IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-129

No. COA19-1146

Filed 6 April 2021

Catawba County, Nos. 14 CRS 5087–91, 16 CRS 2040–41

STATE OF NORTH CAROLINA

v.

RICKY DALE WALDROP SR.

Appeal by defendant from judgments entered 7 June 2019 by Judge George Cooper Bell in Catawba County Superior Court. Heard in the Court of Appeals 26 January 2021.

Attorney General Joshua H. Stein, by Special Deputy Attorney General John F. Oates, Jr., for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Sterling Rozear, for defendant.

DIETZ, Judge.

¶ 1 Defendant Ricky Dale Waldrop Sr. appeals from numerous convictions related to the sexual abuse of his children. On appeal, he challenges a series of statements made by the prosecutor at closing argument. As explained below, the trial court was well within its sound discretion to overrule Waldrop's objections to the portions of closing argument that Waldrop challenged at trial. Likewise, the portions Waldrop

failed to challenge at trial were not so grossly improper as to require the trial court to intervene on its own initiative. We therefore reject Waldrop's arguments and find no error in the trial court's judgments.

Facts and Procedural History

¶ 2 Defendant Ricky Dale Waldrop Sr. has three biological children, Abigail, Audrey, and Robert, and one stepdaughter, Danielle.[1] All four of the children reported that Waldrop committed acts of sexual misconduct against them.

¶ 3 Audrey testified that her father sexually abused her from the ages of ten or eleven to sixteen. She explained that Waldrop began by molesting and touching her inappropriately while watching pornography and touching himself. The abuse escalated as Waldrop began performing oral sex on Audrey and later raping her and penetrating her with objects, including sex toys. Waldrop performed oral sex on her twenty to thirty times and raped her at least fifty times. At one point, Audrey was sent home from school with a yeast infection.

¶ 4 Waldrop's other children also reported instances of abuse. Robert testified that Waldrop began sexually abusing him when he was nine years old. Waldrop showed Robert pornography, touched him, and used a sex toy on him, abusing him in this manner at least thirty to forty times. Waldrop raped Robert through anal intercourse

[1] We use pseudonyms to protect the identities of the complaining witnesses.

nine or ten times. The abuse ceased when Robert was physically able to fight off Waldrop, at around twelve years of age. Abigail testified that, when she was ten years old and after Audrey had left Waldrop's home, Waldrop exposed himself to her and used a sex toy in front of her.

¶ 5 Danielle, Waldrop's stepdaughter, testified that Waldrop began sexually abusing her when she was five years old. He touched her genitals two to three times a week until she was eleven years old, and he threatened to kill Danielle and her mother if she told anyone about the abuse.

¶ 6 Later in the children's lives, Audrey attempted suicide. Afterward, the siblings decided together to report Waldrop's actions. The State charged Waldrop with numerous sex offenses, including first degree rape, first degree sex offense, and taking indecent liberties with a child.

¶ 7 At trial, the children testified for the State and Waldrop testified in his own defense, denying the accusations. The jury found Waldrop guilty. Waldrop timely appealed.

Analysis

¶ 8 Waldrop argues that he is entitled to a new trial because the prosecutor made improper statements during closing argument. Waldrop objected to some of the challenged statements but not others.

¶ 9 When a defendant timely objects to statements during closing argument, the

standard of review on appeal is "whether the trial court abused its discretion by failing to sustain the objection." *State v. Jones*, 355 N.C. 117, 131, 558 S.E.2d 97, 106 (2002). When the defendant did not object to the challenged statements at closing argument, the standard of review on appeal involves a different, two-step inquiry: whether the statement was improper and, if so, whether the statement was so "grossly improper" that the "defendant's right to a fair trial was prejudiced by the trial court's failure to intervene." *State v. Huey*, 370 N.C. 174, 179–80, 804 S.E.2d 464, 469–70 (2017).

¶ 10 We review challenges to closing argument mindful that trial counsel "are allowed wide latitude in jury arguments and are permitted to argue the facts based on evidence which has been presented as well as reasonable inferences which can be drawn therefrom." *State v. Fisher*, 336 N.C. 684, 699, 445 S.E.2d 866, 874 (1994). Although counsel are given wide latitude to argue their case to the jury, a closing argument should "(1) be devoid of counsel's personal opinion; (2) avoid name-calling and/or references to matters beyond the record; (3) be premised on logical deductions, not on appeals to passion or prejudice; and (4) be constructed from fair inferences drawn only from evidence properly admitted at trial." *Jones*, 355 N.C. at 135, 558 S.E.2d at 108.

¶ 11 Waldrop first argues that the trial court erred by overruling his objection when the prosecutor told the jury that "[w]hen you come back out you're going to have to

look at them [Waldrop's children] in the front row and you're going to have to decide whether you want to tell them we believe you." Waldrop also challenges other, similar statements by the prosecutor including a statement that "you will have to look them in the eye and you can either tell them we believe you or we don't."

¶ 12 Waldrop contends that these statements were an improper appeal to passion or prejudice. We disagree. The evidence at trial consisted of the testimony of Waldrop's children, their family members, and Waldrop. Because the case turned entirely on the credibility of the witnesses, the State was entitled to highlight for the jury that it was, in essence, deciding which of two competing versions of testimony it believed. The trial court's decision to permit the statements in this context was a reasoned one, as the statements were the "type of vivid communication to the jury [that] falls within the realm of permissible hyperbole on the part of the State." *State v. Tart*, 372 N.C. 73, 84, 824 S.E.2d 837, 844 (2019).

¶ 13 Waldrop next argues that the trial court erred by overruling his objection to the prosecutor's argument that, when Audrey developed a yeast infection, it was "probably from being raped." He argues that the statement was not based on the record. Again, we disagree. During closing argument, trial counsel may argue the facts presented as well as the logical and reasonable inferences to be drawn from those facts. *State v. Fullwood*, 343 N.C. 725, 740, 472 S.E.2d 883, 891 (1996). Audrey developed a yeast infection during the time period when she claimed Waldrop was

raping her. The trial court was well within its sound discretion to determine that the prosecutor's argument was a logical and reasonable inference from the facts presented at trial.

¶ 14 Finally, Waldrop also challenges several portions of the closing argument to which he did not object during the trial. Waldrop argues that these statements by the prosecutor were so grossly improper that the trial court should have intervened on its own initiative. First, while referencing witnesses' inability to remember specific details from childhood, the prosecutor asserted that it was "not unlike when we talked about Disney World in jury selection," apparently in reference to a discussion during the jury *voir dire* about recalling memories from childhood. Waldrop contends that this was improper discussion of facts outside the record.

¶ 15 Second, the prosecutor made several statements about Waldrop and his defense, including that "[t]hat defense simply doesn't make sense" and "that's ultimately what you're going to decide, can you believe that man?" Waldrop contends that these statements were grossly improper because they expressed the prosecutor's "personal belief as to the truth or falsity" of Waldrop's arguments and were an attempt to shift the burden of proof from the State to Waldrop.

¶ 16 Lastly, Waldrop contends that the prosecutor made a number of "offensive personal references" about Waldrop, including, while addressing Waldrop's willingness to have Audrey taken into DSS custody, that "[t]hat's the kind of man he

is," and, at another point, arguing that "[i]t's not about whether this man's a racist or not. That's just kind of a [*sic*] who he is. You can see that. You kind of get an impression of who he really is, not how he presents himself." The mention of Waldrop's alleged racism was apparently a response to witness testimony implying that Waldrop had certain racial animus. Waldrop contends that these personal attacks fell so far outside the realm of permissible argument that they were grossly improper.

¶ 17 We reject Waldrop's argument that these comments, even considered together, were so grossly improper that they compelled the trial court to step in and address them. As this Court has recognized, when the trial court intervenes on its own initiative during closing argument, it does so despite recognizing "an argument which defense counsel apparently did not believe was prejudicial when he heard it." *State v. Martinez*, 251 N.C. App. 284, 290, 795 S.E.2d 386, 391 (2016).

¶ 18 This principle is particularly applicable here because Waldrop's counsel chose to object to various other portions of the closing argument. Thus, the trial court properly could have concluded that, although the statements might be objectionable, addressing them in the absence of an objection from defense counsel might inadvertently highlight issues or arguments to which counsel chose not to object for strategic reasons. Because these statements certainly are not the sort that rendered Waldrop's trial fundamentally unfair, our precedent does not permit us to second

guess the trial court's decision not to intervene and address them. *Huey*, 370 N.C. at 179–80, 804 S.E.2d at 469–70. We therefore hold that these statements were not so grossly improper that the trial court erred by failing to address them on the court's own initiative.

Conclusion

¶ 19 We find no error in the trial court's judgments.

NO ERROR.

Judges ARROWOOD and WOOD concur.

Report per Rule 30(e).