018. During that hearing, Defendant was represented by counsel and had the opportunity to cross examine [Amy]. *Id.* As such, his right to confrontation was not violated. *See Crawford*, 541 U.S. at 54–56, 158 L. Ed. 2d at 194–97. There is no need for the State to prove that the admission of [Amy’s] prior testimony was harmless because it was property [sic] admitted.

(Internal record citations omitted).

After careful review, we agree with Defendant. On appeal, Defendant successfully distinguishes the instant case from that of *State v. Ross*, a post-*Crawford* decision from this Court holding that the trial court did not err in admitting an unavailable witness's prior testimony from a probable cause hearing.³ 216 N.C. App. at 346, 720 S.E.2d at 409. In *Ross*, the defendant argued that "he had no *meaningful* opportunity to cross-examine [the witness] at the probable cause hearing because the various charges had not yet been joined, [his] lead trial counsel had not yet been appointed, and his counsel at that time had not yet had an opportunity to review all the discovery." *Id.* at 345, 720 S.E.2d at 409.

We were unpersuaded by these arguments under the circumstances presented in *Ross*. *Id.* Nevertheless, we agree with Defendant that the facts of the instant case are readily distinguishable from those of *Ross*; consequently, the same arguments that we rejected in *Ross* sound quite differently when applied to the unique circumstances presented here. Indeed, far from supporting the State's position, *Ross* instead highlights many of the factual and procedural peculiarities of this case, which compel our conclusion that Defendant's sole prior opportunity to cross-examine Amy

³ Incidentally, the State also heavily relied upon *Ross* in its arguments below. The State cited *Ross* favorably as one of its primary authorities in its written motions before the trial court, arguing its precedent to support its position that Defendant's prior opportunity for cross-examination satisfied *Crawford's* demands.

was *not* constitutionally adequate.

First, contrary to the *Ross* defendant's unpersuasive arguments concerning the joinder of offenses, here, it is constitutionally significant that the State ultimately tried Defendant on two different, greater felony charges than those he faced at the time of the 30 April 2018 probable cause hearing—Defendant's sole opportunity to cross-examine Amy. *Cf. id.* ("The probable cause hearing took place with respect to . . . the sole charges on which the jury found [the] defendant guilty. Thus, with respect to the charges on appeal, [the] defendant's motive to cross-examine [the witness] would have been the same as his motive at trial."). We agree with Defendant that his motives to cross-examine Amy at the April 2018 probable cause hearing—at which point, he faced two second-degree kidnapping charges involving two victims—were necessarily different than they would have been in November 2019, when the State tried Defendant for first-degree kidnapping and attempted human trafficking of a minor, allegations solely related to Amy.

Moreover, the disparate charges inevitably demonstrate the existence of issues that were not addressed, and thus, could not have been the subject of cross-examination, during the probable cause hearing. *Cf. id.* (noting that the defendant failed to "identify any topics that his counsel did not address at the probable cause hearing that would have been covered in cross-examination at the trial"); *see also Joyner*, 284 N.C. App. at 689, 877 S.E.2d at 80 ("The no-contact order demonstrates that the same issues presented at the hearing were the issues subsequently presented

at [the d]efendant's criminal trial. These are the same issues and facts from which the jury ultimately found [the d]efendant guilty of obtaining property by false pretenses and exploitation of an elderly person while in a business relationship in his criminal trial.”).

During the April 2018 probable cause hearing, Defendant lacked a sufficient motive to cross-examine Amy about any of the statutory elements that the State may charge to elevate kidnapping to the first degree, as he had not yet been indicted for the greater offense. *See, e.g., State v. Massey*, 265 N.C. App. 301, 304, 826 S.E.2d 839, 842 (2019) (“Second-degree kidnapping is elevated to first-degree kidnapping if the victim was not released in a safe place, was seriously injured, or was sexually assaulted.”); N.C. Gen. Stat. § 14-39(b) (2021).

Nor did Defendant have an adequate motive to cross-examine Amy about the subsequently charged offense of attempted human trafficking of a minor pursuant to N.C. Gen. Stat. § 14-43.11. On that charge, the State alleged in its superseding indictment that Defendant “did willfully or in reckless disregard of the consequences of the action attempt to cause a minor, [Amy], to be held in involuntary servitude or sexual servitude. At the time of the offense, [Amy] was less than 18 years-old.” As with the elevating elements of first-degree kidnapping, Defendant had not yet been charged with this offense at the time of the probable cause hearing; therefore, we cannot say that Defendant's counsel at that proceeding had the same motives for cross-examination as those possessed by his trial attorney approximately 18 months

later. Accordingly, unlike in *Ross*, here, Defendant has identified constitutionally significant “topics that his counsel did not address at the probable cause hearing that would have been covered in cross-examination at the trial.” 216 N.C. App. at 345, 720 S.E.2d at 409.

Seeking to further distinguish the instant case from *Ross*, Defendant correctly notes that “no discovery had been produced at the time of the probable cause hearing in this case.” While it is true that “our courts have never held that discovery *must be complete* for a cross-examination opportunity to be adequate[,]” *id.* at 346, 720 S.E.2d at 409 (emphasis added), we cannot, in good faith, ignore the significance of discovery timelines in a case such as this.

In addition to the aforementioned new indictments charging Defendant with two greater felonies as to each victim, Defendant has also furnished this Court with a litany of “meaningful inconsistencies in Amy’s testimony” that only arose during discovery, *after* the April 2018 probable cause hearing. Among other things, this list includes: the duration of Amy’s relationship with Rachel; where Amy and Rachel lived; when Amy ran away; whether she or Rachel contacted Defendant on the dating service; and whether Amy gave investigators her cellphone freely or whether it was seized from her while she was trying to delete text messages. We agree with Defendant that because his “counsel lacked this information, and because the court limited counsel’s ability to test Amy’s credibility and recall at the probable cause hearing, [Defendant’s counsel] was not able to effectively cross-examine Amy at the

hearing.”

Compounding our concern over Defendant’s inability to inquire about matters yet undiscovered, Defendant pointedly notes that the district court *further limited* the scope of his already cursory cross-examination of Amy during the probable cause hearing. For instance, as defense counsel began questioning Amy about her knowledge of and relationship with Rachel, the State objected, asserting that Defendant’s opportunity to fully cross-examine Amy would come at trial:

[DEFENDANT’S COUNSEL:] So when you met her through this family friend you thought she was 17?

[PROSECUTOR]: Objection, Your Honor, I’m just going to--

[AMY:] I didn’t know how old she was.

[PROSECUTOR]: This is a probable cause hearing, not discovery. There will be full discovery when we get the case up in Superior Court.

THE COURT: Let’s move on.

[DEFENDANT’S COUNSEL]: Yes, sir.

The State later objected again as Defendant’s attorney was cross-examining Amy about her fear of Defendant:

[DEFENDANT’S COUNSEL:] But if you were so afraid of this man, --

[PROSECUTOR]: Objection, Your Honor, this has been asked and answered. We’re in a PC hearing, I’ve got one more--

THE COURT: Yeah, this is a probable cause. Move on.

Point's made. Move on.

Defendant argues that these limitations on his ability to cross-examine Amy at the probable cause hearing undercut the argument that he had the meaningful opportunity necessary to permit the admission at trial of her prior testimony. Yet at the pretrial hearing on the admissibility of this prior testimony, the trial court determined that Defendant was not prejudiced by these limitations.

After considering arguments of counsel, the trial court concluded:

I don't think that on [the State's first objection] that . . . [D]efendant is prejudiced. There is a lot of testimony about the ages of people and the contradictions about the ages of people, and on [the State's second objection] there's an indication that that -- the question is about why she didn't call the police and that was explored in other parts of the testimony.

We disagree with the trial court's conclusion. As Defendant argues, "[t]he reasons the prosecutor gave for limiting cross-examination are the very reasons Amy's probable-cause testimony shouldn't have been admitted at trial." The repeated invocation of procedural posture regarding the previous proceeding—that it was merely "a probable cause hearing, not discovery"—directly implicates the constitutional inadequacy of Defendant's prior opportunity to cross-examine Amy.

We agree with Defendant that the district court's limitations of his cross-examination at the probable cause hearing "thwart[ed] any full and effective opportunity to cross-examine Amy." We emphasize, however, that these are highly case-specific determinations, which depend heavily not only upon the evidentiary

record, but first and foremost, upon the facts found by the trial court from the evidence. Our holding in the instant case should not be construed as an attempt to quantify or otherwise categorically resolve the issue of what constitutes a “constitutionally adequate” prior opportunity for cross-examination during a probable cause hearing, where the testifying witness subsequently becomes unavailable for trial.

In sum, due to Defendant’s potentially different motivations on cross-examination during the April 2018 probable cause hearing and the November 2019 trial—most particularly, as related to the greater, subsequently charged offenses for which Defendant was actually tried; the unavailability to Defendant of important discovery at the April 2018 probable cause hearing; and the limitations imposed during Defendant’s sole opportunity to cross-examine Amy, we conclude that the trial court erred by ruling that Amy’s prior testimony was admissible under the Confrontation Clause.

B. Prejudice

Having concluded that the erroneous admission of Amy’s prior testimony violated Defendant’s constitutional rights to confrontation, we must next assess the extent to which the error prejudiced the outcome of Defendant’s trial. “Because this error is one with constitutional implications, the State bears the burden of proving that the error was harmless beyond a reasonable doubt.” *State v. Bell*, 359 N.C. 1, 36, 603 S.E.2d 93, 116 (2004), *cert. denied*, 544 U.S. 1052, 161 L. Ed. 2d 1094 (2005); N.C.

Gen. Stat. § 15A-1443(b) (“A violation of the defendant’s rights under the Constitution of the United States is prejudicial unless the appellate court finds that it was harmless beyond a reasonable doubt. *The burden is upon the State to demonstrate, beyond a reasonable doubt, that the error was harmless.*” (emphasis added)).

Here, the State makes no attempt to demonstrate that the admission into evidence during Defendant’s trial of Amy’s testimony from the April 2018 probable cause hearing was harmless beyond a reasonable doubt. In fact, far from carrying its burden on this issue, *the State effectively disclaims it*, offering only—without citation or further argument—that “[t]here is no need for the State to prove that the admission of [Amy’s] prior testimony was harmless because it was property [sic] admitted.” We must disagree.

We acknowledge that there is substantial evidence of Defendant’s guilt of the convicted offenses in this case. Nonetheless, it is beyond dispute that a violation of a defendant’s constitutional rights “is prejudicial and requires a new trial unless [the error] is harmless beyond a reasonable doubt.” *State v. Miller*, 254 N.C. App. 196, 201, 801 S.E.2d 696, 699 (2017) (citing N.C. Gen. Stat. § 15A-1443(b)), *rev’d on other grounds*, 371 N.C. 273, 814 S.E.2d 93 (2018).⁴ And it is equally settled that “[t]he

⁴ See *State v. Miller*, 371 N.C. 273, 284 n.5, 814 S.E.2d 93, 100 n.5 (2018) (“In view of the nontestimonial nature of the challenged statements, we need not address the validity of the Court of Appeals’ determinations with respect [to] whether [the] defendant had an adequate opportunity to cross-examine [the witness] at his domestic criminal trespass trial or whether the Court of Appeals erred by refusing to find the admission of the challenged evidence concerning [the witness]’s extrajudicial statements to have been harmless beyond a reasonable doubt.”).

burden is upon the State to demonstrate, beyond a reasonable doubt, that the error [i]s harmless.” N.C. Gen. Stat. § 15A-1443(b).

We thus may only conclude that “[b]ecause the State does not make the required harmless beyond a reasonable doubt argument, it has failed in its burden.” *State v. Lindsey*, 271 N.C. App. 118, 132, 843 S.E.2d 322, 332 (2020) (citation omitted).

In sum, Defendant has shown constitutional error to the satisfaction of this Court; meanwhile, the State has made no effort whatsoever to establish that the error was harmless beyond a reasonable doubt—the State’s well-established burden on appeal, in response to Defendant’s successful demonstration of constitutional error. Accordingly, we vacate the judgments entered upon Defendant’s convictions in this matter and remand to the trial court for further proceedings. *See, e.g., Miller*, 254 N.C. App. at 201, 801 S.E.2d at 700 (vacating the trial court’s judgments and remanding for a new trial where “the State violated [the defendant]’s Sixth Amendment right to confront the witnesses against him and . . . this violation prejudiced his trial”).

“Because we vacate and remand on this issue, we need not reach [Defendant]’s other arguments on appeal.” *Id.*

Conclusion

The trial court erred by ruling that Amy’s prior testimony from the probable cause hearing was admissible at trial, in violation of Defendant’s constitutional rights

STATE V. SMITH

Opinion of the Court

to confrontation, without his having adequate opportunity to cross-examine Amy at the probable cause hearing. The State makes no argument that the error was harmless beyond a reasonable doubt. Accordingly, “[w]e vacate the trial court’s judgments and remand for further proceedings consistent with this opinion.” *Id.*

VACATED AND REMANDED.

Judges CARPENTER and WOOD concur.

Report per Rule 30(e).