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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-632

Filed 15 August 2023

Mecklenburg County, Nos. 19CRS 236872-74

STATE OF NORTH CAROLINA

v.

TAIQUAN RODGERS, Defendant.

Appeal by defendant from judgment entered 7 December 2021 by Judge Robert C. Ervin in Mecklenburg County Superior Court. Heard in the Court of Appeals 10 May 2023.

*Attorney General Joshua H. Stein, by Assistant Attorney General Rebecca E. Lem, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Brandon Mayes, for the Defendant.*

DILLON, Judge.

Defendant Taiquan Rodgers appeals from a judgment entered upon a jury's verdict convicting him of first-degree burglary, larceny, and misdemeanor sexual battery in connection with a home invasion. The key evidence connecting Defendant to the crime was testimony from an expert matching Defendant's DNA with that of a

small sample found at the victim's home. On appeal, Defendant challenges the admissibility of the opinion testimony and otherwise, the sufficiency of the evidence on his sexual battery conviction. We conclude that Defendant received a fair trial, free of reversible error.

### I. Background

On the evening of 11 August 2019, T.L.<sup>1</sup> was asleep in bed with her two minor sons. She was awakened by someone touching and rubbing her right thigh and buttocks. When T.L. turned to see who was touching her, she saw the intruder leaving the room. The intruder fled before T.L. was able to get a good look at him.

Shortly thereafter, law enforcement arrived at the home and began collecting fingerprints and additional evidence. Although T.L. did not see the intruder's face, she was able to describe the intruder's height and frame to law enforcement.

The following day, T.L. noticed that her pocketbook and her sons' Xbox video games were missing.

Four DNA swabs were collected from surfaces at the victim's residence. The fourth swab was collected from the sash of a window thought to be the point of entry. Following analysis of the DNA swabs, Defendant was indicted on one count each of felony larceny after breaking and entering, first-degree burglary, and misdemeanor sexual battery.

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<sup>1</sup> We refer to the victim by her initials to protect her identity as a victim in a sexual crime case.

At trial, the Charlotte-Mecklenburg Police Department lab DNA analyst, testifying as an expert witness, opined that the fourth swab taken from the window sash contained “touch” DNA consistent with Defendant’s known DNA. On 7 December 2021, the jury found Defendant guilty of all charges. Defendant timely appealed.

## II. Analysis

Defendant makes two arguments on appeal, which we address in turn.

### A. Opinion Testimony

Defendant first argues that the trial court did not properly perform its gatekeeping function before allowing the State’s DNA analyst to opine regarding the similarities between the touch DNA found at the crime scene and Defendant’s DNA.

We review a trial court’s ruling on Rule 702(a) for abuse of discretion. *State v. McGrady*, 368 N.C. 880, 893, 787 S.E.2d 1, 11 (2016). The trial court “is afforded wide latitude of discretion when making a determination about the admissibility of expert testimony” and will be reversed “only upon a showing that its ruling was manifestly unsupported by reason and could not have been the result of a reasoned decision.” *State v. Bullard*, 312 N.C. 129, 140, 322 S.E.2d 370, 376 (1984); *State v. Riddick*, 315 N.C. 749, 756, 340 S.E.2d 55, 59 (1986).

Rule 702(a) of our North Carolina Rules of Evidence requires a trial court to perform a “three-pronged” analysis to determine the reliability of an expert’s testimony. Specifically, the trial court must determine whether:

- (1) The testimony is based upon sufficient facts or data.
- (2) The testimony is the product of reliable principles and methods.
- (3) The witness has applied the principles and methods reliably to the facts of the case.

N.C. Gen. Stat. § 8C-1, Rule 702(a) (2021).

The trial court has discretion in making this determination, and our Courts do not mandate any precise procedural requirements for how the trial court exercises its gatekeeping function. *McGrady*, 368 N.C. at 893, 787 S.E.2d at 11.

We conclude the DNA analyst was properly qualified by the trial court as an expert. Specifically, during her testimony, the DNA analyst described her educational and professional background, which included a master's degree in chemistry; her work for almost a decade as a criminalist; her examination during her career of thousands of DNA samples; her membership in professional organizations related to forensic science; her process for analyzing DNA samples; and the fact that her process of analyzing DNA is commonly accepted in the scientific community.

The DNA analyst then explained her analysis of the touch DNA found at the crime scene, and her comparison of that DNA with Defendant's known DNA. She explained that the touch DNA found at the crime scene was a small, partial sample. She also explained how the touch DNA sample was only 2.7 picograms, and that accepted protocol requires any sample below 250 picograms to be analyzed with "extreme caution". However, this protocol did not prohibit smaller samples from being

sufficient for analysis unless the sample was below 1 picogram.

The DNA analyst explained that a sample is then converted into an electropherogram, which is an image with peaks that represent each allele. She testified that in a male DNA profile, there are 24 locations (“loci”) for data. Out of these 24, three are sex-determinative. Thus, only the 21 non-sex-determinative loci are important to matching a DNA sample with an individual.

She testified that from the touch DNA found at the crime scene, three loci were missing data entirely, 11 contained “potentially missing data”, and seven were complete. She testified that because three loci were missing data, she determined the sample to be a “partial profile”. However, she testified that as long as at least seven loci had complete information, the Department’s Standard Operating Procedures (“SOP”) permit comparison of a partial profile to a known DNA standard.

The DNA analyst then testified that each loci is then examined to determine the amount of relative fluorescence units (“RFU”) present in each loci. She testified that the higher the peak in the graph, the more DNA is present. There are three types of thresholds applicable to this portion of DNA analysis, each of which are measured by the amount of RFU’s at each loci. First, the stochastic threshold distinguishes whether the DNA sample should be interpreted as a single-source profile or a mixture of DNA from more than one individual. The stochastic threshold for each allele was 350 RFU. Next, the analytical threshold is the minimum level where it is possible to determine if data is an allele. This threshold was 75 RFU. The

DNA analyst also utilized a lower analytical threshold, which is the admission value where allele peaks can be distinguished from non-allele peaks, which was 30 RFU.

The DNA analyst testified that for the seven loci with complete information, each allele ranged from a minimum of 77 RFUs to a maximum of 181 RFUs. Thus, although none of the loci met the stochastic threshold, each was above the analytical threshold.

The SOP states that if all alleles are below the stochastic threshold *and* there are indications of a second contributor below the analytical threshold, then the profile is uninterpretable. This is due to concerns regarding a possible second contributor affecting the peaks above the analytical threshold. Here, the DNA analyst did not testify about any alleles below the analytical threshold. Instead, she testified that although it was “possible” that there was a second contributor, she had no indication to believe there was. And as stated above, each of the seven complete loci had RFU amounts over the analytical threshold. On cross-examination, the analyst explained why she had no indication of the presence of another contributor:

I determined it to be of enough value that, even though the peaks are below stochastic, they're balanced, and so, that's also an indication if there's more than one individual present, as I was mentioning about a major and a minor, and different donors are contributing different amounts of DNA to a mixture, and because of that you will see the difference in the peak heights, and this profile had peak heights that were very balanced. And so, that's also an indication of a single donor. And there is another, you could say, threshold that was met. We refer to it [] as a peak height ratio, and that's the percentage of the balance, you

could say, of each of these peak heights. And so, when it goes below a certain percentage, then it's another indication of, perhaps this isn't -- these two peaks don't match up and don't go together, and that they could be a representation of two different individuals.

The DNA analyst testified that the probability of matching the DNA from a randomly chosen individual was one in 1.5 quadrillion. She also testified her opinion that Defendant's DNA was consistent with the touch DNA found at the crime scene.

We conclude that because the sample was complete enough to be properly analyzed by the analyst, the trial court did not commit reversible error by determining the DNA analyst's opinion testimony was reliable under Rule 702, thereby allowing the jury to determine the weight which should be given to her opinion.

Defendant argues, however, that the trial court abused its discretion when it denied Defendant's request for *voir dire* and subsequent offer of proof. Rule 702 does not *require* a trial court, acting as gatekeeper, to allow the defense attorney to conduct a *voir dire* of an individual being tendered as a DNA expert before performing its gatekeeping function. A trial court, though, may allow such *voir dire*, and such *voir dire* may be helpful in providing additional information for the trial court to consider in performing its gatekeeping function. However, after careful review of the record, we conclude that the trial court did not abuse its discretion in performing its gatekeeping function without the benefit of a *voir dire* by Defendant's counsel. We note Defendant cites no cases and we have searched and found no cases supporting

the proposition that *voir dire* is mandatory given the facts of this case. Rather, the general rule is that the conduct of the trial is within the discretion of the trial judge, which will be upheld on appeal absent an abuse of discretion. *State v. Branch*, 288 N.C. 514, 527, 220 S.E.2d 495, 505 (1975).

Of course, if a defense counsel who is not allowed to *voir dire* were to elicit new information regarding the lack of reliability of the expert during cross-examination, the trial court can certainly revisit its gatekeeping decision. For example, if it is revealed during cross-examination that the expert is a close relative of the victim, the trial court could rescind its prior gatekeeping decision and order the expert's prior testimony struck or, perhaps, declare a mistrial. However, here, there was nothing during cross-examination which would have rendered the trial court's gatekeeping determination as an abuse of discretion, and Defendant's counsel did not otherwise request the trial court to revisit its discretionary decision based on the information elicited during cross-examination.

#### B. Defendant's Motion to Dismiss

Defendant argues that the trial court erred when it denied Defendant's motion to dismiss the charges of larceny after breaking and entering and sexual battery for insufficiency of the evidence.

To survive a motion to dismiss, there must be substantial evidence of each essential element of the crime and that the defendant is the perpetrator. *State v. Winkler*, 368 N.C. 572, 574, 780 S.E.2d 824, 826 (2015). When reviewing the evidence



to determine whether it is substantial enough to survive a motion to dismiss, evidence must be considered in the light most favorable to the State, and the State is entitled to every reasonable inference from the evidence. *Id.* at 574, 780 S.E.2d at 826. “Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.” *State v. Miller*, 363 N.C. 96, 99, 678 S.E.2d 592, 594 (2009) (citations and internal quotation marks omitted). “Whether the State presented substantial evidence of each essential element is a question of law,” which we review *de novo*. *State v. Phillips*, 365 N.C. 103, 133-34, 711 S.E.2d 122, 144 (2011) (citation omitted).

First, we consider whether there was sufficient evidence to submit the charge of larceny to the jury. A defendant is guilty of larceny if the State proves that he “(a) took the property of another; (b) carried it away; (c) without the owner’s consent; and (d) with the intent to deprive the owner of his property permanently.” *State v. Jones*, 369 N.C. 631, 633, 800 S.E.2d 54, 56 (2017).

Defendant relies on the two following cases to support his contention that the trial should have dismissed the charge of larceny. First, in *State v. Campbell*, our Supreme Court reversed the defendant’s larceny conviction under the rationale that “evidence of a defendant’s mere opportunity to commit a crime is not sufficient to send the charge to the jury.” *State v. Campbell*, 373 N.C. 216, 221, 835 S.E.2d 844, 848 (2019). There, the only evidence linking the defendant to the larceny was that he was present inside the premises for several hours during a four-day period in which sound

equipment was stolen from inside a church. However, in *Campbell*, it was undisputed that several other persons had access to the interior of the church during the four-day period.

Here, however, the only people that had been inside T.L.'s home around the time the pocketbook and video games went missing, were law enforcement officers. Additionally, the defendant in *Campbell* had been on the church premises *four days prior* to the time the equipment was found missing. *Id.* at 225, 835 S.E.2d at 850. Here, T.L. noticed that her pocketbook and son's video games were missing the *morning after* the break-in. Thus, the number of persons that had been present at the scene of the crime, as well as the window of time that the larceny could have occurred, are much smaller here than in *Campbell*.

In the second case, *State v. Moore*, the defendant sexually assaulted a store clerk and left her in the bathroom. *State v. Moore*, 312 N.C. 607, 608-09, 324 S.E.2d 229, 230 (1985). Two hours after the assault, the clerk noticed her wallet was missing from behind the cashier's counter at the front of the store. *Id.* at 609-10, 324 S.E.2d at 231. Our Supreme Court reversed the defendant's conviction for robbery because there was about a 45-minute period during which the store was unattended, the back door was unlocked, and anyone in the vicinity could have entered and taken the wallet. *Id.* at 612-13, 324 S.E.2d at 232-33. Thus, *Moore* is distinct because the robbery occurred in a store that was left unattended and accessible to the public, whereas here, the larceny occurred in a private home where only T.L., law

enforcement, and Defendant had access.

Therefore, when we view the evidence regarding the timing and location of the larceny in the light most favorable to the state, we conclude that there was sufficient evidence to submit the charge of larceny after breaking and entering to the jury. *Winkler*, 368 N.C. at 574, 780 S.E.2d at 826.

Last, we consider whether there was sufficient evidence that Defendant committed sexual battery.

Pursuant to N.C. Gen. Stat. § 14-27.33,

(a) A person is guilty of sexual battery if the person, for the purpose of sexual arousal, sexual gratification, or sexual abuse, engages in sexual contact with another person:

(1) By force and against the will of the other person; or

(2) Who has a mental disability or who is mentally incapacitated or physically helpless, and the person performing the act knows or should reasonably know that the other person has a mental disability or is mentally incapacitated or physically helpless.

N.C. Gen. Stat. § 14-27.33 (2021).

Here, Defendant argues that there was insufficient evidence that the touching occurred for purposes of “sexual gratification”. However, the State presented evidence showing that (1) T.L. woke up to someone rubbing her buttocks and thighs, and (2) she described the touching as “feeling on her sexually”. Because “the element of acting for the purpose of sexual arousal, sexual gratification, or sexual abuse may be inferred ‘from the very act itself’”, we conclude that the State presented sufficient

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evidence to support sending the charge of sexual battery to the jury. *See In re S.A.A.*, 251 N.C. App. 131, 135, 795 S.E.2d 602, 605 (2016).

III. Conclusion

For the reasons discussed above, we conclude that the trial court did not abuse its discretion when it allowed the DNA analyst to testify regarding the consistency of Defendant's known DNA with the sample found at the scene of the crime. We also conclude that the trial court did not abuse its discretion when it denied Defendant's request to *voir dire* the witness or to provide an offer of proof prior to allowing the DNA analyst to render her opinion. Finally, we conclude that the trial court did not err when it denied Defendant's motion to dismiss the charges for insufficiency of the evidence. Therefore, we conclude that Defendant received a fair trial, free of reversible error.

NO ERROR.

Judges WOOD and STADING concur.

Report per Rule 30(e).