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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-616

Filed 21 May 2025

Hoke County, Nos. 22CRS050597-460, 22CRS050598-460

STATE OF NORTH CAROLINA

v.

RAHEEM LARRONTE DAVIS

Appeal by defendant from judgments entered 20 November 2023 by Judge Stephan R. Futrell in Hoke County Superior Court. Heard in the Court of Appeals 26 February 2025.

Attorney General Jeff Jackson, by Special Deputy Attorney General Lisa Bradley, for the State.

The Sweet Law Firm, PLLC, by Kaelyn N. Sweet, for defendant-appellant.

ZACHARY, Judge.

Defendant Raheem Larronte Davis appeals from the trial court's judgments entered upon a jury's verdicts finding him guilty of three counts of statutory rape of a child and three counts of taking indecent liberties with a child. Defendant argues that the trial court committed plain error by admitting the testimony of a Cumberland County Department of Social Services ("DSS") investigator that he

alleges amounted to impermissible vouching. After careful review, we conclude that Defendant received a fair trial, free from error.

I. Background

Emily¹ alleged that between December 2021 and January 2022, she was repeatedly sexually abused by Defendant, her biological father. On 3 January 2023, a Hoke County grand jury indicted Defendant for three counts of rape of a child and three counts of taking indecent liberties with a child. Defendant's case came on for trial on 13 November 2023 in Hoke County Superior Court.

At trial, a DSS child protective services ("CPS") investigator testified that she had investigated a report of sexual abuse of Emily by Defendant. She stated that Emily told her that she had "two dads"—her biological father and her stepfather—and that the sexual abuse had "happened with her real dad, [Defendant]." The CPS investigator thereafter met with the school counselor to whom Emily had reported the abuse and asked whether she knew that Emily had two fathers. Regarding this discussion, the State asked whether "it [was] clarified as to who the actual father was" to determine who Emily alleged "had committed the sexual assaults." The CPS investigator responded that Emily confirmed that Defendant was the perpetrator. When asked whether DSS made a case decision in this matter, the CPS investigator testified that the report regarding Emily's sexual abuse "was substantiated."

¹ To protect her identity, we refer to the minor child by the pseudonym adopted by the parties. See N.C.R. App. P. 42(b).

STATE V. DAVIS

Opinion of the Court

The trial court accepted Dr. Thomas-Taylor of the Southern Regional Area Health Education Center as an expert in the field of child-abuse pediatrics. Dr. Thomas-Taylor testified that she had conducted a medical examination of Emily in February 2022, the results of which showed “blunt force . . . penetrating trauma,” which led her to conclude that there was “a history of sexual abuse.”

Emily’s school counselor testified to Emily’s description of sexual abuse by Defendant and the CPS report she filed for her. Three other State’s witnesses from the Fayetteville Police Department and the Hoke County Sheriff’s Office testified concerning the investigation of Defendant. Emily’s stepfather also testified regarding Emily’s behavior at the time of the sexual abuse and the initial confusion as to whether he or Defendant was the alleged perpetrator. Additionally, a social worker from the Fayetteville Child Advocacy Center testified that Emily told her of Defendant’s sexual abuse. Finally, the State also called as witnesses 1) Defendant’s cousin, who had also been sexually abused by Defendant, and 2) the detective who investigated that case.

On 20 November 2023, the jury returned verdicts finding Defendant guilty of all charges. That same day, the trial court entered judgments against Defendant, sentencing him to three consecutive terms of 300 to 420 months’ imprisonment in the custody of the North Carolina Department of Adult Correction for each of his convictions for statutory rape of a child. The court arrested judgment on Defendant’s three convictions for indecent liberties with a child. Defendant gave timely notice of

appeal.

II. Discussion

Defendant raises a single issue on appeal: whether the trial court committed plain error in admitting the CPS investigator's testimony that DSS "had investigated and substantiated the allegations of sexual abuse identifying [Defendant] as the perpetrator," thereby impermissibly vouching for Emily's credibility.

A. Standard of Review

Defendant acknowledges that he failed to object at trial to the testimony he challenges on appeal. 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). Now, Defendant "specifically and distinctly contend[s]" that the admission of this testimony amounted to plain error, and he seeks plain error review. *Id.*

To establish plain error, a defendant must show "that a fundamental error occurred at trial." *State v. Worley*, 268 N.C. App. 300, 303–04, 836 S.E.2d 278, 282 (2019) (citation omitted), *disc. review denied*, 375 N.C. 287, 846 S.E.2d 285 (2020). "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." *Id.* at 304, 836 S.E.2d at 282 (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.” *State v. Reber*, 386 N.C. 153, 158, 900 S.E.2d 781, 786 (2024) (cleaned up).

B. Analysis

Defendant’s argument is predicated on the premise that “the State improperly elicited [the CPS investigator’s] opinion regarding the veracity of Emily’s allegations” such that the CPS investigator impermissibly vouched for Emily’s credibility and thus “resolve[d] the issue of [Defendant’s] guilt for the jury.”

“[I]t is fundamental to a fair trial that a witness’s credibility be determined by a jury, that expert opinion on the credibility of a witness is inadmissible, and that the admission of such testimony is prejudicial when the State’s case depends largely on the testimony of the prosecuting witness.” *State v. Warden*, 268 N.C. App. 646, 650, 836 S.E.2d 880, 883 (2019) (citation omitted), *aff’d*, 376 N.C. 503, 852 S.E.2d 184 (2020). “In 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. Chandler*, 364 N.C. 313, 318, 697 S.E.2d 327, 331 (2010) (citation omitted). “[T]he same analysis applies to a witness who is a DSS worker or child abuse investigator because, even if she is not qualified as an expert witness, the jury will most likely give her opinion more

weight than a lay opinion.” *State v. Crabtree*, 249 N.C. App. 395, 402, 790 S.E.2d 709, 714 (2016) (cleaned up), *aff’d*, 370 N.C. 156, 804 S.E.2d 183 (2017).

As such, a witness impermissibly vouches for the credibility of a child victim in a sexual abuse case when the witness gives her “opinion that sexual abuse has *in fact* occurred . . . absent physical evidence supporting a diagnosis of sexual abuse.” *Chandler*, 364 N.C. at 318, 697 S.E.2d at 331 (citation omitted); *see also Crabtree*, 249 N.C. App. at 402, 790 S.E.2d at 714.

Here, the CPS investigator testified regarding the allegations contained in the initial report of sexual abuse, her interview with Emily, and DSS’s investigation. Defendant challenges two portions of the CPS investigator’s testimony as impermissibly “mov[ing] beyond opinion evidence and establish[ing] for the jury that (1) Emily had in fact been sexually abused and (2) [Defendant] was the perpetrator of Emily’s sexual abuse.”

The first challenged portion immediately follows the CPS investigator’s testimony regarding her meeting with Emily’s school counselor and the preliminary confusion concerning the identity of Emily’s alleged abuser:

[The State:] . . . [W]as it clarified as to who the actual father was?

[Witness:] Meaning, you mean - -

[The State:] That had committed the sexual assaults?

[Witness:] To me?

STATE V. DAVIS

Opinion of the Court

[The State:] Did it come across to you - -

[Witness:] Yes, well - -

[The State:] - - during your investigation?

[Witness:] Yes, yes, uh-huh.

[The State:] Okay.

[Witness:] Her biological father, her real dad.

[The State:] Which is who?

[Witness:] Which is [Defendant].

The second portion of challenged testimony concerns the DSS case decision:

[The State:] . . . [D]id [DSS] make a case decision in this case?

[Witness:] Yes.

[The State:] And when was that, what date?

[Witness:] It was substantiated for abuse concerning [Emily] . . . April 29th of 2022.

[The State:] What type of abuse was substantiated as to [Emily]?

[Witness:] Sexual abuse.

Defendant asserts that “[b]ased on the State’s line of questioning, a representative of [DSS] was able to vouch for” Emily’s credibility: “Essentially, because [DSS] had investigated and determined that Emily had been sexually abused by [Defendant], it must have happened.” In response, the State argues that “[t]his is

a misrepresentation of this testimony. [The CPS investigator] did not testify as to her opinion of Emily's testimony, and she did not testify as to . . . Defendant being the perpetrator of the sexual abuse against Emily." Rather, this "line of questioning was an attempt to clarify if [the CPS investigator] had determined which of Emily's two fathers Emily was accusing of the sexual assaults." We agree with the State.

Defendant heavily relies on *State v. Giddens*, 199 N.C. App. 115, 681 S.E.2d 504 (2009), *aff'd*, 363 N.C. 826, 689 S.E.2d 858 (2010), to support his argument that the CPS investigator's testimony constituted impermissible vouching. In *Giddens*, a CPS investigator testified "that DSS had 'substantiated' [the d]efendant as the perpetrator, and that the evidence she gathered caused DSS personnel to believe that the abuse alleged by the children did occur." 199 N.C. App. at 121, 681 S.E.2d at 508. This Court concluded that the CPS investigator's "testimony was clearly improper, as she testified that DSS had concluded [the d]efendant was guilty of the alleged criminal acts. Our case law has long held that a witness may not vouch for the credibility of a victim." *Id.* Moreover, "[a]lthough [the CPS investigator] was not qualified as an expert witness, [she wa]s a child protective services investigator for DSS, and the jury most likely gave her opinion more weight than a lay opinion." *Id.* at 122, 681 S.E.2d at 508.

However, the facts of the case before us do not align so completely with those in *Giddens* as to support Defendant's claim of plain error. Viewing the first portion of challenged testimony in context, it is clear that this line of questioning was intended

to clarify which “dad” had been accused of sexually abusing Emily. It was not, as Defendant contends, a positive assertion that Defendant in fact sexually abused Emily—much less testimony that amounted to plain error. *See State v. Wade*, 155 N.C. App. 1, 14, 573 S.E.2d 643, 652 (2002) (finding no plain error on review of challenged witness testimony because “when read in context, we cannot say that absent this statement, the jury probably would have reached a different result”), *disc. review denied*, 357 N.C. 169, 581 S.E.2d 444 (2003).

As for the CPS investigator’s allegedly improper “substantiation” testimony, in *State v. Martinez*, a social worker assigned by DSS to investigate a minor child’s allegations of abuse testified at trial that “[a] case and investigation was done and substantiated for ____.” 212 N.C. App. 661, 663, 711 S.E.2d 787, 789 (emphasis omitted), *disc. review denied*, 365 N.C. 359, 719 S.E.2d 23 (2011). The defendant’s counsel objected “to any ‘substantiation’ testimony.” *Id.* The trial court overruled the objection, and the social worker continued: “[DSS] substantiated a case of sex abuse in regard[] to [the minor child].” *Id.* This Court determined that the substantiation testimony amounted to impermissible vouching for the minor victim’s credibility. *Id.* at 664, 711 S.E.2d at 789.

Here, unlike in *Martinez*, the issue was not properly preserved by an objection at trial. Moreover, Defendant fails to show plain error where the jury’s verdict “did not rest solely on the victim’s credibility.” *State v. Hammett*, 361 N.C. 92, 99, 637 S.E.2d 518, 523 (2006).

At trial, Dr. Thomas-Taylor testified that she conducted a medical examination of Emily in February 2022. She found that Emily’s hymen had “a gap indicating that there had been some type of prior trauma.” She noted that this sign of “blunt force . . . penetrating trauma” was “a very rare finding.” Dr. Thomas-Taylor also found “some notching around” Emily’s hymen and stated that these notches “have been associated with a history of sexual abuse.” She testified that her diagnosis of Emily, based on “the penetrating trauma, the bleeding, and all the information that [Emily] had provided was certainly consistent with a history of sexual abuse.”

In addition to the physical evidence of Defendant’s sexual abuse, there was ample other evidence of Defendant’s guilt presented at trial. Emily provided extensive testimony detailing her repeated rapes by Defendant. Several other witnesses provided strong corroborating testimony, extensively cataloging Emily’s behavior during the period of sexual abuse, her consistent descriptions of the sexual abuse, and the investigation of Defendant.

As our Supreme Court has recently explained, when reviewing for plain error, we “examine[] the state of all the evidence except for the challenged evidence and ask[] whether, in light of that remaining evidence, the jury probably would have done something different.” *Reber*, 386 N.C. at 162, 900 S.E.2d at 789. Defendant has not overcome that high burden here. *Id.*; *see also State v. Stancil*, 355 N.C. 266, 267, 559 S.E.2d 788, 789 (2002) (“The overwhelming evidence against [D]efendant leads us to conclude that the error committed did not cause the jury to reach a different verdict

STATE V. DAVIS

Opinion of the Court

than it otherwise would have reached.”).

For these reasons, we cannot conclude that the unchallenged admission of the CPS investigator’s substantiation testimony had a probable impact on the jury’s finding of Defendant’s guilt, or that this is the “exceptional case” in which the alleged “error seriously affects the fairness, integrity or public reputation of judicial proceedings.” *Reber*, 386 N.C. at 158, 900 S.E.2d at 786 (cleaned up).

NO ERROR.

Judges COLLINS and GORE concur.

Report per Rule 30(e).