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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-657

Filed 2 April 2025

Hoke County, Nos. 17 CRS 051516, 051660

STATE OF NORTH CAROLINA

v.

WILLIAM JUNIOR MCBRYDE, Defendant.

Appeal by Defendant from judgments entered 11 June 2023 by Judge Michael A. Stone in Hoke County Superior Court. Heard in the Court of Appeals 27 February 2025.

*Attorney General Jeff Jackson, by Special Deputy Attorney General Justin Isaac Eason, for the State.*

*Jackie Willingham for Defendant.*

GRIFFIN, Judge.

Defendant William Junior McBryde appeals from the trial court's judgments entered following jury verdicts finding Defendant guilty of two counts of indecent liberties with a child. Defendant argues the trial court erred by allowing a medical examiner to testify that the alleged victim's symptoms were consistent with characteristics of sexual abuse. We hold the trial court did not err.

## **I. Factual and Procedural Background**

This case arises from instances of sexual assault against a minor child, Aria.<sup>1</sup> The evidence at trial tended to show as follows:

In the summer of 2017, Aria went to live with her paternal grandmother and Defendant, her paternal step-grandfather, because her mother needed financial assistance caring for her. Aria was twelve years old. Aria's mother lived with Aria's maternal grandparents and Aria's four siblings. Aria stayed with her paternal grandmother and Defendant on weekdays and would visit her mother and siblings on the weekends. Aria did not like living separately from her mother.

Aria's behavior noticeably changed after she moved in with Defendant. She became distant and aggressive towards her male family members. This behavior appeared related to time spent at Defendant's home but dissipated once Aria returned to live with her mother.

In September 2017, Aria attended a birthday party over a weekend at her maternal grandparents' house. Defendant came to pick Aria up and take her back to his home. Aria became upset, cried, hid, and insisted that she did not want to leave. Aria's mother asked Aria why she was upset, and whether Defendant had touched her in various sexual ways. Aria responded that Defendant "was doing nasty stuff to

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<sup>1</sup> We use a pseudonym for ease of reading and to protect the identity of the juvenile. See N.C. R. App. P. 42(b).

[her] and that [she] didn't want to go back" to Defendant's house, but did not otherwise elaborate at that time.

Law enforcement from the Hoke County Sheriff's Office and Raeford Police Department investigated Aria's complaints and conducted videoed interviews with Aria and her mother. Aria also underwent medical examinations at Cape Fear Hospital and Southern Regional Area Health Education Center. Aria repeatedly attested that Defendant had touched her inappropriately on her breasts, vagina, and/or anus on multiple occasions.

Aria explained that, beginning in June or July of 2017, Defendant would call her into his bedroom while he was wearing only underwear. Defendant would then push her onto the bed and put his penis inside her vagina. On the first occasion, Defendant told Aria that he was "getting [her] ready for the real world." Defendant did this roughly once a week over the following two to three months, when he and Aria were alone in his home. On at least one occasion, Defendant assaulted Aria in her bedroom. Aria also reported that Defendant put his penis in her anus and had also touched her vagina and her breasts with his hands, at least once. The last instance of sexual assault occurred after a cookout on 2 September 2017. She waited until September to tell someone about the assaults because Defendant told her not to tell anyone, and she was worried no one would believe her.

On 3 December 2018, a grand jury indicted Defendant on two counts of statutory rape of a child by an adult, two counts of statutory sexual offense with a

child by an adult, and two counts of taking indecent liberties with a child. The trial court conducted a jury trial in which the State presented testimony and video evidence from Aria, Aria's mother, law enforcement, a forensic examiner, and Dr. Thomas-Taylor, a child abuse pediatrician who examined Aria. The jury found Defendant guilty of both counts of indecent liberties with a child and not guilty as to all other counts. The trial court entered judgment on the verdict and sentenced Defendant to two consecutive terms of sixteen to twenty-nine months imprisonment each.

Defendant timely appeals.

## **II. Analysis**

Defendant argues the trial court erred by allowing prejudicially improper expert witness testimony from Dr. Thomas-Taylor. Rule 702 of the North Carolina Rules of Evidence allows expert witnesses to testify to their opinions where they possess “scientific, technical or other specialized knowledge [which] will assist the trier of fact to understand the evidence or to determine a fact in issue[.]” N.C. R. Evid. 702 (2019). “We review a trial court’s ruling on the admission of expert testimony under Rule of Evidence 702 only for an abuse of discretion.” *State v. Richardson*, 385 N.C. 101, 154, 891 S.E.2d 132, 176 (2023) (citation omitted). “Abuse of discretion results where the court’s ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988) (citation omitted).

Ordinarily, “in order to establish reversible error, a defendant must show prejudice in addition to a clear abuse of discretion on the part of the trial court.” *State v. Parks*, 324 N.C. 420, 423, 378 S.E.2d 785, 787 (1989) (citation omitted). However, “[s]tatements elicited by a defendant on cross-examination are, even if error, invited error, by which a defendant cannot be prejudiced as a matter of law.” *State v. Gopal*, 186 N.C. App. 308, 319–20, 651 S.E.2d 279, 287 (2007) (citations omitted).

#### **A. Diagnosis without Physical Evidence**

Defendant frames Dr. Thomas-Taylor’s testimony as inappropriate expert vouching that a witness was in-fact sexually abused absent any corroborating physical evidence.

Our Courts have made clear that, “[i]n 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. Stancil*, 355 N.C. 266, 266–67, 559 S.E.2d 788, 789 (2002) (citation omitted); *see also State v. Clark*, 380 N.C. 204, 209, 868 S.E.2d 56, 61 (2022) (recognizing our Courts’ repeated adherence to this principle). “For expert testimony to amount to vouching for a witness’s credibility, that expert testimony must present ‘a definitive diagnosis of sexual abuse’ in the absence of ‘supporting physical evidence of the abuse.’” *State v. Perdomo*, 276 N.C. App. 136, 140, 854 S.E.2d 596, 600 (2021) (quoting *State v. Chandler*, 364 N.C. 313, 319, 697 S.E.2d 327, 331 (2010)). With that

in mind, the expert witness may nonetheless testify “as to the profiles of sexually abused children and whether a particular complainant has symptoms or characteristics consistent therewith[,]” even in the absence of physical evidence of abuse as long as proper foundation is laid. *Id.* at 139, S.E.2d at 599 (quoting *Stancil*, 355 N.C. at 266–67, 559 S.E.2d at 789).

Defendant’s brief recites only one instance in Dr. Thomas-Taylor’s testimony that he claims could amount to this manner of expert vouching. On cross-examination, Dr. Thomas-Taylor agreed to a “diagnosis” in response to Defendant’s questioning:

[DEFENSE COUNSEL]: Dr. Taylor, you’re saying just because it’s consistent you cannot say to a reasonable degree of medical certainty that [Aria was sexually abused]?

[DR. THOMAS-TAYLOR]: I mean, yes, that is my diagnosis.

...

[DEFENSE COUNSEL]: And your opinion was that it was characteristic, is consistent with sexual abuse; is that correct?

[DR. THOMAS-TAYLOR]: A child who’s been sexually abused, yes.

The trial court then excused the jury and took up the admissibility of Dr. Thomas-Taylor’s cross-examination testimony *sua sponte*. The trial court held Dr. Thomas-

Taylor's testimony was, at most, an ambiguous diagnosis regarding sexual abuse that was invited by Defendant:

[L]et the record reflect that this [c]ourt, counsel -- counsel for the State with regard to conclusions regarding sexual abuse and vouching for the witness based upon the case law, the State asked questions which in the [c]ourt's opinion were consistent with the case law with regard to characteristics and consistencies of such, and that on cross-examination the defense asked a question which elicited an answer which went into a[n] ambiguous, I'll say, the [c]ourt will say ambiguous, diagnosis regarding that sexual abuse, and therefore that that was an invited question by the defense and not by the State.

We agree with the trial court's assessment. Dr. Thomas-Taylor's testimony did not attest to a definitive diagnosis that sexual abuse in fact occurred without supporting physical evidence. Dr. Thomas-Taylor agreed with Defendant that she could not say "to a reasonable degree of medical certainty" that Aria was in-fact sexually abused. Dr. Thomas-Taylor agreed that her diagnosis was, as Defendant phrased in his questioning, "characteristic" of and "consistent with sexual abuse." The trial court did not err by finding this testimony permissible under *Stancil* and our Courts' subsequent cases. Further, the State's questioning on direct examination never requested a specific diagnosis of sexual abuse; this diagnosis was requested by Defendant on cross-examination, and could therefore only be harmless, invited error.

#### **B. Sufficient Foundation of Expert Testimony**

The majority of Defendant’s brief contends Dr. Thomas-Taylor’s testimony lacked proper foundation to support her opinion that Aria’s symptoms were consistent with victims of sexual abuse.

Rule 702 allows expert witnesses to testify in the form of an opinion if that “witness [is] qualified as an expert by knowledge, skill, experience, training, or education” and “[i]f scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue[.]” N.C. R. Evid. 702. “Before expert testimony may be admitted, an adequate foundation must be laid.” *Chandler*, 364 N.C. at 319, 697 S.E.2d at 331 (citation omitted). An adequate foundation for testimony consists of evidence that the expert’s opinion complies with the following:

- (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. R. Evid. 702(a); *see also State v. McGrady*, 368 N.C. 880, 889, 787 S.E.2d 1, 8 (2016) (explaining “Rule 702(a) has three main parts, and expert testimony must satisfy each to be admissible”).

“[A]n expert witness may testify, upon a proper foundation, as to the profiles of sexually abused children and whether a particular complainant has symptoms or characteristics consistent therewith.” *Stancil*, 355 N.C. at 266–67, 559 S.E.2d at 789



(citations omitted). “This rule permits the introduction of expert testimony only when the testimony is ‘based on the special expertise of the expert,’ who ‘because of his [or her] expertise is in a better position to have an opinion on the subject than is the trier of fact.’” *State v. Warden*, 376 N.C. 503, 506–07, 852 S.E.2d 184, 187–88 (2020) (citations omitted). When a foundation is sufficiently established, “[t]he nature of the experts’ jobs and the experience which they possess make them better qualified than the jury to form an opinion as to the characteristics of abused children.” *State v. Grover*, 142 N.C. App. 411, 419, 543 S.E.2d 179, 184 (2001) (citing *State v. Aguallo*, 322 N.C. 818, 821, 370 S.E.2d 676, 677 (1988)).

Defendant argues “the State failed to lay a sufficient foundation for the opinion of Dr. Thomas-Taylor in this case.” Defendant agrees, though, that the State’s burden was only “to lay a sufficient foundation to show that the opinion expressed by Dr. Thomas-Taylor was really based on her special expertise and that she was in a better position than the jury to have an opinion on the subject.” We hold the State satisfied this burden. Dr. Thomas Taylor’s testimony was supported by a sufficient foundation pursuant to Rule 702.

Dr. Thomas-Taylor presented plenary evidence of her expertise in the field of child sexual abuse and her ability to assist the jury in their understanding of the issues material to this case. Dr. Thomas-Taylor is a licensed doctor of medicine who is specifically board-certified in the field of child abuse pediatrics. She testified to over a decade of experience working in child abuse pediatrics, in which she conducted

an average of three hundred child abuse examinations each year. Dr. Thomas-Taylor explained that she interviewed Aria and Aria's mother to develop a profile of behavior for Aria. She then compared Aria's demeanor against a multitude of factors recognized in profiles of sexually abused children, including a delay in disclosure, fear of repercussions from disclosure, mood changes, avoiding affection, and anxiety. From this comparison, Dr. Thomas-Taylor testified Aria showed each of these characteristics and that she had rendered an opinion that Aria presented characteristics consistent with the profiles of sexually abused children. The State's foundation showed Dr. Thomas-Taylor had a storied history with and expertise in child abuse pediatrics which could aid the jury's understanding, and that her opinion was based on reliable principles and methods properly applied to the data gathered in this case. The court did not err by allowing Dr. Thomas-Taylor to testify that Aria showed characteristics consistent with sexual abuse.

### **III. Conclusion**

For the foregoing reasons, we hold the trial court did not err by allowing Dr. Thomas-Taylor's testimony.

NO ERROR.

Judges STROUD and FLOOD concur.

Report per Rule 30(e).