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NO. COA05-1631

NORTH CAROLINA COURT OF APPEALS

Filed: 3 October 2006

STATE OF NORTH CAROLINA

v.

Guilford County
No. 03 CRS 107615

KENTRELL MARSHALL MITCHELL

Appeal by defendant from judgment entered 18 February 2005 by Judge A. Moses Massey in Guilford County Superior Court. Heard in the Court of Appeals 11 September 2006.

Attorney General Roy Cooper, by Assistant Attorney General Robert Curran, for the State.

Irving Joyner for defendant-appellant.

CALABRIA, Judge.

Kentrell Marshall Mitchell ("defendant") appeals from a judgment entered upon a jury verdict finding him guilty of second degree rape and second degree sex offense. We find no error.

At trial, the State presented the testimony of A.O. ("the victim"), who was fifteen years of age at the time of this incident. The victim stated defendant forcibly and against her will inserted his finger and penis into her vagina in an empty classroom trailer on the grounds of Eastern Guilford High School on the afternoon of 10 December 2003. The victim further stated that

during the incident she repeatedly attempted to push defendant away but failed. The defendant conversed very little with the victim and repeatedly tried to kiss her on the mouth. The victim testified she was a virgin at the time of this incident. As she was leaving the school trailer, the defendant told the victim to "stop crying because [she] was still a virgin." The victim went to an upstairs bathroom and cried. Soon thereafter, the victim told a friend defendant raped her.

Teresa May Slade, a staff nurse for thirty-two (32) years at Moses Cone Health Care System ("Nurse Slade"), testified "as an expert in the medical evaluation and treatment of victims of sexual assault." On 12 December 2003, Nurse Slade treated the victim with a sexual assault kit. Nurse Slade stated that she found redness at the floor of the victim's posterior fourchette, the area inside the labia at the bottom of the vagina. A speculum exam further revealed redness "around the edge of the [victim's] cervix" and "a small amount of blood" at the cervix's entrance. After describing the victim's physical condition, Nurse Slade offered the following opinion about her findings:

Q. Ms. Slade, in your opinion, to a reasonable degree of medical certainty, were the vaginal injuries that you observed upon your examination of [the victim] consistent with her account of a sexual assault?

A. Yes.

[DEFENSE COUNSEL]: Objection.

THE COURT: Objection overruled.

Q. And what is your opinion?

A. Yes.

Q. And why is that?

A. Because those are not usual findings on a vaginal exam.

On cross-examination, Nurse Slade acknowledged that the redness and blood found in complainant's vaginal area could have been caused by things other than a sexual assault.

Defendant testified he and the victim engaged in consensual contact in the classroom, fondling and rubbing each other for between five and ten minutes. He admitted penetrating the victim's vagina with his finger, but denied having intercourse with her. He had no idea how many times he digitally penetrated the victim.

The jury found the defendant guilty of second degree rape and second degree sex offense. The court sentenced defendant to serve a minimum of 80 months to a maximum of 105 months in the Western Youth Center. Defendant appeals.

Defendant argues the trial court erred and abused its discretion by admitting improper expert opinion testimony. We disagree. "It is undisputed that expert testimony is properly admissible when such testimony can assist the jury to draw certain inferences from facts because the expert is better qualified." *State v. Locklear*, 349 N.C. 118, 147, 505 S.E.2d 277, 294 (1998) (quoting *State v. Bullard*, 312 N.C. 129, 139, 322 S.E.2d 370, 376 (1984)). Our Supreme Court provided the following guidance on the admissibility of expert opinion regarding the significance of a victim's physical injuries:

[Expert] testimony is properly admitted if (1)

the witness because of his expertise is in a better position to have an opinion on the subject than the trier of fact, (2) the witness testifies only that an event could or might have caused an injury but does not testify to the conclusion that the event did in fact cause the injury, unless his expertise leads him to an unmistakable conclusion and (3) the witness does not express an opinion as to the defendant's guilt or innocence.

State v. Brown, 300 N.C. 731, 733, 268 S.E.2d 201, 203 (1980) (emphasis omitted). Within this framework, a medical expert may testify that a victim's physical injuries are "consistent with" her account of an assault. *State v. Aguallo*, 322 N.C. 818, 822, 370 S.E.2d 676, 678 (1988). "The acceptance of a witness as an expert and the admission of expert testimony are within the sound discretion of the trial court and will not be upset absent a showing of an abuse of discretion.'" *State v. Berry*, 143 N.C. App. 187, 202, 546 S.E.2d 145, 156 (2001) (quoting *State v. Willis*, 109 N.C. App. 184, 192, 426 S.E.2d 471, 475 (1993)).

In the instant case, defendant alleges when the trial court overruled his objection, this "resulted in [Nurse Slade] giving an opinion of the credibility of [the victim's] account of the alleged sexual assault[.]" Rather than offering the jury a "medical explanation" or "medical conclusion" drawn from her observations, defendant insists Nurse Slade expressed "her belief that the perceived vaginal injuries meant that a sexual assault occurred and bolstered [the victim's] credibility regarding this allegation." However, pursuant to *Aguallo, supra*, Nurse Slade never offered an opinion whether the victim had been sexually assaulted, was telling the truth, or whether the victim's version of events was

believable. Further, Nurse Slade never testified regarding defendant's guilt or innocence. Rather, Nurse Slade's testimony "only revealed the consistency of her findings with the presence of vaginal trauma. [It] did not comment on the truthfulness of the victim or the guilt or innocence of defendant." *Aguallo*, 322 N.C. at 823, 370 S.E.2d at 678. Accordingly, "[t]he questions and answers were properly admitted to assist the jury in understanding the results of the physical examination and their relevancy to the case being tried." *Id.* (citing N.C. Gen. Stat. § 8C-1, Rule 702). Moreover, we believe Nurse Slade's expertise placed her in a better position than the jury to assess whether the redness and blood found during complainant's vaginal exam were consistent with a sexual assault. This assignment of error is overruled.

The remainder of defendant's assignments of error were not addressed in his brief to this Court and thus, pursuant to N.C. R. App. 28(b)(6) (2005), they are abandoned.

No error.

Chief Judge MARTIN and Judge JACKSON concur.

Report per Rule 30(e).