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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-570

Filed 4 November 2026

Stanly County, Nos. 21CR052070-830, 21CR052071-830, 24CR000001-830

STATE OF NORTH CAROLINA

v.

GEORGE KEVIN HELMS, Defendant.

Appeal by Defendant from judgment entered 26 August 2024 by Judge Jessica Locklear in Stanly County Superior Court. Heard in the Court of Appeals 25 February 2026.

*Attorney General Jeff Jackson, by Special Deputy Attorney General Tracy Nayer, for the State.*

*Richard Croutharmel and Appellate Defender Glenn Gerding, by Assistant Appellate Defender James R. Grant, for Defendant-Appellant.*

CARPENTER, Judge.

Defendant appeals after a jury convicted him of two counts of first-degree sexual exploitation of a minor, second-degree sexual exploitation of a minor, and taking indecent liberties with a child. On appeal, Defendant argues that the trial court: (1) plainly erred in denying his motion to suppress two photos from his cell

phone; and (2) erred in denying his motion to dismiss the sexual exploitation charges. After careful review, we discern no error.

## I. Factual & Procedural Background

In November 2021, a grand jury indicted Defendant on one count of first-degree forcible sexual offense and two counts of first-degree sexual exploitation of a minor. In June 2022, a grand jury returned a superseding indictment on two counts of statutory sexual offense with a child by an adult. In January 2024, a grand jury also indicted Defendant on two counts of second-degree sexual exploitation of a minor. In May 2024, a grand jury returned a superseding indictment on one count of statutory sexual offense with a child by an adult and on two counts of taking indecent liberties with a child. The case proceeded to trial in August 2024, and the evidence tended to show the following.

Between the ages of four and five, Annie[1] regularly visited the home of Defendant. Defendant, who was not wearing pants or underwear, touched her while they were in the bedroom sleeping together. Defendant also watched videos with Annie on his computer of "kids sucking on their father's pee-pee." Defendant asked Annie to do the same, but she refused. One time, Defendant "told [her] to lay on the ground, and he sat on [her] legs and milk came out of his penis."

In 2021, Annie told her grandmother about the incidents. Annie's

[1] A pseudonym is used to protect the identity of the minor child. *See* N.C. R. App. P. 42(b) (2025).

grandmother told Annie's mother, who then contacted law enforcement. During their investigation, Annie was referred to a children's advocacy center. When interviewed by staff at the advocacy center, Annie said that "[P]awpaw tickled her private parts." When the Stanly County Sheriff's Office interviewed Defendant, Defendant admitted he "had an issue with porn some years ago." Defendant also said that he "ha[d] noticed a couple of times when [Annie's] been to the house that she has, um, given off little hints that maybe she's found herself . . . and she'll be rubbing herself[.]" Defendant shared that Annie "might have seen something on the computer[.]"

Later, a sergeant applied for a search warrant for Defendant's residence. In the application, the sergeant described Annie's allegations, Defendant's pornography addiction, and Defendant's decision "to get rid of" a laptop he had in his home "due to this addiction." The warrant sought files on electronic devices, digital external storage devices, cell phones, computers, hard drives, and SD cards related to child pornography. After executing the warrant, the sergeant extracted data from Defendant's cell phone, including photos that Defendant had deleted of a prepubescent nude female child. One photo was of a child's vagina with the child's underwear, which had characters from "Frozen," gathered at her feet, and the other photo was of a hand pulling underwear away from the child's body. Defendant's hand had similar markings to the hand in the photo. Defendant filed a motion *in limine* to suppress the photos from the cellphone, which the trial court denied.

At trial, Annie's mother identified the legs and underwear in the photos as

those of Annie and the couch in the background as that of Defendant. Defendant stated that Annie asked him to take the first photo and denied taking the second photo. Defendant, however, admitted that the photos were taken in his living room and were on his phone. Defendant also claimed that Annie could not have seen "milk" come out of his penis because he was impotent.

At the close of the State's evidence, Defendant moved to dismiss the charges, and the trial court granted the motion to dismiss the charge of statutory sexual offense with a child by an adult. Defendant renewed his motion to dismiss the remaining charges at the close of all the evidence, which the trial court denied.

A jury found Defendant guilty of two counts of first-degree sexual exploitation of a minor, two counts of second-degree sexual exploitation of a minor, and two counts of taking indecent liberties with a child. The trial court consolidated the convictions into two judgments and sentenced Defendant to consecutive terms of 58 to 130 months of imprisonment. The trial court also ordered Defendant to register as a sex offender for thirty years after his release from prison. Defendant gave oral notice of appeal.

## II. Jurisdiction

This Court has jurisdiction under N.C. Gen. Stat. §§ 7A-27(b)(1) and 15A-1444(a) (2025).

## III. Issues

The issues on appeal are whether the trial court: (1) plainly erred in denying

Defendant's motion to suppress; and (2) erred in denying his motion to dismiss the sexual exploitation charges.

## IV. Analysis

### A. Motion to Suppress

Defendant first argues that the trial court plainly erred by denying his motion to suppress. Specifically, he contends that the search warrant was not supported by probable cause. We disagree.

To preserve an issue for review on appeal, a defendant must present "to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling [sought] if the specific grounds were not apparent from the context." N.C. R. App. P. 10(a)(1) (2025). "A trial court's evidentiary ruling on a pretrial motion to suppress is not sufficient to preserve the issue of admissibility for appeal unless a defendant renews the objection during trial." *State v. Hargett*, 241 N.C. App. 121, 124, 772 S.E.2d 115, 119 (2015) (cleaned up).

This Court may, however, "review unpreserved issues for plain error when they involve . . . rulings on the admissibility of evidence." *State v. Gregory*, 342 N.C. 580, 584, 467 S.E.2d 28, 31 (1996) (citing *State v. Sierra*, 335 N.C. 753, 761, 440 S.E.2d 791, 796 (1994)). The defendant must "specifically and distinctly" argue plain error. *State v. Frye*, 341 N.C. 470, 496, 461 S.E.2d 664, 667 (1995) (citing N.C. R. App. P. 10(c)(4)). To establish plain error, a defendant must pass a three-part test:

> First, the defendant must show that a fundamental error

> occurred at trial. Second, the defendant must show that the error had a probable impact on the outcome, meaning that absent the error, the jury probably would have returned a different verdict. Finally, the defendant must show that the error is an exceptional case that warrants plain error review, typically by showing that the error seriously affects the fairness, integrity or public reputation of judicial proceedings.

*State v. Reber*, 386 N.C. 153, 158, 900 S.E.2d 781, 786 (2024) (internal quotation marks and citations omitted).

An application for a search warrant "must be made in writing upon oath or affirmation." N.C. Gen. Stat. § 15A-244 (2025). Additionally, each application must include "[a]llegations of fact supporting the statement . . . setting forth facts and circumstances establishing probable cause to believe that the items are in the places or in the possession of the individuals to be searched[.]" *Id.* § 15A-244(3). A search warrant "affidavit is sufficient if it supplies reasonable cause to believe that the proposed search for evidence of the commission of the designated criminal offense will reveal the presence upon the described premises of the objects sought and that they will aid in the apprehension or conviction of the offender." *State v. Vestal*, 278 N.C. 561, 575–76, 180 S.E.2d 755, 765 (1971) (citations omitted).

When assessing probable cause, a magistrate "must make a practical, common-sense decision, based on the totality of the circumstances, whether there is a fair probability that contraband will be found in the place to be searched." *State v. McKinney*, 368 N.C. 161, 164, 775 S.E.2d 821, 824 (2015) (internal quotation marks

and citations omitted). Additionally, "a magistrate is entitled to draw reasonable inferences from the material supplied to him by an applicant for a warrant." *State v. Sinapi*, 359 N.C. 394, 399, 610 S.E.2d 362, 365 (2005) (citing *State v. Riggs*, 328 N.C. 213, 221, 400 S.E.2d 429, 434 (1991)). A finding of probable cause does not require certainty, but rather only a substantial chance of criminal activity. *See McKinney*, 368 N.C. at 165, 775 S.E.2d at 825.

Here, the search warrant affidavit sufficiently supported the finding of probable cause. *See* N.C. Gen. Stat. § 15A-244; *Vestal*, 278 N.C. at 575–76, 180 S.E.2d at 765. The sergeant included statements that Defendant had engaged in sexual activity with a minor, had a pornography addiction, and disposed of his computer to try to avoid his addiction. Thus, the magistrate could have reasonably inferred that Defendant viewed child pornography and that Defendant's electronic devices contained that pornography. *See Sinapi*, 359 N.C. at 399, 610 S.E.2d at 365. In other words, the search warrant affidavit provided sufficient evidence for the magistrate to find probable cause. *See McKinney*, 368 N.C. at 165, 775 S.E.2d at 825. The trial court's denial of Defendant's motion to suppress, therefore, was not error, let alone plain error. *See Reber*, 386 N.C. at 158, 900 S.E.2d at 786.

**B. Motion to Dismiss**

Defendant also argues that the trial court erred in denying his motion to dismiss the sexual exploitation charges because the State did not meet its burden in proving that the photos showed sexual activity. We disagree.

We review a "denial of a motion to dismiss *de novo*." *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007) (citing *State v. McKinnon,* 306 N.C. 288, 298, 293 S.E.2d 118, 125 (1982)). "Under a *de novo* review, [this 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) (quoting *In re Greens of Pine Glen, Ltd. P'ship*, 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003)).

" 'Upon defendant's motion for dismissal, the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense. If so, the motion is properly denied.' " *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (2000) (quoting *State v. Barnes*, 334 N.C. 67, 75, 430 S.E.2d 914, 918 (1993)). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Smith*, 300 N.C. 71, 78–79, 265 S.E.2d 164, 169 (1980). On a motion to dismiss, the evidence must be considered "in the light most favorable to the State; the State is entitled to every reasonable intendment and every reasonable inference to be drawn therefrom . . . ." *State v. Winkler*, 368 N.C. 572, 574–75, 780 S.E.2d 824, 826 (2015) (quoting *State v. Powell*, 299 N.C. 95, 99, 261 S.E.2d 114, 117 (1980)).

A defendant is guilty of first-degree sexual exploitation of a minor:

> if, knowing the character or content of the material or performance, [he] . . . [u]ses, employs, induces, coerces, encourages, or facilitates a minor to engage in or assist

> others to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity.

N.C. Gen. Stat. § 14-190.16(a) (2025). Second-degree sexual exploitation of a minor criminalizes the act of "photograph[ing] . . . or duplicat[ing] material that contains a visual representation of a minor engaged in sexual activity." *Id.* § 14-190.17. Sexual activity includes "[t]he lascivious exhibition of the genitals or pubic area of any person." *Id.* § 14-190.13(5)(g). Lascivious means "tending to arouse sexual desire." *State v. Hammett*, 182 N.C. App. 316, 322, 642 S.E.2d 454, 458 (2007) (internal quotation marks and citations omitted).

Here, the State presented substantial evidence that the photos depicted sexual exploitation of a minor. *See Fritsch*, 351 N.C. at 378, 526 S.E.2d at 455; N.C. Gen. Stat. §§ 14-190.16(a), 14-190.17. The first photo showed a nude child's vagina, and the second photo showed a child's pubic area covered by underwear that a hand was pulling down. A nude vagina and the act of pulling underwear down both tended to arouse sexual desire. *See Hammett*, 182 N.C. App. at 322–23, 642 S.E.2d at 458–59. Accordingly, in the light most favorable to the State, *see Winkler*, 368 N.C. at 574–75, 582, 780 S.E.2d at 826, 830, the visual representations showed a minor engaged in sexual activity, *see* N.C. Gen. Stat. §§ 14-190.16(a), 14-190.17. The trial court, therefore, did not err in denying Defendant's motion to dismiss. *See Fritsch*, 351 N.C. at 378, 526 S.E.2d at 455.

## V. Conclusion

The trial court did not err in denying Defendant's motion to suppress or his motion to dismiss.

NO ERROR.

Judges COLLINS and FREEMAN concur.

Report per Rule 30(e).