IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-443

No. COA20-565

Filed 17 August 2021

Brunswick County, No. 19CRS001417, 19CRS002335, 19CRS051914, 19CRS001415

STATE OF NORTH CAROLINA

v.

SEAN MICHAEL LENT, Defendant.

Appeal by Defendant from judgments entered on 29 January 2020 by Judge Claire V. Hill in Brunswick County Superior Court. Heard in the Court of Appeals 25 May 2021.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Tiffany Y. Lucas, for the State.

Mark Montgomery for the Defendant.

JACKSON, Judge.

¶ 1 Sean Michael Lent ("Defendant") appeals from judgments entered upon jury verdicts finding him guilty of second-degree rape, sexual offense with a child by an adult, statutory sexual offense with a child by an adult, incest, and two counts of indecent liberties with a child. We hold that Defendant has failed to demonstrate any error.

I. Background

¶ 2 On Saturday, 2 June 2018, Cindy[1] slept over at a friend's house where she had slept over frequently before. She was six years old at the time. That evening, she told her friend's mother, Ms. Watson, that her uncle, Hunter Lent, Defendant's younger brother, had touched her inappropriately and made her do things she should not. Ms. Watson told Cindy that they would talk about it again the following day.

¶ 3 The next morning, Cindy told Ms. Watson the same thing again. Ms. Watson decided to invite Cindy's grandparents, Deena and Sean Martin Lent, over to talk about what Cindy had told her.

¶ 4 After they arrived, Cindy told her grandparents the same thing she had told Ms. Watson, while Ms. Watson was present. She also told her grandparents something new—that a person had put his penis in her mouth three nights in a row and that the person had long brown curly hair. She had been asleep, and when she tried to move her head away, she said the person forced her head back into place. Her grandparents asked her who she thought the person was, and she told them she thought it might have been Defendant, her father. He was the only one living in the home with long brown curly hair.

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[1] The parties have stipulated to use of this pseudonym for the child victim to protect her privacy. *See* N.C. R. App. P. 42(b).

¶ 5 At that time Cindy was living at her grandparents' home with Defendant. Defendant and Cindy shared the same room, which had only one bed. Her uncle had been living in the home previously but at that time was living elsewhere and would visit on weekends. After Cindy told her grandparents about the abuse by Defendant and her uncle, Ms. Watson agreed to keep Cindy overnight until Monday. Cindy's grandparents said they wanted to keep her away from Defendant for her safety until they figured out the truth.

¶ 6 Four days later, on Thursday, 7 June 2018, Deena Lent spoke to Brunswick County Sheriff's Detective Shannon Mylod and shared her concern that Defendant had sexually assaulted Cindy. Deena Lent told Detective Mylod that someone with long brown curly hair had put his penis into Cindy's mouth three nights in a row. She also told Detective Mylod about a time she had walked in on Defendant masturbating in the room he shared with Cindy when Cindy was not home.

¶ 7 Detective Mylod and a social worker with the Brunswick County Department of Social Services ("DSS") visited the home that day to investigate. Neither Defendant or Cindy were there that day. Social Worker Morgan Traynham learned that Defendant's father, Sean Martin Lent, had confronted Defendant about what Cindy had told him a day or two beforehand—at least two days after the conversation at Ms. Watson's—and at least a day before either of the grandparents contacted the police.

¶ 8 Detective Mylod and Social Worker Traynham learned later that day that Defendant had picked Cindy up from school and dropped her off at a relative's home in Wilmington, North Carolina, whereupon Social Worker Traynham immediately went to pick Cindy up and take her to a foster placement.

¶ 9 Cindy was interviewed as part of a Child Medical Evaluation ("CME") on Friday, 8 June 2018, and then a week later on the following Friday, 15 June 2018. Alexandra Hayson, a forensic interviewer and child therapist, conducted the interview while Detective Mylod and Katie Spencer, a Child Protective Services supervisor with DSS, observed in a separate room. During the first interview, Cindy was uncomfortable and said repeatedly that she was scared. She also told Ms. Hayson she was afraid of her father.

¶ 10 Over the course of the two days, Cindy told Ms. Hayson that her uncle Hunter Lent had sexually abused her when she was four years old. She also told Ms. Hayson that when she was four, she told her grandmother and her grandmother told her not to tell, that it was a secret, and that secrets are to be kept. When Cindy was asked whether anyone else had done things to her, she did not identify anyone else.

¶ 11 In January 2019, Cindy began meeting with Caitlin Lafferty, a licensed clinical social worker and trauma clinician. Cindy had made a video of herself masturbating that a foster parent then discovered on a mobile phone, and the foster parent no longer felt comfortable caring for Cindy because there was another child in the home.

Cindy was referred to Ms. Lafferty for intensive in-patient therapy by her outpatient therapist and DSS because of the change in foster homes.

¶ 12 Prior to their first meeting, Ms. Lafferty was made aware that Cindy had reported that her uncle had sexually abused her. At a 4 March 2019 therapy session, while discussing her family members, Cindy told Ms. Lafferty that her "favorite person is Mommy, but that other people did bad things to [her] like Daddy and uncle." At a 12 March 2019 session, after reading a book together, Cindy began talking about being sexually abused by her father as well as her uncle. She stated: "My dad put his pee-pee into my mouth. My uncle put his pee-pee in my mouth and butt. I waited till I was older to tell my grandparents because they would believe me. I didn't have the courage to tell them before. Dad said he would find my mom and hurt my baby sister that was in my mommy's tummy. Sometimes I would say no, but he said he would hurt me. One time he peed in my mouth and I was disgusted. It happened a million times. He said he would kill me if I told anyone. Grandma and Grandpa were in their room. They did it together. They, uncle and Dad, did it together once, and it was hurting me really bad, and I was getting really tired, and they wouldn't let me go away. Sometimes I would try to whisper, but no one heard me."

¶ 13 Ms. Lafferty, who had not been aware of any allegations of sexual abuse by Defendant, immediately wrote a letter recommending that Cindy not be required to attend court-ordered supervised visitation with Defendant until the investigation of

the abuse concluded.

¶ 14 On 24 June 2019, Defendant was indicted in Brunswick County Superior Court with rape of a child by an adult, sexual offense with a child by an adult, first-degree rape, first-degree forcible rape, and incest. On 16 December 2019, a Brunswick county grand jury also indicted Defendant with four counts of taking indecent liberties with a child. He was also indicted with additional counts of rape of a child by an adult and sexual offense with a child by an adult on 16 December 2019.

¶ 15 The matter came on for trial on 21 January 2020 before the Honorable Claire V. Hill in Brunswick County Superior Court. The trial court heard pretrial motions that day and an offer of proof from two of the State's witnesses. Jury selection began the following day. Jury selection concluded on 23 January 2020, and Judge Hill then presided over a four-day trial.

¶ 16 After jury selection concluded, on the first day of trial, Cindy testified. Cindy testified that Defendant and Hunter Lent had done bad things to her when she was three, four, and five years old, but mostly when she was three and four years old. She testified that she shared the same bed with Defendant when she lived with him in Deena and Sean Martin Lent's home. She testified that Hunter Lent had "[p]ut his privates where he – you know, where he shouldn't put them[,]" and clarified that she was referring to Hunter Lent's penis. She indicated that Hunter Lent had penetrated her vaginally, anally, and digitally. She also testified Defendant "[p]ut his penis in

my mouth." Finally, she testified that there was one occasion when Defendant and Hunter Lent engaged in sexual acts with her at the same time, where Defendant put his penis in her mouth while Hunter Lent penetrated her vaginally, and they were being mean and laughing while they did it.

¶ 17 Hunter Lent also testified that day. He also testified that Cindy and Defendant shared the bed in the room where they both slept at Deena and Sean Martin Lent's home. Hunter Lent admitted in his testimony that Cindy had performed oral sex on him while she was three, four, and five years old; that he had performed oral sex on her; that he had tried or partially penetrated her vaginally; that he had tried or partially penetrated her anally; that he had penetrated her digitally; and he estimated that these things had happened 15 or more times. Hunter Lent also admitted to taking pictures of Cindy using a mobile phone during these sex acts, but testified that the phone had been broken in an argument and he was unable to provide it to the police. Hunter Lent denied ever having engaged in a sexual act with Cindy at the same time as Defendant.

¶ 18 After the State finished presenting its case-in-chief, it took voluntary dismissals of the charges for first-degree rape, first-degree forcible rape, and announced that it would proceed on second-degree forcible rape as a lesser included offense of rape of a child by an adult. The State also moved to amend the date of offense of one of the counts of second-degree rape, which the court allowed, rendering

the second count of the same charge duplicative, so the State took a voluntary dismissal of the second count. Defendant chose not to present evidence and moved to dismiss the remaining charges against him at the close of all the evidence. The trial court granted Defendant's motion with respect to two of the counts of indecent liberties with a child, but denied it as to the remaining charges.

¶ 19 At the conclusion of the trial, the jury returned guilty verdicts on the charges of second-degree rape, sexual offense with a child by an adult, statutory sex offense with a child by an adult, incest, and two counts of indecent liberties with a child. The court determined Defendant to be a prior record level III offender and consolidated the convictions for sex offense by an adult with a child, second-degree rape, and statutory sex offense with a child by an adult in one judgment, sentencing Defendant to 300 to 420 months in prison for these convictions. The court then consolidated the convictions for incest and two counts of indecent liberties in a second judgment and sentenced Defendant to 254 to 365 months in prison for these convictions, ordering that his sentence for these convictions run consecutively with the other sentence. The court also entered a permanent no-contact order with Cindy.

¶ 20 Defendant entered notice of appeal in open court.

II. Analysis

¶ 21 Defendant makes essentially four arguments on appeal, raising three principal arguments and arguing in the alternative with respect to each that he received

ineffective assistance of counsel if any of the arguments has not been properly preserved for appellate review. We address his three principal arguments first before turning to his ineffective assistance of counsel claim/claims.

A. Use of the Word "Disclose" and Vouching

¶ 22 Defendant first argues that the trial court erred or plainly erred in allowing various witnesses to improperly vouch for Cindy's credibility. Specifically, Defendant contends that many of the State's witnesses improperly vouched for Cindy's credibility by using the word "disclose" to describe her reports of abuse. We disagree.

1. Vouching

¶ 23 "The jury is the lie detector in the courtroom and is the only proper entity to perform the ultimate function of every trial—determination of the truth." *State v. Kim*, 318 N.C. 614, 621, 350 S.E.2d 347, 351 (1986). For this reason, "[t]he credibility of a witness is a matter for the jury to decide." *State v. Coble*, 63 N.C. App. 537, 541, 306 S.E.2d 120, 122 (1983).

¶ 24 "[A] witness may not vouch for the credibility of a victim[,]" *State v. Giddens*, 199 N.C. App. 115, 121, 681 S.E.2d 504, 508 (2009), *aff'd*, 363 N.C. 826, 689 S.E.2d 858 (2010), because the witness is in "no better position than the jury to assess [the victim's] credibility[,]" *In re T.R.B.*, 157 N.C. App. 609, 617, 582 S.E.2d 279, 285 (2003). "We review on a fact-specific basis whether [] testimony amounted to improper vouching for a witness." *State v. Robinson*, 854 S.E.2d 407, 409 (N.C. Ct.

App. 2020).

2. Use of the Word "Disclosure" in Witness Testimony

¶ 25 In *State v. Jamison*, 262 N.C. App. 708, 821 S.E.2d 665, 2018 WL 6318321 (2018) (unpublished), a panel of this Court reasoned that use of the word "disclose," by itself, when used by a witness to describe a previous statement of a victim in a child sex abuse case "suggests [] there was something factual to divulge, and is itself a comment on the declarant's credibility and the consequent reliability of what is being revealed." *Id.* at *4. Relying on a dictionary definition of the word "disclose," the Court in *Jamison* concluded that testimony about what the victim "disclosed" constituted impermissible vouching, reasoning that mere use of the word "disclose" to describe the prior statement "enhanced [the victim's] credibility." *Id.* However, while holding that admission of such testimony was error, the Court in *Jamison* held that it did not rise to the level of plain error, where the other record evidence of the defendant's guilt was substantial. *Id.*

¶ 26 Subsequent panels of our Court have declined to follow the reasoning in *Jamison*. *See State v. Betts*, 267 N.C. App. 272, 281, 833 S.E.2d 41, 47 (2019), *modified and aff'd*, 2021-NCSC-68 (2021) ("[T]he term 'disclosure' merely means the content of the victim's description of abuse. . . . There is nothing about use of the term "disclose," standing alone, that conveys believability or credibility."); *Robinson*, 854 S.E.2d at 410 ("There is no per se rule that using the word disclosure is

vouching."); *State v. Worley*, 268 N.C. App. 300, 307, 836 S.E.2d 278, 284 (2019) ("[R]epeated use of the word 'disclose' or its variants does not constitute impermissible vouching for a declarant's credibility.").

¶ 27 Our Supreme Court recently rejected the reasoning in *Jamison*. *State v. Betts*, 2021-NCSC-68 ¶ 20 (2021). While noting at the outset that "[a]n expert's opinion that a complainant has endured sexual abuse, absent physical evidence, is impermissible vouching as to the complainant's credibility[,]" *id.* ¶ 19 (citation omitted), the Supreme Court held that "use of the word 'disclose,' standing alone, does not constitute impermissible vouching as to the credibility of a victim of child sex abuse, regardless of how frequently used, and indicates nothing more than that a particular statement was made." *Id.* ¶ 20. Alluding to the fact that this Court's opinion in *Jamison* was unpublished, the Supreme Court also expressly "not[ed] that it is highly disfavored to cite to unpublished opinions." *Id.* ¶ 20, n.3.

¶ 28 Accordingly, we hold that the testimony referring to Cindy's previous reports of abuse as "disclosures" did not constitute impermissible vouching to warrant a new trial. The trial court therefore did not err, much less commit plain error, in allowing this testimony.

B. Evidence of Other Crimes or Wrongs Admitted under Rule 404(b)

¶ 29 Defendant next argues that the trial court abused its discretion and plainly erred by allowing members of his family to testify about him masturbating.

Defendant's brother, Hunter Lent, testified about a time he saw Defendant masturbating "over" Cindy in the room they shared. His mother, Deena Lent, testified about a time she walked in on him masturbating in the same room while Cindy was not home. Defendant contends that the trial court abused its discretion in determining that the probative value of this testimony outweighed the danger of unfair prejudice from it and that it was not offered for a permissible purpose under Rule 404(b) of the North Carolina Rules of Evidence. We disagree.

¶ 30 Rule 404(b) of the North Carolina Rule of Evidence sets out the general principle that "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith." N.C. Gen. Stat. § 8C-1, Rule 404(b) (2019). Rule 404(b) goes on to provide, however, that such evidence may "be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident." *Id.* Our Supreme Court has described Rule 404(b) as

> a clear general rule of *inclusion* of relevant evidence of other crimes, wrongs or acts by a defendant, subject to but *one exception* requiring its exclusion if its *only* probative value is to show that the defendant has the propensity or disposition to commit an offense of the nature of the crime charged.

State v. Coffey, 326 N.C. 268, 278-79, 389 S.E.2d 48, 54 (1990) (emphasis in original).

¶ 31 As applied to prior sex offenses, our Supreme Court has described its decisions

as "'markedly liberal' in holding evidence of prior sex offenses admissible for one or more of the purposes listed in the Rule[,]" *id.* at 279, 389 S.E.2d at 54 (internal marks and citation omitted), particularly "under the common plan or scheme exception[,]" *State v. Gordon*, 316 N.C. 497, 504, 342 S.E.2d 509, 513 (1986) (citation omitted). Similarly, evidence of the prior conduct "may be offered to show [the] defendant's identity as the perpetrator when the *modus operandi* is similar enough to make it likely that the same person committed both crimes." *State v. Sokolowski*, 351 N.C. 137, 150, 522 S.E.2d 65, 73 (1999) (internal marks and citation omitted). "It is not necessary that the similarities between the two situations rise to the level of the unique and bizarre." *Id.*

¶ 32 Rule 403 requires that the probative value of evidence presented pursuant to Rule 404(b) not be "substantially outweighed by the danger of unfair prejudice[.]" N.C. Gen. Stat. § 8C-1, Rule 403 (2019). Of course, presuming it is relevant, "[m]ost evidence tends to prejudice the party against whom it is offered." *State v. Braxton*, 352 N.C. 158, 196, 531 S.E.2d 428, 450 (2000). That is, "[e]vidence which is probative of the State's case necessarily will have a prejudicial effect upon the defendant; the question is one of degree." *Coffey*, 326 N.C. at 281, 389 S.E.2d at 56 (citation omitted). "[T]o be excluded under Rule 403, the probative value of the evidence must not only be outweighed by the danger of unfair prejudice, it must be *substantially* outweighed." *State v. Lyons*, 340 N.C. 646, 669, 459 S.E.2d 770, 783 (1995).

¶ 33 "[I]f the trial court concludes the evidence is relevant to something other than the defendant's propensity to commit the crime, as well as sufficiently similar and temporally related to the crime charged, the evidence may be excluded under Rule 403 if the trial court determines that admission of the evidence would result in unfair prejudice, confusion of the issues, or would mislead the jury." *State v. Noble*, 226 N.C. App. 531, 538, 741 S.E.2d 473, 480 (2013). However, "[w]hen limiting instructions are given, . . . [we] presume[] that the jury follows such instructions." *State v. Barnett*, 223 N.C. App. 450, 456, 734 S.E.2d 130, 135 (2012) (citation omitted). "Limiting instructions mitigate the danger of unfair prejudice to the defendant." *Id.*

¶ 34 For preserved challenges to testimony about prior crimes or wrongs offered under Rule 404(b), "[w]e review de novo the legal conclusion that the evidence is, or is not, within the coverage of Rule 404(b)." *State v. Beckelheimer*, 366 N.C. 127, 130, 726 S.E.2d 156, 159 (2012). "We then review the trial court's Rule 403 determination for abuse of discretion." *Id.* "An abuse of discretion occurs when the trial court's ruling is so arbitrary that it could not have been the result of a reasoned decision." *Ferguson v. DDP Pharmacy, Inc.*, 174 N.C. App. 532, 535, 621 S.E.2d 323, 326 (2005) (internal marks and citation omitted).

¶ 35 We review unpreserved evidentiary challenges for plain error. *State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012). "To demonstrate plain error, the defendant must show that the error had a *probable* impact on the finder of fact's

determination of guilt." *State v. Wendorf*, 852 S.E.2d 898, 905 (N.C. Ct. App. 2020) (internal marks and citation omitted).

¶ 36 In the present case, the trial court admitted the testimony by Defendant's brother about observing him masturbating over his objection "for the purpose of identity, . . . common plan[] or scheme, [and] lack of consent." We hold that it was not an abuse of discretion for the trial court to admit this testimony. Nor was it an abuse of discretion for the trial court to conclude that the danger of unfair prejudice to Defendant from admission of this testimony did not substantially outweigh its probative value.

¶ 37 Defendant had two defense theories at trial: (1) there was insufficient evidence of the identity of the person who forcibly inserted his penis into Cindy's mouth because the room was dark at the time and Cindy admitted she could not see the person's face; and (2) Defendant's brother was the perpetrator of all the abuse, significant amounts of which he admitted to in his trial testimony. It was not arbitrary in the least for the trial court to admit Defendant's brother's testimony about observing Defendant masturbating over Cindy as evidence of the identity of the person who forcibly inserted his penis into Cindy's mouth where Cindy's identification of Defendant as the perpetrator was arguably weak and one of Defendant's defense theories was that his brother was the perpetrator, not him. The two events are sufficiently similar for the instance of masturbation to be properly

considered evidence of the *modus operandi* of the person who forcibly inserted a penis into Cindy's mouth. The trial court also gave an appropriate limiting instruction to the jury regarding this testimony, which we must presume the jury followed. *See Barnett*, 223 N.C. App. at 456, 734 S.E.2d at 135.

¶ 38 Relatedly, we hold that the trial court did not plainly err by allowing Defendant's mother to testify about the time she walked in on Defendant masturbating in the room he shared with Cindy when Cindy was not home. Defendant did not object to this testimony, and in light of the other substantial evidence of Defendant's guilt, we cannot say that his mother's testimony about him masturbating had a probable impact on the jury's verdicts.

C. Evidence of Flight

¶ 39 Defendant next argues that the trial court abused its discretion and plainly erred by allowing testimony that he was on probation in early 2019. Specifically, Defendant contends that the trial court abused its discretion by allowing his former probation officer to testify that Defendant was on probation in March 2019 and could not be located because the fact of his probation implied his previous conviction of a crime, which was not evidence of his guilt of any subsequent offense. Similarly, Defendant contends that the trial court plainly erred by allowing his mother to testify that he was on probation at that time. We disagree.

¶ 40 "Although evidence of an unrelated crime is not admissible to prove

defendant's guilt of the crime for which he is being tried, if such evidence tends to prove any other relevant fact, it will not be excluded merely because it also shows defendant to have been guilty of an independent crime." *State v. Little*, 56 N.C. App. 765, 769, 290 S.E.2d 393, 396 (1982) (internal marks and citation omitted).

> Flight is defined as leaving the scene of the crime and taking steps to avoid apprehension. Though flight is not one of the enumerated exceptions of Rule 404(b), those exceptions are examples and are not exclusive.
>
> Flight is a bad act which tends to show the character of defendant. Reading Rule 404 and Rule 403 together with North Carolina's common law on flight, evidence of flight is inadmissible if it is meant to show the propensity of defendant to commit a crime similar to the one charged. On the other hand, evidence of flight is admissible if offered for the purpose of showing defendant's guilty conscience as circumstantial evidence of guilt of the crime for which he is being tried[.]

State v. Bagley, 183 N.C. App. 514, 520-21, 644 S.E.2d 615, 620 (2007) (internal marks and citation omitted).

¶ 41 The testimony by Defendant's former probation officer that Defendant missed a meeting with him around the time the allegations of sexual abuse of Cindy surfaced in March 2019 and that he subsequently learned Defendant had left North Carolina was not introduced to prove prior convictions or his propensity commit sexual offenses, which would be prohibited by Rule 404(b), it was introduced as evidence of flight. Importantly, Defendant's former probation officer did not testify about what

the crime was that Defendant had previously committed such that Defendant was serving a sentence of supervised probation in March of 2019, instead merely testifying that he had missed a scheduled report date, was determined to have unlawfully absconded the jurisdiction, and was thereafter extradited. We hold the trial court did not abuse its discretion by allowing the officer to testify in this limited fashion because the fact that Defendant absconded the state in March 2019 when he was not free to do so was circumstantial evidence of his guilt of the sexual abuse allegations that came to light during that timeframe.

¶ 42 Relatedly, we hold that the trial court did not plainly err by allowing Defendant's mother to testify that he was on probation at the time the allegations of sexual abuse surfaced. Defendant failed to object to this testimony, and in light of the other substantial evidence of Defendant's guilt, we cannot say that his mother's testimony about the fact that he was on probation had a probable impact on the jury's verdicts or was plain error.

D. Ineffective Assistance of Counsel

¶ 43 Defendant also argues that he received ineffective assistance of counsel. His ineffective assistance of counsel argument consists of three distinct claims of ineffective assistance of counsel raised in the alternative to his three primary arguments on appeal. In support of these claims, Defendant asserts three times in his principal brief that "the State's case was weak." We disagree, and hold that

Defendant has not demonstrated he was prejudiced by any deficiency in trial counsel's performance.

¶ 44 Under the United States and North Carolina Constitutions, a defendant has a right to the effective assistance of counsel. *State v. Braswell*, 312 N.C. 553, 561, 324 S.E.2d 241, 247-48 (1985). In order to succeed on a claim for ineffective assistance of counsel, a defendant must do the following:

> First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, *a trial whose result is reliable.*

Id. at 562, 324 S.E.2d at 248 (quoting *Strickland v. Washington*, 466 U.S. 668 (1984)).

¶ 45 The Supreme Court of the United States, further elaborating on the prejudice prong, has explained that "[t]he 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." *Strickland*, 466 U.S. at 694. "Because of the difficulties inherent in making the [prejudice] evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial

strategy.'" *Id.* at 689.

¶ 46 Trial counsel's failure to preserve for appellate review the issue of the alleged vouching by various witnesses by using the word "disclose" did not prejudice Defendant because "use of the word 'disclose,' standing alone, does not constitute impermissible vouching as to the credibility of a victim of child sex abuse, regardless of how frequently used, and indicates nothing more than that a particular statement was made." *Betts*, 2021-NCSC-68 ¶ 20. The trial court did not err, much less commit plain error, by allowing witnesses to use the word "disclose" in their testimony.

¶ 47 Trial counsel's performance related to the evidence of Defendant masturbating did not prejudice him either. Counsel preserved for appellate review the issue of whether the testimony from his brother was admissible and whether the trial court abused its discretion in concluding that the probative value of the testimony was not substantially outweighed by the danger of unfair prejudice, and the trial court did not err in ruling that the testimony was admissible under Rule 404(b) or abuse its discretion under Rule 403.

¶ 48 We also hold that Defendant was not prejudiced by trial counsel's failure to object to the testimony by his mother about him masturbating because presuming, *arguendo*, that the admission of this testimony was error, admission of this testimony did not create a reasonable possibility the jury's verdicts would have differed in light of the overwhelming evidence of Defendant's guilt. As noted above, we disagree with

Defendant's repeated assertion that the State's case was "weak."

¶ 49 Finally, we hold that trial counsel's performance was not ineffective with respect to any failure to preserve the issue of whether admission of the fact that he was on probation and left the state at the time Cindy's allegations surfaced was improper. Trial counsel preserved this challenge, but the testimony by Defendant's former probation officer was not offered to demonstrate he had a propensity to commit a particular crime, which would have been improper, but was instead offered for a proper purpose—that when investigation of Cindy's allegations began, Defendant left the state when he was not free to do so.

III. Conclusion

¶ 50 For the reasons stated above, we hold that Defendant has failed to demonstrate any error in the trial proceedings.

NO ERROR.

Judges TYSON and MURPHY concur.

Report per Rule 30(e).