Circuit Court for Howard County
Case No. C-13-CR-19-000775

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1046

September Term, 2020

JOHNNY OATES

v.

STATE OF MARYLAND

Shaw Geter,
Zic,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 4, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following a not guilty plea upon an agreed statement of facts, Johnny Oates, appellant, was convicted of sexual abuse of a minor. His sole claim on appeal is that the court erred in denying his motion to suppress the victim's testimony about the contents of a recorded conversation that was inadmissible under the Maryland Wiretap Act.

Prior to trial, defense counsel moved to suppress evidence of "surreptitiously recorded telephone conversations that took place between [the victim] and Mr. Oates" without Mr. Oates's consent. The calls Mr. Oates sought to suppress took place in March 2019 when the minor victim was living in North Carolina and Mr. Oates was living in Virginia. The State conceded that the recordings of those phone calls were inadmissible under the Maryland Wiretap Act but argued that, pursuant to *Aud v. State*, 72 Md. App. 508 (1987), the minor victim should be allowed to testify about the content of those conversations. Following a hearing, the court found that the recordings of the phone calls were inadmissible but that the victim could testify about her recollection of the conversations. However, the court prohibited the victim from reviewing the excluded recordings, or any evidence derived from those recordings, prior to her testimony.

On the day of trial, Mr. Oates elected to enter a plea of not guilty and the parties proceeded by way of an agreed statement of facts. The statement of facts that was offered by the prosecutor did not mention the 2019 phone calls or make any reference to what the victim's testimony would have been with respect to the contents of those calls. Because the State did not rely on the victim's challenged testimony to convict Mr. Oates, there is no longer an existing controversy for which we can fashion an effective remedy. Consequently, we shall dismiss the appeal as moot. *See La Valle v. La Valle*, 432 Md.

343, 351 (2013) (noting that a case is considered moot when "past facts and occurrences have produced a situation in which, without any future action, any judgment or decree the court might enter would be without effect" (quotation marks and citation omitted)).[1]

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.

[1] We note that after the State concluded its recitation of facts, defense counsel briefly reminded the court that there was a "one-party consent call" that "would not have come into evidence" but that the victim "would have testified about the content of that call including descriptions that the Defendant made about the acts that occurred between them[.]." Thus, even if the appeal was not moot, we would not reverse as defense counsel invited any alleged error. *Smith v. State*, 218 Md. App. 689, 701 (2014) ("Under the 'invited error' doctrine, a defendant who himself invites or creates error cannot obtain a benefit—mistrial or reversal—from that error." (internal quotation marks and citation omitted)).