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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-189

Filed 5 November 2024

Cleveland County, No. 21 CRS 52056

STATE OF NORTH CAROLINA

v.

ANTHONY MOSES ARNOLD

Appeal by Defendant from judgment entered 24 May 2023 by Judge W. Todd Pomeroy in Cleveland County Superior Court. Heard in the Court of Appeals 8 October 2024.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Justin Isaac Eason, for the State.

Joseph P. Lattimore for the Defendant.

WOOD, Judge.

Anthony Moses Arnold (“Defendant”) appeals from a judgment entered upon a jury verdict finding him guilty of statutory sexual offense with a child by an adult, sexual act by a substitute parent or custodian, and indecent liberties with a child. On appeal, Defendant raises two unpreserved issues, including the trial court’s failure to provide an unrequested jury instruction and the trial court’s admission of a law

enforcement officer's corroborative evidence. For the reasons discussed below, we hold Defendant received a fair trial free from error.

I. Factual and Procedural Background

Defendant and Mother married in 2017 and resided in Georgia. Mother was previously married and had two children from that marriage, ZG¹ and her sister. Defendant adopted both daughters and they referred to him as “Dad.” The family relocated to North Carolina in 2018. Defendant and Mother had two children during their marriage, a son born in 2019, and a son born in 2020. Defendant financially provided for the family while Mother stayed home with the children. Mother eventually returned to work, but worked in the evening after Defendant came home from his job. During this time, Mother also homeschooled ZG during the day. Her curriculum included, *inter alia*, lessons on human anatomy. Mother educated ZG on this subject beginning in the fifth grade by using a book titled “Children’s Human Body Encyclopedia.”

In April of 2021, Mother learned that Defendant was having an affair with a woman located in a different state. Mother found photos of the other woman on Defendant’s phone and spoke to her directly about her relationship with Defendant. Mother confronted Defendant about the affair and demanded a divorce. According to Mother, an argument ensued, and Defendant then placed his hands on her and told

¹ A pseudonym is used to protect the identity of the juvenile pursuant to N.C. R. App. P. 42(b).

her that he would kill her. As the argument continued, ZG intervened and stated that Defendant had put his penis in her mouth. Mother immediately stopped arguing with Defendant, instructed ZG not to say anything else, and told Defendant to leave the house, but he refused. Subsequently, Mother left the home with ZG, went to the police department, and spoke with Melanie Martin, an administrative lieutenant. Mother filed a report that day, on 29 April 2021, about her altercation with Defendant. Mother also reported what ZG stated during the argument and informed the police that a similar, unreported incident occurred when they lived in Georgia. ZG spoke with Matthew Sadler, a detective with the Cleveland County Sheriff's Office who handles child sexual assault cases. Throughout law enforcement interviews and investigation, and later during trial testimony, the following was revealed.

One night while Mother was at work, sometime between January and March of 2021, Defendant entered ZG's bedroom with a scarf. Defendant instructed ZG to stand up and turn around. He then blindfolded her with the scarf. The scarf was one that ZG used in her hair and was thick enough that she could not see through it. ZG told Defendant that she needed to go to the bathroom, but Defendant did not let her go. Defendant then placed his hands on her shoulders and sat ZG down at the edge of her bed. Defendant told ZG to open her mouth, stuck his "private part" in her mouth, and "rub[bed] it against [her] teeth to open [her] mouth wider." ZG stated that she knew it was Defendant's penis because of what she learned in her anatomy book, as well as from changing her brothers' diapers. Defendant rubbed it "in-and-

out” of her mouth for approximately fifteen to twenty minutes, until ZG heard him grunt and she felt a liquid in her mouth. She spit out the substance on her bed and later observed that the substance was white. Thereafter, Defendant told her “not to talk to [her] brothers rudely again” and beat her hands with his belt. She stated that she never previously told anyone what had happened that night because she was scared Defendant would beat her because he had previously hit her with a belt when she got in trouble. At the time, ZG was ten years old.²

As Mother had previously informed law enforcement, a similar event reportedly occurred when ZG was seven years old and living in Georgia. At that time, ZG’s grandmother was visiting Mother and Defendant, and it was shortly after they married. ZG’s grandmother privately shared with Mother information that ZG told her: that Defendant hit her on the hand, covered her face, and did “things of that nature.” When confronted, Defendant denied the entire situation and told Mother that ZG’s grandmother influenced ZG to tell a false story because her grandmother and Defendant had gotten into an argument the prior day. After that incident, according to Mother, ZG was not comfortable around Defendant, seemed “timid” with him, and their relationship was noticeably different from that day forward.

² Defendant’s indictment and the trial transcript testimony indicate that ZG was ten-years old at the time of the offense. On the trial court’s “Judicial Findings and Order for Sex Offenders – Active Punishment” it found that ZG was nine-years old at the time of the offense. This discrepancy, of whether ZG was nine or ten-years old, is irrelevant to the charged offenses.

On 1 June 2021, Defendant was indicted for one count of statutory sex offense with a child by an adult, one count of incident liberties with a child, and one count of sexual act by a substitute parent or custodian. Defendant's matter came on for trial at the 22 May 2023 session of superior court. At trial, ZG testified about the conduct leading to the indicted charges and the incident that allegedly had occurred in Georgia. Mother testified about ZG's disclosure of the events, as well as her perspective of ZG's behavior and her relationship with Defendant. Matthew Saddler, the detective that handled ZG's case, testified about the investigation and authenticated the recorded footage of his interview with ZG so it could be played for the jury. Melanie Martin, who also assisted in the investigation, testified about Mother's reporting of the offense. Lastly, Defendant testified on his own behalf. He stated that he and Mother got into an argument because he stayed at the home of a female colleague during a work trip to Chicago. After the argument, Mother left the house, and he was later served with a warrant for assaulting Mother. Defendant denied all of ZG's allegations and stated that he never touched her inappropriately.

Following the close of evidence, the trial court conducted a charge conference to address the jury instructions. Specifically, the trial court conversed with the parties about how to instruct the jury on the testimony regarding the testimony about the incident in Georgia. The trial court and the parties discussed and ultimately agreed on the permissible purpose of the evidence and the respective instruction to

the jury. Neither party raised an objection to any of the instructions. The trial court instructed the jury as follows:

Evidence has been received tending to show that at a previous time in Georgia the defendant was accused of committing an act against the alleged victim, [ZG]. This evidence was received solely for the purpose of showing the identity of the person who could have committed the crime charged in this case, if it was committed.

If you believe this evidence, you may consider it, but only for the limited purpose for which it was received. You may not consider it for any other purpose.

On 24 May 2023, the jury convicted Defendant on all three charges. The trial court sentenced Defendant to an active sentence of 300 to 420 months of imprisonment on the statutory sex offense with a child by an adult charge. The trial court then consolidated the convictions for incident liberties with a child and sexual act by a substitute parent or custodian into an active sentence of 25 to 39 months of imprisonment to run consecutively to the first sentence imposed. Additionally, Defendant was ordered to register as a sex offender and to enroll in satellite-based monitoring for ten years upon his release from imprisonment. At sentencing, Defendant gave oral notice of appeal in open court.

II. Analysis

Defendant argues: (1) the trial court plainly erred in not instructing the jury to disregard the evidence about the alleged prior incident in Georgia; and (2) the trial court plainly erred in allowing Officer Martin to relate what Mother said to the officer

about ZG's detailed allegations to Mother, as a means of corroborating ZG's testimony.

Defendant failed to raise an objection at trial, thereby failing to preserve his issues for appeal. We review Defendant's unpreserved arguments under the plain error standard. Plain error review "places a much heavier burden upon the defendant than that imposed . . . upon defendants who have preserved their rights by timely objection." *State v. Walker*, 316 N.C. 33, 39, 340 S.E.2d 80, 83 (1986). Under this standard, "[i]t is the rare case in which an improper instruction will justify reversal of a criminal conviction when no objection has been made in the trial court." *State v. Odom*, 307 N.C. 655, 660-61, 300 S.E.2d 375, 378 (1983) (citation omitted). It is applied in the "exceptional case" and must be applied "cautiously." *Id.* (citations omitted). Our Supreme Court in *Lawrence* articulated the well-established plain error standard. It requires a defendant to "demonstrate that a fundamental error occurred at trial." *State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012) (citation omitted). For an error to be considered a fundamental error, a defendant must show prejudice, which requires "that, after examination of the entire record, the error had a probable impact on the jury's finding that the defendant was guilty." *Id.* (cleaned up). Stated differently, "absent the error the jury probably would have reached a different verdict." *Id.* (citation omitted). "[T]he error will often be one that seriously affects the fairness, integrity or public reputation of judicial proceedings." *Id.* (cleaned up).

A. Jury Instructions

Defendant first argues that the trial court erred when it instructed the jury on the evidence showing that “at a previous time in Georgia [] [D]efendant was accused of committing an act against the alleged victim, [ZG].” Defendant asserts the trial court plainly erred because it failed to “give a required instruction removing the highly prejudicial insinuation of prior sexual misconduct from the jury’s consideration altogether.” Defendant cites to *Haskins* in which this Court held, “other crimes, wrongs, or acts evidence is relevant only if the jury can conclude by a preponderance of the evidence that the extrinsic act occurred, and that the defendant was the actor.” *State v. Haskins*, 104 N.C. App. 675, 679, 411 S.E.2d 376, 380 (1991) (cleaned up). Further, when determining whether to admit the evidence, the trial court must find that the defendant committed the extrinsic act, and that evidence must be substantial. *Id.* at 680, 411 S.E.2d 376, 380. If the evidence is not substantial, “the trial court must, if the evidence has been presented in the presence of the jury, *instruct the jury to disregard the evidence.*” *Id.* at 680, 411 S.E.2d 376, 380–81 (citations omitted) (emphasis added). Defendant argues that if the trial court had engaged in such analysis pursuant to *Haskins*, it would have provided an instruction to the jury to disregard the evidence.

Defendant did not object either before or after the State presented testimony concerning a prior incident involving Defendant and ZG while they resided in Georgia. Defendant also did not object to the jury instructions or offer an alternative

instruction. *See State v. Reber*, 386 N.C. 153, 157, 900 S.E.2d 781, 786 (2024) (Discussing the importance of a timely objection and that preservation by objection “serves crucial functions in our justice system.”). Thus, we must determine whether the trial court’s failure to instruct the jury to disregard the evidence about the incident in Georgia was a “grave error” that “resulted in a miscarriage of justice.” *Reber*, 386 N.C. at 158, 900 S.E.2d at 786 (citations omitted).

Defendant asserts this high standard is met and that the error was inherently prejudicial, because the jury’s verdict was based on the credibility of the witnesses. Defendant argues the State presented no witnesses that observed the alleged sexual abuse, no physical evidence, and no expert testimony. Additionally, Defendant asserts that he contested ZG’s allegations with his own testimony that the acts did not occur. Furthermore, Defendant points to specific testimony he contends undermined ZG’s credibility: that ZG witnessed Defendant and Mother in an argument and Mother was visibly upset; that ZG stated a week prior that “nothing had happened” with Defendant; and that ZG changed her story the following day, that the sexual abuse did occur, after she spoke with Mother.

We cannot conclude the trial court’s limiting instruction to the jury that the evidence about Georgia could only be considered “for the purpose of showing the identity of the person” rather than instructing the jury to “disregard the evidence” had a probable impact on the jury’s verdict. The prosecutor asked ZG if “anything like this ever happened before” to which ZG stated, “yes . . . I was 7 and I was in

Georgia.” Mother similarly testified that ZG confided to her grandmother about what happened in Georgia. In addition to this testimony to which Defendant did not object and which was subject to cross examination by Defendant, there was substantial evidence of the charged conduct presented to the jury. The jury viewed footage of ZG’s interview with law enforcement, where she detailed sexual acts by Defendant on her. ZG’s testimony at trial was consistent with her statements to law enforcement. She gave a descriptive narrative of what occurred, including the color, length, and thickness of the scarf used to blindfold her; where Defendant was positioned in relation to her; her awareness of what was occurring because of what she learned in her anatomy book; how Defendant moved “in-and-out” and “rub[bed] it against [her] teeth to open [her] mouth wider;” and that eventually she felt a “liquid” in her mouth, which was “bitter” and appeared “white” in color.

In light of this evidence, even if the trial court should have provided the jury with an instruction to disregard the testimony regarding a prior incident alleged to have occurred in Georgia, Defendant cannot establish such error amounts to plain error. We cannot conclude such an instruction would have swayed the jury’s verdict, after hearing a ten-year-old child testify in explicit detail to the sexual acts Defendant committed on her. Further, “the duty of the jury is to weigh a witness’ credibility.” Defendant had the opportunity to question and examine each witness. *State v. Carter*, 198 N.C. App. 297, 306, 679 S.E.2d 457, 462 (2009). The testimony the jury heard about Defendant’s prior act was minimal when compared to the testimony elicited

from ZG about the charged offenses. Accordingly, Defendant has not met his burden under the plain error standard. The trial court did not plainly error by failing to instruct the jury to disregard the evidence about the alleged prior incident in Georgia.

B. Officer Martin's Testimony

Defendant next argues the trial court plainly erred when it allowed Officer Martin to testify about Mother's initial report to law enforcement. Officer Martin took Mother's report at the police department. At trial, the State asked Officer Martin "what specifically did [Mother] tell you about what her daughter said?" Prior to Officer Martin's answer, the trial court intervened *sua sponte*, to provide a limiting instruction to the jury:

Members of the jury, when evidence has been received tending to show that at an earlier time a witness made a statement which may be consistent or may conflict with testimony at this trial, you must not consider such earlier statement as evidence of the truth of what was said at that earlier time because it was not made under oath at this trial. If you believe that such earlier statement was made and that it is consistent or does conflict with the testimony of the witness at this trial, then you may consider this together with all other facts and circumstances bearing upon the witness's truthfulness in deciding whether you will believe or disbelieve the witness's testimony at this trial.

Following the instruction to the jury, Officer Martin provided the following testimony:

Okay. So what [Mother] came in and told me that -- that she was physically assaulted, and then that she had explained that her daughter had revealed some information. I'm going to refer to my notes so that I can give you exactly what I wrote down.

After the altercation occurred, he had left the residence. Her daughter confessed that [Defendant] had sexually assaulted her a month ago at the residence. She said -- she said that [ZG] told her that [Defendant] had put a cheetah-print wrap over her eyes and told her to open her mouth. [Defendant] put something in her mouth, and [ZG] knew the object by the shape to be his penis. [Defendant] moved it around in her mouth and then told [ZG] to hold her hand out. [Defendant] then slapped [ZG] in the hand with his penis.

Thus, the jury was permitted to consider whether Officer Martin's testimony was consistent or conflicted with the testimony of ZG and Mother. Again, Defendant did not object before or after the evidence was presented; rather, the trial court intervened *ex mero motu* to provide an instruction. *See Reber*, 386 N.C. at 157, 900 S.E.2d at 786 ("A preservation requirement 'prevents parties from allowing evidence to be introduced or other things to happen during a trial as a matter of trial strategy and then assigning error to them if the strategy does not work.'" (citation omitted)).

Consistent with the plain error analysis discussed *supra*, Defendant cannot show that admission of this testimony had a probable impact on the jury's verdict. Officer Martin's testimony did not reveal new information, as ZG and Mother had already testified about what had occurred. Other parts of the officer's testimony concerned law enforcement reporting procedures. At no time did Officer Martin provide her opinion or conclusion on Defendant's charged conduct. Considering the entire record, to the exclusion of Officer Martin's testimony, the jury would have contemplated the same information. With the inclusion of Officer Martin's testimony,

the jury was tasked with determining whether Mother's initial report to law enforcement was consistent or conflicted with ZG's trial testimony. Thus, the testimony was limited in scope, for the sole purpose of witness credibility. For these reasons, Defendant is unable to show that he was prejudiced by the alleged error. Defendant failed to satisfy his burden of showing "absent the error the jury probably would have reached a different verdict." *Lawrence*, 365 N.C. at 518, 723 S.E.2d at 334. We hold the trial court did not err, much less plainly err, when it allowed Officer Martin to testify about Mother's initial report to law enforcement.

III. Conclusion

For the foregoing reasons, we hold the trial court did not plainly err in failing to instruct the jury to disregard the evidence about the alleged prior incident in Georgia. We further hold the trial court did not plainly err in allowing Officer Martin to testify about Mother's initial report to law enforcement, as a means of corroborating ZG's testimony. Defendant's alleged errors do not constitute "grave errors" that exist "only in the exceptional case." *Reber*, 386 N.C. at 158, 900 S.E.2d at 786. Accordingly, we hold the trial court did not plainly err, and Defendant received a fair trial free from error.

NO ERROR.

Judges ARROWOOD and STADING concur.

Report per Rule 30(e).