

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 19-634

Filed: 17 March 2020

Pitt County, No. 17CRS50420

STATE OF NORTH CAROLINA

v.

JAMES CLAYTON CLARK, JR., Defendant.

Appeal by defendant from judgment entered 18 July 2019 by Judge Jeffery B. Foster in Pitt County Superior Court. Heard in the Court of Appeals 19 February 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Lisa B. Finkelstein, for the State.

Paul F. Herzog for defendant-appellant.

BERGER, Judge.

On July 18, 2019, a Pitt County jury found James Clayton Clark, Jr. (“Defendant”) guilty of taking indecent liberties with a child. Defendant was sentenced to sixteen to twenty-nine months in prison. Defendant was also required to register as a sex offender for thirty years. On appeal, Defendant argues (1) the

trial court committed plain error when it allowed an expert witness to use the word “disclosure” to describe the child victim’s allegations, testify regarding treatment recommendations, and testify that the child victim had been sexually abused; (2) the trial court erred when it allowed another expert witness to testify, over objection, that the child victim had not been “coached”; and (3) that Defendant was denied effective assistance of counsel.

Factual and Procedural Background

During the summer of 2015, six-year-old “Jane” began experiencing several, lasting behavioral problems, including bed-wetting, nightmares, and social withdrawal.¹ In mid-July 2016, Jane told her stepmother about an incident that occurred at her aunt’s home during the summer of 2015. According to Jane, Defendant, who was dating the aunt at the time, called Jane into a bathroom him. Defendant grabbed Jane by her arm and attempted to put her hand inside of his underwear.

The day after Jane reported the incident to her stepmother, the incident was also reported to law enforcement and Jane was interviewed by the Pitt County Sheriff’s Office. Jane was subsequently scheduled for an appointment with the TEDI Bear Children’s Advocacy Center (“CAC”). After her screening appointment, the CAC ultimately recommended that Jane receive trauma-based therapy. According to

¹ A pseudonym is used to protect the identity of the child victim.

Jane's stepmother, after one year and four months of therapy, Jane's behavioral problems "improved greatly"; however, there remains "a distance that wasn't there before."

Jane testified at trial that she had visited her aunt and two young cousins. Defendant, who was also staying at the aunt's home, was the only adult present at the time of the incident. According to Jane, Defendant called her into a bathroom, grabbed her hand, and tried to make her "touch his private." Jane testified that, as Defendant tried to place her hand down his pants, she pulled away and was eventually able to get loose from his grip. After getting loose, Jane returned to playing with her young cousins. Jane further testified that she could not remember how Defendant reacted after the incident.

According to Jane, she told both her aunt and her biological mother about the incident with Defendant but neither took any action. Jane then told her stepmother about the alleged abuse during July of the following year.

Ann Parsons ("Parsons"), a nurse practitioner who specializes in providing medical evaluations for children suspected of suffering from abuse or neglect, also testified for the State. Parsons was admitted as an expert in child abuse and forensic evaluation of abused children. At the time the alleged abuse was reported, Parsons worked for the CAC and evaluated Jane.

According to Parsons, she performed a physical examination of Jane and determined that she “was healthy” and “looked normal for [her] age from head to toe.” During the evaluation, Parsons also considered Jane’s behavioral history, including her social behavior, schoolwork, sleeping patterns, fears, and appetite. On direct examination by the State, Parsons was asked if she made a diagnosis in Jane’s case. Parsons testified, without objection, that “[Jane] had been sexually abused.”

Parsons also detailed the recommendations she made based on this diagnosis. Parsons testified, again without objection, that she recommended Jane have “[n]o contact with [Defendant] during the investigation. And any future contact with [Defendant] only to address therapeutic needs as determined by [Jane’s] therapist.”

The jury also heard from Andora Hankerson (“Hankerson”), a forensic interviewer with more than nine years of experience in interviewing children suspected of suffering from abuse. Hankerson holds a degree in sociology and is formally trained in forensic interviewing techniques. According to Hankerson, based on Jane’s wording and demeanor during their interview, there were no indications that Jane had been “coached” by an adult in making her allegations.

On July 18, 2019, a Pitt County jury found Defendant guilty of taking indecent liberties with a child. The trial court sentenced Defendant to sixteen to twenty-nine months in prison. Defendant was also required to register as a sex offender for thirty years. Defendant now appeals arguing (1) the trial court committed plain error by

allowing Parsons to use the word “disclosure” to describe Jane’s allegations, testify regarding treatment recommendations, and testify that Jane had been sexually abused; (2) the trial court erred by allowing Hankerson to testify, over objection, that Jane had not been “coached”; and (3) that Defendant was denied effective assistance of counsel. We address each argument in turn.

Analysis

I. Parsons’ testimony

Defendant first contends that the trial court committed plain error when it admitted portions of Parsons’ expert testimony. Specifically, Defendant argues that it was plain error for the trial court to allow (1) Parsons’ to use of the word “disclosure” to describe Jane’s allegations, (2) Parsons’ medical recommendations for Jane’s treatment, and (3) Parsons’ testimony that Jane had been sexually abused.

Under the plain error rule, a court “may review alleged errors affecting substantial rights even though the defendant failed to object to admission of the evidence at trial.” *State v. Lee*, 348 N.C. 474, 482, 501 S.E.2d 334, 339 (1998). To establish plain error, a defendant “must show that a fundamental error occurred at his trial and that the error had a probable impact on the jury’s finding that the defendant was guilty.” *State v. Towe*, 366 N.C. 56, 62, 732 S.E.2d 564, 568 (2012) (citation and quotation marks omitted). Additionally, “because plain error is to be applied cautiously and only in the exceptional case, the error will often be one that

seriously affects the fairness, integrity or public reputation of judicial proceedings.” *Id.* at 62, 732 S.E.2d at 568 (citation and quotation marks omitted). Only where a defendant shows that the trial court’s error has “tilted the scales” of justice in the jury’s determination of a defendant’s guilt or innocence will a finding of plain error be appropriate. *State v. Moore*, 366 N.C. 100, 107, 726 S.E.2d 168, 174 (2012).

In determining whether plain error occurred, we must first consider whether Parson’s testimony was improper. *Towe*, 366 N.C. at 61, 732 S.E.2d at 567. Under Rule 702 of the North Carolina Rules of Evidence, “[i]f scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion.” N.C. Gen. Stat. § 8C-1, Rule 702 (2019). “[I]n order for one qualified as an expert to present an opinion based upon his specialized knowledge, his opinion must assist the trier of fact.” *State v. Trent*, 320 N.C. 610, 614, 359 S.E.2d 463, 465 (1987). Put another way, the witness, because of his or her expertise, must be “in a better position to have an opinion on the subject than is the trier of fact.” *State v. Wilkerson*, 295 N.C. 559, 568-69, 247 S.E.2d 905, 911 (1978).

Defendant first contends that Parsons’ expert testimony improperly bolstered Jane’s testimony because Parsons used the word “disclosure” to describe Jane’s allegations and purportedly asserted, via medical recommendations, that Defendant

was the perpetrator of Jane's abuse. However, the former alleged error has no support in the law of this State, and the latter no support in the facts of this case.

Relying on the unpublished opinion of *State v. Jamison*, ___ N.C. App. ___, 821 S.E.2d 665 (2018) (unpublished), Defendant argues that Parsons' use of the term "disclosure" to describe Jane's allegations constituted improper "vouch[ing] for the truthfulness of the accuser." However, *Jamison* "is not controlling, not persuasive, and . . . did not properly analyze [controlling precedent]." *State v. Betts*, ___ N.C. App. ___, ___, 833 S.E.2d 41, 47 (2019). This Court has subsequently noted in the published opinion of *State v. Betts*, that "[t]here is nothing about use of the term 'disclose,' standing alone, that conveys believability or credibility." *Id.* at ___, 833 S.E.2d at 47. Thus, Defendant's contention that the trial court erred by permitting Parsons to use the term "disclosure" while describing Jane's allegations is without merit.

Defendant further argues that Parsons' medical recommendations amounted to an assertion that Defendant was the perpetrator of Jane's abuse. However, Defendant's contention has no factual support in the record. As found in the record, Parsons testified, without objection, regarding her medical recommendations for Jane's treatment. Parsons' recommendations included, among other things, that Jane should have "[n]o contact with [Defendant] during the investigation. And any

future contact with [Defendant] only to address therapeutic needs as determined by [Jane's] therapist.”

At most, this testimony implies that Jane should not have continued contact with Defendant because she subjectively believes Defendant to be her abuser. That Jane alleged Defendant of the abuse cannot reasonably be disputed. However, Parsons’ statements in no way amounted to an assertion that Defendant was, in fact, responsible for Jane’s alleged sexual abuse. Thus, Parsons’ expert testimony did not improperly bolster Jane’s testimony at trial. Accordingly, this argument is also meritless.

Next, Defendant contends that the trial court committed plain error by allowing Parsons to testify that Jane had been sexually abused. As our State Supreme Court has held, “[i]n a sexual offense prosecution involving a child victim, the trial court should not admit expert opinion 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).

In the instant case, Parsons testified that Jane’s physical exam was “completely normal”—that she “was healthy” and “looked normal for [her] age from head to toe.” However, Parsons went on to testify that “[Jane] had been sexually abused.” Under our precedent, this expert testimony was improper.

However, our determination that an error occurred at trial does not conclude the plain error analysis. Next, we must determine whether the erroneous admission of expert testimony was sufficiently prejudicial to amount to plain error. *Towe*, 366 N.C. at 62, 732 S.E.2d at 568. As previously noted, plain error only occurs in the truly exceptional case where a defendant is able to “show that a fundamental error occurred at his trial and that the error had a probable impact on the jury’s finding that the defendant was guilty.” *Id.* at 62, 732 S.E.2d at 568 (citation and quotation marks omitted).

In *Betts*, this Court determined that, even assuming an error had occurred at trial, the defendant was unable to demonstrate plain error where “[t]here was substantial evidence from which the jury could find [the defendant guilty]” and the jury had ample opportunity “to make its own independent assessment concerning the victim’s credibility.” ___ N.C. App. at ___, 833 S.E.2d at 47. As a result, our Court concluded that “it is not for this Court to reweigh the evidence” upon a defendant’s invitation. *Id.* at ___, 833 S.E.2d at 47.

In the instant case, like in *Betts*, the State presented substantial evidence from which the jury could find Defendant guilty and the jury had ample opportunity to assess for themselves the credibility of the child victim. The State’s evidence against Defendant included the following: (1) Jane’s testimony at trial; (2) a video-recorded interview with Jane at the CAC; (3) evidence of Jane’s lasting behavioral problems

after the incident—including bed-wetting, nightmares, and social withdrawal; and (4) the consistency of Jane’s accounts of the incident to her family, law enforcement, and medical personnel at the CAC.

Based on the foregoing, we conclude that it is not the role of this Court to reweigh the evidence and make our own determination of Jane’s credibility. Defendant has failed to demonstrate that the erroneous admission of Parsons’ testimony has “tilted the scales” of justice in the jury’s determination of his guilt or innocence. *Moore*, 366 N.C. at 107, 726 S.E.2d at 174. As such, the trial court’s admission of Parsons’ improper testimony did not result in plain error.

II. Hankerson’s testimony

Defendant next argues that the trial court erred when it allowed Hankerson to testify, over objection, that there were no indications Jane had been “coached” by an adult in making her allegations. According to Defendant, Hankerson’s testimony improperly bolstered Jane’s credibility in the absence of physical evidence of sexual abuse.

“The standard of review for admission of evidence over objection is whether it was admissible as a matter of law, and if so, whether the trial court abused its discretion in admitting the evidence.” *State v. Bodden*, 190 N.C. App. 505, 512, 661 S.E.2d 23, 27 (2008). As previously noted, under Rule 702 of the North Carolina Rules of Evidence, “[i]f scientific, technical or other specialized knowledge will assist the

trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion.” N.C. Gen. Stat. § 8C-1, Rule 702. A qualified expert can testify regarding the opinions formed based on his or her expert knowledge so long as that opinion is helpful to the trier of fact. *Trent*, 320 N.C. at 614, 359 S.E.2d at 465.

As a preliminary matter, we note that Hankerson was not formally tendered as an expert witness before providing testimony regarding her interview with Jane. However, our Supreme Court has held that a trial court’s allowance of testimony requiring scientific, technical, or other specialized knowledge may sufficiently serve as an implicit finding that the witness qualifies as an expert. *State v. Wise*, 326 N.C. 421, 430-31, 390 S.E.2d 142, 148 (1990). In the instant case, given the foundation laid by the State regarding Hankerson’s education, training, and several years of experience in the field of forensic interviewing, as well as her subsequent testimony, we conclude that Hankerson was implicitly qualified as an expert under Rule 702. *See id.* at 430-31, 390 S.E.2d at 148 (holding that a witness need not be formally qualified as an expert where “the nature of [her] job and of the experience which she possesses affirmatively shows that she was better qualified than the jury to form an opinion as to, and to testify about, the characteristics of abused children”).

While our Court may find reversible error when an expert testifies that a child victim is believable, “a statement that a child was not coached is not a statement on the child’s truthfulness.” *State v. Ryan*, 223 N.C. App. 325, 333-34, 734 S.E.2d 598, 604 (2012) (citation and quotation marks omitted). Thus, our Court has previously determined an expert’s opinion that a child witness had not been “coached” may be admissible evidence. *Id.* at 334-35, 734 S.E.2d at 604-05.

In the instant case, Hankerson, an expert in the forensic interviewing of children suspected of suffering from abuse, testified that Jane’s wording and demeanor during their interview indicated that she had not been “coached” by an adult in making her allegations. Given that Hankerson’s expert testimony was helpful in assisting the trier of fact and did not improperly bolster Jane’s testimony, we conclude this testimony was admissible. Accordingly, the trial court did not abuse its discretion by admitting Hankerson’s testimony over Defendant’s objection.

III. Defendant’s claim for ineffective assistance of counsel

Lastly, Defendant argues that he was denied effective assistance of counsel when his trial counsel failed to object to Parsons’ testimony that Jane had been sexually abused. We decline to address this claim on direct appeal.

“In general, claims of ineffective assistance of counsel should be considered through motions for appropriate relief and not on direct appeal.” *State v. Stroud*, 147 N.C. App. 549, 553, 557 S.E.2d 544, 547 (2001). As our Court noted in *Stroud*,

In order to determine whether a defendant is in a position to adequately raise an ineffective assistance of counsel claim, we stress this Court is limited to reviewing this assignment of error only on the record before us, without the benefit of information provided by defendant to trial counsel, as well as defendant's thoughts, concerns, and demeanor, that could be provided in a full evidentiary hearing on a motion for appropriate relief.

Id. at 554, 557 S.E.2d at 547 (*purgandum*). Where “the reviewing court determine[s] that ineffective assistance of counsel claims have been prematurely asserted on direct appeal, it shall dismiss those claims without prejudice to the defendant’s right to reassert them during a subsequent motion for appropriate relief proceeding.” *State v. Perry*, 254 N.C. App. 202, 211, 802 S.E.2d 566, 573 (2017) (*purgandum*).

In the case at hand, “the record before us is insufficient to determine whether trial counsel was ineffective or whether there were reasonable, strategic reasons for counsel’s actions.” *State v. Bice*, ___ N.C. App. ___, ___, 821 S.E.2d 259, 268 (2018). Therefore, we dismiss Defendant’s ineffective assistance of counsel claim without prejudice to his right to assert this claim in a motion for appropriate relief.

Conclusion

For the reasons stated herein, the trial court did not commit plain error by admitting portions of Parsons’ expert testimony. Neither did the trial court err by permitting Hankerson to testify, over objection, that there were no indications Jane had been “coached” by an adult in making her allegations. Finally, we dismiss Defendant’s ineffective assistance of counsel claim without prejudice.

STATE V. CLARK

Opinion of the Court

NO ERROR IN PART; DISMISSED IN PART.

Judge DILLON concurs.

Judge ARROWOOD dissents by separate opinion.

Report per Rule 30(e).

ARROWOOD, Judge, dissenting.

I respectfully dissent from the majority’s dismissal of defendant’s ineffective assistance of counsel claim. While the majority believes there is insufficient evidence in the record before us to determine whether trial counsel was ineffective, I would hold that there is sufficient evidence of ineffective assistance of counsel. Because of this ineffective assistance of counsel, I believe defendant is entitled to a new trial, therefore I do not address the other portions of the majority opinion.

As the majority correctly notes, generally, “claims of ineffective assistance of counsel should be considered through motions for appropriate relief and not on direct appeal.” *State v. Stroud*, 147 N.C. App. 549, 553, 557 S.E.2d 544, 547 (2001). However, “it is appropriate for an appellate court to reach the merits of a claim of ineffective assistance of appellate counsel on direct review ‘when the cold record reveals that no further investigation is required, i.e., claims that may be developed and argued without such ancillary procedures as the appointment of investigators or an evidentiary hearing.’” *State v. Baskins*, __ N.C. App. __, __, 818 S.E.2d 381, 391 (2018) (quoting *State v. Fair*, 354 N.C. 131, 166, 557 S.E.2d 500, 524 (2001)). Thus, this Court may consider ineffective assistance of counsel claims on direct appeal “when those claims are apparent on the face of the record.” *State v. Allen*, 360 N.C.

297, 316, 626 S.E.2d 271, 286 (2006) (citing *Fair*, 354 N.C. at 166-67, 557 S.E.2d at 524-25).

Here, defendant's claim is apparent on the face of the record, as there is sufficient support in the record from which to determine trial counsel was ineffective, thus no further investigation is needed. It is well established that "[t]o prevail on a claim of ineffective assistance of counsel, a defendant must first show that his counsel's performance was deficient and then that counsel's deficient performance prejudiced his defense." *Id.* (citing *Strickland v. Washington*, 466 U.S. 668, 687, 80 L. Ed.2d 674, 693 (1984)). "Performance is 'deficient' when counsel's representation falls beneath an objective standard of reasonableness, or when counsel's errors are 'so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment.'" *State v. Taylor*, 362 N.C. 514, 547, 669 S.E.2d 239, 266 (2008) (citations omitted). "In analyzing the reasonableness under the performance prong, the material inquiry is whether the actions were reasonable considering the totality of the circumstances at the time of performance." *State v. Gainey*, 355 N.C. 73, 112-13, 558 S.E.2d 463, 488 (2002) (citing *Strickland*, 466 U.S. at 689, 80 L. Ed.2d at 694).

In the case *sub judice*, trial counsel failed to object both to Ann Parson's testimony that "[Jane] had been sexually abused" and her implication of defendant as the perpetrator of the abuse. Though North Carolina appellate courts give wide

latitude to counsel in matters of strategy, *State v. Fletcher*, 354 N.C. 455, 482, 555 S.E.2d 534, 551 (2001), I can see no conceivable strategic advantage in trial counsel's failure to object here. In addition, trial counsel's failure to object also falls below the North Carolina Commission on Indigent Services Performance Guidelines for Non-Capital Criminal Cases at the Trial Level. Section 7.1(e) of that Guideline provides that "[c]ounsel should be fully informed as to the rules of evidence and the law relating to all stages of the trial process, and should be familiar with legal and evidentiary issues that reasonably can be anticipated to arise in the trial." N.C. Comm'n on Indigent Services, *Performance Guidelines for Indigent Defense Representation in Non-Capital Criminal Cases at the Trial Level* 16 (Nov. 12, 2004), <http://www.ncids.org/Rules%20&%20Procedures/Performance%20Guidelines/Trial%20Level%20Final%20Performance%20Guidelines.pdf>.

Our Supreme Court has previously considered an attorney's "lack of diligence or skill in investigating, analyzing or evaluating the strength or weakness of the State's case, in searching for possible rebuttal evidence or in planning and presenting the defendant's case to the jury" when analyzing a defendant's ineffective assistance of counsel claim. *See State v. Mathis*, 293 N.C. 660, 669, 239 S.E.2d 245, 251 (1977). Trial counsel in this case not only had no apparent case strategy in failing to object to Parsons' testimony, but also demonstrated ineffective assistance by failing to recognize and object to testimony long held impermissible. Reasonably diligent

research on trial counsel's part would have revealed such testimony was inadmissible. Moreover, trial counsel evidently completely failed to anticipate or develop a plan to address the State's foreseeable attempt to bolster the credibility of its sole witness to the crime. I would thus find that trial counsel's performance was deficient and thereby satisfies the first prong of the ineffective assistance of counsel test.

The second prong is also satisfied, as defendant was prejudiced by counsel's deficient performance. While counsel's lack of competence does not always impact a defendant's constitutional right to counsel, errors by counsel warrant reversal of a conviction when "there is a reasonable probability that, but for counsel's errors, there would have been a different result in the proceedings." *State v. Braswell*, 312 N.C. 553, 563, 324 S.E.2d 241, 248 (1985) (citing *Strickland*, 466 U.S. at 695, 80 L. Ed.2d at 698). "Since there can be no precise or 'yardstick' approach in applying the recognized rules of law in this area, each case must be approached upon an ad hoc basis, viewing circumstances as a whole, in order to determine whether an accused has been deprived of effective assistance of counsel." *State v. Carter*, 210 N.C. App. 156, 167, 707 S.E.2d 700, 708 (2011) (quoting *State v. Sneed*, 284 N.C. 606, 613, 201 S.E.2d 867, 872 (1974)) (internal quotation marks omitted).

Here, the State's sole witness to the alleged sexual abuse was the victim, Jane, a nine-year-old child who had been six years old at the time of the alleged abuse. In

addition to Jane's testimony that she was sexually abused, the State also elicited testimony from Parsons' that "[Jane] had been sexually abused." The majority correctly found that Parsons' testimony was improper given the lack of physical evidence of sexual abuse. Because "such testimony is an impermissible opinion regarding the victim's credibility," it should not have been admitted and considered by the jury. *State v. Stancil*, 355 N.C. 266, 266-67, 559 S.E.2d 788, 789 (2002). Given that Jane was the only witness to the alleged sexual abuse and there was no physical evidence of such abuse, the issue of Jane's credibility was crucial to the outcome of the case. Thus, there is a reasonable probability that there would have been a different result in the proceedings had trial counsel objected to Parsons' testimony, both at the trial level and now on appeal.

Indeed, at the very least, an objection by trial counsel would have preserved the matter for review on appeal and thereby ensured its review by this Court under a less stringent standard than plain error. Because the majority agrees there was error committed below, defendant would have been entitled to a new trial in keeping with our holding in *State v. Grover*, 142 N.C. App. 411, 543 S.E.2d 179 (2001). There, the defendant challenged the trial court's admission, over defendant's objection, of expert opinion testimony that sexual abuse had occurred. *Id.* at 413, 543 S.E.2d at 181. Similar to the facts of this case, the experts found no physical evidence of sexual abuse and the only witnesses of the alleged abuse were the young victims. *Id.* at 418-

19, 543 S.E.2d at 183. Thus, the credibility of the two victims' testimonies was a central issue in the case. We held the trial court erred in admitting expert testimony that the victims had been sexually abused when there was no physical evidence of such abuse and the testimony thus "merely attested to the truthfulness of the child witness." *Id.* at 413, 543 S.E.2d at 181 (quoting *State v. Dick*, 126 N.C. App. 312, 315, 485 S.E.2d 88, 90 (1997)). We further held the defendant was entitled to a new trial because there was a reasonable possibility that, absent the error, a different result would have been reached. *Id.* at 421, 543 S.E.2d at 185. Because we would have reached a similar result here had trial counsel objected to Parsons' testimony, defendant was prejudiced by trial counsel's deficient performance.

Furthermore, defendant was also prejudiced because there is a reasonable probability the result at the trial court proceedings would have been different as well. This Court in *Carter* considered an ineffective assistance of counsel claim based on a similar issue. There, the defendant had been convicted of taking indecent liberties with two young children. 210 N.C. App. at 158, 707 S.E.2d at 703. In addition to the victims' testimonies, there was also physical evidence of the defendant's crimes. *Id.* at 159-60, 707 S.E.2d at 703-704. One of the State's expert witnesses testified in regards to one victim's testimony that "[a] child—you know, a child her age with that much sexual knowledge indicates that something happened." *Id.* at 166, 707 S.E.2d at 707. On appeal, the defendant claimed he received ineffective assistance of counsel

when his trial counsel failed to move to strike that statement because it “vouch[ed] for the credibility of a child witness [and] improperly resolve[d] the only factual issue before the jury.” *Id.* at 167-68, 707 S.E.2d at 708. We rejected the defendant’s argument, however, holding that, in the face of all the substantive evidence and corroborative testimony, the singular comment did not unduly prejudice the defendant. *Id.* at 168, 707 S.E.2d at 709.

The present case differs importantly from the facts of *Carter* in that there is no physical evidence of sexual abuse, and the jury was ultimately forced to base its decision solely on how credible it found Jane’s testimony. Thus, without Parsons impermissible bolstering of Jane’s testimony, there is a reasonable probability the jury would have reached a different verdict. Accordingly, trial counsel’s failure to object to Parsons’ testimony likely prejudiced defendant at both the trial and appellate level. I would therefore hold that defendant received ineffective assistance of counsel and is entitled to a new trial, and respectfully dissent from the majority.