IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-1033

Filed 19 September 2023

Iredell County, Nos. 19 CRS 51309–15

STATE OF NORTH CAROLINA

v.

KIMA SHARELL IVEY

Appeal by defendant from judgments entered 13 May 2022 by Judge Nathaniel J. Poovey in Iredell County Superior Court. Heard in the Court of Appeals 29 August 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Amber I. Davis, for the State.

Anne Bleyman for defendant-appellant.

PER CURIAM.

Defendant Kima Sharell Ivey appeals from the judgments entered upon a jury's verdicts finding him guilty of seven counts each of (1) taking indecent liberties with a child, in violation of N.C. Gen. Stat. § 14-202.1; and (2) statutory sexual offense with a person who is 15 years of age or younger, pursuant to N.C. Gen. Stat. § 14-27.30(a).

After the jury convicted Defendant of one count of each offense in each case file, Nos. 19 CRS 51309–51315, the trial court entered judgment sentencing Defendant to seven concurrent terms of 365–498 months in the custody of the North Carolina Division of Adult Correction. The trial court also entered orders requiring Defendant to register as a sex offender for a 30-year period following his release from prison, as well as a permanent no-contact order prohibiting Defendant from having any contact with the minor victim, K.W., for the rest of Defendant's natural life.

Defendant entered oral notice of appeal in open court.

On appeal, Defendant advances but one substantive challenge: that the trial court committed prejudicial error by failing to intervene during portions of the State's closing argument. Defendant contends that certain of the State's remarks were "grossly improper," in that the prosecutor addressed "matters beyond the scope of the established evidence and expressed the [prosecutor's] personal belief that K.W. was truthful."

As Defendant concedes, however, he failed to lodge timely objections at trial to those portions of the State's closing argument about which he now complains on appeal. Accordingly, our standard of review of this issue "is whether the remarks were so grossly improper that the trial court committed reversible error by failing to intervene *ex mero motu*." *State v. Jones*, 355 N.C. 117, 133, 558 S.E.2d 97, 107 (2002). Thus, absent timely objection by defense counsel, the standard of review of an allegedly improper closing argument "requires a two-step analytical inquiry: (1)

whether the argument was improper; and, if so, (2) whether the argument was so grossly improper as to impede the defendant's right to a fair trial." *State v. Huey*, 370 N.C. 174, 179, 804 S.E.2d 464, 469 (2017). "Only when it finds both an improper argument and prejudice will this Court conclude that the error merits appropriate relief." *Id.*

Having thoroughly reviewed the record and briefs in this matter, we conclude that Defendant's appeal lacks merit. As noted above, Defendant's sole contention is that the trial court committed prejudicial error by failing to intervene *ex mero motu* during the State's closing argument, because the prosecutor improperly addressed matters "beyond the record" and "vouched" for K.W.'s credibility, the central issue of the case. Yet upon careful review, we are satisfied that all of the prosecutor's allegedly problematic remarks flagged by Defendant are within the bounds imposed by our existing law and rules of professional conduct. *See, e.g.*, *id.* at 180, 804 S.E.2d at 469 ("It is improper for lawyers in their closing arguments to become abusive, inject their personal experiences, express their personal belief as to the truth or falsity of the evidence or as to the guilt or innocence of the defendant, or make arguments on the basis of matters outside the record." (cleaned up) (quoting N.C. Gen. Stat. § 15A-1230(a))).

Contrary to Defendant's assertions on appeal, our Supreme Court has consistently reiterated that "prosecutors are allowed to argue that the State's witnesses are credible." *State v. Wilkerson*, 363 N.C. 382, 425, 683 S.E.2d 174, 200

(2009) (citation omitted), *cert. denied*, 130 S. Ct. 2104, 176 L. Ed. 2d 734 (2010); *State v. Augustine*, 359 N.C. 709, 725, 616 S.E.2d 515, 528 (2005), *cert. denied*, 548 U.S. 925, 165 L. Ed. 2d 988 (2006). *See also State v. Wiley*, 355 N.C. 592, 622, 565 S.E.2d 22, 43 (2002) ("Defendant's characterization of this argument as one vouching for the [S]tate's witnesses is implausible. The prosecutor was merely giving the jury reasons to believe the [S]tate's witnesses who had given prior inconsistent statements and were previously unwilling to cooperate with investigators."), *cert. denied*, 537 U.S. 1117, 154 L. Ed. 2d 795 (2003).

We agree with Defendant that "this case was all about K.W.'s account"; indeed, the State acknowledged as much in the first sentences of its closing argument.

Here, Defendant declined to present any evidence in his defense—as is his constitutional right, to be sure. Nevertheless, given the record before us and the issue presented, Defendant's hurdle on appeal is insurmountable:

> [o]ur standard of review dictates that only an extreme impropriety on the part of the prosecutor will compel this Court to hold that the trial judge abused his discretion in not recognizing and correcting *ex mero motu* an argument that defense counsel apparently did not believe was prejudicial when originally spoken.

Huey, 370 N.C. at 180, 804 S.E.2d at 470 (emphases added) (cleaned up).

In that Defendant has not met his initial burden under our two-step analytical inquiry—i.e., demonstrating that the State's argument was improper—we need not address "whether the argument was so grossly improper as to impede [Defendant]'s

right to a fair trial." *Id.* at 179, 804 S.E.2d at 469.

NO ERROR.

Panel consisting of:

Judges ZACHARY, HAMPSON, and FLOOD.

Report per Rule 30(e).