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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-44

Filed 15 October 2024

Gaston County, Nos. 21 CRS 54917-21

STATE OF NORTH CAROLINA

v.

THOMAS ANTHONY MARTIN

Appeal by defendant from judgment entered 30 May 2023 by Judge David A. Phillips in Gaston County Superior Court. Heard in the Court of Appeals 14 August 2024.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Tamika L. Henderson, for the State.

Mark Montgomery for defendant-appellant.

THOMPSON, Judge.

Thomas Anthony Martin (defendant) appeals from a judgment entered upon a jury's verdict finding him guilty of statutory rape. Defendant argues that the trial court erred in allowing the State's witness to impermissibly vouch for the alleged victim, or that defendant received ineffective assistance of counsel due to his attorney's failure to object to the allegedly impermissible vouching. After careful

review, we discern no error.

I. Factual Background and Procedural History

Defendant is the father of the alleged victim (minor). In 2017, the minor moved to Gaston County with defendant and his new wife, her stepmother. Shortly thereafter, DSS opened an investigation into the home due to, *inter alia*, the minor's truancy from school. The minor was ultimately removed from defendant's home and placed in foster care in 2021, wherein she disclosed the allegations regarding defendant to her foster mother. The minor's foster mother subsequently reported the allegations to the minor's social worker.

On 5 December 2022, defendant was indicted upon a true bill of indictment by a Gaston County Grand Jury for five counts of statutory rape of a child fifteen years of age or younger. On 22 May 2023, the matter came on for trial in Gaston County Superior Court. On 30 May 2023, a jury found defendant guilty of all five counts of statutory rape. Pursuant to the jury's verdict, the trial court sentenced defendant to 483 months minimum to 684 months maximum in the custody of the North Carolina Division of Adult Correction. Defendant entered timely oral notice of appeal at trial.

II. Discussion

On appeal, defendant alleges that the trial court "erred or committed plain error in allowing the State to characterize [the minor]'s accusation as a 'disclosure.'"

We do not agree.

A. Standard of review

At the outset, we note that defendant did not object to the use of the word “disclosure” by the witness at trial. Consequently, we apply a plain error standard of review. Under a plain error standard, “a defendant must demonstrate that a fundamental error occurred at trial.” *State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012). “To show that an error was fundamental, a defendant must establish prejudice—that, after examination of the entire record, the error had a probable impact on the jury’s finding that the defendant was guilty.” *Id.* (internal quotation marks and citation omitted).

B. Vouching

Generally, “[t]he admission of opinion testimony intended to bolster or vouch for the credibility of another witness violates N.C. Gen. Stat. § 8C-1, Rule 701.” *State v. Harris*, 236 N.C. App. 388, 403, 763 S.E.2d 302, 313 (2014). Indeed, an “opinion that a complainant has endured sexual abuse, absent physical evidence, is impermissible vouching as to the complainant’s credibility.” *State v. Betts*, 377 N.C. 519, 524, 858 S.E.2d 601, 605 (2021). Similarly, our Supreme Court has held that it is “reversible error when experts have testified that the victim was believable, had no record of lying, and had never been untruthful.” *State v. Aguillo*, 322 N.C. 818, 822, 370 S.E.2d 676, 678 (1988).

However, in *State v. Betts*, our Supreme Court explicitly held that “[a]n expert witness’s use of the word ‘disclose,’ standing alone, does not constitute impermissible vouching as to the credibility of a victim of child sex abuse, *regardless how frequently*

used, and indicates nothing more than that a particular statement was made.” *Betts*, 377 N.C. at 525, 858 S.E.2d at 605–06 (emphasis added).

Here, as in *Betts*, defendant argues that the witness’s testimony constituted improper vouching because the witness repeatedly used the word “disclosure” to describe what the minor had told the witness during the minor’s physical examination. However, as the State astutely notes in its appellate brief, “[t]he term ‘disclosure’ in this context simply conveyed the act of revealing information without implying any endorsement of the truthfulness of [the minor’s] statements regarding the sexual abuse. Its use remained neutral and was devoid of any suggestion of opinion regarding the veracity of the” statements.

We agree with the State’s characterization of the witness’s usage of the term “disclosure” in this context. Here, the use of the term disclosure simply conveyed the act of sharing information; there is no indication that, in this case, the usage of the word “disclosure” was intended to bolster or vouch for the credibility of another witness, in violation of N.C. Gen. Stat. § 8C-1, Rule 701. For this reason, we conclude that the trial court did not commit *plain error* in allowing the witness to characterize the minor’s statements to the witness as disclosures—akin to an “accusation,” an “allegation,” or an “assertion”— as opposed to impermissible vouching, wherein the witness usurps the role of the jury by testifying that the victim’s statements are “believable,” the victim “had no record of lying,” or the victim “had never been untruthful.” *Aguallo*, 322 N.C. at 822, 370 S.E.2d at 678.

C. Ineffective assistance of counsel

Alternatively, defendant contends that “counsel was ineffective for not adequately objecting to the vouching.” Again, we do not agree.

“To 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.” *State v. Allen*, 360 N.C. 297, 316, 626 S.E.2d 271, 286 (2006). “Deficient performance may be established by showing that counsel’s representation fell below an objective standard of reasonableness.” *Id.* (internal quotation marks and citation omitted). “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.” *Id.* (internal quotation marks and citation omitted). “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* (internal quotation marks and citation omitted).

Here, defendant alleges that his counsel was ineffective for not adequately objecting to the alleged vouching via the witness’s use of the word “disclosure.” However, as noted above, our Supreme Court has explicitly held that “use of the word ‘disclose,’ standing alone, does not constitute impermissible vouching as to the credibility of a victim of child sex abuse, *regardless how frequently used*, and indicates nothing more than that a particular statement was made.” *Betts*, 377 N.C. at 525, 858 S.E.2d at 606 (emphasis added). Consequently, we conclude that defense

counsel's performance was not so deficient, that is, counsel's representation did not fall below an objective standard of reasonableness when he failed to object to the admission of the word "disclosure" at trial.

III. Conclusion

We conclude that the trial court did not plainly err in allowing the State's witness to characterize the alleged victim's statements as a disclosure while the witness testified at trial, and that defendant did not receive ineffective assistance of counsel. For the aforementioned reasons, we discern no plain error.

NO PLAIN ERROR.

Judges TYSON and STADING concur.

Report per Rule 30(e).