IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-722

Filed 16 April 2024

Johnston County, Nos. 18 CRS 54143-46, 54148-55

STATE OF NORTH CAROLINA

v.

JONATHAN DAVID YOUNG

Appeal by defendant from judgments entered 29 August 2022 by Judge G. Bryan Collins, Jr. in Superior Court, Johnston County. Heard in the Court of Appeals 3 April 2024.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Sherri Horner Lawrence, for the State.

Parry Law, PLLC, by Edward Eldred, for defendant-appellant.

ARROWOOD, Judge.

Jonathan David Young ("defendant") appeals from the trial court's judgments entered on 29 August 2022 upon a jury verdict finding defendant guilty of several offenses. On appeal, defendant argues the trial court erred by allowing evidence regarding the prevalence of violence against women, allowing improper portions of

expert testimony, and failing to intervene *ex mero motu* during the State's closing argument. For the following reasons, we find no error.

I. Background

On 8 July 2019, defendant was indicted with multiple offenses regarding multiple alleged victims[1] H.H., B.D., and V.D., including: (1) H.H.: two counts of first-degree sexual offense and one count of indecent liberties with a child; (2) B.D.: two counts of taking indecent liberties with a child; and (3) V.D.: nine counts of first degree rape of a child, nine counts of first-degree sexual offense, and nine counts of taking indecent liberties with a child. The State later dismissed four of the rape charges as to V.D.

The case came on for trial by jury 15 August 2022 at the criminal session of Johnston County Superior Court, Judge Bryan Collins presiding. H.H., B.D., and V.D. all testified for the State. H.H. testified that her family lived near defendant's family, and when she was approximately eight years old, defendant made her perform oral sex when they would ride four wheelers around family property. H.H. also testified that defendant once performed oral sex on her and touched her genitalia with his fingers.

H.H. told the court that she did not tell anyone of the alleged abuse until 2013. H.H. testified that when she was in college, she talked to other women at her school

[1] Initials are used throughout the opinion to protect the identities of the victims.

who described their own instances of abuse similar to her alleged experience. Defense counsel objected to this testimony, and the trial court overruled the objection. However, the trial court did sustain defense counsel's objection to a similar line of testimony, but it did not provide any limiting instruction to the jury.

B.D. testified that defendant taught Sunday school and sang in the choir at their church. B.D. said that when she was eight or nine years old, defendant would rub her legs on the church bus. She also stated that every Sunday for a year and a half, defendant would come downstairs to the church school when no one else was there, touch her genitals and breasts, and kiss her. B.D. told the court that defendant threatened to harm her family if she told anyone. B.D. testified that she did not know about her sister V.D.'s alleged abuse, and although the abuse stopped when she was 11 years old, she did not tell anyone about defendant's abuse until 2017.

V.D. testified that she is four years older than B.D., and when she was five or six years old, defendant touched her legs each time she was on the church bus, inching toward her underwear. V.D. testified that when she was eight or nine, defendant made her perform oral sex in the basement where the church school was. Defendant told V.D. that if she told anyone, he would hurt her family or kill her. V.D. stated that oral sex occurred almost every time she went to church and until she was about 13 or 14 years old. V.D. testified that she once woke up in the basement without her clothes on, with blood between her legs, and unable to recall why she had fallen unconscious. V.D. further told the court that defendant began engaging in vaginal

sex with her when she was 11 years old, and it occurred multiple days per week. She became pregnant as a result, and V.D. told the court that defendant got "very violent," continued to threaten her, and punched her in the stomach. V.D. testified that she started bleeding badly a few days later, but she never told anyone about that incident and did not tell anyone about the alleged abuse until 2017.

Dr. Sharon Cooper ("Dr. Cooper"), a developmental forensic pediatrician specializing in child maltreatment and sexual abuse and expert for the State, gave testimony that was limited by the trial court to opinions on general phenomena regarding delayed reporting and to what the complaining witnesses reported to her. Dr. Cooper testified that V.D. described her abuse to her, "including having been strangled, having been sexually assaulted with penile-vaginal penetration, having lost consciousness, having awoken and discovering bruises on her breasts, on her inner thighs, over her vaginal area, on her outer arms," and that "she would be causing the death of her parents if she ever made a disclosure of this particular form of abuse." Defense counsel made no objection to this testimony.

Dr. Cooper further testified that V.D. "developed a lot of psychological difficulties. She had a lot of anxiety. She had a lot of intrusive thoughts about what had happened to her, that's what we usually see when we think about post-traumatic stress disorder with intrusive thoughts." Defense counsel objected to Dr. Cooper's testimony, and the trial court overruled the objection.

During closing argument, the State referred to the process of "grooming." The State told the jury child abuse "comes enveloped in a cloud and distorted by time, by misconceptions, by a grooming process that happens over and over and over." The State continued that "[V.D.] didn't know what it was. Just like you heard [V.D.] say, it felt normal; it just seemed like a normal thing. That's the grooming process that we didn't unpack[.]" The State alluded to the grooming process throughout its argument, including statements such as "when a child is sexually abused, they love their abuser because they are kids, and they've been groomed." There was no objection to this argument.

On 29 August 2022, the jury convicted defendant of five counts of first-degree rape, 11 counts of first-degree sex offense, and 12 counts of indecent liberties with a child. Defendant was sentenced to a minimum of 1,052 months and a maximum of 1,318 months' imprisonment. Defendant gave oral notice of appeal in open court.

II. Discussion

On appeal, defendant contends the trial court (1) erred by allowing evidence regarding the prevalence of violence against women, (2) plainly erred by allowing Dr. Cooper to testify to V.D.'s prior statements that do not corroborate her testimony, (3) erred by overruling an objection that V.D. suffered post-traumatic stress disorder ("PTSD"), and (4) erred by failing to intervene *ex mero motu* during the State's closing argument. We find no error.

A. Evidence of Other Women's Sexual Abuse

Defendant first argues that H.H.'s testimony regarding other women's experiences with sexual abuse was irrelevant and prejudicial and should have been excluded from evidence. We disagree.

" 'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." N.C.G.S. § 8C-1, Rule 401 (2023). Relevant evidence is generally admissible. § 8C-1, Rule 402. However, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice[.]" § 8C-1, Rule 403.

Defense counsel implicitly argued at trial that the complaining witnesses' delay in reporting the allegations made them less credible. H.H.'s testimony that she learned of other women's abuse when she was in college was relevant to her decision to tell someone about her alleged abuse by defendant. The testimony tended to show that H.H. did not report the alleged abuse until later in her life, and it tended to show her motivation for doing so—factors that certainly are relevant to her disclosure.

Defendant also argues that H.H.'s testimony was unfairly prejudicial. H.H.'s statements regarding abuse other women at her college experienced was probative of her motivation to disclose defendant's alleged abuse, and in our view, the danger of prejudice does not outweigh this value. Though the occurrence of abuse against other women could be prejudicial to defendant, H.H. did not allege that defendant abused these other women or implicate him with regard to that testimony. Thus, the

probative value of H.H.'s testimony is not substantially outweighed by the danger of prejudice.

B. Dr. Cooper's Testimony

1. V.D.'s Prior Statements

Defendant next contends that the trial court plainly erred by allowing Dr. Cooper to testify to V.D.'s prior statements. We disagree.

Although hearsay is generally inadmissible, "a witness' prior consistent statements may be admitted to corroborate the witness' sworn trial testimony." *State v. Lloyd*, 354 N.C. 76, 103 (2001) (quoting *State v. Gell*, 351 N.C. 192, 204, *cert. denied,* 531 U.S. 867 (2000)). "However, the witness's prior statements as to facts not referred to in his trial testimony *and not tending to add weight or credibility* to it are not admissible as corroborative evidence." *State v. Ramey*, 318 N.C. 457, 469 (1988) (citations omitted) (emphasis in original).

Defense counsel did not object to Dr. Cooper's testimony that V.D. reported "having been strangled, having been sexually assaulted with penile-vaginal penetration, having lost consciousness, having awoken and discovering bruises on her breasts, on her inner thighs, over her vaginal area, on her outer arms." Nonetheless, defendant argues that this testimony was outside the scope of V.D.'s testimony at trial and did not sufficiently corroborate her prior testimony. Even assuming *arguendo* that this testimony was improper, the standard or review for an unpreserved error is plain error. *See State v. Lawrence*, 365 N.C. 506, 516 (2012).

Under this standard, a defendant must show that a fundamental error occurred at trial—"that, after examination of the entire record, the error had a probable impact on the jury's finding that the defendant was guilty." *Id.* at 518 (citations and internal quotation marks omitted).

Defendant argues that the testimony Dr. Cooper provided was plain error because it included vivid descriptions of violence which did not corroborate the evidence V.D. testified to and led to unfair prejudice presenting defendant "as a physically violent predator who attacked and injured young women." However, V.D.'s testimony itself provided enough evidence for the jury to characterize defendant as such; V.D. testified that defendant began raping her regularly when she was 11 years old, threatened to hurt her family if she told anyone, and got "very violent" and punched her in the stomach when he learned she was pregnant, causing her to bleed badly a few days later. Additionally, V.D. testified that when she once was with defendant, she passed out and woke up with blood between her legs, unable to remember how she had passed out. The jury could have perceived defendant as a violent predator from this testimony alone.

Additionally, the trial court gave the following instruction:

> Evidence has been received tending to show that at an earlier time witnesses made statements which may conflict or be consistent with the testimony of that witness at this trial. You must not consider such earlier statement as evidence of the truth of what was said at that earlier time because it was not made under oath at this trial. If you believe the earlier statement was made, and that it

> conflicts or is consistent with the testimony of the witness at this trial, you may consider this and all other facts and circumstances bearing upon the witness' truthfulness in deciding whether you will believe or disbelieve the witness' testimony.

Any inconsistency in V.D.'s testimony and Dr. Cooper's testimony was properly left to the jury to evaluate. *See State v. Morgan*, 164 N.C. App. 298, 302 (2004) ("Jurors are presumed to follow a trial court's instructions." (citation omitted)). Thus, the trial court did not commit plain error when it allowed Dr. Cooper to relay V.D.'s prior statements.

2. Post-Traumatic Stress Disorder

Defendant also contends that the trial court erred in allowing Dr. Cooper to testify that V.D. had symptoms consistent with PTSD. We disagree.

The trial court limited Dr. Cooper's testimony to what the complaining witnesses reported to her and to general phenomena regarding delayed reporting in sexual abuse cases. Defendant argues that Dr. Cooper's statement that "[V.D.] had a lot of intrusive thoughts about what had happened to her, that's what we usually see when we think about post-traumatic stress disorder with intrusive thoughts" fell outside the scope of this limitation. Dr. Cooper merely stated that V.D. reported to her a common symptom of PTSD, but she did not opine that V.D. had PTSD or diagnose V.D. with PTSD in her testimony. We therefore find that defendant's argument is without merit, and the trial court did not err.

C. State's Closing Argument

Finally, defendant contends that the trial court erred by failing to intervene *ex mero motu* during the State's closing argument. We disagree.

"Our 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." *State v. Huey*, 370 N.C. 174, 180 (2017) (cleaned up). "A '[g]rossly improper argument is defined as conduct so extreme that it renders a trial fundamentally unfair and denies the defendant due process.' " *State v. Parker*, 377 N.C. 466, 472 (2021) (quoting *State v. Fair*, 354 N.C. 131, 153 (2001)).

Defendant argues that the State's multiple references to grooming were grossly improper. The State alluded to the grooming process throughout its argument, including statements such as "when a child is sexually abused, they love their abuser because they are kids, and they've been groomed." "This is not the case where an attorney engages in name-calling, makes statements of opinion, intrudes upon constitutional rights, or references events outside of the evidence." *Parker*, 377 N.C. at 473 (citation omitted). Here, defense counsel presented evidence that some of the complaining witnesses admitted to having crushes on defendant and joked about who would marry defendant. The State simply argued that this evidence could be explained by and was evidence of the grooming process; the State referred to a phenomenon it did not explore during its examination, but it did not reference events

outside the evidence or make opinions about defendant. The trial court did not err in failing to intervene *ex mero motu* in the State's closing argument.

III. Conclusion

For all the foregoing reasons, we hold that the trial court committed no error.

NO ERROR.

Judges WOOD and FLOOD concur.

Report per Rule 30(e).