NO. COA14-57

NORTH CAROLINA COURT OF APPEALS

Filed: 17 February 2015

STATE OF NORTH CAROLINA

v.

SLADE WESTON HICKS, JR.,
Defendant.

Lincoln County
Nos. 11 CRS 53292
11 CRS 53293

Appeal by defendant from judgment entered 14 August 2013 by Judge William R. Bell in Lincoln County Superior Court. Heard in the Court of Appeals 7 May 2014.

Attorney General Roy Cooper, by Special Deputy Attorney General Belinda A. Smith, for the State.

Appellate Defender Staples Hughes, by Assistant Appellate Defender Charlesena Elliott Walker, for defendant-appellant.

GEER, Judge.

Defendant Slade Weston Hicks, Jr. appeals from a judgment entered on his convictions of sexual offense with a child and indecent liberties with a child. On appeal, defendant primarily argues that the trial court committed plain error by instructing the jury on sexual offense with a child under N.C. Gen. Stat. § 14-27.4A (2013) instead of first degree sexual offense under N.C. Gen. Stat. § 14-27.4(a)(1), the charge for which he was indicted. A conviction must be supported by an indictment that alleges all

the elements of the offense. Because the indicted charge, N.C. Gen. Stat. § 14-27.4(a)(1), is a lesser included offense of N.C. Gen. Stat. § 14-27.4A, the indictment did not allege all the elements of the crime set out in § 14-27.4A, the crime of which defendant was convicted. Accordingly, we vacate the judgment.

However, the indictment sufficiently alleges the lesser included offense of first degree sexual offense under § 14-27.4(a)(1), and the jury's verdict on the greater offense of sexual offense with a child necessarily included a determination by the jury that the defendant was guilty of that lesser included offense. We, therefore, remand for entry of judgment and resentencing on the charge of first degree sexual offense in violation of N.C. Gen. Stat. § 14-27.4(a)(1).

Facts

The State's evidence tended to show the following facts. Defendant was born in 1985 and is 11 years older than his cousin "Sally" who was born in 1996.[1]

Around 2007, while at a relative's house in Gaston County, North Carolina, defendant asked Sally to go into a walk-in closet. After she went in, defendant closed the closet door, grabbed her shoulder, and told her to get on her knees. He pulled his penis

[1]To protect the identity of the minor child and for ease of reading we use the pseudonym "Sally" throughout this opinion.

out of his pants so that it was level with her nose. Sally ran out of the closet when she heard her mother calling her name. She did not tell anyone what happened.

In March 2008, when Sally was 11 years old and defendant was 22 years old, Sally went to defendant's father's house in Lincoln County, North Carolina, for a family gathering. Defendant offered to take Sally to his hiding place in the woods. Once there, defendant grabbed Sally's shoulder and asked her to suck his penis, but she refused. At that point, Sally's brother and defendant's sister, who had been sent by Sally's mom to find her, were coming down the trail. Defendant told Sally to tell them something to make them go away, so Sally told her brother that she and defendant were watching the deer.

After Sally's brother and defendant's sister left, defendant picked Sally up and stood her on a tree stump. He pulled Sally's jeans and underwear down to her ankles and began touching, licking, and inserting his fingers into her vagina. He then lifted her off the log, placed her on top of him, and started humping her. Sally pushed away but did not say anything because defendant had shown her a knife and told her not to tell anyone.

In August 2011, when Sally was 16, she told her mother about the incident in the woods and her mother contacted the police. Sally went with her mother to the Gaston County Police Department

and told Detective William Sampson what happened in 2007 at her relative's house in the walk-in closet and what happened in 2008 in the woods. Defendant was charged in Gaston County with indecent liberties with a child as a result of the 2007 Gaston County incident and pled guilty to that charge pursuant to an *Alford* plea on 4 April 2013.

With respect to the 2008 incident, defendant was indicted in Lincoln County for indecent liberties with a child in violation of N.C. Gen. Stat. § 14-202.1 and for first degree sexual offense in violation of N.C. Gen. Stat. § 14-27.4(a)(1). Defendant was tried on these charges at the 12 August 2013 Criminal Session of Lincoln County Superior Court, and the jury found defendant guilty of both charges. The trial court consolidated the offenses into a single judgment and sentenced defendant to a presumptive-range term of 300 to 369 months imprisonment.

In a separate order entered the same day, the trial court found that defendant had been convicted of a reportable conviction under N.C. Gen. Stat. § 14-208.6, specifically "sexual offense with a child, G.S. 14-27.4A," and ordered defendant to register as a sex offender upon release from prison for his natural life and to enroll in satellite-based monitoring ("SBM") for his natural life.

Discussion

As an initial matter, we must address our jurisdiction over defendant's appeal. Although defendant filed a timely written notice of appeal of his underlying convictions, he did not file written notice of appeal from the 14 August 2013 SBM order. Because SBM orders are civil in nature, written notice of appeal is required under N.C.R. App. P. 3(a). *State v. Brooks*, 204 N.C. App. 193, 195, 693 S.E.2d 204, 206 (2010). Nevertheless, defendant filed a petition for writ of certiorari to review the SBM order, and we decide, in our discretion, to allow defendant's petition and to review the merits of his appeal of the SBM order.

I

Defendant first argues that the trial court erred by admitting certain testimony of Frieda Bellis, a psychologist who treated Sally after she told her mother about the sexual abuse. Because defendant did not object to the testimony at trial, he contends that this constituted plain error.

> For error to constitute plain error, a defendant must demonstrate that a fundamental error occurred at trial. To show that an error was fundamental, a defendant must establish prejudice -- that, after examination of the entire record, the error had a probable impact on the jury's finding that the defendant was guilty. Moreover, because plain error is to be applied cautiously and only in the exceptional case, the error will often be one that seriously affect[s] the fairness, integrity or public reputation of judicial proceedings[.]

State v. Lawrence, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012) (internal citations and quotation marks omitted).

At trial, Ms. Bellis testified that she is a psychologist who works at New Directions, a facility that provides psychological testing, therapy, and counseling. Although Ms. Bellis was not tendered as an expert witness by the State, she testified that she has a masters degree in clinical psychology, is licensed to practice psychology, and has attended symposiums regarding treating children, two of which addressed sexual abuse and trauma in children.

On direct examination, the State asked Ms. Bellis about her treatment of Sally:

> Q. Okay. Now, have you ever been contacted with regard to [Sally] pursuant to a request to treat?
>
> A. Yes.
>
> Q. And would you describe that initial meeting with [Sally]?
>
> A. Yes. I first saw her on August 1st, 2011. *They specifically came in because she had been molested by her older cousin*.
>
> Q. Okay. Was there an allegation of molestation?
>
> A. Yes.
>
> Q. And did they discuss with you a goal, a treatment goal regarding why she was there?

A. Yes, to help her with the symptoms of trauma that she was experiencing and help her cope with those.

Q. Do you recall from that meeting the symptoms that she was experiencing?

A. Yes. She was having a hard time falling asleep. Once she fell asleep she would wake up because she would have nightmares concerning the trauma. She was having a hard time paying attention in school, because when she would think about the trauma it would make her feel anxious.

Q. And did you base this conclusion on disclosures from [Sally]?

A. Yes.

(Emphasis added.)

Ms. Bellis testified that she saw Sally about once every two weeks from 1 August 2011 until March 2012. Her direct examination was very brief and closed with the following exchange:

Q. Do you recall during the course of your meeting with [Sally] the nature of the allegations of molestation? Do you remember if she disclosed any details to you?

A. I believe she did.

Q. And during the course of your treatment, did you discuss those details?

A. We did.

Q. And do you recall if -- whether or not [Sally] remained consistent in those details?

A. She was.

On cross-examination, defense counsel asked Ms. Bellis if "the appointments and treatment evolve[d] shortly into dealing with the death of [Sally's] dog." Ms. Bellis acknowledged that the dog's death was one of the issues that they dealt with, but she was unsure when that issue came up or how long they addressed it. Defense counsel also elicited from Ms. Bellis that she diagnosed Sally with ADHD.

On re-direct, the State asked Ms. Bellis whether ADHD was the only diagnosis made during Sally's treatment:

> Q. Besides the diagnosis of ADHD, did you make any official diagnosis that you recollect or that you recall?
>
> A. Yes, post-traumatic stress disorder.
>
> Q. And how do you -- what's the basis of that diagnosis generally speaking, not as it applies to [Sally]?
>
> A. There are many symptoms of PTSD. Some of those can be when you recollect the trauma you feel very fearful, or if there's something that triggers that you feel very afraid, nightmares, certainly, a hard time sleeping, hard time concentrating. It can affect your school performance, or if you're an adult, your job performance.
>
> Q. Based upon those indicators, are you the one that made the diagnosis?
>
> A. Yes.

Defendant first argues that Frieda Bellis' testimony that Sally "specifically came in because she had been molested by her older cousin" amounted to expert testimony that Sally had, in fact, been sexually molested by defendant and impermissibly vouched for Sally's credibility. We disagree.

It is well established that "a witness may not vouch for the credibility of a victim" because it constitutes an impermissible opinion on the guilt of the defendant. *State v. Giddens*, 199 N.C. App. 115, 121, 681 S.E.2d 504, 508 (2009), *aff'd per curiam*, 363 N.C. 826, 689 S.E.2d 858 (2010). Accordingly, our Supreme Court has held that "[i]n a sexual offense prosecution involving a child victim, the trial court should not admit expert opinion that sexual abuse has *in fact* occurred because, absent physical evidence supporting a diagnosis of sexual abuse, such testimony is an impermissible opinion regarding the victim's credibility." *State v. Stancil*, 355 N.C. 266, 266-67, 559 S.E.2d 788, 789 (2002). "However, an expert witness may testify, upon a proper foundation, as to the profiles of sexually abused children and whether a particular complainant has symptoms or characteristics consistent therewith." *Id.* at 267, 559 S.E.2d at 789. Nevertheless, an expert opinion that a victim was sexually abused *by the defendant* amounts to an impermissible expert opinion as to the defendant's

guilt. *State v. Figured*, 116 N.C. App. 1, 8, 446 S.E.2d 838, 842 (1994).

In support of his argument, defendant cites a number of cases in which our courts have applied this principle to hold that the expert testimony was admitted in error. In the cases cited by defendant, the experts clearly and unambiguously either testified as to their opinion regarding the victim's credibility or identified the defendant as the perpetrator of the sexual abuse. *See, e.g., State v. Kim*, 318 N.C. 614, 620, 350 S.E.2d 347, 351 (1986) (new trial granted where doctor testified that victim had "'never been untruthful with [him]'"); *State v. Heath*, 316 N.C. 337, 340, 341 S.E.2d 565, 567 (1986) (expert responded negatively to question whether victim suffered from mental condition that caused her to lie about sexual assault); *Giddens*, 199 N.C. App. at 121, 681 S.E.2d at 508 (child protective services investigator for DSS testified that DSS had "'substantiated'" defendant as perpetrator of sexual abuse based on evidence investigator had gathered); *State v. Hannon*, 118 N.C. App. 448, 451, 455 S.E.2d 494, 496 (1995) (new trial granted where expert testified that prosecuting witness was truthful); *Figured*, 116 N.C. App. at 8, 446 S.E.2d at 842 (physician testified that in his opinion children were sexually abused by defendant).

Here, in contrast, Ms. Bellis was never specifically asked to give her opinion as to the truth of Sally's allegations of molestation or whether she believed that Sally was credible. When reading Ms. Bellis' testimony as a whole, it is evident that when Ms. Bellis stated that "[t]hey specifically came in because [Sally] had been molested by her older cousin[,]" Ms. Bellis was simply stating the reason why Sally initially sought treatment from Ms. Bellis. Indeed, Ms. Bellis' affirmative response to the State's follow-up question whether there was "an allegation of molestation" clarifies that Ms. Bellis' statement referred to Sally's allegations, and not Ms. Bellis' personal opinion as to their veracity.

Because Ms. Bellis' testimony, when viewed in context, does not express an opinion as to Sally's credibility or defendant's guilt, we hold that the trial court did not err in admitting it. *See State v. O'Hanlan*, 153 N.C. App. 546, 562, 570 S.E.2d 751, 761 (2002) (rejecting defendant's argument that detective's testimony that had victim not positively identified her attacker, he would have conducted more thorough investigation "'because [he] wouldn't have known who done it'" impermissibly bolstered victim's testimony, because "[t]he context in which this testimony was given makes it clear [the detective] was not offering his opinion that the victim had been assaulted, kidnapped, and raped by defendant,

but was explaining why he did not pursue as much scientific testing of physical evidence in this case as he would a murder case").

Defendant next argues that the trial court committed plain error by admitting Ms. Bellis' testimony that she diagnosed Sally with post-traumatic stress disorder ("PTSD"). Our Supreme Court has held "[i]n no case may [evidence of PTSD] be admitted substantively for the sole purpose of proving that a rape or sexual abuse has in fact occurred." *State v. Hall*, 330 N.C. 808, 822, 412 S.E.2d 883, 891 (1992). The Court identified two primary problems with admitting evidence of a PTSD diagnosis as substantive evidence:

> First, the psychiatric procedures used in developing the diagnosis are designed for therapeutic purposes and are not reliable as fact-finding tools to determine whether a rape has in fact occurred. Second, the potential for prejudice looms large because the jury may accord too much weight to expert opinions stating medical conclusions which were drawn from diagnostic methods having limited merit as fact-finding devices.

Id. at 820, 412 S.E.2d at 889.

Nevertheless, evidence of PTSD may be admitted for certain corroborative purposes. *Id.* at 821, 412 S.E.2d at 890. Evidence that the victim suffers from PTSD may "cast light onto the victim's version of events and other, critical issues at trial. For example, testimony on post-traumatic stress syndrome may assist in corroborating the victim's story, or it may help to explain delays

in reporting the crime or to refute the defense of consent." *Id.* at 822, 412 S.E.2d at 891.

The Supreme Court explained:

> This list of permissible uses is by no means exhaustive. The trial court should balance the probative value of evidence of post-traumatic stress, or rape trauma, syndrome against its prejudicial impact under Evidence Rule 403. It should also determine whether admission of this evidence would be helpful to the trier of fact under Evidence Rule 702. If the trial court is satisfied that these criteria have been met on the facts of the particular case, then the evidence may be admitted for the purposes of corroboration. If admitted, the trial judge should take pains to explain to the jurors the limited uses for which the evidence is admitted.

Id.

This Court applied the rule set forth in *Hall* in *O'Hanlan*. In *O'Hanlan*, the State's expert witness, a physician, testified regarding her treatment of the victim after she had been sexually abused by the defendant. 153 N.C. App. at 555-56, 570 S.E.2d at 758. On cross-examination, "defendant asked questions pertaining to the victim's mental treatment, in particular, a psychiatric evaluation of the victim. This line of questioning elicited responses that could have given the jury the impression that the victim was mentally unstable prior to the time of the assault. On redirect examination, the State introduced the rest of the report to put the evidence introduced by defendant into context, namely

that the victim only began suffering such mental problems after that attack." *Id.* at 560, 570 S.E.2d at 760. The report included a diagnosis of PTSD and the physician testified that the victim suffered from PTSD as a result of the sexual assault. *Id.* at 559, 570 S.E.2d at 760. The trial court did not give a limiting instruction. *Id.*

On appeal, the defendant argued that because a limiting instruction was not given, the evidence was admitted for the sole purpose of proving that the rape took place. This Court disagreed and reasoned instead:

> The reference to PTSD was being used to rebut the inference by defendant that the victim was mentally unstable prior to the assault and rape rather than to prove the assault and rape happened. Therefore, the evidence was admissible, but not as substantive evidence. Defendant would have been entitled to request the *Hall/Chavis* limiting instruction. However, since he did not, "[t]he admission of evidence which is competent for a restricted purpose will not be held error in the absence of a request by the defendant for limiting instructions."

Id. at 560-61, 570 S.E.2d at 760 (quoting *State v. Jones*, 322 N.C. 406, 414, 368 S.E.2d 844, 848 (1988)).

Additionally, the Court noted that "evidence which is otherwise inadmissible is admissible to explain or rebut evidence introduced by defendant" and "where a defendant examines a witness so as to raise an inference favorable to defendant, which is

contrary to the facts, defendant opens the door to the introduction of the State's rebuttal or explanatory evidence about the matter." *Id.* at 561, 570 S.E.2d at 761. Therefore, this Court held that the defendant's cross examination of the State's expert opened the door for admission of the PTSD diagnosis as admissible rebuttal evidence.

We find the facts of this case analogous to the facts of *O'Hanlan*. On cross-examination of Ms. Bellis, defense counsel asked about treatment for the death of Sally's dog and about Ms. Bellis' diagnosing Sally with ADHD. This line of questioning elicited responses that raised an inference favorable to defendant -- that Sally's psychological problems were caused by something other than having been sexually assaulted. The State's introduction of evidence of PTSD on re-direct examination was not, therefore, admitted as substantive evidence that the sexual assault happened, but rather to rebut an inference raised by defense counsel during cross-examination. Although defendant could have requested a limiting instruction, he did not do so. We, therefore, hold that the trial court did not commit plain error in admitting this testimony.

II

Defendant next argues that the trial court committed plain error by instructing the jury on "sexual offense with a child,"

under N.C. Gen. Stat. § 14-27.4A, a crime for which defendant was not indicted. We agree.

Defendant was indicted for first degree sexual offense in violation of N.C. Gen. Stat. § 14-27.4(a)(1), which is a lesser included offense of "sexual offense with a child; adult offender" under N.C. Gen. Stat. § 14-27.4A. *See* N.C. Gen. Stat. § 14-27.4A(d). While both offenses require the State to prove that the defendant engaged in a sexual act with a victim who was a child under the age of 13 years, sexual offense with a child under N.C. Gen. Stat. § 14-27.4A has a greater requirement with respect to the age of a defendant at the time of the act. For first degree sexual offense, N.C. Gen. Stat. § 14-27.4(a)(1), the State must prove only that the defendant was at least 12 years old and at least four years older than the victim, whereas for N.C. Gen. Stat. § 14-27.4A, the State must prove that the defendant was at least 18 years old.

Here, rather than instruct the jury on first degree sexual offense -- the indicted offense -- the trial court instructed the jury on the greater offense of sexual offense with a child. In essence, the trial court submitted to the jury an additional element that the State was not required to prove: that defendant was at least 18, an adult, at the time he committed the offense.

"It has long been the law of this State that a defendant must be convicted, if convicted at all, of the particular offense charged in the warrant or bill of indictment." *State v. Williams*, 318 N.C. 624, 628, 350 S.E.2d 353, 356 (1986). Correspondingly, "the failure of the allegations [of the indictment] to conform to the equivalent material aspects of the jury charge represents a fatal variance, and renders the indictment insufficient to support [the] resulting conviction." *Id.* at 631, 350 S.E.2d at 357.

In this case, the jury charge on the elements of sexual offense with a child resulted in a conviction that is not supported by the indictment on the lesser included offense of first degree sexual offense. Specifically, the indictment does not allege an essential element of the resulting conviction: that defendant was at least 18 years old. We must, therefore, vacate the judgment.

Nevertheless, this Court has held that "where the indictment does sufficiently allege a lesser-included offense, we may remand for sentencing and entry of judgment thereupon." *State v. Bullock*, 154 N.C. App. 234, 245, 574 S.E.2d 17, 24 (2002). In such a case, a new indictment is not required because "[a] verdict of guilty of [a greater offense] necessarily includes the jury's determination that the defendant is guilty of each element of . . . [the] lesser-included offense." *State v. Perry*, 291 N.C. 586, 591, 231 S.E.2d 262, 266 (1977) (internal quotation marks omitted) (where

indictment was sufficient to charge defendant with second degree rape, vacating judgment on conviction of first degree rape and remanding for entry of judgment on conviction of lesser included offense of second degree rape). *See also Bullock*, 154 N.C. App. at 244-45, 574 S.E.2d at 24 (arresting judgment on conviction for attempted first degree murder where indictment did not allege essential element of "malice aforethought" and remanding for sentencing and entry of judgment on lesser included offense of voluntary manslaughter, which was sufficiently alleged in indictment).

It is undisputed that the indictment in this case was sufficient to support a conviction of the lesser included offense of first degree sexual offense under N.C. Gen. Stat. § 14-27.4(a)(1). Furthermore, the verdict of guilty of sexual offense with a child under N.C. Gen. Stat. § 14-27.4A necessarily includes the jury's determination that the defendant is guilty of each element of the lesser included offense of first degree sexual offense under N.C. Gen. Stat. § 14-27.4(a)(1). Therefore, pursuant to *Bullock* and *Perry*, we vacate the judgment entered on defendant's conviction under N.C. Gen. Stat. § 14-27.4A and remand for resentencing and entry of judgment on the lesser included offense of first degree sexual offense under N.C. Gen. Stat. § 14-27.4(a)(1).

Defendant, however, relying primarily upon *Williams*, *State v. Bowen*, 139 N.C. App. 18, 533 S.E.2d 248 (2000), and *State v. Miller*, 159 N.C. App. 608, 583 S.E.2d 620 (2003), *aff'd per curiam*, 358 N.C. 133, 591 S.E.2d 520 (2004), contends that the trial court's failure to instruct the jury on the elements of first degree sexual offense under N.C. Gen. Stat. § 14-27.4(a)(1) constituted a dismissal of the charge as a matter of law. We disagree.

In *Williams* and *Bowen*, the trial court, in each case, declined to instruct the jury on an essential element of the indicted offense and instead instructed the jury on a separate theory of the offense not alleged in the indictment. *See Williams*, 318 N.C. at 628, 350 S.E.2d at 356 (trial court declined to instruct jury on element of force, an essential element of indicted offense of first degree rape by use of force in violation of N.C. Gen. Stat. § 14-27.2(a)(2)); *Bowen*, 139 N.C. App. at 24-25, 533 S.E.2d at 252-53 (trial court declined to instruct jury on element of force, an essential element of indicted offense of first degree sexual offense by force in violation of N.C. Gen. Stat. § 14-27.4(a)(2)). By declining to instruct the jury on all the essential elements of the indicted offense, the trial courts, in effect, dismissed the charges.

In *Miller*, the indictment for statutory sexual offense cited N.C. Gen. Stat. § 14-27.7A(a) (2001), but the defendant was tried and convicted for first degree sexual offense under N.C. Gen. Stat. § 14-27.4(a)(1). This Court held that the trial court erred in denying the defendant's motion to dismiss because the indictment was fatally defective in that the factual allegations in the indictment were "sufficient to satisfy *some* elements contained in each of these statutes to the exclusion of the other, but the[] averments [we]re insufficient to satisfy *all* of the elements contained in either statute." 159 N.C. App. at 614, 583 S.E.2d at 623. In other words, the factual allegations of the indictment were insufficient to support a conviction for *either* offense.

In contrast, in this case, the indictment alleges all the essential elements of a violation of N.C. Gen. Stat. § 14-27.4(a)(1), and the trial court did not omit any of these essential elements from its jury instructions. Rather, the trial court instructed the jury on all the essential elements of the indicted offense plus an additional element of a greater offense. Under these circumstances, the resulting conviction is not supported by the indictment and judgment on that conviction must be vacated, but the rationale for dismissal of the *indicted* charge -- failure to instruct on all the essential elements thereof -- does not apply. Accordingly, we vacate the judgment on defendant's

conviction under N.C. Gen. Stat. § 14-27.4A and remand for resentencing and entry of judgment on the offense of first degree sexual offense under N.C. Gen. Stat. § 14-27.4(a)(1).

The trial court additionally entered an SBM order based upon a finding that defendant was convicted of "sexual offense with a child, G.S. 14-27.4A." The State concedes, and we hold, that this was error. We vacate the SBM order and hold that defendant is entitled to a new SBM determination hearing on remand.

This case illustrates a significant ongoing problem with the sexual offense statutes of this State: the various sexual offenses are often confused with one another, leading to defective indictments. *See, e.g. Miller*, 159 N.C. App. at 614, 583 S.E.2d at 623 (vacating convictions where defendant was indicted under statute governing first degree sexual offense but convicted under statutory rape statute, and indictment mixed elements of both offenses); *State v. Hill*, 185 N.C. App. 216, 220, 647 S.E.2d 475, 478 (2007) (indictment purportedly charged defendant with statutory rape but alleged elements of first degree sexual offense), *rev'd per curiam for reasons stated in dissent*, 362 N.C. 169, 655 S.E.2d 831 (2008).

Given the frequency with which these errors arise, we strongly urge the General Assembly to consider reorganizing, renaming, and renumbering the various sexual offenses to make them more easily

distinguishable from one another. Currently, there is no uniformity in how the various offenses are referenced, and efforts to distinguish the offenses only lead to more confusion. For example, because "first degree sexual offense" encompasses two different offenses, a violation of N.C. Gen. Stat. § 14-27.4(a)(1) is often referred to as "first degree sexual offense with a child" or "first degree statutory sexual offense" to distinguish the offense from "first degree sexual offense by force" under N.C. Gen. Stat. § 14-27.4(a)(2). "First degree sexual offense with a child," in turn, is easily confused with "statutory sexual offense" which could be a reference to a violation of either N.C. Gen. Stat. § 14-27.4A (officially titled "[s]exual offense with a child; adult offender") or N.C. Gen. Stat. § 14-27.7A (2013) (officially titled "[s]tatutory rape or sexual offense of person who is 13, 14, or 15 years old"). Further adding to the confusion is the similarity in the statute numbers of N.C. Gen. Stat. § 14-27.4(a)(1) and N.C. Gen. Stat. § 14-27.4A. We do not foresee an end to this confusion until the General Assembly amends the statutory scheme for sexual offenses.

Vacated and remanded.

Judges BRYANT and CALABRIA concur.