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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-200

Filed 2 January 2024

Watauga County, Nos. 21CRS050660-61

STATE OF NORTH CAROLINA

v.

MICHAEL DEAN PARSONS

Appeal by Defendant from judgments entered 26 August 2022 by Judge R. Gregory Horne in Watauga County Superior Court. Heard in the Court of Appeals 3 October 2023.

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

*J. Clark Fischer for Defendant-Appellant.*

COLLINS, Judge.

Defendant appeals from judgments entered upon guilty verdicts of two counts of taking indecent liberties with a child. Defendant argues that the trial court erred by admitting certain hearsay statements into evidence at trial. We find no prejudicial error.

**I. Background**

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Defendant was indicted for one count of taking indecent liberties with his daughter's friend, E.G., and one count of taking indecent liberties with his daughter, S.P.<sup>1</sup> He was tried on both charges in August 2022. At trial, the State presented testimony from E.G. and her family members; S.P.; Detective Rollins, the detective assigned to the case; Selena Moretz, a forensic interviewer at the Child Advocacy Center; and Elizabeth Browning, a nurse practitioner who worked with the Child Advocacy Center. The State's evidence at trial tended to show the following:

In May 2021, E.G. and her sister had a sleepover with S.P. at Defendant's house. During the sleepover, E.G. and her sister slept in a bed with S.P., Defendant, and Defendant's wife. E.G. testified at trial that she was sleeping next to Defendant, and that Defendant touched her on the vagina under her clothes after everyone was asleep. E.G. told her parents about the incident in July 2021. E.G.'s parents reported the incident to the Watauga County Sheriff's Office and were connected with Detective Rollins, who asked the family to bring E.G. to the Child Advocacy Center for a forensic interview with Selena Moretz on 16 July 2021.

During the forensic interview, E.G. told Moretz that she had been in the bed next to Defendant and woke up in the middle of the night. She told Moretz that Defendant put his finger "on [her] private part; then he quit and [she] went back to sleep."

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<sup>1</sup> Initials are used to protect the identities of the minors involved in this case. See N.C. R. App. P. 42(b).

On a later date, Elizabeth Browning performed a medical examination on E.G. at the Child Advocacy Center. Prior to the examination, Browning asked E.G. if she knew why she was being examined, and E.G. told Browning that “[Defendant] took his fingers and wiped it up [her] private.” Moretz and Browning both testified at trial about their respective interactions with E.G., and a video of E.G.’s forensic interview was admitted to corroborate E.G.’s courtroom testimony.

Rollins interviewed Defendant at the Sheriff’s office, where he explained to Defendant that he was under investigation because of E.G.’s allegations. Defendant denied intentionally touching E.G. but acknowledged that there was a chance that he had held E.G. thinking it was S.P. Defendant told Rollins that S.P. slept naked in his bed and that it was common for him to “hold [S.P.’s] little butt . . . just like it’s no big deal,” and that he would hold S.P. “just like that,” and placed his hand on his upper thigh between his legs. Defendant explained that he saw it as showing affection but acknowledged that it was “wrong probably to others” and that it would be inappropriate to hold E.G. the same way. A video of this interview was admitted and played for the jury.

Based on his interview with Defendant, Rollins became concerned about Defendant’s children and scheduled forensic interviews at the Child Advocacy Center for S.P. and her brother, which Moretz conducted on 19 July 2021. Browning also performed a medical examination on S.P. Moretz and Browning both testified at trial about their respective interactions with S.P., and a video of S.P.’s forensic interview

was admitted and played for the jury as substantive evidence.

Rollins interviewed Defendant a second time on 19 July 2021, where Defendant described how he would scratch S.P. from her groin all the way down her legs to help her go to sleep. Defendant also stated that he would sometimes go to sleep with his hand tucked under S.P.'s underwear. When asked if he had ever scratched S.P.'s vagina, Defendant stated, "if her groin is her vagina, then yes," adding that "it's nothing weird, we never make it weird." A video of this interview was also admitted and played for the jury.

Defendant's wife, mother, brother, and son testified for the defense; Defendant did not testify. Defendant's wife confirmed that E.G. had slept next to Defendant when she spent the night in May 2021 but testified that Defendant had gone to sleep hours before the girls and that, although she doesn't "sleep very heavy or very well," she did not recall anything that woke her up that night.

The jury returned guilty verdicts on both charges. The trial court sentenced Defendant to an active term of 15 to 27 months' imprisonment for the conviction related to E.G. and a consecutive suspended sentence of 15 to 27 months' imprisonment for the conviction related to S.P. Defendant filed written notice of appeal.

## **II. Discussion**

Defendant argues that the trial court erred by admitting certain hearsay statements during Defendant's trial. "The standard of review for admission of

evidence over objection is whether [the evidence] was admissible as a matter of law, and if so, whether the trial court abused its discretion in admitting the evidence.” *State v. Bodden*, 190 N.C. App. 505, 512, 661 S.E.2d 23, 27 (2008) (citation omitted).

#### **A. E.G.’s Out-of-Court Statements**

Defendant argues that the trial court erred by admitting portions of statements E.G. made to her family members, Browning, and Moretz to corroborate her trial testimony because the statements were not corroborative and therefore were inadmissible hearsay.

Hearsay is a statement, other than one made by the declarant while testifying at trial, offered in evidence to prove the truth of the matter asserted. N.C. Gen. Stat. § 801(c) (2022). Subject to enumerated exceptions, hearsay is inadmissible at trial. *Id.* § 802 (2022). “[O]ut-of-court statements offered for purposes other than to prove the truth of the matter asserted are not considered hearsay.” *State v. Call*, 349 N.C. 382, 409, 508 S.E.2d 496, 513 (1998).

“A witness’s prior consistent statements may be admitted to corroborate the witness’s courtroom testimony.” *State v. Harrison*, 328 N.C. 678, 681, 403 S.E.2d 301, 303 (1991) (citation omitted). “Corroboration is the process of persuading the trier of the facts that a witness is credible.” *State v. Ramey*, 318 N.C. 457, 468, 349 S.E.2d 566, 573 (1986) (quotation marks and citation omitted). To “corroborate” means “to strengthen” or “to add weight or credibility to a thing by additional and confirming acts or evidence.” *Id.* (emphasis and citation omitted). “However, the witness’s prior

statements as to facts not referred to in [their] trial testimony and not tending to add weight or credibility to it are not admissible as corroborative evidence.” *Id.* at 469, 349 S.E.2d at 574 (emphasis omitted).

Nonetheless, “the erroneous admission of hearsay is not always so prejudicial as to require a new trial.” *State v. Hickey*, 317 N.C. 457, 473, 346 S.E.2d 646, 657 (1986) (citation omitted). A defendant must also demonstrate that “there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial.” N.C. Gen. Stat. § 15A-1443(a) (2022).

Even assuming *arguendo* that portions of E.G.’s prior statements did not corroborate her courtroom testimony and were thus inadmissible hearsay, there is no reasonable possibility that a different result would have been reached at Defendant’s trial had the challenged statements not been admitted.

The elements of taking indecent liberties with a child are: “(1) the defendant was at least 16 years of age; (2) he was five years older than his victim; (3) he willfully took or attempted to take an indecent liberty with the victim; (4) the victim was under 16 years of age at the time the alleged act or attempted act occurred; and (5) the action by the defendant was for the purpose of arousing or gratifying sexual desire.” *State v. Thaggard*, 168 N.C. App. 263, 282, 608 S.E.2d 774, 786-87 (2005) (citations omitted); *see* N.C. Gen. Stat. § 14-202.1(a) (2022).

At the time of the incident, E.G. was six years old and Defendant was over the age of sixteen and at least five years older than E.G. At trial, E.G. gave the following

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testimony about the night she slept over at Defendant's house:

[STATE] Okay. Can you tell me what happened?

[E.G.] He touched me.

[STATE] Okay. Who touched you?

[E.G.] [Defendant].

[STATE] And can you tell me where he touched you, where on your body?

[E.G.] Vagina.

....

[STATE] How did it make you feel when [Defendant] was touching you on the vagina?

[E.G.] Not safe.

[STATE] Not safe? Okay. Do you remember how it felt when he was touching you, what it felt like?

[E.G.] Liquidy.

[STATE] Liquidy? Okay. Did you see [Defendant] do anything else before he touched you?

[E.G.] No.

[STATE] You didn't?

[E.G.] No.

[STATE] What about after he touched you, did you see him do anything else?

[E.G.] No.

[STATE] What did you do while he was touching you like this?

[E.G.] Kept my eyes shut.

....

[STATE] How many times did [Defendant] touch you?

[E.G.] One.

[STATE] Did it feel like a long time or just a short time?

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[E.G.]           A short time.

. . . .

[STATE]       [E.G.], when [Defendant] touched you on your  
                  vagina, was it over or under your clothes?

[E.G.]           Under.

The State also elicited corroborative testimony from several other witnesses about what E.G. had said about the night she slept over at Defendant's house, and the trial court instructed the jury that the testimony was for corroborative purposes only.

E.G.'s mother testified that E.G. told her, "the night I stayed at [Defendant's], he touched me and he swiped my vagina . . . ." Browning testified that E.G. told her that "[Defendant] took his fingers and wiped it up my private. . . . [H]e touched me on my skin. He lifted up my panties. . . . I was scared to say anything and I pretended that I was asleep." Moretz testified about the content of her forensic interview with E.G.:

And then my question to her was tell me about why you're here today. And her response was a man touched me. I asked her is that something that happened one time or more than one time. She said one time. . . . I woke up in the middle of the night. He . . . put [his finger] on my private part; then he quit and I went back to sleep. . . . I asked her if he touched her clothes, her skin, or something else, and she said touched her skin. . . . I said tell me about how that felt when he . . . touched your private parts. She said it felt like water.

The evidence presented at trial, including E.G.'s trial testimony as properly



corroborated by other testifying witnesses, was abundantly sufficient to convict Defendant of taking indecent liberties with E.G. Thus, there is no reasonable possibility that a different result would have been reached had the challenged portions of E.G.'s out-of-court statements been excluded. N.C. Gen. Stat. § 15A-1443(a).

### **B. S.P.'s Out-of-Court Statements**

Defendant argues that the trial court erred by admitting portions of statements S.P. made to Browning and Moretz, as well as admitting portions of S.P.'s forensic interview as corroborative and as substantive evidence. Specifically, Defendant argues that the challenged statements and portions of the interview were not corroborative of S.P.'s courtroom testimony, and that the trial court erroneously determined that S.P. was unavailable as required by Rule 804.

Although hearsay is generally inadmissible, certain hearsay statements “are not excluded by the hearsay rule if the declarant is unavailable as a witness.” *Id.* § 8C-1, Rule 804(b) (2022). Rule 804(b) describes these exceptions and provides a residual exception, Rule 804(b)(5), for statements “not specifically covered by any of the [other] exceptions but having equivalent circumstantial guarantees of trustworthiness[.]” *Id.* § 8C-1, Rule 804(b)(5). A declarant is unavailable as a witness if the declarant “[t]estifies to a lack of memory of the subject matter of his statement[.]” *Id.* § 8C-1, Rule 804(a)(3) (2022).

“However, the erroneous admission of hearsay is not always so prejudicial as

to require a new trial.” *Hickey*, 317 N.C. at 473, 346 S.E.2d at 657 (citation omitted). A defendant must also demonstrate that “there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial.” N.C. Gen. Stat. § 15A-1443(a).

Even assuming *arguendo* that the challenged statements and portions of S.P.’s interview were erroneously admitted, there is no reasonable possibility that a different result would have been reached had the evidence been excluded.

At the time of the incident, S.P. was six years old and Defendant was over the age of sixteen and at least five years older than S.P. Defendant’s interviews with Rollins were admitted and published to the jury. In those interviews, Defendant told Rollins that S.P. slept naked in his bed and that it was common for him to “hold [S.P.’s] little butt . . . just like it’s no big deal,” and that he would hold S.P. “just like that,” placing his hand on his upper thigh between his legs. Defendant also described how he would scratch S.P. from her groin all the way down her legs to help her go to sleep and stated that he would sometimes go to sleep with his hand tucked under S.P.’s underwear. When asked if he had ever scratched S.P.’s vagina, Defendant responded, “if her groin is her vagina, then yes.”

The evidence presented at trial, including Defendant’s own statements about how he touched S.P., was abundantly sufficient to convict Defendant for taking indecent liberties with S.P. Thus, there is no reasonable possibility that a different result would have been reached had the challenged portions of S.P.’s out-of-court

statements been excluded. *Id.*

### **III. Conclusion**

The trial court did not prejudicially err by admitting hearsay testimony.

NO PREJUDICIAL ERROR.

Judges GRIFFIN and THOMPSON concur.

Report per Rule 30(e).