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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-210

Filed: 17 November 2015

Lincoln County, No. 10 CRS 51312-16

STATE OF NORTH CAROLINA

v.

JAMES FRED REEVES, JR., Defendant.

Appeal by defendant from judgment entered 17 January 2014 by Judge Eric Levinson in Lincoln County Superior Court. Heard in the Court of Appeals 10 September 2015.

Attorney General Roy Cooper, by Special Deputy Attorney General Karen A. Blum, for the State.

Staples Hughes, Appellate Defender, by Assistant Appellate Defender Kathryn L. VandenBerg, for defendant.

DIETZ, Judge.

A jury convicted Defendant James Reeves of numerous sex offenses for raping and sexually assaulting a 14-year-old girl. On appeal, Reeves argues that his counsel was ineffective for failing to object to the introduction of certain evidence and to statements by the prosecutor during closing argument.

To prevail on a claim for ineffective assistance of counsel, Reeves must show that, but for his counsel's allegedly deficient performance, the outcome of the trial

would have been different. Here, even without the challenged evidence and statements by the prosecutor, there was overwhelming evidence of Reeves's guilt. The victim identified Reeves as the man who raped her. The victim's mother witnessed Reeves escape out of the victim's window. Police apprehended Reeves shortly after he escaped in a truck matching the description given by the victim. After his arrest, Reeves made incriminating statements to police, to his prison cellmate, and to his sister in a written note.

In light of this evidence, we hold that Reeves cannot show that, but for the allegedly deficient performance of his counsel, the outcome of his trial would have been different. Accordingly, we reject his ineffective assistance of counsel claims.

Facts and Procedural History

On 6 May 2010, 14-year-old Courtney¹ awoke to a loud noise at her bedroom window and found Reeves in her room. Reeves told her to remove her clothes because he wanted to have sex with her. Courtney responded that she did not want to have sex, at which time Reeves pushed her onto the bed, held her down, and removed her clothing. Reeves performed and forced the victim to perform oral sex and digitally penetrated her. He also forced her to engage in vaginal intercourse. While Reeves was assaulting Courtney, he heard Courtney's mom, Tammy, in the hallway beyond the bedroom door. Reeves then stopped and hid beside the doorframe.

¹ A pseudonym is used to protect the identity of the minor.

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Moments later, Tammy opened the door and brought the family dog into Courtney's room. When she turned around to leave the bedroom, Tammy saw Reeves standing next to the door. Tammy screamed and demanded to know who Reeves was. Reeves responded that his name was Michael and then escaped out the window. Courtney described the truck in which Reeves escaped, which she had seen around the neighborhood before.

Officers soon observed a truck matching that description nearby. When law enforcement attempted to stop the truck, the driver sped up and tried to elude police. Officers eventually pulled the truck over and arrested Reeves, the only occupant.

At trial, the State introduced a video recording of an interview with Courtney that took place on 29 June 2010 at the Children's Advocacy Center. Reeves did not object to admission of the video. In the video, Courtney made the following statements concerning Reeves's nephew, Paul:

Paul is scared of his uncle 'cuz he's been abused several times, and I'm the only one that knows 'cuz he never wanted to tell anybody else. Because he knew I wouldn't tell anybody unless it was an emergency.

Q. What about Paul?

A. Well actually he said his uncle had done this to several other girls too; that's why he didn't have many friends. And so, he said that when I was over, be careful around his uncle. But that was all he really said.

Q. Did you talk to Paul after April the 5th about what had happened when he was made to watch?

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A. Yeah. He said he was very scared and nervous and . . . he was really nervous that I was not gonna be his friend after that and I said it wasn't his fault and that I didn't care if his uncle made him watch and everything and he was still gonna be my friend. He started crying because . . . every time this happened his friend would not be his friend anymore. . . .

The State also called Detective Seth Bailey, who specializes in sexual abuse cases. Bailey testified that he interviewed Courtney at the hospital where he made handwritten notes based on their conversation. Bailey testified that she was timid and that he didn't press her for many details because he knew she would be interviewed later and, in his opinion, having a witness repeat a story is "almost like being assaulted over and over again." The prosecutor then asked:

Q. But the detail that you were able to determine – or able to extract information from Courtney that there had been some sort of a sexual assault?

A. Yes, I was.

Q. Were you able to determine what type of sexual assault?

A. Yes.

There was no objection from defense counsel, but the trial court interjected: "I don't know how that's helpful. That's a legal conclusion for the jury. Let's move forward. He's a fact witness of course."

The State also called Melody Thompson, a treating counselor for Courtney, to testify that she had been seeing Courtney before May of 2010, and that after May

2010 they “began addressing the issues surrounding the traumatic event that occurred with her.” Defense counsel did not object, but the trial court interjected, “Ladies and gentlemen, I’m going to instruct you to disregard the witness’ last remark.”

On the court’s own motion, the jury was sent out and the judge explained that Ms. Thompson’s testimony was “completely inadmissible.” Further, he explained, “a clinician is not permitted to give an opinion about an event taking place.” When the jury returned, the court instructed them “not to consider in any respect the comment that the witness made.”

The State also offered, as 404(b) evidence, testimony about an encounter alleged to have occurred on 5 April 2010, where Reeves restrained and raped Courtney at Reeves’s house while she was visiting his nephew Paul. The State argued that this testimony was admissible to show identity. Courtney’s mother and Ms. Thompson testified that Courtney told them about the April sexual assault. Courtney also described the incident during the videotaped interview shown to the jury. The trial court offered to give a limiting instruction emphasizing that the jury should not consider the fact that Reeves committed the April assault as evidence that Reeves committed the crime charged. Defense counsel did not request such an instruction.

Finally, during closing argument, the prosecutor said the following:

Now, the position of the State, the position of me as the prosecutor, is Courtney’s recounting to you of what

happened. That's what I argued happened . . . I contend that Courtney's a credible witness and I believe in her.

The jury convicted Reeves on all charges and he timely appealed.

Analysis

I. Ineffective Assistance of Counsel

Reeves alleges that his counsel was ineffective in three ways: (1) Failing to exclude Courtney's statement that Paul told her Reeves had sex with other girls and was physically abusive towards him; (2) failing to exclude, object to, and move to strike multiple instances of credibility vouching for the victim; and (3) failing to request a limiting instruction to prevent the jury from considering 404(b) evidence from the 5 April 2010 incident beyond showing identity.

“To prevail on a claim of ineffective assistance of counsel, a defendant must first show that his counsel's performance was deficient and that counsel's deficient performance prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687, 80 L.Ed.2d 674 (1984). When a convicted defendant complains of the ineffectiveness of counsel's assistance, the defendant must show that counsel's representation fell below an objective standard of reasonableness. *Id.* at 687-88; 80 L.Ed.2d at 693. Generally, “to establish prejudice, a ‘defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *State v. Allen*, 360 N.C. 297, 316, 626 S.E.2d 271, 286 (2006). When it is apparent that the allegedly deficient performance did not prejudice

the defendant, this Court may resolve the ineffective assistance claim on that basis without addressing whether counsel's performance actually was deficient. *See State v. Braswell*, 312 N.C. 553, 563, 324 S.E.2d 241, 249 (1985).

Applying this precedent here, we need not address whether counsel was deficient because, even if we ignore the evidence and testimony that Reeves claims should not have been admitted, there is no reasonable probability that the jury would have reached a different result.

Even without that challenged evidence, the jury would have heard the following: Before Courtney was assaulted, Reeves had been seen sitting in his truck for hours near Courtney's house. Courtney complained to her school counselor that Reeves was stalking her and it made her uncomfortable. Courtney identified Reeves as her attacker. Courtney's mother saw Reeves fleeing through an open window in Courtney's room. Courtney described Reeves's truck to officers responding to the scene. Officers observed a truck matching that description and, when they tried to pull it over, the truck sped away. When police ultimately stopped the fleeing truck, they discovered Reeves, the only occupant.

While in police custody, Reeves asked a detective if it would be a burglary if he was invited in. Later, while in jail awaiting trial, Reeves told a fellow inmate that he had engaged in vaginal and oral sex with a girl after she let him in through a window. Reeves's sister identified his handwriting on a 10 August 2010 letter giving her

permission to take Reeves's truck out of impound. In the letter, Reeves told his sister that his relationship with Courtney was consensual, that he did not force Courtney to do anything, and that it was Courtney who was stalking him. He also wrote that he felt flattered by Courtney's attention, but he should have been more responsible and put a stop to it.

Finally, although the State crime lab could not isolate Reeves's DNA from the DNA recovered from Courtney's rape kit, Reeves could not be excluded as a possible contributor of the mixture of DNA the State obtained.

In light of the aforementioned evidence, we confidently hold there is no reasonable probability that, but for the allegedly deficient performance of his counsel, the jury would have acquitted Reeves. As a result, we hold that Reeves cannot satisfy the second prong of the *Strickland* test and therefore reject his ineffective assistance of counsel claims.

Conclusion

For the reasons stated above, we find no error.

NO ERROR.

Judges HUNTER, JR. and DILLON concur.

Report per rule 30(e)