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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-351

Filed 7 May 2025

Wake County, Nos. 21CR214587-910, 21CR214588-910

STATE OF NORTH CAROLINA

v.

KEVIN FRED MARTINEZWELFEL

Appeal by defendant from judgments entered 6 March 2023 by Judge Keith O. Gregory in Wake County Superior Court. Heard in the Court of Appeals 29 January 2025.

Attorney General Jeff Jackson, by Special Deputy Attorney General Julianne L. Bradshaw, for the State.

Michael E. Casterline for defendant-appellant.

ZACHARY, Judge.

Defendant Kevin Fred Martinezwelfel¹ appeals from the trial court's judgments entered upon a jury's verdicts finding him guilty of two counts of taking indecent liberties with a child, one count of statutory sex offense with a child, and one

¹ We note that the record contains variations of Defendant's surname: in some filings, it is hyphenated, while in others, it is presented as two words. For our purposes, we utilize the spelling found in the judgments from which Defendant appeals.

count of statutory rape of a child. Defendant argues that the trial court committed plain error by admitting expert-witness testimony 1) that violated his rights under the Confrontation Clause, and 2) that was irrelevant and constituted impermissible vouching. After careful review, we conclude that the trial court did not err by admitting the expert-witness testimony.

I. Background

Defendant entered into a relationship with Ms. Molina, mother of Lucia,² in late 2020. Beginning on 25 December 2020 and continuing into 2021, Defendant sexually abused Lucia by making her touch his penis, forcing her to perform oral sex on him, and groping her. Defendant also raped Lucia on multiple occasions, with the last incident in mid-February 2021.

In March 2021, Lucia told her older sister about the abuse, and the sister told their mother. Lucia's mother and sister accompanied her to WakeMed Children's Emergency Department, where she presented with vaginal itching and discharge. Dr. Amy Griffin examined Lucia and noted that the results were "normal or nonspecific." Lucia was referred to the SAFEchild Advocacy Center.³ During an interview at the SAFEchild Advocacy Center in April 2021, Lucia described Defendant's abuse.

² We employ the pseudonym used by the parties to protect the identity of the juvenile and for ease of reading. See N.C.R. App. P. 42(b).

³ The SAFEchild Advocacy Center is "a nonprofit organization that provides medical evaluations for children who are suspected to be victims of child abuse or neglect." *State v. Harris*, 243 N.C. App. 728, 731, 778 S.E.2d 875, 877 (2015).

On 12 October 2021, a Wake County grand jury indicted Defendant for two counts of taking indecent liberties with a child, one count of statutory sex offense with a child fifteen years old or younger, and one count of statutory rape of a child fifteen years old or younger.

Defendant's case came on for jury trial on 27 February 2023 in Wake County Superior Court. At trial, Dr. Karen Todd, a pediatrician and the child medical examiner of the SAFEchild Advocacy Center, testified as an expert in the field of pediatrics. As regards Lucia's medical examination, Dr. Todd testified:

[The State:] Did you actually physically examine [Lucia] at that point?

[Dr. Todd:] I did not.

[The State:] And why is that?

[Dr. Todd:] So [Lucia] had been seen . . . about five weeks ahead of the SAFEchild appointment at the [WakeMed] emergency department and had a very thorough examination. The medical team at [WakeMed] at the time deemed that her disclosure and presenting concerns warranted some lab work to be done, and so they took care of ordering lab work. And since she had been through that exam at [WakeMed], her mom and her decided not to repeat that.

When asked about Lucia's lack of physical abuse symptoms, Dr. Todd explained that

there are several published studies that offer guidelines around physical findings in the case of sexual abuse of teenagers or prepubescent children, and contrary to . . . lay belief or lay opinion, after the first two to four days when

an assault may have occurred, there are very few findings, if any.

And in some of the studies that have been done, they've come out with a number around 94 percent of children who are several weeks past an assault would have a normal examination. So normal meaning no findings, nothing specific. A trained medical professional looking at this child's examination would not know, just based on the examination, if anything happened to them.

On 6 March 2023, the jury returned verdicts finding Defendant guilty of all charges. That same day, the trial court entered judgments, sentencing Defendant to consecutive terms of 16 to 29 months' imprisonment in the custody of the North Carolina Department of Adult Correction for both of his convictions for taking indecent liberties. The court also sentenced Defendant to two consecutive terms of 240 to 348 months' imprisonment for his remaining convictions (one count each of statutory sex offense and statutory rape).⁴

Defendant gave oral notice of appeal.

II. Discussion

On appeal, Defendant first contends that the trial court committed plain error by admitting Dr. Todd's testimony regarding Dr. Griffin's medical examination of Lucia. Specifically, Defendant asserts that the admission of this testimony violated

⁴ We note that the trial court also ordered (1) that Defendant register as a sex offender for 30 years; (2) that satellite-based monitoring risk assessments be conducted; and (3) that Defendant have no contact with the victim for the remainder of his natural life. Defendant did not appeal these civil orders.

his Confrontation Clause rights under the Sixth Amendment. Second, Defendant argues that the trial court committed plain error by allowing Dr. Todd to testify insofar as her testimony was irrelevant and served only to bolster the credibility of Lucia.

A. Standard of Review

Initially, we note that Defendant acknowledges that he did not lodge an objection to the admission of Dr. Todd's testimony at trial. In criminal cases, certain evidentiary and instructional issues that were not properly preserved by objection at trial and that are not otherwise "deemed preserved by rule or law without any such action nevertheless may be made the basis of an issue presented on appeal when the judicial action questioned is specifically and distinctly contended to amount to plain error." N.C.R. App. P. 10(a)(4). On appeal, Defendant "specifically and distinctly contend[s]" that the trial court's admission of Dr. Todd's testimony constituted plain error, and he requests such review.

As our Supreme Court recently reiterated, plain error is established by applying "a three-factor test." *State v. Reber*, 386 N.C. 153, 158, 900 S.E.2d 781, 786 (2024). "First, the defendant must show that a fundamental error occurred at trial." *Id.* "Second, the defendant must show that the error had a probable impact on the outcome, meaning that absent the error, the jury probably would have returned a different verdict." *Id.* (cleaned up). "Finally, the defendant must show that the error is an exceptional case that warrants plain error review, typically by showing that the

error seriously affects the fairness, integrity or public reputation of judicial proceedings.” *Id.* (cleaned up).

B. Confrontation Clause

We first address Defendant’s challenge to the trial court’s admission of Dr. Todd’s testimony regarding Dr. Griffin’s medical examination of Lucia as a violation of his Confrontation Clause rights under the Sixth Amendment.

“The Sixth Amendment to the United States Constitution, made applicable to the States via the Fourteenth Amendment, provides that in all criminal prosecutions, the accused shall enjoy the right to be confronted with the witnesses against him.” *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 309, 174 L. Ed. 2d 314, 320 (2009) (cleaned up). In the landmark decision of *Crawford v. Washington*, the United States Supreme Court held that the Confrontation Clause bars the “admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination.” 541 U.S. 36, 53–54, 158 L. Ed. 2d 177, 194 (2004); *see also State v. Lewis*, 361 N.C. 541, 545, 648 S.E.2d 824, 827 (2007).

In the present case, Lucia underwent a medical examination at WakeMed by Dr. Griffin. At trial, Dr. Todd testified that she was familiar with both Dr. Griffin and her staff and the procedures employed when a child is brought to WakeMed for medical examination. Dr. Todd explained how the records are created and kept at WakeMed as well as the procedures for laboratory testing. She also testified that she

reviewed Lucia's medical reports and laboratory work, and that the medical examination showed no evidence of sexual abuse.

Assuming, *arguendo*, that Defendant can "show that a fundamental error occurred at trial," he must also "show that the error had a probable impact on the outcome" and that "the error is an exceptional case that warrants plain error review." *Reber*, 386 N.C. at 158, 900 S.E.2d at 786 (cleaned up). Although Defendant contends that Dr. Todd's testimony "was devastating to the defense," it is unclear how medical-examination results showing no evidence of sexual abuse could prejudice Defendant.

Accordingly, the trial court did not commit plain error by admitting Dr. Todd's testimony concerning Dr. Griffin's medical examination of Lucia.

C. Medical Examination Results

Defendant further asserts that the trial court committed plain error by allowing Dr. Todd to testify that most sexually abused children show no physical evidence of abuse, in that such testimony was irrelevant and constituted improper vouching.

1. Relevancy

First, Defendant contends that because Dr. Todd's testimony "didn't make the existence of any fact more probable than it would have been without [the] evidence, the . . . testimony was irrelevant and should not have been admitted."

A “trial court’s rulings on relevancy are technically not discretionary.” *State v. Gillard*, 386 N.C. 797, 821, 909 S.E.2d 226, 251 (2024) (citation omitted). Thus, we review Defendant’s relevancy challenge for plain error.

Relevant evidence is such evidence that has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” N.C. Gen. Stat. § 8C-1, Rule 401 (2023); *see also, e.g., State v. Godfrey*, 263 N.C. App. 264, 269, 822 S.E.2d 894, 898 (2018). “All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by the Constitution of North Carolina, by Act of Congress, by Act of the General Assembly or by” our Rules of Evidence. N.C. Gen. Stat. § 8C-1, Rule 402. “While a trial court’s relevancy determinations are not discretionary, we accord them great deference on appeal.” *Gillard*, 386 N.C. at 821, 909 S.E.2d at 251 (cleaned up).

Dr. Todd testified as follows regarding Lucia’s medical examination and the resultant findings:

[The State:] And in your experience, are you familiar with the study - - either in your professional experience and/or the literature, are you familiar with whether or not physical findings are normal to be found in children who present four weeks or so later to the hospital?

. . . .

[Dr. Todd:] Yes. So there are several published studies that offer guidelines around physical findings in the case of sexual abuse of teenagers or prepubescent children, and

contrary to . . . lay belief or lay opinion, after the first two to four days when an assault may have occurred, there are very few findings, if any.

And in some of the studies that have been done, they've come out with a number around 94 percent of children who are several weeks past an assault would have a normal examination. So normal meaning no findings, nothing specific.

. . . .

[The State:] And you had said within two to four days, typically, that heals. So when you're looking at weeks, would you expect to have any physical findings in most children?

[Dr. Todd:] No.

[The State:] And you had talked about the studies themselves, but with regard to your own personal experience, have you also found that to be the case?

[Dr. Todd:] Yes.

Defendant argues that because “the testimony presented by Dr. Todd tended to neither support nor disprove Lucia’s allegations that she had been sexually abused,” it “was irrelevant and should not have been admitted.” We disagree.

Defendant mischaracterizes Dr. Todd’s testimony, which was offered to explain the “normal” results of a sexually abused child’s medical examination and laboratory work, i.e., “normal meaning no findings, nothing specific.” As such, it was manifestly relevant to an understanding of the significance of a medical examination that revealed no signs of physical or sexual abuse. Accordingly, we conclude that Dr.

Todd's testimony was relevant and properly admitted by the trial court.

2. Vouching

Finally, Defendant asserts that “Dr. Todd’s testimony was improperly offered by the State to bolster [Lucia]’s credibility.”

“It is well settled that expert opinion testimony is not admissible to establish the credibility of the victim as a witness.” *State v. Frady*, 228 N.C. App. 682, 685, 747 S.E.2d 164, 167 (cleaned up), *disc. review denied*, 367 N.C. 273, 752 S.E.2d 465 (2013). “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) (cleaned up), *disc. review denied*, 380 N.C. 678, 868 S.E.2d 859 (2022).

Defendant specifically argues that two portions of Dr. Todd’s testimony—“that she would expect normal genital findings, and that . . . Lucia should engage in trauma-focused therapy”—“constituted nothing more than impermissible vouching on Lucia’s credibility.” However, “[r]ather than vouching for [Lucia]’s credibility, as Defendant claims, Dr. [Todd] appropriately provided the jury with an opinion, based on her expertise, that a lack of physical findings of sexual abuse does not generally correlate with an absence of sexual abuse.” *Id.* at 141–42, 854 S.E.2d at 601. Additionally, Dr. Todd’s testimony that she would “have communicated to [Lucia]’s mother the need for this trauma[-]focused therapy” cannot be interpreted as a

diagnosis of sexual abuse, definitive or otherwise.

Viewed in full context, it is clear that neither of the challenged portions of testimony presented “a definitive diagnosis of sexual abuse.” *See id.* at 140, 854 S.E.2d at 600 (citation omitted). Thus, we discern no error, let alone plain error, in the trial court’s admission of Dr. Todd’s expert testimony. Defendant’s arguments are overruled.

III. Conclusion

For the foregoing reasons, we conclude that Defendant received a fair trial, free from error.

NO ERROR.

Chief Judge DILLON and Judge STROUD concur.

Report per Rule 30(e).