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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-94

Filed 2 April 2025

Wake County, Nos. 20CRS208545-46

STATE OF NORTH CAROLINA

v.

STEVEN RICHARD BULLOCK, Defendant.

Appeal by defendant from judgments entered 6 February 2023 by Judge A. Graham Shirley in Superior Court, Wake County. Heard in the Court of Appeals 10 September 2024.

Attorney General Jeff Jackson, by Special Deputy Attorney General Olga Vysotskaya de Brito, for the State.

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

STROUD, Judge.

Defendant appeals from judgments convicting him of first-degree forcible rape, first-degree forcible sex offense, and conspiracy to commit second-degree kidnapping. Defendant's sole argument on appeal is that the trial court plainly erred in allowing expert witness testimony under Rule 702 of the North Carolina Rules of Evidence since the State did not lay a proper foundation as to the expert's reliability. For the

following reasons, we conclude there was no plain error.

I. Background

The State's evidence tended to show that in March 2020, Desiree¹ lived in a townhome in Raleigh, North Carolina with her significant other, Teresa. While Desiree and Teresa still lived together in March 2020, Desiree testified they had "been broken up for six to eight months prior to that." After leaving her job on 5 March 2020, Desiree stayed with her "current girlfriend" Sydnee instead of going back to her townhome, and Desiree stated Teresa "was very unhappy that [she] had gotten into some type of relationship with somebody else." Desiree planned to stay with Sydnee again the night of 6 March 2020 but ended up staying at the townhome with Teresa as her car windshield was broken and Teresa told Desiree she could not continue driving the car with a broken windshield.

On the morning of 7 March 2020, Desiree woke up at the townhome to get ready for her shift that morning. Desiree stated she was supposed to buy a new car with Teresa before work that morning, but Teresa "kept putting it off[.]" At about 9:00 a.m., Desiree noticed "a figure standing at [her] backdoor trying to peek in." Teresa went to the backdoor and the door "barged open as soon as she put[] her hand on the door" and a man entered who was "masked [and] had a jacket [on] with a hood" and sunglasses. Desiree stated she could only see the man's nose and that

¹ A pseudonym is used to protect the identity of the victim.

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he had “freckles on his nose and he had light skin.” Teresa also noticed the man had busted knuckles and “a tattoo . . . on his left hand. . . . [i]n the middle of his two fingers” which was in the “webbing in between his thumb and his corner finger.” The man forced Desiree and Teresa to sit down on the couch and took Desiree’s cellphone; the man had a knife with a silver blade and black handle. The man then demanded \$10,000.00 from Desiree, stated he knew where Desiree’s family lived, and gave accurate details about Desiree’s family. He also told Desiree she was to leave North Carolina, which confused Desiree as the man did not indicate why she was to leave.

The man forced Desiree and Teresa to go upstairs and pack a bag to go to Tennessee, specifically to where Teresa’s family lived. The man forced Desiree into Teresa’s closet where Desiree found a trophy; she attempted to hit the man with the trophy to defend herself. The man overpowered Desiree, grabbed her by her throat, and strangled her for about 10 seconds to the point where Desiree was unable to breathe. The man laid Desiree facedown on a mattress, “[sat] on top of [her], on the back of [her] legs, right around [her] butt area” and started to make sexual comments to her and said “his mission was to kill [her], but [she] was too pretty to kill.” The man separated Teresa and Desiree, “pulled Desiree’s shorts to the side and inserted [his] fingers into [her] vagina” and forced Desiree to perform oral sex on him. Desiree noticed the man was not circumcised. The man eventually forcibly entered his penis into Desiree’s vagina; the man had the knife in his hand during this entire encounter. The man also forced Desiree to text Sydnee to break up with her. Desiree noted that

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the man had his own cellphone with him during this time. The man had Teresa and Desiree get into one of their cars and the man left; Teresa then pulled out of the driveway to drive to Tennessee.

On the way to Tennessee, Teresa stopped at a McDonald's to get something to eat and Desiree stayed in the car; while in the drive-through, the man called Desiree's phone from a number with no caller ID and said "I told you to stop talking to people. I know you're f***** talking to people. Stop talking to people or I will kill your family." Teresa and Desiree stopped at a hotel for the night and Desiree "immediately took off [her] clothing that [she] had . . . and put it in a plastic bag" "[b]ecause [she] knew [she] was going to come back and report" what happened. The next day, Desiree was still in fear of her life, but she decided to contact a friend to come and get her from Tennessee. Desiree testified she did not contact the police at this time as the man threatened her family during the assault. Desiree eventually got back to Sydnee's house around 5:00 a.m. on 9 March 2020. Desiree did not immediately report what happened to the police as she was "still scared and in shock . . . [the man] was threatening [her] family" and she attempted to "block out the pain" by drinking alcohol. Desiree eventually reported the events to the Raleigh Police Department ("RPD") on 12 March 2020. Desiree got a sexual assault kit done at the hospital and was evaluated by a sexual assault nurse which included a lengthy and invasive examination. Desiree also gave the clothes she was wearing during the assault that she had placed in a plastic bag to the nurse. At some point, RPD Detective Petersen

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called Desiree and asked if she knew Kevin Bullock and then asked if Desiree knew Kevin's brother, Steven Bullock. Desiree testified that "[a]s soon as [Detective Petersen] said that, everything just kind of clicked, and [she] immediately started bawling[.]" Desiree definitively identified the man who raped her as Steven Bullock.

Detective Petersen testified on behalf of the State at trial. Detective Petersen testified that Desiree's description of Defendant, before Desiree knew the identity of Defendant, was "a light-skinned male around six-foot, I want to say 250 [pounds], with freckles on his face, and also a tattoo on his hand." Detective Petersen identified Defendant as a suspect after she obtained data from Desiree's cell phone that indicated Defendant was the person calling from a phone with no caller ID. The data also showed phone calls between Defendant and Teresa in the days leading up to the assault and on the morning of the assault. Location data from Defendant's cell phone from 7 March 2020, the day of the assault, showed Defendant's phone was in Sanford at his home that morning, traveled to Desiree's townhome in Raleigh, and traveled back to Sanford from Raleigh after the assault.

Detective Petersen then interviewed Defendant who stated he knew Teresa through his brother. After she asked Defendant whether he was the perpetrator, Defendant "said he wasn't there, that he didn't have any type of sexual contact with [Desiree], and he wouldn't have [Desiree's] number at all." When confronted with the cell phone data showing the calls between his phone and Teresa and Desiree and the location data, Defendant stated he lost his phone and that he "must have left his

phone with [Teresa] and she had it for approximately two weeks.” Detective Petersen took a buccal swab from “the inner lining of [his] cheek” to collect DNA. Defendant further admitted to Detective Petersen he was uncircumcised, consistent with Desiree’s description. Detective Petersen explained to the jury that Defendant said something “to the effect of . . . he wasn’t wearing a mask, something along those lines” even though Detective Petersen had not brought up a mask in the interview. Finally, Detective Petersen testified that Defendant had a tattoo on his left hand consistent with the tattoo Desiree described in her initial report.

The State also presented testimony from Ines Benaissa, the State Crime Lab analyst who did the DNA testing on Desiree’s underwear. Ms. Benaissa outlined her qualifications and general procedures of the State Crime Lab and the Lab’s accreditation process. Ms. Benaissa then testified about DNA generally and the process for obtaining DNA from a piece of clothing. Ms. Benaissa stated “[t]he process for DNA [testing] begins with extraction[.]” “[t]he next step would be to quantitate the DNA[.]” and “[a]fter quantitation is amplification.” After explaining the process of extraction, quantitation, and amplification, Ms. Benaissa was asked “[i]s this process - - the extraction, quanti[t]ation, amplification analysis, is that the method recognized in the scientific community as a reliable method for testing DNA” and Ms. Benaissa responded “[y]es, it is.” Then, Ms. Benaissa discussed her hypotheses about this case, stating “[g]iven the evidence, the following propositions were considered for a statistical calculation” which included (1) the two DNA profiles being that of Desiree

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and Defendant, and (2) the DNA profiles being from Desiree or an unknown individual. Ms. Benaissa next “ran statistics on those” hypotheses and concluded the DNA samples came from Desiree and Defendant. Specifically, Ms. Benaissa testified “[t]he mixture DNA profile obtained from fraction two of the swabbing from the underpants is at least 429 septillion times more likely if it originated from” Desiree and Defendant. Ms. Benaissa stated her conclusion as to the statistics came from the software STRmix.

On or about 22 June 2020, Defendant was indicted for first-degree forcible rape, first-degree forcible sex offense, first-degree kidnapping, and on or about 9 August 2022, Defendant was indicted in a superseding indictment for two counts of robbery with a dangerous weapon, conspiracy to commit robbery with a dangerous weapon, and conspiracy to commit first-degree kidnapping. The conspiracy indictments alleged Defendant conspired with Teresa to commit robbery and kidnap Desiree. The matter came on for trial on 30 January 2023.

At the close of the State’s evidence, the trial court dismissed one of the counts of robbery with a dangerous weapon and the count of conspiracy to commit robbery with a dangerous weapon. On 3 February 2023, the jury found Defendant guilty of first-degree forcible rape, first-degree forcible sex offense, first-degree kidnapping based on the commission of a sexual assault, and conspiracy to commit second-degree kidnapping. The jury also found Defendant not guilty of one count of robbery with a dangerous weapon. The trial court arrested judgment on the first-degree kidnapping

charge and sentenced Defendant to life imprisonment without the possibility of parole. Defendant gave oral notice of appeal in open court.

II. Rule 702

Defendant contends “the trial court plainly erred by allowing the admission of testimony about DNA when the State whol[l]y failed to lay a proper foundation about the reliability of the testimony under Rule 702 and when the DNA was critical evidence in the case.” We disagree.

[P]lain error review in North Carolina is normally limited to instructional and evidentiary error. *Lawrence*, 365 N.C. at 516, 723 S.E.2d at 333 (citation omitted); *see also* [*Lawrence*, 365 N.C. at 516, 723 S.E.2d at 333] (“Like federal plain error review, the North Carolina plain error standard of review applies only when the alleged error is unpreserved, and it requires the defendant to bear the heavier burden of showing that the error rises to the level of plain error.”). In both federal court and North Carolina state court, the unchallenged admission of opinion testimony on a subject requiring specialized knowledge by persons not admitted as experts may be reviewed for plain error. *See United States v. Diaz*, 300 F.3d 66, 74 (1st Cir. 2002) (“The consequence of a party’s failure to make a timely objection to the admission of expert testimony is plain error review.”); *State v. Maready*, 205 N.C.App. 1, 17, 695 S.E.2d 771, 782 (2010) (reviewing for plain error the unchallenged admission of opinion testimony regarding the cause of an accident by persons not admitted as experts in accident reconstruction). Thus, an unpreserved challenge to the performance of a trial court’s gatekeeping function in admitting opinion testimony in a criminal trial is subject to plain error review in North Carolina state courts.

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For error to constitute plain error, a defendant must

demonstrate that a fundamental error occurred at trial. 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. Moreover, because plain error is to be applied cautiously and only in the exceptional case, the error will often be one that seriously affects the fairness, integrity or public reputation of judicial proceedings.

State v. Hunt, 250 N.C. App. 238, 246-47, 792 S.E.2d 552, 560 (2016) (citation, quotation marks, and ellipses omitted).

Even if we were to assume the trial court erred in admitting expert testimony regarding DNA, Defendant has not demonstrated “the error had a probable impact on the jury’s finding that . . . [D]efendant was guilty” sufficient to establish plain error. *Id.* Even without the DNA evidence, there was overwhelming evidence identifying Defendant as the person who committed these crimes. Desiree’s physical description of Defendant, before law enforcement had identified him as a suspect, was consistent with Defendant’s appearance. Desiree described to police: (1) a tattoo on her attacker’s hand in the same spot as Defendant’s tattoo; (2) her attacker was uncircumcised and Defendant confirmed he was uncircumcised; and (3) that her attacker had freckles on his nose and was light-skinned, consistent with Defendant’s description. Defendant’s physical description matched the description of Desiree’s attacker given to police. Further, Defendant’s cell phone data showed Defendant’s cell phone was at his address in Sanford before the attack, traveled to Raleigh where Desiree’s townhome was, and eventually traveled back to Sanford around the time

the attack ended. There was also evidence that Defendant's cell phone made calls to Desiree's cellphone using a blocked caller ID. When confronted with this information, Defendant claimed he lost his cell phone for around two weeks. Finally, Detective Petersen testified about a spontaneous statement made by Defendant in his interview where Defendant stated he was not wearing a mask, despite Detective Petersen never bringing up that the attacker was wearing a mask during the attack. Even without the DNA evidence, Defendant has failed to demonstrate the jury "probably would have returned a different verdict." *State v. Reber*, 386 N.C. 153, 162, 900 S.E.2d 781, 789 (2024) (emphasis omitted) (citation omitted). We conclude Defendant failed to demonstrate plain error.

III. Conclusion

Even assuming error in the admission of DNA evidence at trial, Defendant has failed to demonstrate plain error.

NO PLAIN ERROR.

Judges HAMPSON and GORE concur.

Report per Rule 30(e).