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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-457

Filed 5 February 2025

Wake County, Nos. 21CR211824-910 21CR211825-910 21CR211826-910

STATE OF NORTH CAROLINA

v.

LUIS ARTURO CUELLAR AGUILAR

Appeal by defendant from judgment entered 16 August 2023 by Judge Claire V. Hill in Wake County Superior Court. Heard in the Court of Appeals 15 January 2025.

Attorney General Jeff Jackson, by Assistant Attorney General Narcisa Woods, for the State.

Thomas, Ferguson & Beskind, LLP, by Kellie Mannette, for the defendant-appellant.

TYSON, Judge.

Luis Arturo Cuellar Aguilar (“Defendant”) appeals from the jury’s guilty verdicts and the judgments entered thereon for convictions of five counts of indecent liberties and two counts of sexual offense with a child. Our review discloses no error.

I. Background

Mercedes was born on 1 June 2004, and she had turned five years old in 2009. *See* N.C. R. App. P. 42(b) (pseudonyms used to protect the identity of minors). She lived in Apex, North Carolina, with her mother, Elizabeth Sanchez (“Mother”).

When Mercedes and Mother moved to Apex, Mother did not own a car. Mother worked at a Chick-Fil-A restaurant, where she met Defendant’s wife. Defendant drove his wife and picked up Mercedes’ Mother to and from work, because Defendant’s wife and Mother worked the same shifts. Mercedes and Mother socialized with Defendant and his wife outside of work hours, and the two families grew close.

Mother believed Defendant’s relationship with Mercedes was a platonic father-daughter relationship. From the time Mercedes was five until she turned twelve years old, Defendant would often babysit Mercedes while Mother was at work. Mercedes spent the night at Defendant’s house two to three times a month. When Mercedes turned twelve, she told her mother she no longer needed a babysitter and refused to visit Defendant’s home again. Mercedes never revealed to Mother the reason she did not want to visit Defendant’s home.

When Mercedes was about fourteen or fifteen years old, she told her friend, Gabby, she had been sexually abused by a family friend. Mercedes later told another one of her friends, Madelyne, during a FaceTime call, that Defendant had “sexually touched” her vagina with his hand. Madelyne asked Mercedes if she was still in contact with “him.” Mercedes told Madelyne she had not seen Defendant in two or

three years. Madelyne testified Mercedes appeared nervous and distressed during the conversation. Madelyne encouraged Mercedes to share the information with her mother.

Defendant contacted Mother on 21 July 2021. He told Mother he had opened his own business and asked for Mercedes to help him send some emails. Mother agreed, and Defendant said he would go to their home to discuss the details. When Mother told Mercedes Defendant was planning to visit their home and needed help, Mercedes agreed, “thinking that [she] could just get it done with and never have to see him again.” Evidence tended to show Mercedes was “very anxious” in the days leading up to Defendant’s visit.

On the day Defendant was scheduled to come to Mother’s house, Mercedes grew fearful her Mother would go to work and leave her alone with Defendant. Mercedes feared “this time, instead of touching [her], he would rape [her].” Mercedes told Mother she had something important to tell her. Mother noticed Mercedes was visibly shaking and asked what was wrong. Mercedes told Mother that Defendant had been touching her since she was a child. Mercedes further said Defendant had touched her vagina with his fingers from the time she was approximately five or six years old until she was eleven to twelve years old. She alleged the abuse would happen every time Mother would take Mercedes to Defendant’s home.

Mother immediately got into her car and started driving to Defendant’s house. She repeatedly called Defendant’s wife’s phone, but no one answered. She decided to

drive to the Apex Police Department. At the police department, Mother told the receptionist her daughter had just told her she had been sexually abused. She then spoke with Officer F. A. Guevara (“Officer Guevara”).

Officer Guevara testified she was dispatched to Apex Police Department to assist a Spanish speaker on 21 July 2021. Upon arrival, Officer Guevara spoke with Mother. Mother was crying and reported her daughter had just reported and accused Defendant of sexually abusing her. Mother told Officer Guevara the purported abuse had occurred whenever she had dropped Mercedes off at Defendant’s home, which was once or twice a month. As this was a report of a sexual offense, Officer Guevara forwarded her report to Detective Aimee Miller (“Det. Miller”) with the Apex Police Department’s Special Victims Unit.

On 27 July 2021, Mercedes and Mother met with Det. Miller. Det. Miller interviewed Mother first. During the interview, Mother provided the following information. Mother had worked with Defendant’s wife for ten years at a Chick-Fil-A restaurant, and she would drop Mercedes off at Defendant’s home when she needed childcare. Mother recalled Mercedes began displaying unexplained behavioral changes when she was eight or nine years old, such as nightmares and waking up in the middle of the night screaming and crying. She also noticed Mercedes had become reluctant to see Defendant, although Mother did not know why.

Mother explained Mercedes burst into tears on the day Defendant was supposed to visit their home, and Mercedes had told her Defendant had repeatedly

touched her when she was younger. At trial, Det. Miller testified Mother was very upset during the interview and unaware of the alleged abuse until 21 July 2021.

Det. Miller also interviewed Mercedes. Det. Miller explained the interview was being recorded. Mercedes told Det. Miller Defendant began touching her private parts when she was five or six years old, and the touching had occurred two to three times per month until she was eleven or twelve years old. Mercedes gave Det. Miller detailed accounts of the sexual abuse she had endured and identified Defendant as the perpetrator.

Defendant was indicted for six counts of indecent liberties, five counts of sexual offense with a child, and one count of statutory sexual offense with a child by an adult. Mercedes, Mother, Det. Miller, Officer Guevara, and Madelyne testified at trial.

At trial, Mercedes positively identified Defendant as being the person who had sexually abused her. Mercedes testified the first time Defendant had sexually abused her was during an unplanned sleepover at his house. Mercedes was in bed lying between Defendant and his wife, and his wife turned over to go to sleep. She recalled Defendant “put his hands down [her] pants. And I asked him to stop, but he wouldn’t, so I just laid there. And I remember he was breathing very heavily in my ear.” She further testified he touched her vagina with his index finger.

Mercedes explained, “I knew it was wrong, and it didn’t feel right, which is why I asked him to stop. But given that he was someone that I looked up to and I trusted and he wouldn’t stop, I just assumed that it was something that was supposed to be

happening[.]” This continued for ten to fifteen minutes before Defendant stopped and went to sleep. Mercedes testified Defendant repeatedly touched her any time they were left alone. Mercedes testified the abuse occurred from the time she was five years old until she was twelve.

Mercedes also testified when she was seven or eight years old, she went to Crabtree Valley Mall with Mother, Defendant, and his wife. During that shopping trip, she was eventually left alone with Defendant, and he took her to a store to purchase clothing. After picking out a few items, they went into a fitting room so she could try them on. Defendant insisted on going into the fitting room with her. Mercedes testified:

So, we went [to shop for clothes,] and I picked out a few things to try on. And he came into the fitting room with me. And he gave me a shirt and he was like, “Try it on.” And I gave him a look of confusion because I didn’t want him to be in the fitting room with me while I was changing.

And when he saw that I looked at him this way, he looked back at me and almost – he said it almost as if I had disrespected him, and he was like, “[Mercedes], do you think I would ever do anything to hurt you?” And so, hearing that and hearing him almost upset, I said no and I started to change in front of him.

...

I was just very confused, because everything in me was telling me that this wasn’t right and that he wasn’t supposed to be in the fitting room with me. But he was telling me that it was okay and that I could trust him.

Mercedes testified she had traveled to the beach with Defendant and his wife

when she was about eight or nine years old. His wife, who was pregnant at the time, did not go into the water, so Defendant took Mercedes into the water. Mercedes remembered he had carried her into deep waters and began rubbing her vagina over her bathing suit. Mercedes testified, “I was scared, because I didn’t want this to be happening to me. But I also knew that I couldn’t do anything in that circumstance. I had to just wait it out, because I couldn’t swim away. I really couldn’t do anything.”

Mercedes further testified about another occasion when she was nine or ten years old, and she was over at Defendant’s home babysitting his daughter. When his daughter fell asleep, Defendant showed Mercedes a video of a man showering in the locker room, and he “dropped his soap.” Defendant explained it was funny, but Mercedes did not understand nor find it humorous. Defendant also showed Mercedes images of naked women, including a picture of a woman with her legs spread open and another woman was performing oral sex on her.

While showing Mercedes these images, Defendant explained them to Mercedes. Mercedes testified she “was very confused on why I was being shown this, because I didn’t really understand. And I remember I asked him to stop showing me them because I simply just wasn’t interested in seeing it. And he was like, ‘No,’ he’s like, ‘but you need to learn about this.’” Mercedes testified Defendant’s roommate walked in at some point, and Defendant slammed the laptop shut. Mercedes recalled feeling angry and confused because “he’s telling me that it’s okay and that it’s something he’s supposed to be showing me and something I’m supposed to learn, but

he's also telling me that I can't tell anyone else, and the second his roommate walked in, he closed the laptop."

Mercedes further testified she was babysitting Defendant's daughter when Mercedes was in the sixth grade. Once his daughter fell asleep, Defendant started unbuckling Mercedes' pants and touched her vagina with his fingers. Mercedes recalled, "But this time, like, I knew that it was wrong. I knew that it shouldn't have been happening. So, I pushed him away, and he looked at me confused. And I remember I just went to the bathroom and I started sobbing."

Mercedes also testified she was afraid of revealing the sexual abuse to anyone. She testified that she was afraid her Mother would feel betrayed, because she had not told her earlier. Mercedes testified she was also concerned about Defendant's daughter, whom she had babysat and was very attached to. Mercedes testified she did not "want her to have to grow up with an image of her father like this and have to grow up without her father in general," as Mercedes had.

The jury convicted Defendant of five counts of indecent liberties with a child and two counts of sexual offense with a child and acquitted him of the remaining charges. The trial court imposed an active term of 256 to 317 months of imprisonment. Defendant's term was in the presumptive range, and he was sentenced as a prior record level I offender. Defendant entered oral notice of appeal in open court.

II. Jurisdiction

Jurisdiction lies in this Court pursuant to N.C. Gen. Stat. §§ 7A-27(b) and 15A-1444(a) (2023).

III. Issues

Defendant presents two arguments on appeal. He first argues the trial court abused its discretion by excluding relevant evidence showing Mercedes had a motive to falsely accuse him. Defendant next argues the trial court committed plain error by allowing the State to discuss the age of Defendant's wife, implying Defendant had a sexual desire to date young women. In the alternative, Defendant argues his counsel at trial provided ineffective assistance of counsel ("IAC") by failing to object.

IV. Cross-Examination

A. Standard of Review

"Although cross-examination is a matter of right, the scope of cross-examination is subject to appropriate control in the sound discretion of the court." *State v. Kowalski*, 270 N.C. App. 121, 126, 839 S.E.2d 443, 447 (2020) (citation omitted). "[T]he scope of cross-examination is largely within the discretion of the trial judge, and his rulings thereon will not be held in error in the absence of a showing that the verdict was improperly influenced by the limited scope of the cross-examination." *State v. Woods*, 307 N.C. 213, 221, 297 S.E.2d 574, 579 (1982).

This Court "review[s] [a] trial court's decision to admit the evidence pursuant to Rule 403 for an abuse of discretion." *State v. Peterson*, 361 N.C. 587, 602, 652 S.E.2d 216, 227 (2007) (citation omitted).

“An abuse of discretion results when the trial court’s ruling is manifestly unsupported by reason or is so arbitrary it could not have been the result of a reasoned decision.” *State v. Whaley*, 362 N.C. 156, 160, 655 S.E.2d 388, 390 (2008) (citation and internal quotation marks omitted).

B. Analysis

Defendant argues he should have been allowed to cross-examine Mercedes concerning her motive to falsely accuse him of committing sexual offenses against her to obtain a U-visa. A U-visa is a visa available to immigrants who are the victims of serious crimes and who cooperate with law enforcement in the investigation or prosecution of those crimes. *See* 8 C.F.R. § 214.14.

“In all criminal prosecutions, every person charged with crime has the right to be informed of the accusation and to confront the accusers and witnesses with other testimony[.]” N.C. Const. art. I, § 23. North Carolina courts traditionally allow wide-ranging latitude during cross examination as an expansive interpretation of a defendant’s rights under the Confrontation Clause. *State v. Rush*, 340 N.C. 174, 186, 456 S.E.2d 819, 826 (1995) (“Counsel is given wide latitude and has the right and duty to cross-examine vigorously a defendant who takes the stand in his own defense.”); N.C. Const. art. I, § 23. *See generally State v. Gregory*, 291 N.C. App. 617, 626, 896 S.E. 2d 205, 212 (2023).

Our Rules of Evidence permit a witness to be “cross-examined on any matter relevant to any issue in the case, including credibility.” N.C. Gen. Stat. § 8C-1, Rule

611(b) (2023). Notwithstanding the prior rule, relevant evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” N.C. Gen. Stat. § 8C-1, Rule 403 (2023).

Defendant argues the trial court prejudiced his constitutional and statutory right to vigorous cross-examination and abused its discretion in limiting his trial counsel’s cross-examination of Mercedes. He asserts the trial court committed prejudicial error by preventing Defendant’s counsel from asking Mercedes questions about her purported motive to allege Defendant had committed sexual offenses against her in order to obtain a U-visa. When Defendant’s counsel asked if Mercedes and Mother had discussed a U-visa, the State immediately objected on grounds of relevance.

The trial court excused the jury, and Defendant’s counsel offered the following argument:

[DEFENDANT’S COUNSEL]: Your Honor, in order to obtain a U visa, one of the requirements is you have to be a victim of a crime. If you apply for a U visa and you provide documentation that you’ve been a victim of a crime, you can go forward with an application to get a U visa that allows you to stay in the United States for a number of years. And it’s later applied for lawful permanent residence, and then, in turn, perhaps citizenship after that.

So, it would go to motive or –

THE COURT: Motive for what?

[DEFENDANT'S COUNSEL]: False allegation.

The trial court inquired of the State about whether Mercedes or Mother had obtained a U-visa. The State explained a U-visa had been obtained in 2016, but it had been “applied for years and years before” this investigation began. The State further explained, “the U visa that they applied for in 2016 was not related to this case whatsoever. It was a completely different case.” The trial court ruled: “I’ll allow questions outside the presence of the jury, but I don’t know that I’m going to allow this testimony in front of the presence of the jury.”

Defendant’s counsel asked Mercedes on *voir dire* several questions about her current immigration status and whether Mother had ever discussed applying for a U-visa with Mercedes. Mercedes explained she knew very little about U-visas: “I know that my mom applied for one when I was a minor, but that’s all I know.” When asked about the process of applying for a U-visa and whether she had to report she was a victim of a crime, Mercedes stated: “Like I said, my mom applied. And since I was a minor, I was under her, so I don’t know much about the process.”

The trial court found and concluded: “All right. The objection is sustained at this point. I will not – based on her limited knowledge and the fact that the application allegedly occurred in 2016, before the [accusations] to her mother, the objection is sustained in the [c]ourt’s discretion.”

Defendant has failed to show the trial court prejudicially erred. *Kowalski*, 270

N.C. App. at 127-28, 839 S.E.2d at 447; *Woods*, 307 N.C. at 220-21, 297 S.E.2d at 579; *Peterson*, 361 N.C. at 607-08, 652 S.E.2d at 227; *Whaley*, 362 N.C. at 160, 655 S.E.2d at 390. The trial court allowed Defendant to *voir dire* Mercedes regarding her knowledge of U-visas and when she had received a U-visa.

Her answers to those questions revealed she knew very little about the process. Mother had obtained a U-visa, which extended to Mercedes as a minor, many years before Mercedes spoke with law enforcement officers about her encounters with Defendant. Defendant's argument is overruled. *Id.*

V. Character Evidence

A. Standard of Review

Defendant concedes his counsel failed to object under Rule 404(b) when the State was asking questions about Defendant's wife's age. In a criminal action, when a defendant fails to properly preserve an issue for appellate review with a timely request, objection, or motion to the trial court, the error may still be reviewed for plain error in certain limited circumstances, including the admission of expert testimony. *See State v. Hammett*, 182 N.C. App 316, 320, 642 S.E.2d 454, 457 (2007). *See also State v. Koiyan*, 270 N.C. App 792, 794-95; 841 S.E.2d 351, 353 (2020).

Plain error applies only "in extraordinary cases where, after reviewing the entire record, it can be said the claimed error is a fundamental error, something so basic, so prejudicial, so lacking in its elements that justice cannot have been done." *State v. Barden*, 356 N.C. 316, 348, 572 S.E.2d 108, 130 (2002) (internal quotation

marks and citations omitted). A defendant must meet a significantly heavier burden than that placed upon a defendant who preserved their rights *via* timely objection at trial.

“To establish plain error, a defendant must demonstrate (i) that a different result probably would have been reached but for the error or (ii) that the error was so fundamental as to result in a miscarriage of justice or denial of a fair trial.” *Hammett*, 182 N.C. App at 320, 642 S.E.2d at 457 (internal quotation marks and citations omitted).

B. Analysis

Defendant argues the trial court plainly erred by allowing the State to question whether Defendant’s wife was “14 or 15” years old when they had started dating. Defendant argues this information was inadmissible under Rule 404(b) because, “[t]he sole purpose of this evidence was to demonstrate [Defendant] has a sexual desire for young girls.”

Under Rule 404(b) of the North Carolina Rules of Evidence, “[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith.” N.C. R. Evid. 404(b) (2023). This evidence may, however, be admissible for other purposes, “such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity” *Id.*

The determination of whether the trial court properly admitted evidence under N.C. R. Evid. 404(b) involves a two-step analysis. First, is the evidence offered for

“some purpose other than to show that Defendant has the propensity to commit the type of offense for which he is being tried?” *State v. Houseright*, 220 N.C. App. 495, 499, 725, S.E.2d 495, 448 (2012) (internal citations omitted). Second, is the evidence relevant? *Id.*

Here, the State relied upon a police report, which listed Defendant’s wife’s date of birth as 20 February 1989. During cross examination by the State, Defendant testified his wife’s birthday was 20 February 1989. Defendant also testified their relationship had begun in 2005. Had the State’s theory been that Defendant’s wife was fourteen or fifteen years old when she began dating Defendant, this information may have been relevant. Later, when Defendant’s wife was called as a witness, she testified she had been born in 1986, not 1989. She also testified she began dating Defendant in 2009, although she met Defendant at the end of 2005. After learning this, the State presented no additional evidence of prior crimes, wrongs, or acts by Defendant towards his wife.

Defendant, quoting *State v. White*, argues the trial court committed plain error by allowing questions about Defendant’s wife’s age, because this evidence “tends only to show the propensity of the defendant to commit sexual acts against young female children, a purpose for which the evidence cannot be admitted.” *State v. White*, 135 N.C. App. 349, 354, 520 S.E.2d 70, 74 (1999).

Presuming, *arguendo*, the admission of this testimony was error, the State presented other substantial evidence of Defendant’s guilt. Defendant cannot show

the admission of this evidence rises to the level of plain error. *Hammett*, 182 N.C. App at 320, 642 S.E.2d at 457. Mercedes informed multiple friends that a family friend had repeatedly touched her inappropriately over many years, and one of those friends testified at trial. These conversations with her friends occurred before Mercedes had informed her Mother or had met with law enforcement officers.

Mercedes also testified regarding the multiple instances Defendant had touched her vagina. She recalled specific details concerning the times, places, and manners of those occasions. Mother testified Mercedes had refused to be alone with Defendant, and Mercedes had nightmares around the same time she refused to be alone with Defendant. Mother also testified regarding Mercedes' refusal be left alone with Defendant after age 12, or to meet with Defendant at their house. Defendant's argument is without merit.

C. Ineffective Assistance of Counsel

Defendant's ineffective assistance of counsel arguments fail for the same reasons. *See State v. Braswell*, 312 N.C. 553, 562, 324 S.E.2d 241, 248 (1985) (explaining a successful ineffective assistance of counsel claim requires "showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment" and "the deficient performance prejudiced the defense") (quoting *Strickland v. Washington*, 466 U.S. 668, 687, 80 L. Ed. 2d 674, 693 (1984)).

To establish prejudice, a "[d]efendant must show that there is a reasonable

probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694, 80 L. Ed. 2d at 698. Defendant has failed to demonstrate any of his counsel's purported errors prejudiced him or could have affected the outcome of the proceeding. Defendant's argument is overruled. *Id.*

VI. Conclusion

The trial court did not abuse its discretion by prohibiting Defendant from questioning Mercedes in the presence of the jury about her alleged motives in obtaining a U-visa. The trial court did not commit plain error by allowing the State to inquire about Defendant's wife's age, which was rebutted by his wife's testimony. Defendant received a fair trial, free from prejudicial errors he preserved or argued. We discern no error or plain error in the jury's verdicts or in the judgments entered thereon. *It is so ordered.*

NO ERROR.

Judges ZACHARY and FLOOD concur.

Report per Rule 30(e).