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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-979

Filed 7 May 2025

Mecklenburg County, Nos. 18CRS232848-590, 18CRS232849-590, 18CRS232855-590, 18CRS232856-590

STATE OF NORTH CAROLINA

v.

FRANCISCO JAVIER DIAZ-RODRIGUEZ, Defendant.

Appeal by defendant from judgment entered 22 August 2022 by Judge J. Thomas Davis in Superior Court, Mecklenburg County. Heard in the Court of Appeals 13 August 2024.

Attorney General Jeff Jackson, by Assistant Attorney General Amber I. Davis, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Daniel Shatz, for defendant-appellant.

PER CURIAM.

Defendant Francisco J. Diaz-Rodriguez was convicted of two counts of statutory sexual offense with a child by an adult and two counts of engaging in a sexual act with a minor by a person in a parental role. On appeal, he argues his constitutional right to a speedy trial was violated and the trial court erred when it

allowed the State's expert witnesses to give improper testimony.

I. Background

A.S.¹ was born in Durango, Mexico. She moved to Charlotte with her mother and sister to live in the same city as her father, who moved to Charlotte years earlier. A.S.'s parents, although not together, co-parented A.S. and her younger sister. A.S.'s mother began seeing Defendant soon after moving to Charlotte. After about two or three months of knowing each other and being romantically involved, A.S.'s mother and Defendant moved in together, along with A.S. and her sister. While together, Defendant, A.S.'s mother, and the two daughters moved to about three different residences.

A.S. testified that initially she and Defendant had a good relationship. It was not until after A.S.'s mother ended the relationship with Defendant in August 2018 that A.S. revealed to her mother what had happened between her and Defendant. A.S. testified that on multiple occasions Defendant engaged in sexual activity with her and once showed her pornographic videos on his phone. Defendant denied engaging in any sexual activity with A.S.

Before the beginning of trial, Defendant initially filed a motion for speedy trial on 27 June 2019. Defendant later filed a motion to dismiss based on a violation of his right to a speedy trial on 3 March 2022. The trial court heard the motion on 18 March

¹ A pseudonym is used.

2022 and the motion was denied after the court applied and analyzed the matter under the test established in *Barker v. Wingo*, 407 U.S. 514, 33 L. Ed. 2d 101 (1972). The trial court denied the motion to dismiss at the hearing but did not enter a written order. Defendant was ultimately found guilty and timely appealed to this Court.

II. Analysis

Defendant raises two issues on appeal: (1) whether Defendant’s right to a speedy trial was violated and (2) whether the trial court erred by allowing the State’s expert witness to make improper statements.

A. Speedy Trial

“The denial of a motion to dismiss on speedy trial grounds presents a constitutional question of law subject to de novo review.” *State v. Farook*, 381 N.C. 170, 178, 871 S.E.2d 737, 746 (2022) (citation omitted). “In reviewing the denial of a motion to dismiss for a speedy-trial violation, we review the superior court’s order to determine whether the trial judge’s underlying findings of fact are supported by competent evidence and whether those factual findings in turn support the judge’s ultimate conclusions of law.” *State v. Spinks*, 277 N.C. App. 554, 561, 860 S.E.2d 306, 314 (2021) (citations, quotation marks, and brackets omitted).

Criminal defendants are guaranteed the right to a speedy trial under both the Sixth Amendment of the United States Constitution, as applicable to the states through the Fourteenth Amendment, and Article I, Section 18 of the North Carolina Constitution. See U.S. Const. Amend. VI (“In all criminal prosecutions, the accused

shall enjoy the right to a speedy and public trial[.]”); U.S. Const. Amend. XIV; N.C. Const. art. I, § 18 (“[J]ustice shall be administered without favor, denial, or delay.”).

A delay exceeding one year generally “signal[s] the point at which courts deem the delay unreasonable enough to trigger the *Barker* calculus,” wherein we analyze the factors to determine whether a defendant’s right to a speedy trial has been violated. *Farook*, 381 N.C. at 178-79, 871 S.E.2d at 746 (referencing the federal speedy trial analysis devised by the Supreme Court of the United States in *Barker v. Wingo*, 407 U.S. 514, 33 L. Ed. 2d 101 (1972)). Here, Defendant’s trial was delayed for about four years, which triggers constitutional review under *Barker*. *See id.*

Under the *Barker* analysis, we weigh these four factors: (1) length of the delay, (2) reason for the delay, (3) the defendant’s assertion of his right to a speedy trial, and (4) prejudice to the defendant. *See Barker*, 407 U.S. at 530, 33 L. Ed. 2d at 117; *see also State v. Grooms*, 353 N.C. 50, 62, 540 S.E.2d 713, 721 (2000) (recognizing that we employ the *Barker* analysis in reviewing speedy trial motions under the North Carolina Constitution). None of the four *Barker* factors are “either a necessary or sufficient condition” to finding a defendant was deprived of his right to a speedy trial. *Barker*, 407 U.S. at 533, 33 L. Ed. 2d at 118. Rather, we “engage in a difficult and sensitive balancing process” of weighing these factors and other relevant circumstances. *Id.* We first address Defendant’s argument that the trial court’s ruling on the motion to dismiss at the hearing instead of entering a written order was error and then examine each factor below.

1. Lack of Written Order

Defendant contends “the trial court’s order was insufficient to support its ruling denying [Defendant’s] motion to dismiss” since there are “no enumerated findings of fact or conclusions of law” and “[a]lthough the order contains observations by the trial court that touch upon some of the *Barker* factors, the order is wholly insufficient to show that the trial court properly considered and weighed each of the four *Barker* factors.” This Court has previously noted

Trial courts are not always required to enter written findings when analyzing speedy trial motions:

In ruling on a motion for a speedy trial the trial court is not always required to conduct an evidentiary hearing and make findings of facts and conclusions of law. *See State v. Dietz*, 289 N.C. 488, 495, 223 S.E.2d 357, 362 (1976). In those instances, however, when the motion to dismiss for denial of a speedy trial is based on allegations not “conjectural and conclusory in nature,” an evidentiary hearing is required and the trial court must enter findings to resolve any factual disputes and make conclusions in support of its order. *Id.* When there is no objection, evidence at the hearing may consist of oral statements by the attorneys in open court in support and in opposition to the motion to dismiss. *See State v. Pippin*, 72 N.C. App. 387, 397-98, 324 S.E.2d 900, 907 (findings properly based on oral arguments of attorney where opposing party did not object to procedure), *disc. rev. denied*, 313 N.C. 609, 330 S.E.2d 615 (1985).

State v. Ambriz, 286 N.C. App. 273, 287-88, 880 S.E.2d 449, 463 (2022) (brackets omitted).

In *Ambriz*, we concluded the defendant’s second speedy trial motion was “conjectural and conclusory in nature” since “[t]he motions filed by counsel recounted a simple history of [the d]efendant’s arrest and imprisonment, made a bare assertion of his right to a speedy trial, and lacked factual allegations sufficient to show a violation of his speedy trial right.” *Id.* at 289-90, 880 S.E.2d at 464 (citations, quotation marks, and brackets omitted). We noted even despite the trial court not being required to conduct an evidentiary hearing based on the conclusory nature of the motion, “the trial court held evidentiary hearings and [the d]efendant received the opportunity to present arguments and provide evidence in the form of oral statements by his attorney.” *Id.* at 290, 880 S.E.2d at 464. We thus found the trial court did not err by “failing to enter findings of fact and conclusions of law” denying the motion. *See id.*

Here, we also conclude Defendant’s speedy trial motion merely “recounted a simple history of Defendant’s arrest and imprisonment, made a bare assertion of his right to a speedy trial, and lacked factual allegations sufficient to show a violation of his speedy trial right.” *Id.* Specifically, Defendant explained the dates of his arrest, indictment, and filing of his motions, cited case law to support the general proposition that criminal defendants have a right to a speedy trial, and stated the remedy was dismissal of the charges. The trial court was not required to hold an evidentiary hearing, but Defendant was nonetheless afforded “the opportunity to present arguments and provide evidence in the form of oral statements by his attorney.” *Id.*

The trial court did not err by not entering a written motion and made sufficient findings at the hearing to support its ruling denying the motion.

2. *Length of Delay*

The first factor we address is the length of the delay. While the length of delay is the triggering mechanism for a full *Barker* analysis, it is also an independent factor to be considered in the analysis. *See Barker*, 407 U.S. at 533, 33 L. Ed. 2d at 118. But “mere length of delay, standing alone, does not establish that the delay was unreasonable or prejudicial[.]” *State v. Groves*, 324 N.C. 360, 366, 378 S.E.2d 763, 767 (1989) (citations omitted).

The delay here was almost four years, calculated from the time of Defendant’s arrest (16 September 2018) to his trial in superior court (15 August 2022). Because the delay was over one year, it is a sufficient amount of time to warrant a *Barker* analysis. However, while an extended delay of trial does weigh in favor of Defendant, “[t]he length of delay is not *per se* determinative of whether a defendant has been deprived of his right to a speedy trial.” *Farook*, 381 N.C. at 178, 871 S.E.2d at 746 (citation omitted).

3. *Reason for Delay*

Second, we address the reason for delay. Our Supreme Court has stated that a delay of one year “is generally recognized as long enough to create a *prima facie* showing that the delay was caused by the negligence of the prosecutor. . . . sufficient to shift the burden of proof to the State ‘to rebut and offer explanations for the delay.’”

Id. at 179, 871 S.E.2d at 746-47 (citations, quotation marks, and brackets omitted). However, “delays occasioned by acts of the defendant or on his or her behalf are heavily counted against the defendant and will generally defeat his or her speedy trial claim.” *Id.* at 180, 871 S.E.2d at 747-48 (citations omitted).

The length of delay in this case creates a *prima facie* showing of prosecutorial neglect, thus shifting the burden of proof to the State to rebut the showing by explaining the delay. *See id.* at 179, 871 S.E.2d at 746-47. “A more neutral reason such as negligent delay or a valid administrative reason such as the complexity of the case or a congested court docket is weighted less heavily against the State than is a deliberate delay.” *Id.* at 179-80, 871 S.E.2d at 747. “A valid reason for delay, such as delay caused by difficulty in locating witnesses, serves to justify appropriate delay.” *Id.* at 180, 871 S.E.2d at 747 (citation omitted).

Here, the trial court first found that most of the delay was attributable to COVID-19 and the resulting court shutdowns. The court also found that the COVID-19 measures halted trials for most of 2020 and 2021, resulting in a backlog of cases. Further, the prosecutor’s office was coordinating with the United States Department of Homeland Security to obtain visas for A.S. to testify in court. We conclude competent evidence supports the trial court’s findings of fact and the findings of fact support the court’s conclusions of law. *See Spinks*, 227 N.C. App. at 561, 860 S.E.2d at 314. The reasons for delay do not weigh heavily in the favor of one party or the other, and there was no neglect or negligence found. Rather, most of the delay was

due to circumstances beyond the control of Defendant or the State.

4. *Assertion of Speedy Trial Right*

We next address whether Defendant asserted his right to a speedy trial.

The more serious the deprivation, the more likely a defendant is to complain. The defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right. We emphasize that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial.

Barker, 407 U.S. at 531-32, 33 L. Ed. 2d 101, 117-18. A defendant's "failure to assert his right to a speedy trial sooner in the process does not foreclose his speedy trial claim, but does weigh against his contention that he has been denied his constitutional right to a speedy trial." *State v. Flowers*, 347 N.C. 1, 28, 489 S.E.2d 391, 407 (1997) (citation omitted).

Here, Defendant was arrested in September 2018 and filed his demand for a speedy trial in June 2019. Defendant's arraignment was in August 2019, and his trial was set for March 2020. Due to unforeseen circumstances caused by COVID-19, the trial began in August 2022, after defense counsel's request for a continuance was denied. Before Defendant's August 2022 trial, he filed a motion to dismiss based on speedy trial grounds on 3 March 2022, which the trial court denied. Thus, Defendant demanded a speedy trial in June 2019 and later filed a motion to dismiss based on speedy trial grounds in March 2022. Taken together, Defendant timely asserted his right to a speedy trial, but we emphasize "[n]o one factor alone is decisive of the issue

for or against a defendant; rather, the factors must be examined as a whole, with such other circumstances as may be relevant.” *State v. Johnson*, 124 N.C. App. 462, 466, 478 S.E.2d 16, 19 (1996) (citation and quotation marks omitted).

5. *Prejudice to Defendant*

Finally, we address the prejudice prong of the *Barker* analysis.

To assess whether the defendant has suffered prejudice from the delay in bringing his case to trial, courts should analyze three interests identified by the *Barker* Court that are affected by an unreasonable delay: (1) oppressive pretrial incarceration; (2) the social, financial, and emotional strain and anxiety to the accused of living under a cloud of suspicion; and (3) impairment of the ability to mount a defense to the charges pending against the defendant.

Farook, 381 N.C. at 189, 871 S.E.2d at 753 (citations omitted). The third interest—whether the delay impaired the defendant’s ability to mount his defense—is the most serious part of the prejudice factor. *Barker*, 407 U.S. at 532, 33 L. Ed. 2d at 118. “The defendant has the burden of proving the fourth factor: that he was prejudiced by the delay.” *Spinks*, 277 N.C. App. at 566, 860 S.E.2d at 317 (citation omitted). “A defendant must show actual, substantial prejudice.” *Id.* (citation omitted).

Here, defense counsel argues that Defendant was treated oppressively during his pretrial incarceration due to having to wait for trial while being incarcerated due to the inability to pay his bond. Defense counsel states it is “obvious that . . . he was being kept in jail solely because of his poverty.” However, there is nothing in the record that leads to the conclusion that the bond of \$70,000 was excessive given the

circumstances of the alleged crime and other factors used to determine the bond. Next, defense counsel argued during the pretrial hearing and on appeal that the quality of life in jail and the unknown outcome of Defendant's case made him live in constant stress and anxiety awaiting trial. Defendant also contends his ability to defend the case was impaired "due to the natural tendency of witness memories to fade over time." While Defendant discussed general arguments about prejudice, he failed to demonstrate actual prejudice. Accordingly, the fourth factor does not weigh in Defendant's favor.

6. Conclusion

We first conclude the trial court did not err by orally ruling on the motion to dismiss instead of entering a written order. And while the length of delay in Defendant's trial triggered a full analysis of the *Barker* factors, the State presented sufficient evidence as to the reasons for delay – the COVID-19 pandemic and resulting case backlog – to rebut the presumption of a violation of Defendant's speedy trial rights. Further, Defendant asserted his speedy trial rights early in the process but did not demonstrate prejudice in his ability to mount his defense. As the State presented sufficient reasons for delay and Defendant failed to show prejudice, we conclude the trial court did not err in denying Defendant's speedy trial motion.

B. Improper Expert Witness Testimony

Defendant next argues that the trial court erred by allowing two State expert witnesses to testify regarding the credibility of A.S.'s allegations against Defendant.

Defendant did not object to this testimony at trial, so we consider this issue under a plain error standard of review. N.C. R. App. P. 10(a)(4).

For error to constitute plain error, a defendant must demonstrate that a fundamental error occurred at trial. *See State v. Odom*, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983). “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.” *State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012) (citations and quotation marks omitted). Plain error is to be “applied cautiously and only in the exceptional case[.]” *Id.*

Our Supreme Court has held that an expert witness may not testify that sexual abuse has in fact occurred in absence of physical evidence. *State v. Stancil*, 355 N.C. 266, 266-67, 559 S.E.2d 788, 789 (2002) (“[A]bsent physical evidence supporting a diagnosis of sexual abuse, such testimony is an impermissible opinion regarding the victim’s credibility.” (citation omitted)). Dr. Jeffcoat was the “medical provider who provides the holistic medical care of all children who come into the advocacy center” associated with Levine’s Children’s Hospital. Defendant contends that Dr. Jeffcoat gave an opinion that abuse had actually occurred based on the portion of testimony in italics below:

Q. At the time that you saw her, did you engage in that process of obtaining a social and medical history from her?

A. Absolutely. Remember, I’m already knowing a little bit about [A.S.] before I even walk into the room.

Q. Talk to the jury about that. What did you know about her?

A. I knew that -- I knew of her case. *I knew what was reported about her case. I knew that she was kind of down because of the case because I listened to her forensic interview, and I could tell that it was kind of difficult for her to talk about that. So I knew about her mental state. I knew about the case. I knew how she was reacting towards what has happened to her.*

(Emphasis added.)

Ms. Wood testified as an expert in forensic interviewing and in the dynamics of child sexual abuse disclosure. Defendant contends Ms. Wood also gave an improper opinion based upon the following testimony in italics below:

Q. You mentioned a little bit that you had information prior to meeting with [A.S.]. Based on that information, what did you know to have happened or believe to have happened based on this?

A. What I believe or was - - believed to have happened was that [A.S.] - -

THE COURT: Just a minute. Don't let her testify to - -

MS. NOBLE: Yes, Your Honor.

Q. *As far as the information you had, what were you presented with upfront?*

A. *That [A.S.] disclosed to her mother that her mother's boyfriend had touched her inappropriately more than one time.*

Q. *You said the word disclosure. What does that mean?*

A. It means a statement. It's a statement that describes an event that a child has experienced - - that a child has experienced that has happened to them.

(Emphasis added.) Defendant contends the testimony about what A.S. “disclosed” about the alleged sexual abuse constitutes an expression of opinion that these events happened. But these statements simply describe the forensic interview and information A.S. gave to these witnesses. Our Supreme Court has noted that “[a]n expert witness’s use of the word ‘disclose,’ standing alone, does not constitute impermissible vouching as to the credibility of a victim of child sex abuse, regardless of how frequently used, and indicates nothing more than that a particular statement was made.” *State v. Betts*, 377 N.C. 519, 525, 858 S.E.2d 601, 605-06 (2021). Defendant’s argument about these statements also takes them out of context. Both witnesses were describing their initial meetings with A.S. and describing their understanding of the situation before meeting with her. These brief statements were not expressions of an opinion that sexual abuse had actually occurred. Both witnesses made it clear they were not expressing an opinion as to what had happened. For example, Dr. Jeffcoat referred to the “reported incidents” from A.S. in other portions of her testimony. She also clarified that she was not “a witness to those things occurring” and she only knew it “had been reported that those things had occurred.”

The trial court did not err in failing to intervene *ex mero motu* as to the statements identified by Defendant. Further, even if the trial court did err, any such

error did not rise to the level of plain error, as Defendant failed to prove the testimony was so prejudicial that the error had a probable impact on the jury's finding that Defendant was guilty.

III. Conclusion

We conclude the trial court did not err in denying Defendant's motion to dismiss on speedy trial grounds as the State presented valid reasons for delay and Defendant did not demonstrate actual prejudice. Further, the trial court did not err by not intervening during the expert witnesses' testimony.

NO ERROR.

Panel consisting of Chief Judge DILLON and Judges STROUD and GORE.

Report per Rule 30(e).