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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-637

Filed: 20 October 2020

Wake County, Nos. 16 CRS 220966–69, 221104

STATE OF NORTH CAROLINA

v.

RONALD KEITH SUTHERLAND, JR.

Appeal by defendant from judgments entered 24 August 2018 by Judge A. Graham Shirley in Wake County Superior Court. Heard in the Court of Appeals 8 September 2020.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Jasmine S. McGhee, for the State.

Glover & Petersen, P.A., by Ann B. Petersen, for defendant-appellant.

BRYANT, Judge.

Where the State’s remarks during closing argument were within the permissible scope of closing argument, we affirm the trial court’s ruling on defendant’s objection.

Defendant Ronald Sutherland was indicted on thirteen felonies alleged to have occurred between 1 November 2009 and 31 December 2014: four counts of first-degree

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sex offense with a child; two counts of statutory sex offense with a child; two counts of first-degree rape; and five counts of statutory rape of a child.

On 17 September 2018, the case was tried in Wake County Superior Court before the Honorable Graham Shirley, Judge presiding. The victim, Alice,¹ was nineteen at the time of trial.

At trial, the State's evidence revealed that defendant met the victim's mother, Kelly (now known as "Ameenah"), in 2008 when they worked together at a restaurant in Raleigh. By 2009, defendant and Ameenah began dating, and he moved into her apartment where she lived with her two daughters. Alice was nine years old and the oldest of the two girls.

Alice testified that defendant took her virginity when she was ten years old. Thereafter, defendant frequently had vaginal sexual intercourse with Alice. Defendant also directed Alice to engage in other sexual acts with him, including cunnilingus and felatio as well as watching pornography. The sexual abuse continued until Alice reached the age of fifteen. In 2012, defendant married Ameenah, and in 2013, the family moved to a house in Cary. After moving to Cary, defendant's sexual abuse of Alice continued. In late 2013 or early 2014, the family moved to Philadelphia where Alice and her sister enrolled in a private religious school. Alice got in trouble at school for talking with a boy and was suspended for three days. Ameenah picked

¹ A pseudonym is used to protect the identity of the child victim and for ease of reading.

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Alice up from school, and it was while they were in the car that Alice revealed to her mother the sexual abuse by defendant. Ameenah immediately attacked Alice, pulling on her and scratching her face before she drove them home. Ameenah demanded that Alice retract her statements in front of defendant. When Alice would not do so, Ameenah attempted to attack her until defendant intervened. Eventually, defendant left the home. Ameenah then forced Alice to pack her clothes and drove her to North Carolina to live with her paternal great-grandmother in Roxboro so defendant would return to the home, which he did.

While in Roxboro, Alice ran away and, at some point, slept on the street. Upon finding out that Alice was essentially homeless Alice's maternal grandmother, Janice, went to Roxboro and brought Alice to Raleigh to live with her. Alice told her grandmother about defendant's sexual abuse. Janice contacted Child Protective Services (CPS) to report the abuse and to get assistance with enrolling Alice in school. Janice made several attempts to enroll Alice in school, but Ameenah refused to release Alice's social security number unless Alice denied her claims that defendant sexually abused her. CPS reported the abuse to the police for a criminal investigation. CPS also removed Alice from her grandmother's house. Alice was taken to SAFEchild Advocacy center for evaluation, which included a full medical examination and interview during which Alice disclosed the long history of sexual

abuse by defendant. A video of Alice’s interview describing the abuse by defendant was played for the jury and admitted into evidence.

After the State’s evidence, defendant’s testimony was the sole evidence for the defense. Defendant admitted touching Alice’s breast when she was about twelve years old, but denied otherwise sexually assaulting Alice.

During closing arguments, defendant objected to remarks made by the State, but the trial court overruled those objections. The jury acquitted defendant of two counts of first-degree sex offense with a child and found defendant guilty on all other counts submitted to the jury.² Following the jury verdict, defendant was sentenced accordingly. Defendant appeals.

On appeal, defendant argues the trial court erred by overruling his objection to the State’s remarks during closing argument. Specifically, defendant contends the State’s comments that it was “the jury’s function to protect ‘our children’ when they are ‘abused by the adults in their lives’ and that the jury was the voice that speaks for the children,” were improper. We disagree.

“When a defendant objects at trial, this Court reviews closing arguments to determine whether the trial court abused its discretion by failing to sustain the objection.” *State v. Dalton*, 369 N.C. 311, 315, 794 S.E.2d 485, 488 (2016) (citation

² The trial court dismissed one count of first-degree rape at end of the State’s evidence.

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and quotation marks omitted). “In reviewing closing arguments for an abuse of discretion, this Court must first determine[] if the remarks were improper.” *Id.* (alteration in original) (citation and quotation marks omitted). “If so, this Court must then determine if the remarks were of such a magnitude that their inclusion prejudiced defendant, and thus should have been excluded by the trial court.” *Id.* (citation and quotation marks omitted).

“The scope of closing argument is governed by N.C.G.S. § 15A-1230(a) which provides that an attorney may ‘argue any position or conclusion with respect to a matter in issue.’” *State v. Whiteside*, 325 N.C. 389, 398, 383 S.E.2d 911, 916 (1989) (quoting N.C.G.S. § 15A-1230(a) [(2019)]). “[N.C. Gen. Stat. § 15A-1230] is in accord with the general rule that counsel is allowed wide latitude in his arguments to the jury.” *Id.* “Nonetheless, the permissible scope of counsel’s argument to the jury is not unlimited.” *Id.*

During a closing argument to the jury, an attorney may not become abusive, inject his personal experiences, express his personal belief as to the truth or falsity of the evidence or as to the guilt or innocence of the defendant, or make arguments on the basis of matters outside the record except for matters concerning which the court may take judicial notice.

N.C.G.S. § 15A-1230(a).

Closing arguments in criminal cases advising that the jury is the “conscience of the community” have been found to be proper. *State v. Bishop*, 346 N.C. 365, 396, 488 S.E.2d 769, 786 (1997) (“[The appellate courts] have repeatedly stated that it is

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proper to urge the jury to act as the voice and conscience of the community.”). It is true that prosecutors are required to act as both an impartial representative of the people and a zealous advocate for conviction. *State v. Scott*, 314 N.C. 309, 311, 333 S.E.2d 296, 297 (1985). However, “[i]t is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community.” *Id.* (citation omitted). The jury is “to act as the voice and conscience of the community . . . because the very reason for the jury system is to temper the harshness of the law with the commonsense judgment of the community.” *Id.* at 312, 333 S.E.2d at 298 (citation and quotation marks omitted).

In the instant case, the State made the following remarks over defendant’s objection during closing arguments:

[THE STATE]: . . . “Who protects our children when the adults in their lives abuse them?” And I say ours. I say ours because they are all of ours. It is our community. This is our community. As a jury, you sit as the voice of our community, and these are our kids. These are literally our community’s future, and you speak for them, and so the answer --

[DEFENSE COUNSEL]: Your Honor, we would move to strike.

. . . .

[DEFENSE COUNSEL]: We would object to the argument that they speak for the children, and I may -- may have misunderstood, but I would ask the jury be instructed they don’t speak for the children.

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[THE COURT]: Overruled.

[THE STATE]: . . . [T]he answer is you. That's the answer.
You protect them. You're the voice.

. . . .

[DEFENSE COUNSEL]: -- we would object to that.
They're not the voice of the children.

[THE COURT]: Overruled.

The State's remarks were a proper attempt to appeal to the jury's conscience by asking them to exercise their role and be a voice for the community. Nevertheless, defendant asserts that such remarks were improper and prejudicial because the State deliberately used the word "children" to suggest that the jury's role was to protect all abused children in child sex abuse cases. In support of his assertion of prejudice, defendant cites one of the cases we cite for the established traditions in the use of juries, *State v. Scott*. *See id.* However, *Scott* is distinguishable from the point defendant is attempting to make.

In *Scott*, the defendant was charged with driving under the influence of alcohol and driving too fast for conditions when he struck a vehicle traveling in the opposite direction. *Scott*, 314 N.C. at 310, 333 S.E.2d at 297. At trial, the State made the following remarks in closing argument:

Now, we often hear, we often read in the paper or hear on television or anything else, something that happens, there's a lot of public sentiment at this point against driving and drinking, causing accidents on the highway. And, you know, you read these things and you hear these

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things and you think to yourself, “My God, they ought to do something about that.”

. . . .

Well, ladies and gentlemen, the buck stops here. You twelve judges in Cumberland County have become the “they.”

Id. at 311, 333 S.E.2d at 297. The North Carolina Supreme Court said telling “the jury that ‘the buck stops here’ or that the jurors had become ‘judges’ . . . correctly informed the jury that for purposes of the defendant’s trial, the jury had become the representatives of the community.” *Id.* However, the Court went on to state

[t]he prosecutor fell into improper argument, however, when he emphasized to the jury that “there’s a lot of public sentiment at this point against driving and drinking, causing accidents on the highway.” This argument was improper because it *went outside the record* and appealed to the jury to convict the defendant because impaired drivers had caused other accidents.

Id. at 312, 333 S.E.2d at 298 (emphasis added). Further the Court held “that such statements could only be construed as telling the jury that the citizens of the community sought and demanded conviction and punishment of the defendant[]” and that by doing so, “[t]he State was asking the jury to lend an ear to the community rather than a voice.” *Id.* (alterations in original) (citations omitted). Again, these remarks in *Scott* are distinguishable from those in the instant case.

Here, the State did not direct the jury to consider evidence outside the record, including other child sex abuse cases, or urge them to base their decision on

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community concerns. The State did not attempt to sway the jury by being abusive, injecting personal experiences, or inserting personal beliefs. *See* 15A-1230(a). Instead, the State recalled the evidence presented before the jury, which included long term sexual abuse by a stepfather and evidence of physical abuse by a mother, and appropriately asked them to be a voice and conscience of the community, consistent with the jury's role. *See State v. Wardrett*, 261 N.C. App. 735, 745, 821 S.E.2d 188, 195 (2018) (holding "remarks by the prosecutor were proper because they involved commonly held beliefs and merely attempted to motivate the jury to come to an appropriate conclusion, rather than to achieve a result based on the community's demands."); *see also id.* ("A prosecutor can argue that a jury is the voice and conscience of the community, and may also ask the jury to send a message to the community regarding justice." (internal citation and quotation marks omitted)). Thus, we hold the trial court did not abuse its discretion, as the State's closing remarks were within the permissible scope of closing argument.

Even assuming *arguendo*, some portion of the challenged remarks could be considered impermissible, they could have no probable effect on the jury verdict. Defendant was indicted on thirteen charges involving child sexual abuse that occurred over a period of five years, twelve of which were decided by the jury. Defendant was found not guilty on two counts, and guilty on the remaining ten

counts.³ Clearly, the jury carefully evaluated the evidence. And, contrary to defendant's assertion that the entire case rested on the credibility of the victim, defendant's own testimony included an admission of touching Alice's breast when she was about twelve years old. This limited admission, along with defendant's acknowledgment of many of the facts (not including direct sexual assault) testified to by Alice, served to corroborate and enhance the credibility of Alice's testimony. The fact that defendant did not confess to the charged sexual assaults does not negate the credibility of the victim's testimony. In addition, testimony from Alice's grandmother, law enforcement officers, DSS workers, (including a therapist), and expert witnesses at SAFEchild, corroborated Alice's disclosure of a five-year pattern of sexual abuse from the time she was ten years old until she was fifteen, when she was forced to leave her home. The jury heard live testimony of all the witnesses as well as the videotaped interview, which contained significant details used by Alice to disclose much of the abuse. From this record, it is not probable a jury would have returned a different result even if the prosecutor's closing remarks were considered error. Therefore, defendant cannot show error, much less prejudicial error.

Accordingly, the trial court's ruling on defendant's objection is affirmed, and we find no error committed by the trial court.

NO ERROR.

³ See *supra* note 2.

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Judges ZACHARY and ARROWOOD concur.

Report per Rule 30(e).