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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-120

Filed 17 October 2023

Columbus County, No. 18 CRS 52489

STATE OF NORTH CAROLINA

v.

RESHOD KING

Appeal by defendant from judgment entered 22 April 2022 by Judge James G. Bell in Columbus County Superior Court. Heard in the Court of Appeals 4 October 2023.

*Attorney General Joshua H. Stein, by Assistant Attorney General Deborah M. Greene, for the State.*

*Public Defender Jennifer Harjo, by Max E. Ashworth III, Assistant Public Defender, for defendant-appellant.*

ARROWOOD, Judge.

Reshod King (“defendant”) appeals from judgment entered upon his conviction for indecent liberties with a child. On appeal, defendant argues the trial court erred in allowing certain expert testimony and entering a report into evidence. Defendant also contends that he should be granted a new trial because these errors were prejudicial. For the following reasons, we hold that defendant had a fair trial free

from prejudicial error.

I. Background

Defendant was indicted on 12 December 2018 for indecent liberties with a child against Jamie<sup>1</sup>, the daughter of defendant's girlfriend. The case came on for trial in Columbus County Superior Court on 19 April 2022, Judge Bell presiding.

Defendant started dating Jamie's mother ("JM") in 2015. In 2018, defendant and JM lived with each other in Fair Bluff, North Carolina, along with defendant's three children; JM's family friend, Donte; JM's son; and Jamie.

On the evening of 8 July 2018, defendant, JM, Donte, Jamie, and one of defendant's children were home. JM went to sleep around 10:00 p.m. in her bedroom while defendant was sitting next to her in a recliner, drinking a beer. Around the same time, Jamie was in her bedroom by herself playing video games.

Jamie testified that at some point that night, while she was still playing video games, defendant came into her room, sat at the end of her bed, and started playing with her toes. According to Jamie, defendant then left the room, and Jamie switched from playing the video game to watching television. A few minutes after leaving her room, Jamie testified that defendant returned, sat back on the bed, and started playing with her toes again. Jamie further testified, "[Defendant then] started rubbing on my legs. Then he went up to my thighs and then he started touching my

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<sup>1</sup> Jamie and Donte are pseudonyms used to protect the juveniles' identities.

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butt . . . under my clothes.” After Jamie turned over and faced the wall, she testified that defendant left her room but then returned around five minutes later and started rubbing her chest while whispering in her ear, “Please don’t tell.” Jamie testified that after defendant left the room a few minutes later, she cried and washed up. The next day, Jamie testified that she woke up, washed up again, and then texted JM, who was at work, about what happened the night before.

According to JM, defendant had already left for work when she woke up that morning. JM left for work without speaking to Jamie, who was still in her bedroom. When she received the text message from Jamie, she left work and called to confront defendant. Defendant denied touching Jamie. JM filed a police report and contacted the Department of Social Services later that day. Defendant was later indicted on one count of indecent liberties with a child under N.C. Gen. Stat. 14-202.1(a)(2).

Jamie went to the Fayetteville Area Health Education Center (“FAHEC”) for a child medical examination (“CME”) on 9 August 2018. At FAHEC, Physician Assistant Becky Herrmann (“Herrmann”) completed the exam and generated a CME report. Herrmann reported no physical findings.

At trial, during defendant’s opening statement, defense counsel acknowledged that a sexual offense had occurred but that it was unknown who committed the offense. Defense counsel stated:

[W]e don’t know whether the child was asleep or confused or what, someone touches her, touches her on the thigh, touches her on the chest. She goes to her mother and then

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it becomes a fact in their minds that it was [defendant] who did the touching. We don't know whether it was [defendant]. We don't know if it was Donte. Somebody touched this child.

....

[Y]ou're going to realize that there's one witness that matters and that's going to be Jamie. She was lying in her bed. She was just about asleep from what we can find out. And she says somebody touched her. And then she says that person was [defendant]. And that's where this case -- you all are going to have to decide if you believe [defendant] when he tells you, I didn't touch her. I would never do that. I've known that child for a number of years. And you're going to have to decide whether that is sufficient evidence to outweigh a small child saying somebody touched me and I think it's [defendant]. That's what this case is all about. It's not about a rape. It's not about what you would call a bad sexual offense. It's about touching someone on the bottom and the chest and who did the touching.

Herrmann was accepted as an expert witness at trial and testified for the State. Two versions of Herrmann's CME report were admitted into evidence: a redacted one and an unredacted one. Defendant objected to the report's admission, particularly pages eighteen and nineteen because the pages included Herrmann's recommendations where she "refer[red] to [defendant] as 'the offender.'" Specifically, on page eighteen, Herrmann recommended that "any future contact between [Jamie] and [defendant be] contingent upon" certain conditions, such as defendant completing "sex offender evaluation and treatment" and "comprehensive psychological evaluation[.]"

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The unredacted version was entered into evidence but not published to the jury. With respect to the redacted version, portions of it were read to the jury by Herrmann, but the jury did not see the report or request to see it before deliberating.

During Herrmann's direct examination, the exchanges below occurred:

The State: Based on your -- the collection of the narratives you got from Jamie, her mom, as well as the other examination you did, did you have concerns of child abuse?

Herrmann: Yes. Jamie gave a very clear disclosure of events that were fondling from the toe upward to the buttocks and then resumed with fondling and massaging of the breasts, under the clothes, both the buttocks and the breasts.

....

The State: Okay. Based on your examination that you conducted and information that was provided to you, were you able to make a diagnosis with regard to child abuse, neglect, dependence, or any other significant risk exposure?

Defendant: Objection.

....

Trial Court: Repeat the question?

The State: Based on your examination you conducted, all the information that you received from folks, were you able to make a diagnosis in regard to child abuse, neglect, dependency, or other significant risk exposure?

Trial Court: Overruled.

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Herrmann: On Page 15 of the report, our impression [] to maltreatment, assault, or risk is noted. There was concern for sexual abuse with digital or hand contact. There was not concern for physical abuse, emotional abuse, or neglect.

The State: And based on those findings and diagnosis, did you make any recommendations --

....

The State: -- for Jamie's treatment?

Herrmann: Yes. The recommendation was made that she continue with her routine care and well child care with the primary care physician that attention be paid to her body mass index or weight in comparison to height so that she might maintain healthy dietary habits. We did recommend trauma-focused cognitive behavioral therapy and therapeutic counseling as recommended or as needed. So the ACE study states that when a child has been exposed to sexual abuse that if we can get cognitive behavioral therapy started that is trauma focused, we can minimize the long-term effects of that sexual abuse and lessen the likelihood for the child to go on to become sexually promiscuous or delve into substance abuse.

Defendant: Objection, move to strike all that.

After a brief sidebar, the trial court overruled defendant's objection. Defendant testified on his own behalf, denying the allegations. At the close of all evidence, defendant made a motion to dismiss, which was denied. On 22 April 2022, the jury found defendant guilty of indecent liberties with a child. The trial court entered

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judgment on the same day and sentenced defendant to a sixteen to twenty-nine-month active imprisonment term. Defendant gave oral notice of appeal in open court following sentencing.

II. Discussion

On appeal, defendant argues the trial court abused its discretion when it (1) allowed Herrmann to “opine[]” that Jamie was sexually abused and (2) allowed Herrmann’s report into evidence, which “identified [defendant] as the perpetrator.” Defendant also contends that he should be granted a new trial because each error was prejudicial in that, had they not occurred, there was a reasonable possibility of a different trial result. We disagree.

A. Standard of Review

Trial judges are afforded a wide latitude of discretion when determining the admissibility of expert testimony. *State v. Bullard*, 312 N.C. 129, 140, 322 S.E.2d 370, 376 (1984). “The trial court’s decision regarding what expert testimony to admit will be reversed only for an abuse of discretion.” *State v. Alderson*, 173 N.C. App. 344, 350, 618 S.E.2d 844, 848 (2005) (citation omitted). “A trial court may be reversed for abuse of discretion only upon a showing that its ruling was manifestly unsupported by reason and could not have been the result of a reasoned decision.” *State v. Riddick*, 315 N.C. 749, 756, 340 S.E.2d 55, 59 (1986) (citations omitted).

Even assuming error, “evidentiary error does not necessitate a new trial unless the erroneous admission was prejudicial.” *State v. Wilkerson*, 363 N.C. 382, 415, 683

S.E.2d 174, 194 (2009) (citations omitted). For a trial court’s error to be considered prejudicial, defendant must show that “there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises.” N.C. Gen. Stat. § 15A-1443(a) (2022). “In determining whether an error was prejudicial, our courts have examined the entire record to determine if the error had a probable impact on the jury’s finding of guilt.” *State v. Lawrence*, 365 N.C. 506, 517, 723 S.E.2d 326, 334 (2012) (cleaned up).

B. Herrmann’s testimony was not prejudicial

Defendant contends the trial court erred by allowing Herrmann to testify that she (1) had “concern[s] for sexual abuse” and (2) had recommended Jamie undergo trauma-focused cognitive behavioral therapy and therapeutic counseling because it resulted in Herrmann giving her opinion that Jamie was sexually abused.

“It is well settled that expert opinion testimony is not admissible to establish the credibility of the victim as a witness.” *State v. Frady*, 228 N.C. App. 682, 685, 747 S.E.2d 164, 167 (cleaned up), *writ denied, review denied*, 367 N.C. 273, 752 S.E.2d 465 (2013). As for sexual offenses involving child victims, experts cannot testify “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) (per curiam) (emphasis in original).

Here, assuming *arguendo* that Herrmann’s testimony was impermissible in



that it amounted to stating “that sexual abuse ha[d] *in fact* occurred[,]” defendant has not met his burden of showing prejudice because he conceded substantially similar information during trial. *Id.* (cleaned up). During defendant’s opening statement, defense counsel unambiguously stated that somebody touched Jamie in a manner that constituted a sexual offense. Specifically, defense counsel stated, “That’s what this case is all about. It’s not about a rape. It’s not about what you call a bad sexual offense. It’s about touching someone on the bottom and the chest and who did the touching.” Thus, defense counsel conceded that the sexual abuse had occurred but argued that it was the result of someone other than defendant.

Certainly, it is reasonable to assume that the jury afforded Herrmann’s testimony at trial considerable credibility and weight. However, even assuming such testimony was given great weight, substantially similar information—here, that Jamie was the victim of a sexual offense—was admitted by defense counsel during his opening statement. Accordingly, we hold that even assuming the trial court erred, such error was not prejudicial.

B. The admission of the CME report was not prejudicial

Defendant also contends that the trial court erred by allowing the CME report to be entered into evidence because it implied defendant was the perpetrator by recommending Jamie not have contact with defendant and that defendant complete sex offender and psychological evaluations.

Our Supreme Court has held that medical recommendations that “implicate[]

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the accused as the perpetrator of the crime by affirming the victim’s account of the facts” are impermissible evidence. *State v. Aguallo*, 322 N.C. 818, 822, 370 S.E.2d 676, 678 (1988); *see also State v. Clark*, 380 N.C. 204, 214, 868 S.E.2d 56, 64 (2022) (explaining that statements that implicate the defendant as the perpetrator “run[] afoul of the prohibition against vouching for the victim.”).

Here, the portions defendant argues identified him as the perpetrator were not read or discussed by Herrmann to the jury, and the jury did not see those pages before deliberating because the report was not published to the jury. Because the complained of portions of the report were never referenced in testimony or argument and were not given to the jury, defendant is unable to show any prejudicial error by the trial court’s acceptance of the report as an exhibit.

III. Conclusion

For the foregoing reasons, we hold defendant received a fair trial, free from prejudicial error.

NO ERROR.

Judges DILLON and STADING concur.

Report per Rule 30(e).