IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-163

No. COA20-380

Filed 20 April 2021

Burke County, No. 15 CRS 50878

STATE OF NORTH CAROLINA

v.

RICARDO SOLIS GARCIA

Appeal by defendant, by writ of certiorari, from judgment entered 1 February 2017 by Judge J. Thomas Davis in Burke County Superior Court. Heard in the Court of Appeals 10 March 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Erin E. Gibbs, for the State.

Joseph P. Lattimore for defendant-appellant.

ZACHARY, Judge.

¶ 1 Defendant Ricardo Solis Garcia appeals from a judgment entered upon a jury's verdict finding him guilty of statutory rape of a person who is 13, 14, or 15 years old, in violation of N.C. Gen. Stat. § 14-27.7A(a) (2015).[1] Defendant raises three

[1] N.C. Gen. Stat. § 14-27.7A was recodified as N.C. Gen. Stat. § 14-27.25 by 2015 N.C. Sess. Laws 460, 461, ch. 181, § 7.(a), effective 1 December 2015 and applicable to offenses committed on or after that date.

arguments on appeal: (1) that the trial court lacked subject-matter jurisdiction over Defendant's case because the victim was identified in the indictment only by her initials; (2) that the trial court committed plain error by permitting the jury to hear certain statements by a forensic interviewer, in a recorded interview with the victim, that amounted to impermissible witness vouching; and (3) that Defendant's trial attorney provided ineffective assistance of counsel by opening the door to testimony from a State's witness regarding the victim's credibility. We conclude that Defendant received a fair trial, free from error.

Background

¶ 2 In the winter of 2015, Defendant and P.G.,[2] age 13 at the time of the offense, were neighbors. Defendant and P.G.'s father knew each other, and P.G. occasionally visited Defendant's home and translated his mail.

¶ 3 At trial, P.G. testified to the following facts:

¶ 4 While P.G. was walking to her school bus stop in the early morning of 12 February 2015, Defendant drove up and told her to get into his car. She refused, but the interaction caused her to miss the bus, so she accompanied Defendant to his house. P.G. stayed at Defendant's house from around 7:15 a.m. until 2:00 p.m. P.G. testified that nothing inappropriate happened on 12 February; she and Defendant

[2] Consistent with the indictment and the parties' briefs, we refer to the minor victim by her initials to protect her privacy.

spent the day talking on his sofa. P.G. left Defendant's house and sat on a bench on her street until approximately 3:00 p.m., when she returned home. P.G. testified that on another day in February 2015, Defendant pulled up at her bus stop and asked her to get in his car, but she refused.

¶ 5 In the morning of 6 March 2015, P.G. walked to her bus stop. While she was waiting for the bus, Defendant drove by; P.G. recognized his car. Defendant then pulled up and offered to drive P.G. to school, which she declined. Defendant told her again that he would take her to school, and she got into the backseat of his car. However, after stopping for gasoline, Defendant drove to a motel. P.G. remained in the car while Defendant entered the motel office. When he exited the office, he instructed P.G. to get out of the car, and they entered a motel room, where Defendant closed the drapes, turned on the heater, and went into the restroom.

¶ 6 Defendant returned and directed P.G. to remove her clothes, but she refused. After pushing P.G. onto the bed and ordering her again to disrobe, Defendant removed her clothes and, in P.G.'s words, "told [her] to do sex with him." Defendant then extracted what P.G. described as a white "protector" from its blue packaging and put it on his penis. Next, Defendant "put his penis in [P.G.'s] vagina" and "tried to pick [her] leg up." When Defendant finished, he went to the bathroom, and P.G. sat on the bed. Defendant returned, lay down on the bed, and fell asleep; he slept for five or six hours while P.G. sat on the bed. When he awoke, Defendant told P.G. not to tell

anybody what had happened, or else he would "do something" to her family. He then drove her home.

¶ 7 Defendant also told P.G. to write a note to her school and "make an excuse up" to explain her absence. P.G. wrote a note that stated that she had been sick on 6 March, which she presented to school personnel on the next school day. Eventually, school officials questioned P.G.'s absence on 6 March, and her father asked P.G. what had happened. At first, she told her parents and school officials that she had spent the day with a friend. Later, however, she admitted that she had been with Defendant on 6 March.

¶ 8 School officials referred P.G. to law enforcement, and P.G. spoke with Morganton Public Safety officers. She gave the officers an overview of what happened on 6 March: that Defendant took her to a hotel, removed her clothes, had vaginal intercourse with her, and threatened her family. Sergeant Roger Tate referred P.G. to Southmountain Children and Family Services,[3] a child advocacy center. Rhonda Robbins, a forensic interviewer and victim's advocate, interviewed P.G. there on 25 March 2015.

¶ 9 Defendant also testified at trial regarding his version of the events of 6 March 2015. He testified that he was driving to a mechanic's shop when he received a

[3] At times, witnesses also refer to Southmountain Children and Family Services as the "Gingerbread House."

telephone call from a number that he did not recognize. The call was from P.G., who requested a ride to visit her uncles. Defendant picked her up at her house, and P.G. directed him to a hotel "where she was meeting her uncles[.]" He testified that when they arrived at the hotel, "she gave [him] $35 to pay for the hotel," which he then used to register. P.G. entered the hotel room, while Defendant waited outside by his car for about ten minutes. He then went to the hotel room and asked P.G. when her uncles would arrive, to which she responded that "her uncles weren't coming" but that her "boyfriend [was] coming." According to Defendant, P.G. told him, "Well, I want to be with you." Defendant then drove P.G. back to her house. Defendant denied having any sexual contact with P.G. or spending the day with her on 12 February 2015.

¶ 10 On 4 May 2015, a Burke County grand jury indicted Defendant for statutory rape of a person who is 13, 14, or 15 years old, in violation of N.C. Gen. Stat. § 14-27.7A(a). The indictment alleged that Defendant "unlawfully, willfully, and feloniously did engage in vaginal intercourse with P. G., a person of the age of 13 years."

¶ 11 The matter came on for trial during the 30 January 2017 criminal session of Burke County Superior Court before the Honorable J. Thomas Davis. The jury returned a verdict of guilty on 1 February 2017. The trial court entered judgment upon the jury's verdict and sentenced Defendant to an active term of 240 to 348

months in the custody of the North Carolina Division of Adult Correction. Defendant filed a petition for writ of certiorari on 14 February 2019, which this Court allowed on 1 March 2019.

Discussion

I. Subject-Matter Jurisdiction

¶ 12 Defendant initially argues that the trial court lacked subject-matter jurisdiction to enter judgment against him because, in the indictment, the alleged victim was identified by her initials, "P.G.," and not by her full name. We disagree.

¶ 13 A defendant may "challenge the facial validity of an indictment at any time[.]" *State v. White*, 372 N.C. 248, 250, 827 S.E.2d 80, 82 (2019) (citation omitted). We review the sufficiency of an indictment de novo. *Id.* Under de novo review, this Court "considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *State v. Biber*, 365 N.C. 162, 168, 712 S.E.2d 874, 878 (2011) (citation and internal quotation marks omitted).

¶ 14 "A valid bill of indictment is essential to the jurisdiction of the trial court to try an accused for a felony." *White*, 372 N.C. at 250, 827 S.E.2d at 82 (citation omitted). "An indictment is not facially invalid as long as it notifies an accused of the charges against him sufficiently to allow him to prepare an adequate defense and to protect him from double jeopardy." *State v. Haddock*, 191 N.C. App. 474, 476–77, 664 S.E.2d 339, 342 (2008).

¶ 15 This Court has previously addressed the issue of whether an indictment that uses initials to identify a victim is sufficient to impart subject-matter jurisdiction. In *State v. McKoy*, 196 N.C. App. 650, 675 S.E.2d 406, *disc. review denied*, 363 N.C. 586, 683 S.E.2d 215 (2009), we employed the tests outlined in *State v. Coker*, 312 N.C. 432, 435, 323 S.E.2d 343, 346 (1984), and *State v. Lowe*, 295 N.C. 596, 603, 247 S.E.2d 878, 883 (1978), to determine "(1) whether a person of common understanding would know that the intent of the indictments was to charge [the d]efendant with [the offense], and (2) whether [the d]efendant's constitutional rights to notice and freedom from double jeopardy were adequately protected by the use of the victim's initials." *McKoy*, 196 N.C. App. at 657, 675 S.E.2d at 411–12 (citing *Coker*, 312 N.C. at 435, 323 S.E.2d at 346; and *Lowe*, 295 N.C. at 603, 247 S.E.2d at 883).

¶ 16 Applying these tests, our Court in *McKoy* determined that the defendant had sufficient notice to prepare his defense because he provided law enforcement with two voluntary statements in which he admitted that he knew the victim, and because he "made no argument on appeal that he had difficulty preparing his case because of the use of 'RTB' instead of the victim's full name." *Id.* at 658, 675 S.E.2d at 412. In addition, the defendant did not argue that the use of the victim's initials placed him at risk of double jeopardy, where the victim testified at trial and identified herself in open court. *Id.* We noted that "[a]lthough the indictments would have been clearer had they alleged the victim's full name, they still 'named' the victim by using her

initials." *Id.* at 657, 675 S.E.2d at 411. We held that the indictments at issue were sufficient to meet the *Coker* and *Lowe* tests and were therefore sufficient to impart subject-matter jurisdiction on the trial court. *Id.* at 658, 675 S.E.2d at 412.

¶ 17 Here, as in *McKoy*, the arrest warrant served on Defendant listed the victim by her initials, P.G. P.G. and Defendant testified that they knew each other prior to the offense; they were neighbors. Furthermore, Defendant did not argue that "he had difficulty preparing his case because of the use of '[P.G.]' instead of the victim's full name. Thus, it appears Defendant was not confused regarding the identity of the victim, and therefore the use of '[P.G.]' in the indictment[ ] provided Defendant with sufficient notice to prepare his defense." *Id.* at 658, 675 S.E.2d at 412. Additionally, P.G. "testified at trial and identified herself in open court. [Hence], we find Defendant is protected from double jeopardy." *Id.*

¶ 18 Defendant does not contend that *McKoy* can be distinguished from the case at bar; instead, he argues that "[t]he holding of *McKoy* must yield to the logic of *White*[,]" which held that an indictment alleging a sex offense against a minor identified as "Victim #1" failed to establish jurisdiction in the trial court. 372 N.C. at 252, 827 S.E.2d at 83. Our Supreme Court in *White* reasoned that "to name someone is to identify that person in a way that is unique to that individual and enables others to distinguish between the named person and all other people." *Id.* at 252, 827 S.E.2d at 82. However, *White* discussed but did not overturn *McKoy*. *Id.* at 252, 827 S.E.2d

at 83 (addressing *McKoy*'s rule that an indictment is sufficient when the use of the victim's initials protects the defendant from double jeopardy and identifies the victim, and concluding that the use of "Victim #1" is insufficient).

¶ 19 We are therefore bound by *McKoy*'s holding and conclude that the indictment at issue was sufficient to impart subject-matter jurisdiction on the trial court.

II. Forensic Interview

¶ 20 At trial, the State presented the testimony of Ms. Robbins, a forensic interviewer employed by Southmountain Children and Family Services. Ms. Robbins testified regarding the protocol that she generally follows in conducting forensic interviews of children, as well as the specific circumstances of her interview with P.G. on 25 March 2015. The State offered into evidence the video recording of Ms. Robbins' interview of P.G. and published the same to the jury, but did not tender Ms. Robbins as an expert.

¶ 21 Defendant argues that the trial court committed plain error by permitting the jury to view Ms. Robbins' recorded interview of P.G., in which Ms. Robbins told P.G., "what happened is not your fault," because her statements amount to improper witness vouching—that is, they "were an improper expression of Ms. Robbins' 'subjective beliefs,' which amounted to an affirmation of P.G.'s claim[.]" Defendant concedes that he did not preserve this issue for appeal by lodging an objection before the trial court, either to the admission of the video or to the statements made in the

video; we therefore review his claim for plain error. N.C.R. App. P. 10(a)(4). We disagree that the statements "it's not your fault" and "what happened was not your fault" in the video recording amount to an impermissible expression on the part of Ms. Robbins to the jury that P.G.'s claims were true.

¶ 22 The standard for plain error is well settled: "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. Warden*, 376 N.C. 503, 506, 852 S.E.2d 184, 187 (2020) (internal citations and quotation marks omitted). We first, therefore, must determine whether the trial court erred.

¶ 23 Because "[i]t is fundamental to a fair trial that the credibility of the witnesses be determined by the jury[,]" *State v. Hannon*, 118 N.C. App. 448, 451, 455 S.E.2d 494, 496 (1995), "a witness may not vouch for the credibility of a victim[,]" *State v. Warden*, 268 N.C. App. 646, 650, 836 S.E.2d 880, 883 (2019), *aff'd*, 376 N.C. 503, 852 S.E.2d 184 (2020). "In 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. Chandler*, 364 N.C. 313, 318, 697 S.E.2d 327, 331 (2010) (citation omitted). In such prosecutions, "the same analysis applies to a witness who is a DSS worker or child abuse

investigator because, even if she is not qualified as an expert witness, the jury will most likely give her opinion more weight than a lay opinion." *State v. Crabtree*, 249 N.C. App. 395, 402, 790 S.E.2d 709, 714 (2016), *aff'd*, 370 N.C. 156, 804 S.E.2d 183 (2017); *see also* N.C. Gen. Stat. § 8C-1, Rule 701 (lay-witness "testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue").

¶ 24 Therefore, an expert witness, or a lay witness whose opinion the jury may give great weight, impermissibly "vouches" for the credibility of a child victim in a sexual abuse case when she gives her "opinion that sexual abuse has *in fact* occurred . . . absent physical evidence supporting a diagnosis of sexual abuse[.]" *Chandler*, 364 N.C. at 318, 697 S.E.2d at 331; *see also Crabtree*, 249 N.C. App. at 402, 790 S.E.2d at 714.

¶ 25 Our appellate courts have identified several forms of expert and lay testimony that can amount to such an impermissible opinion. At issue in *Warden* was testimony by a Child Protective Services investigator that her department "substantiated sexual abuse naming [the defendant] as the perpetrator." 268 N.C. App. at 648, 836 S.E.2d at 883. The investigator testified regarding what "substantiating" a case meant: "Part of our role is to determine whether or not we believe allegations to be true or not true. If we believe those allegations to be true, we will substantiate a case."

Id. at 648, 836 S.E.2d at 882. Our Court concluded that "[t]he trial court erred by allowing [the investigator] to vouch for the credibility of [the victim]'s allegations against [the d]efendant by testifying to the conclusion reached by DSS based upon those allegations." *Id.* at 651, 836 S.E.2d at 884 (citation omitted).[4]

¶ 26 Other examples of impermissible vouching have included testimony of an expert witness, based on interviews with the victim, that she was "a sexually abused child[,]" *State v. Grover*, 142 N.C. App. 411, 414, 543 S.E.2d 179, 181, *aff'd per curiam*, 354 N.C. 354, 553 S.E.2d 679 (2001); a pediatrician's categorization of a victim's statement as "clear disclosure or clear indication of abuse," *Crabtree*, 249 N.C. App. at 403, 790 S.E.2d at 715 (internal quotation marks omitted); an expert witness's statement that the clinic's "final conclusion was that [the victim] had given a very clear disclosure of what had happened to her and who had done this to her[,]" *id.*; and testimony that an expert witness "diagnosed [the victim] as having been sexually abused by [the] defendant" based on an interview with the victim, *State v. Delsanto*, 172 N.C. App. 42, 45, 615 S.E.2d 870, 872 (2005).

¶ 27 On the other hand, not all references to events that "happened" amount to a conclusion that sexual abuse in fact occurred. This Court in *State v. Worley* provided examples of such testimony that does not violate the rule against vouching. In that

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[4] On appeal at the Supreme Court, the State conceded error. *Warden*, 376 N.C. at 506, 852 S.E.2d at 187.

case, this Court concluded that,

> [i]n accordance with her area of expertise, it was permissible for [the expert witness] to testify that trauma-focused therapy would be recommended "because of a specific event that happened to the child." Likewise, [the expert witness] could properly comment as to how children like [the victim] are generally encouraged during a therapy session "to tell the whole story of what happened" to them.

State v. Worley, 268 N.C. App. 300, 308, 836 S.E.2d 278, 284–85 (2019), *disc. review denied*, 375 N.C. 287, 846 S.E.2d 285 (2020). Similarly, it was permissible for the expert witness to testify regarding how she typically conducts trauma-focused therapy: "We really *work on how this certain incident that happened* is going to impact [the victim's] feelings and her thoughts in the long run." *Id.* at 308, 836 S.E.2d at 285. Considering the expert testimony in context, our Court determined that,

> the phrase "this certain incident that happened" was not improper in context. This testimony was prompted by the State's question: "Do you ask specific questions about sexual acts?" The crux of the question related to [the expert witness]'s general practice and procedures when interviewing children. Neither the question nor [the expert witness]'s answer directly concerned [the victim] or the substance of her interview.

Id.

¶ 28 However, our Court also concluded that the expert witness did "improperly convey[ ] to the jury her opinion of [the victim]'s veracity" when she stated that the victim "really needs that extra support for trauma-focused [therapy] because of the

sexual abuse that she experienced" and "I believe [the victim]." *Id.* The Court found these statements to be "demonstrably different from the aforementioned general descriptions of trauma-focused therapy" and thus, inadmissible. *Id. Worley* makes clear that our task upon review of allegedly impermissible "vouching" statements is to review the challenged statements in the context in which the witness made them, consider what prompted the statements, and analyze the witness's purpose in making the statements. *See id.*

¶ 29 Here, evaluating them in the proper context, we conclude that Ms. Robbins' statements to P.G. during the interview do not amount to an impermissible vouching for P.G.'s credibility. During the interview, after P.G. had recounted the events of 6 March 2015, P.G. told Ms. Robbins that, before Defendant raped her, she avoided seeing him outside their homes because he told her she was "beautiful," which made her feel uncomfortable. Ms. Robbins responded, "You should always, always, always listen to your gut feeling. And this is not your fault. What happened is not your fault. You're just a kid, and he's an adult." Ms. Robbins also asked P.G. if her parents "[got] upset with" her when she told them what Defendant did to her, and P.G. told her that her parents punished her, told her that the rape "ruined [her] life forever," and that she would not "get a boyfriend one day." In response, Ms. Robbins told her, "You know, things happen, and what happened was not your fault. Okay? It was not your fault." She elaborated:

> Things like this happen sometimes, and no matter what anybody tells you, I'm telling you that it is not your fault. It wouldn't matter—no matter what, it's not your fault because you're only 13 years old, and you're a kid, and he's an adult. So it is not your fault. Um—it, it's not. It's just not. And sometimes it's hard for parents to understand things—and I think that, um, I think your parents are just worried about you and scared for you.

Defendant takes issue with Ms. Robbins' statements that the rape was not P.G.'s fault.

¶ 30 Reviewed in context, Ms. Robbins' statements do not amount to impermissible "*testimony regarding [her] conclusion" or opinion*. *See Warden*, 268 N.C. App. at 651, 836 S.E.2d at 884 (emphasis added) (citation omitted). The statements in the video are not the equivalent of an opinion by Ms. Robbins "that sexual abuse has *in fact* occurred . . . absent physical evidence supporting a diagnosis of sexual abuses[.]" *Chandler*, 364 N.C. at 318, 697 S.E.2d at 331.

¶ 31 The statements to which Defendant now objects were elicited by statements that P.G. made to Ms. Robbins during the interview. During the interview, P.G. confided that her parents had punished her and told her that the rape ruined her life forever—essentially, that her parents made her feel that the rape was her fault. Prompted by this disclosure, Ms. Robbins assured P.G. that "what happened was not [her] fault." Similarly, Ms. Robbins responded to P.G.'s statements that Defendant made her feel uncomfortable during their encounters prior to the rape by telling P.G.:

"You should always, always, always listen to your gut feeling. And this is not your fault. What happened is not your fault. You're just a kid, and he's an adult." We cannot agree that reassuring a child-victim—during a conversation with the child—to "listen to her gut" and that her rape has not "ruined her life forever" are equivalent to communicating a diagnosis or conclusion of sexual abuse to the jury. *See id.*; *see also Warden*, 268 N.C. App. at 648, 836 S.E.2d at 882.

¶ 32 Ms. Robbins testified that she has completed approximately 200 hours of training in "how to work with children and how to do a forensic interview that is neutral, fact-finding, and also correct for the child in the child's level[.]" She also testified that she has conducted over 800 forensic interviews of children during her career. Having reviewed the video footage, this Court notes that Ms. Robbins' interview of P.G. was, in fact, both neutral and fact-finding, and reflected her years of training and experience. Significantly, at no point during the interview did Ms. Robbins "diagnose" P.G. as having been sexually abused or describe her claims as "credible."

¶ 33 Having reviewed the entire recorded interview, we conclude that the statements that Ms. Robbins made to P.G. during an interview, a recording of which was played for the jury, did not amount to impermissible witness vouching. Ms. Robbins did not share an opinion *with the jury* "that sexual abuse has *in fact* occurred[,]" *State v. Stancil*, 355 N.C. 266, 266, 559 S.E.2d 788, 789 (2002) (per

curiam), or otherwise invade the province of the jury, *see State v. Kim*, 318 N.C. 614, 621, 350 S.E.2d 347, 351 (1986). Instead, Ms. Robbins responded to P.G.'s concerns regarding Defendant's behavior and her parents' punishment in a way that reflected her training and experience working with child-victims of physical and sexual abuse.

¶ 34 We therefore conclude that the trial court did not commit a fundamental error by permitting the jury to view a recording of Ms. Robbins' interview of P.G.

III. Ineffective Assistance of Counsel

¶ 35 Defendant raises two ineffective assistance of counsel ("IAC") claims on appeal.

> To prevail on a claim of IAC, a defendant must first show that his counsel's performance was deficient and then that counsel's deficient performance *prejudiced his defense*. Generally, to establish prejudice, a defendant *must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different*.

Crabtree, 249 N.C. App. at 406, 790 S.E.2d at 717 (quoting *State v. Allen*, 360 N.C. 297, 316, 626 S.E.2d 271, 286, *cert. denied*, 549 U.S. 867, 166 L. Ed. 2d 116 (2006)).

¶ 36 Defendant initially argues that his counsel was ineffective in failing to object to the admission of Ms. Robbins' statements. Because we have concluded that the admission of Ms. Robbins' statements was not error, we necessarily conclude that Defendant's counsel was not ineffective in failing to object to the same. Thus, Defendant cannot prevail on this claim because he cannot "show that his counsel's performance was deficient[.]" *Allen*, 360 N.C. at 316, 626 S.E.2d at 286.

¶ 37 Next, Defendant argues that his trial attorney rendered ineffective assistance of counsel when he "opened the door to the admission of Sergeant Tate's testimony concerning the credibility of P.G.'s accusation." We disagree and conclude that Defendant's counsel was not ineffective.

¶ 38 We review de novo claims of ineffective assistance of counsel. *State v. Wilson*, 236 N.C. App. 472, 475, 762 S.E.2d 894, 896 (2014).

¶ 39 The State presented the testimony of Morganton Public Safety Sergeant Roger Tate, who viewed Ms. Robbins' interview of P.G. On cross-examination, defense counsel asked Sgt. Tate, "[W]hen you watched the interview take place, did you have any reason to believe that [P.G.] was not being truthful about anything?" Sgt. Tate responded:

> Well, yes, sir. At first I, I thought she was -- may have been telling a lie or -- because she said -- and I know there was the language barrier. But she kept saying that he kept trying to open her legs, open her legs.
>
> And I was saying -- and I had the interviewer to ask if he was inside of her. She said he put his "privacy" inside of her "privacy".
>
> And I said, "If he was inside of her, how could he be trying to open her legs?"

On redirect examination, the prosecutor asked additional questions in order to clarify Sgt. Tate's earlier testimony:

> Q. [W]hat was her explanation . . . that relieved you of your doubt?

> A. She was saying that he -- it was hurting her and she kept trying to push him off. And when -- I kept remembering she was trying to push him back off of her. And then I think it was the conversation with the interviewer that it was determined that she was trying to keep him from going so deep inside of her.
>
> Q. And that -- She was trying to keep him from going so deep inside of her, because he was -- you mentioned this earlier -- that he was trying to pick her legs up?
>
> A. Yes.
>
> . . . .
>
> Q. Suffice it to say, at that point your, your objections were rel -- I mean, your doubts were relieved.
>
> A. Yes, sir, when I -- when I understood -- when it was understood that he was trying to push her legs back and it hurt her and she wanted to push him off, my doubts were totally relieved; because to me she knew nothing about sex or penetration, but she -- the way she explained it, it was hurting her, she wanted it -- she didn't want it that way. So my doubts were relieved.

¶ 40 Defendant contends that Sgt. Tate's statements that his "doubts were relieved" amount to witness vouching, and that defense counsel provided ineffective assistance when he opened the door to the improper statements by asking Sgt. Tate for his opinion of P.G.'s credibility. We need not decide whether Sgt. Tate's statements constituted improper vouching because Defendant has failed to demonstrate that his attorney's inquiry fell below an objective standard of reasonableness.

¶ 41 Our Supreme Court has noted that

> otherwise inadmissible evidence may be admissible if the door has been opened by the opposing party's cross-examination of the witness. Opening the door refers to the principle that where one party introduces evidence of a particular fact, the opposing party is entitled to introduce evidence in explanation or rebuttal thereof, even though the rebuttal evidence would be incompetent or irrelevant had it been offered initially.

State v. Baymon, 336 N.C. 748, 752–53, 446 S.E.2d 1, 3 (1994) (citation and internal quotation marks omitted). Conduct by defense counsel that leads "directly to introduction of evidence which . . . would not have been otherwise admissible" can constitute ineffective assistance of counsel where it meets the two *Strickland* factors: deficient performance and prejudice. *State v. Baker*, 109 N.C. App. 643, 648–49, 428 S.E.2d 476, 479–80, *disc. review denied*, 334 N.C. 435, 433 S.E.2d 180 (1993).

¶ 42 Nevertheless, "counsel is given wide latitude in matters of strategy, and the burden to show that counsel's performance fell short of the required standard is a heavy one for [a] defendant to bear." *State v. Roache*, 358 N.C. 243, 279, 595 S.E.2d 381, 405 (2004) (citation omitted). For that reason, "[w]e ordinarily do not consider it to be the function of an appellate court to second-guess counsel's tactical decisions." *State v. Warren*, 244 N.C. App. 134, 143, 780 S.E.2d 835, 841 (2015) (citation and internal quotation marks omitted), *disc. review denied*, 368 N.C. 688, 781 S.E.2d 483 (2016).

¶ 43 We therefore conclude that defense counsel's questions regarding whether Sgt.

Tate believed P.G.'s accusation amounted to reasonable trial strategy, in that P.G.'s credibility was a central theme to the State's case. Defense counsel strategically elicited testimony from Sgt. Tate that, at least initially, he found P.G.'s account to be unbelievable; it is evident that this inquiry was intended to undermine P.G.'s credibility. That Sgt. Tate was later able to clarify his meaning, both on cross and redirect examination, does not retroactively render defense counsel's strategy objectively unreasonable.

¶ 44 We therefore conclude that Defendant has not met his burden of proving that his counsel's performance was deficient. Accordingly, his ineffective assistance of counsel claims must fail.

Conclusion

¶ 45 For the reasons discussed above, we conclude that Defendant received a fair trial, free from error. We conclude that the indictment at issue was sufficient to impart subject-matter jurisdiction, that the trial court did not err by admitting impermissible vouching testimony, and that Defendant did not receive ineffective assistance of counsel.

NO ERROR.

Judges WOOD and JACKSON concur.

Report per Rule 30(e).