IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-132

Filed 3 October 2023

Wilson County, No. 19 CRS 51373

STATE OF NORTH CAROLINA

v.

DAVID ADAMS, Jr., Defendant.

Appeal by Defendant from judgment entered 8 June 2023 by Judge William D. Wolfe in Wilson County Superior Court. Heard in the Court of Appeals 29 August 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Katherine M. McCraw, for the State.

Mark Montgomery, for Defendant-Appellant.

CARPENTER, Judge.

David Adams Jr. ("Defendant") appeals from judgment entered after a jury convicted him of second-degree forcible rape. On appeal, Defendant argues the trial court erred in allowing witnesses to use the words "rape," "victim," and "sexual assault" in their testimonies. After careful review, we discern no error.

I. Factual & Procedural Background

A Wilson County grand jury indicted Defendant for second-degree forcible

rape. The State tried this case on 6 June 2022 in Wilson County Superior Court before The Honorable William D. Wolfe. In a motion in limine before trial, Defendant moved to restrict the use of the word "rape." The trial court denied the motion.

At trial, Kay[1], Defendant's half-sister, testified that Defendant had nonconsensual sex with her while she was drunk and incapacitated. Investigating Officer Pedro Cazaras also testified at trial. During his testimony, Officer Cazaras referred to Defendant's alleged conduct as "the rape." Forensic Analyst Kimberly Kennedy gathered evidence and testified at trial. In her testimony, she referred to Kay as "the victim," and Defendant's alleged conduct as "the rape." Detective Jamar Battle also testified. He testified that he interviewed "the victim," referring to Kay, and he referred to Defendant's alleged conduct as "the sexual assault."

At trial, Defendant did not renew his objection to the use of the word "rape." Defendant also did not object to any trial testimony using the words "victim" or "sexual assault." The jury found Defendant guilty of second-degree forcible rape, and after judgment, Defendant orally appealed.

II. Jurisdiction

This Court has jurisdiction under N.C. Gen. Stat. § 7A-27(b)(1) (2021).

III. Issue

The issue on appeal is whether trial court plainly erred in allowing witnesses

[1] "Kay" is a pseudonym we shall use for confidentiality.

to use the words "rape," "victim," and "sexual assault" in their testimonies.

IV. Analysis

"[A] motion *in limine* is not sufficient to preserve for appeal the question of admissibility of evidence if the defendant does not object to that evidence at the time it is offered at trial." *State v. Grooms*, 353 N.C. 50, 76, 540 S.E.2d 713, 730 (2000). We review unpreserved evidentiary challenges for "plain error." *State v. Lawrence*, 365 N.C. 506, 512, 723 S.E.2d 326, 330 (2012). Although Defendant filed a motion in limine concerning one challenged word, he failed to object to any of the challenged words used at trial. Therefore, we review the trial court's tolerance of those words for "plain error." *See id.* at 518, 723 S.E.2d at 334.

To find plain error, this Court must first determine that an error occurred at trial. *See State v. Towe*, 366 N.C. 56, 62, 732 S.E.2d 564, 568 (2012). Second, the defendant must demonstrate the error was "fundamental," which means the error probably caused a guilty verdict and "seriously affect[ed] the fairness, integrity, or public reputation of judicial proceedings." *State v. Grice*, 367 N.C. 753, 764, 767 S.E.2d 312, 320–21 (2015) (quoting *Lawrence*, 365 N.C. at 519, 723 S.E.2d at 335). Notably, the "plain error rule . . . is always to be applied cautiously and only in the exceptional case . . . ." *State v. Odom*, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983) (citing *United States v. McCaskill*, 676 F.2d 995, 1002 (4th Cir. 1982)).

The North Carolina Supreme Court discussed similar witness statements in *State v. Sneeden*, 274 N.C. 498, 164 S.E.2d 190 (1968). There, the defendant

appealed, in part, because he asserted the trial court erred in allowing a witness to testify that "he was in the act of raping me." *Id*. at 501, 164 S.E.2d at 193. The Court explained that the witness was merely "stating in shorthand fashion her version of the events." *Id*. at 502, 164 S.E.2d at 193. Further, the Court held that "[i]t [was] inconceivable that the jury could have construed it otherwise, and its admission was not error." *Id*. at 502, 164 S.E.2d at 193. Indeed, our state Supreme Court has long upheld "such shorthand statements of fact." *E.g.*, *State v. Billups*, 301 N.C. 607, 616, 272 S.E.2d 842, 849 (1981) (citing *Sneeden*, 274 N.C. at 502, 164 S.E.2d at 193); *State v. Goss*, 293 N.C. 147, 154, 235 S.E.2d 844, 849 (1977) ("[U]se of the term 'rape' was clearly a convenient shorthand term, amply defined by the balance of her testimony.").

Here, Defendant argues the trial court erred by allowing witnesses to use the following words: "rape," "victim," and "sexual assault." As in *Sneeden*, the witnesses in this case used the challenged words as a "shorthand fashion [of their] version[s] of the events." *See Sneeden*, 274 N.C. at 502, 164 S.E.2d at 193. Thus, "[i]t is inconceivable that the jury could have construed it otherwise," and the admission of the challenged words was not error. *See id*. at 502, 164 S.E.2d at 193.

We conclude the trial court did not err in allowing witnesses to use the challenged words, so Defendant fails to satisfy the first prong of the plain-error analysis. *See Towe*, 366 N.C. at 62, 732 S.E.2d at 568. Because the trial court did

not err in allowing the challenged words, we need not address whether the testimony affected the jury's guilty verdict. *See Grice*, 367 N.C. at 764, 767 S.E.2d at 320–21.

V. Conclusion

We hold the trial court did not err in allowing witnesses to use the words "rape," "victim," and "sexual assault" in their testimonies.

NO ERROR.

Judges TYSON and GORE concur.

Report per Rule 30(e).