IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-12

Filed 6 February 2024

Martin County, Nos. 19 CRS 50596–98; 21 CRS 271

STATE OF NORTH CAROLINA

v.

CAROLL EUGENE SPRUILL, Defendant.

Appeal by Defendant from judgment entered 9 December 2021 by Judge Marvin K. Blount, III in Martin County Superior Court. Heard in the Court of Appeals 22 August 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Justin Isaac Eason, for the State.

Mark Montgomery, for Defendant-Appellant.

CARPENTER, Judge.

Caroll Eugene Spruill ("Defendant") appeals from judgment after a jury convicted him of one count of each of the following: first-degree rape, second-degree rape, assault on a female, assault by strangulation, and second-degree kidnapping. On appeal, Defendant argues the trial court plainly erred by failing to, sua sponte: (1) issue contemporaneous curative instructions concerning stricken testimony; and

(2) strike certain testimony. After careful review, we disagree with Defendant and discern no error concerning the first issue and no plain error concerning the second.

I. Factual & Procedural Background

On 1 June 2020, a Martin County grand jury indicted Defendant for two counts of first-degree rape, one count of assault on a female, one count of assault by strangulation, one count of second-degree kidnapping, and one count of attempted murder. Beginning on 6 December 2021, the State tried Defendant before a jury in Martin County Superior Court.

After the jury was empaneled and before it heard evidence, the trial court issued the following general instruction: "If the Court grants a motion to strike all or part of the answer of a witness to a question, you must disregard and not consider the evidence that has been stricken."

Following this general instruction, evidence relevant to this appeal tended to show the following. Teresa Bowers, a friend of the victim ("Victim"), testified that Defendant "was in prison all the time," and he was "known to hurt people." Defendant's counsel objected to these statements, and the trial court sustained the objections. Defendant's counsel then moved to strike these statements, and the trial court granted the motions. But Defendant's counsel did not request, and the trial court did not issue, a contemporaneous curative instruction concerning the stricken testimony.

Victim also testified; she stated she was worried about Defendant's mother because "she had a lot of bruises." Victim thought Defendant caused the bruises. Defendant's counsel failed to object to Victim's testimony, and the trial court did not strike Victim's testimony sua sponte.

Chris Wilkerson, an investigator on Victim's case, testified as well, and he used the words "rape" and "victim" throughout his testimony. Defendant's counsel did not object to the use of these words, and the trial court did not strike them sua sponte. On cross-examination, Investigator Wilkerson also admitted to telling Victim that he would "make sure [Defendant] can't get out." Defendant's counsel did not object to this testimony; neither did the State.

Other evidence presented by the State included: Victim's testimony about the alleged assault and rapes by Defendant; photograph and video evidence of Victim's injuries; corroboration by Bowers that Victim was visibly injured on the date of the alleged crimes; and Defendant's DNA inside Victim's shorts worn on the date of one of the alleged crimes.

On 9 December 2021, the jury found Defendant guilty of one count of each of the following: first-degree rape, second-degree rape, assault on a female, assault by strangulation, and second-degree kidnapping. Defendant pleaded guilty to attaining the status of habitual felon. The trial court sentenced Defendant to a minimum of 483 and a maximum of 640 months of imprisonment, to run consecutively with

another term of imprisonment of a minimum of 127 and a maximum of 165 months. On 29 December 2021, Defendant gave written notice of appeal.

II. Jurisdiction

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

III. Issues

The issues on appeal are whether the trial court plainly erred by failing to, sua sponte: (1) issue contemporaneous curative instructions concerning stricken testimony; and (2) strike certain testimony.

IV. Analysis

"In order to preserve an issue for appellate review, the appellant must have raised that specific issue before the trial court to allow it to make a ruling on that issue." *Regions Bank v. Baxley Com. Props., LLC*, 206 N.C. App. 293, 298–99, 697 S.E.2d 417, 421 (2010) (citing N.C. R. App. P. 10(b)(1)). At trial, Defendant failed to object to the issues presented on appeal: a lack of curative instructions concerning stricken testimony, testimony about Defendant's prior misconduct, and alleged improper vouching. Therefore, these issues are unpreserved. *See id*. at 298–99, 697 S.E.2d at 421.

The North Carolina Supreme Court, however, "has elected to review unpreserved issues for plain error when they involve either (1) errors in the judge's instructions to the jury, or (2) rulings on the admissibility of evidence." *State v. Gregory*, 342 N.C. 580, 584, 467 S.E.2d 28, 31 (1996) (citing *State v. Sierra,* 335 N.C.

753, 761, 440 S.E.2d 791, 796 (1994)); *see also* N.C. R. App. P. 10(a)(4) (allowing certain unpreserved arguments in criminal appeals only "when the judicial action questioned is specifically and distinctly contended to amount to plain error"). Accordingly, we will review Defendant's proposed issues for plain error because they concern "instructions to the jury" and "admissibility of evidence." *See Gregory*, 342 N.C. at 584, 467 S.E.2d at 31.

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 *State v. Lawrence*, 365 N.C. 506, 518–19, 723 S.E.2d 326, 334–35 (2012)). 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) (quoting *United States v. McCaskill*, 676 F.2d 995, 1002 (4th Cir. 1982)).

A. Curative Instruction

Defendant first argues that the trial court plainly erred because it failed to issue a contemporaneous curative instruction concerning Bowers' testimony about Defendant's alleged prior misconduct. We disagree.

"A trial court does not err by failing to give a curative jury instruction when, as here, it is not requested by the defense." *State v. Williamson*, 333 N.C. 128, 139, 423 S.E.2d 766, 772 (1992) (citing *State v. Locklear*, 322 N.C. 349, 359, 368 S.E.2d 377, 383 (1988)).

Here, Defendant's counsel did not request a curative instruction concerning Bowers' stricken testimony. Rather, Defendant's counsel objected to Bowers' testimony and moved to strike; the trial court sustained the objection and granted Defendant's motion. And prior to Bowers' testimony, the trial court instructed the jury to "disregard and not consider [any] evidence that has been stricken."

Accordingly, the trial court did not err by failing to give a curative instruction concerning Bowers' stricken testimony because Defendant's counsel did not request such an instruction. *See id.* at 139, 423 S.E.2d at 772. This is especially true because the trial court previously instructed the jury to disregard any stricken testimony. Therefore, because there was no error, the trial court did not plainly err. *See Towe*, 366 N.C. at 62, 732 S.E.2d at 568.

B. Failure to Sua Sponte Strike Testimony

Defendant next argues that the trial court plainly erred because it failed to strike, sua sponte, Victim's testimony and Investigator Wilkerson's testimony. Defendant asserts Victim's testimony violated Rule 404, and Investigator Wilkerson's testimony was "improper vouching." Again, we disagree.

1. Rule 404

Under Rule 404, "[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) (2021).

Here, Victim testified that she believed Defendant abused his own mother in the past. Assuming Victim's testimony violated Rule 404, Defendant has not shown that the trial court's failure to strike the testimony seriously affected the fairness, integrity, or public reputation of our judicial proceedings or caused a guilty verdict. *See Grice*, 367 N.C. at 764, 767 S.E.2d at 320–21. Even without the testimony of Defendant's alleged prior bad acts, the State presented ample evidence of Defendant's guilt: Victim's testimony about the alleged assault and rapes by Defendant; photograph and video evidence of Victim's injuries; corroboration by Bowers that Victim was visibly injured on the date of the alleged crimes; and Defendant's DNA inside Victim's shorts worn on the date of one of the alleged crimes.

Therefore, Defendant has not demonstrated that Victim's testimony about Defendant's alleged prior bad acts seriously affected our judicial proceedings or caused a guilty verdict, so admitting the testimony was not a "fundamental" error. *See id.* at 764, 767 S.E.2d at 320–21. Thus, this is not the "exceptional case" that clears the plain-error hurdle. *See Odom*, 307 N.C. at 660, 300 S.E.2d at 378.

2. Improper Vouching

The North Carolina Supreme Court analyzed "vouching" statements in *State v. Sneeden*, 274 N.C. 498, 501–02, 164 S.E.2d 190, 193 (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, however, explained that the witness was merely "stating in shorthand fashion her version of the events." *Id.* at 501–02, 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) ("Her use of the term 'rape' was clearly a convenient shorthand term, amply defined by the balance of her testimony.").

Here, Defendant argues that Investigator Wilkerson's use of "rape" and "victim" was improper vouching. Defendant also argues that Investigator Wilkerson "improperly vouched" when he admitted that he previously told Victim, in an interview, that he would "make sure [Defendant] can't get out."

First, we do not agree that Investigator Wilkerson's "can't get out" statement constitutes "improper vouching"—Defendant's *own counsel* elicited this statement on cross-examination. The trial court did not err by giving Defendant's counsel latitude to conduct her own cross-examination. *See, e.g.*, *State v. Warren*, 327 N.C. 364, 373, 395 S.E.2d 116, 121 (1990) ("Generally, much latitude is given counsel on cross-examination to test matters related by a witness on direct examination."). And even

if the trial court did err, Defendant failed to demonstrate how Investigator Wilkerson's "can't get out" statement seriously affected our judicial proceedings or caused a guilty verdict. *See Grice*, 367 N.C. at 764, 767 S.E.2d at 320–21.

Second, Investigator Wilkerson's use of "rape" and "victim" were merely "shorthand statements of fact." *See Billups*, 301 N.C. at 616, 272 S.E.2d at 849. We have repeatedly upheld such statements, and therefore, the trial court did not err by failing to strike these words sua sponte. *See id.* at 616, 272 S.E.2d at 849. Therefore, the trial court did not plainly err by declining to strike these words sua sponte. *See Towe*, 366 N.C. at 62, 732 S.E.2d at 568.

V. Conclusion

We conclude that the trial court did not err, much less plainly err, by failing to give a contemporaneous curative instruction concerning Bowers' testimony and did not plainly err by failing to strike Victim's and Investigator Wilkerson's testimony sua sponte.

NO ERROR.

Judges ARROWOOD and COLLINS concur.

Report per Rule 30(e).