IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES A. FELTON,	'	No. 24, 2003
Defendant Below, Appellant,	'	Court Below: Superior Court of the State of Delaware in and for Sussex County
v.	'	
STATE OF DELAWARE,	'	Cr.A. No: IS02-04-0188
Plaintiff Below, Appellee.	'	

Submitted: May 28, 2003
Decided: July 3, 2003

Before **VEASEY**, Chief Justice, **BERGER** and **STEELE**, Justices.

ORDER

This 3rd day of July 2003, upon consideration of the briefs of the parties it appears to the Court that:

(1) On November 14, 2002, appellant, James Felton, was convicted by a jury of one count of unlawful sexual intercourse in the first degree. The victim of Felton's crime was his daughter, Shannon James.[1] The court sentenced Felton to twenty years in prison. Felton now appeals his conviction.

(2) As a child, Shannon lived in Delaware with her father, appellant, James Felton, her mother, her younger sister and two older half siblings. When Shannon was about six-

years-old her mother left the home leaving Felton to raise the children alone. One year later Felton's mother, the children's grandmother, Geneva Felton, took custody of Shannon and her sister. The two girls lived with their grandmother for several years in Maryland. During this time they also visited their father on weekends and holidays.

(3) Shannon testified at trial that when she was about twelve or thirteen-years-old she lost her virginity to a boy during a visit she had with her mother. As a result her mother told Geneva to arrange for Shannon to take birth control pills.

(4) About one month later, during the summer of 1998, Shannon went to visit her father in Delaware. At this time Felton had remarried and was living with his wife, Rovair. Shannon testified that during this particular visit Rovair had gone to work and her sister had gone to a neighbor's house to play when Felton called Shannon to his bedroom and told her to sit on the bed. Shannon said Felton was angry and said that, "since you like to have sex a bt," and "wanted to be grown and wanted to act grown," then he would teach her how "grown" she really was. Shannon claims Felton then started to rub her leg and kiss her neck. Shannon screamed and fought but Felton continued and then penetrated her vagina with his penis.

(5) Shannon never told any adult of the incident. She did, however, tell her younger sister. Shannon also testified that after returning to her grandmother's home she no longer wished to visit her father and would sometimes make excuses not to visit. The

[1] The use of a pseudonym has been provided for the minor child pursuant to Supreme Court Rule 7(d).

grandmother denied this occurred, however, and testified that Shannon never indicated any fear or reluctance about visiting her father. Geneva did state, however, that on one occasion she remembered Shannon saying that she did not want to go to her father's home because she did not like Rovair.

(6) In 2000, Shannon and her sister went to live with their mother after Shannon became pregnant. One year later, in November 2001, Shannon's sister died in a house fire. After her sister's death, Shannon began acting in an unusual manner and her boyfriend at the time asked her what was wrong with her. Shannon began to cry and told her boyfriend about the incident with her father in 1998. Shannon then made him promise not to tell anyone. Shannon's boyfriend, however, told his cousin. Eventually, Lakisha Pettie, who had a two-year-old daughter with Felton, also heard about the incident. Pettie confronted Shannon in front of her mother. Shannon then began to cry and retold the story to Pettie and her mother.

(7) In January 2002 Shannon was taken to the Children's Advocacy Center (hereinafter "CAC"). At the CAC a multi-disciplinary team consisting of police officers, Division of Family Services workers, and prosecutors, interview children regarding allegations of abuse to determine if a crime has occurred and an arrest needs to be made. Shannon was interviewed by Ralph Richardson.

(8) After the interview the police arrested Felton and charged him with one count of first degree unlawful sexual intercourse. A trial was held from November 12 to 14,

2002. Felton presented many witnesses on his behalf and also testified, denying Shannon's allegations. The jury, however, found Felton guilty. The court subsequently sentenced Felton to 20 years in prison.

(9) On appeal Felton asserts the trial court erred by failing to issue a curative instruction sua sponte regarding the testimony of State witness Ralph Richardson. This issue, however, was not presented to the trial court. "Only questions fairly presented to the trial court may be presented for review; provided, however, that when the interests of justice so require, the Court may consider and determine any question not so presented."[2] If the argument is considered by this Court the standard the party must meet is raised to plain error.[3] We find the interests of justice do require review of this issue, thus we review Felton's claim for plain error. Plain error exists where the error was so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process.[4]

(10) During the course of Richardson's testimony the State asked several questions regarding children the CAC interviews. Specifically the following exchange took place:

> Prosecutor: Is it presumed that if a child comes up to be interviewed, that an arrest is going to be made?
>
> Richardson: No, not at all.

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[2] SUP. CT. R. 8.

[3] *Monroe v. State*, 652 A.2d 560, 563 (Del. 1995).

[4] *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986).

Prosecutor: How so?

Richardson: I just did a statistical workup of what we had done in the last two years, the years of 2000 -.

(11) After Richardson's statement Felton objected and the State withdrew the question. Felton did not request a curative jury instruction at this time nor later during final jury instructions. Furthermore, the court did not issue an instruction sua sponte.

(12) Felton claims it was error for the trial court not to issue an instruction. He cites this Court's decision in *Wheat v. State* as support.[5] In *Wheat* this Court reversed the defendant's conviction in a rape case where defendant's stepdaughter was the alleged victim.[6] Specifically the Court found it was error for an expert to testify where the expert expressed opinions concerning the truthfulness of the victim's testimony and quantified the probability of truth or falsity.[7]

(13) Felton's case, however, differs from the *Wheat* case. Here Richardson was not testifying as an expert witness but rather was relaying information on how the CAC conducts its investigations. Although it was error for Richardson to begin to talk about the statistical information he gathered, unlike the expert in *Wheat*, Richardson never actually told the jury the results of the information gathered or the significance of that

[5] *Wheat v. State*, 527 A.2d 269 (Del. 1987).

[6] *Id.* at 270.

[7] *Id.* at 275.

information. Most importantly, the jury was never told whether the investigations from CAC that lead to arrests lead to guilty verdicts as well. Had this information been relayed to the jury, a case for a sua sponte instruction would arguably exist. In this case, however, Richardson merely stated that not all CAC investigations lead to arrests. The results of his statistical workup were never discussed.

(14) We find that the negative inference Felton complains of does not necessarily follow from Richardson's statement. The implication that Richardson committed improper vouching because he testified that his interview led to an arrest and thus he must believe Felton is guilty is to attenuated to constitute plain error.

(15) Furthermore, as the State argues, this inference is present in every case. An officer arresting a suspect or a prosecutor charging a defendant supports the inference that these parties believe the suspect committed a crime. Therefore, this inference is present in every criminal proceeding. Thus the error was not so clearly prejudicial to Felton's rights that the fairness and integrity of the trial process were jeopardized. The trial court, therefore, did not commit plain error by failing to issue a curative instruction sua sponte.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice