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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-178

Filed 19 August 2026

New Hanover County, No. 22CR054996-640

STATE OF NORTH CAROLINA

v.

MARX MICHAEL ANDRZEJEWSKI

Appeal by defendant from judgment entered 23 May 2024 by Judge Bob R. Cherry in New Hanover County Superior Court. Heard in the Court of Appeals 16 October 2025.

Attorney General Jeff Jackson, by Assistant Attorney General Megan Shook, for the State.

Mark Montgomery for defendant.

FREEMAN, Judge.

Defendant appeals from judgment entered upon a jury verdict of guilty on two charges of second-degree sexual offense. On appeal, Defendant argues the trial court plainly erred by allowing the State to present alleged vouching testimony. After careful review, we conclude defendant received a fair trial free from reversible error.

I. Factual and Procedural Background

On 4 July 2020, Jessie¹ and her twenty-two-month-old son arrived at a Fourth of July gathering at her friend's residence. Jessie planned to spend the night at the friend's residence. The friend's husband, defendant, was present at the gathering. Throughout the evening, Jessie recalled eating and socially drinking, while defendant made drinks.

Later that night, Jessie started "feeling off." Jessie could not remember how she got to bed that night. She remembered at some point "inhaling something and choking on the smoke" but was unaware of the source of the inhalant or the smoke. While Jessie was lying in bed that night, she felt someone lay next to her and felt curly hair, "like a beard," brush up against the left side of her arm. Jessie then felt male fingers inside of her pants, in her shirt, and in her mouth. Jessie testified that the only male present at the apartment that night with a beard was defendant.

At some point in the night, Jessie recalled getting out of bed in a foggy state and staggering to a bathroom down the hall while "holding up against the wall." The next day, Jessie awoke abnormally late, feeling "foggy, fussy, and airheaded" and feeling like her "body couldn't function." She also had pain and discomfort in her vagina and rectum.

Jessie testified that she didn't "feel right," like "something had happened," and that it was difficult to drive home due to delayed reactions. Jessie was taken to the

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

hospital, where she was seen and discharged later that day. On 6 July 2020, Jessie tested positive for benzodiazepine. That same day, Jessie's husband called 911 to report sexual assault.

On 8 July 2022, a warrant was issued for defendant's arrest. On 23 October 2023, defendant was indicted for two counts of first-degree forcible sexual offense. In the indictment, the grand jury alleged that defendant "used an impairing substance to facilitate the sexual offense."

Defendant's matter came on for trial on 13 May 2024 in Superior Court, New Hanover County. At trial, Jessie testified that she did not consent to or initiate any sexual activity that night, nor did she intentionally take any medication that night, including benzodiazepines.

The nurse examiner who performed Jessie's sexual assault examination (Nurse) testified as an expert in emergency nursing and as a sexual assault nurse examiner expert. During the Nurse's testimony, the State offered into evidence, over defendant's objection, Jessie's medical record documenting the sexual assault examination and drug screen.

A Wilmington Police Department sex crimes police officer (Officer) investigated Jessie's sexual assault and testified at defendant's trial. On 17 July 2020, the Officer and her partner interviewed defendant. The Officer testified that during the interview, defendant admitted to making drinks for Jessie on 4 July 2020; stated that Jessie was drunk by the end of the night and that he helped Jessie into

bed with her young son; stated that he had to catch Jessie twice when she fell out of bed; and stated that after returning to his wife's bedroom briefly, he went into the bedroom where Jessie was sleeping, but he denied getting into bed with Jessie or ever being intimate together. Defendant denied touching or drugging Jessie over a recorded telephone call.

The Officer testified that she interviewed defendant a second time on 8 July 2022. In this interview, defendant admitted that he offered Jessie a Xanax on 4 July 2020 and that it was Jessie that put defendant's hands down her pants. After obtaining a search warrant for defendant's phone and prescribed Xanax medication, the Officer testified that the warning on the Xanax bottle stated, "[m]ay cause drowsiness and dizziness. Alcohol and marijuana may intensify the effect. Use care when operating a vehicle."

A pharmacist testified as an expert in pharmacology and toxicology (Pharmacist). The Pharmacist testified that Xanax is a benzodiazepine and that benzodiazepines could be "referred to as a tranquilizer." Further, the Pharmacist testified that those who ingest both alcohol and benzodiazepines "may experience a much higher reaction or adverse effect profile than taking both of those individually." The Pharmacist opined that it "seem[s] reasonable to think that the effects that [Jessie] described, specifically with dreamlike states and memory lapses, to be consistent with ingestion of . . . benzodiazepine." The Pharmacist also opined that "the combination of Xanax and alcohol would have caused an increased chance of

confusion, memory issues, and fogginess than we would expect from someone just taking benzodiazepines.”

A forensic scientist at the State Crime Lab testified as an expert in forensic biology and DNA analysis. He testified that the DNA profile obtained from Jessie’s rectal swab was “approximately 826 quintillion times more likely if it originated from [Jessie] and [defendant] than if it had originated from [Jessie] and an unknown, unrelated individual.”

At the conclusion of the trial, the jury returned a verdict of guilty of two counts of second-degree sexual offense. Defendant gave notice of appeal in open court.

II. Jurisdiction

This Court has jurisdiction to hear this appeal from a final judgment of a superior court, pursuant to N.C.G.S. §§ 7A-27(b)(1) and 15A-1444(a) (2023).

III. Standard of Review

“Where a defendant fails to preserve errors at trial, this Court reviews any alleged errors under plain error review.” *State v. Koke*, 264 N.C. App. 101, 107 (2019). “[T]his Court reviews whether a defendant was denied effective assistance of counsel de novo.” *State v. Wilson*, 236 N.C. App. 472, 475 (2014).

IV. Discussion

Defendant contends the trial court plainly erred by allowing testimony from the Officer and the Nurse because it constituted improper vouching testimony. Alternatively, defendant contends that trial counsel was ineffective for not objecting

to the alleged vouching.

A. Vouching Testimony

Defendant contends that the Nurse’s use of the terms *victim*, *assault*, *assailant*, and *attacker* constitutes improper vouching because using those specific terms “made it clear to the jury that, in her mind, Jessie had in fact been sexually assaulted as she claimed.” Defendant further argues, in part, that the Officer improperly vouched for Jessie by testifying that Jessie “was a ‘victim’ of a ‘sexual assault.’”

Defendant failed to object to the testimony at trial and requests plain error review on appeal. Accordingly, we review for plain error. N.C. R. App. P. Rule 10(a); *Koke*, 264 N.C. App. at 107.

Our Supreme Court has explained that plain error “should be ‘applied cautiously and only in the exceptional case,’ that is reserved for ‘grave error which amounts to a denial of a fundamental right of the accused,’ and that it focuses on error that has ‘resulted in a miscarriage of justice’ or the denial of a ‘fair trial.’” *State v. Reber*, 386 N.C. 153, 158 (2024) (quoting *State v. Lawrence*, 365 N.C. 506, 516–17 (2012)). Under plain error review, the defendant must show (1) a fundamental error occurred at trial, (2) the error had a probable impact on the outcome, and (3) the error is an exceptional case that seriously affects the fairness, integrity, or public reputation of the judicial proceedings. *Id.* (citing *Lawrence*, 365 N.C. at 517–18). This test examines “all the evidence except for the challenged evidence and asks whether,

in light of that remaining evidence, the jury probably would have done something different.” *Id.* at 162. “[T]his standard—showing that a jury *probably would have* reached a different result—requires a showing that the outcome is significantly more likely than not. *Id.* at 159. “An event will probably occur if it is almost certainly the expected outcome.” *Id.* (cleaned up).

N.C.G.S. § 8C-1, Rule 701 (2023) provides that:

If the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue.

This statute is violated when opinion testimony intended to vouch for the credibility of another witness is admitted. *State v. Aguilar*, 292 N.C. App. 596, 601 (2024); *see also State v. Bellamy*, 172 N.C. App. 649, 663 (2005) (“It is improper for one witness to vouch for the veracity of another.”). “[T]he truthfulness of a particular witness should be determined by the jury rather than by a witness for one party or the other, as the ‘jury is the lie detector in the courtroom’ and ‘is the only proper entity to perform the ultimate function of every trial—determination of the truth.’” *State v. Caballero*, 383 N.C. 464, 475 (2022) (quoting *State v. Chul Yun Kim*, 318 N.C. 614, 621 (1986)). “This prohibition against vouching for the credibility of another witness applies during the testimony of either an expert or lay witness.” *State v. Betts*, 267 N.C. App. 272, 291 (2019), *aff’d as modified*, 377 N.C. 519 (2021). “[T]he trial court

commits a fundamental error when it allows testimony which vouches for the complainant's credibility in a case where the verdict entirely depends upon the jurors' comparative assessment of the complainant's and the defendant's credibility." *Aguilar*, 292 N.C. App. at 601 (quoting *State v. Warden*, 376 N.C. 503, 504 (2020)).

However, we have repeatedly rejected the premise that prosecution witnesses using the term *victim* constitutes "reinforcing the complainant's credibility at the expense of [the] defendant.'" *State v. Womble*, 272 N.C. App. 392, 400 (2020) (quoting *State v. Jackson*, 202 N.C. App. 564, 568–69 (2010)). In *Womble*, we held that the trial court did not plainly err when multiple witnesses referred to the injured party as a victim. *Id.* at 399. We reasoned that "the strength of the State's evidence against defendant . . . outweighed any potential subliminal effect of the witnesses' occasional references to [the injured party] as the victim." *Id.* at 400.

Here, like *Womble*, the evidence presented at trial outweighed any references to Jessie as *victim*. Further, we cannot say that the jury probably would have reached a different result absent these references, given the substantial evidence of defendant's guilt. The Pharmacist testified that Jessie's symptoms could be consistent with ingestion of the benzodiazepine, supporting the jury's finding that "the defendant used an impairing substance to facilitate the sexual offense." Additionally, Jessie's testimony regarding what she felt in bed that night tends to show that the perpetrator was an adult male with a beard and that defendant was the only adult male with a beard present that night. Moreover, the forensic scientist

testified that the DNA evidence points to defendant as a likely contributor; Jessie's urinalysis tested positive for benzodiazepine, of which defendant has a prescription and Jessie does not. Finally, after initially denying that he touched or drugged Jessie, defendant later admitted to law enforcement in a subsequent interview that he offered Jessie a Xanax that night and that it was Jessie that put defendant's hands down her pants.

Although the Officer testified that Jessie "was a 'victim' of a 'sexual assault' " and the Nurse used the terms *victim*, *assailant*, *assault*, and *attacker*, other sworn testimonial evidence of defendant's guilt "outweighed any potential subliminal effect of the witnesses' occasional" use of such terms. *Womble*, 272 N.C. App. at 400. Thus, defendant has not shown prejudice resulting from the uses of those terms in the Officer's or the Nurse's testimony.

Based on the foregoing, we can neither say that a fundamental error occurred at trial nor that the jury probably would have reached a different result absent the disputed testimony. Accordingly, we hold that the trial court did not plainly err.

B. Ineffective Assistance of Counsel

Defendant alternatively contends that his counsel's failure to object to the alleged vouching testimony was ineffective assistance of counsel.

"A defendant's right to counsel includes the right to the effective assistance of counsel." *State v. Braswell*, 312 N.C. 553, 561 (1985). "There exists a strong presumption that counsel's conduct falls within the wide range of professional

assistance, but this presumption is rebuttable.” *State v. Gillard*, 386 N.C. 797, 867 (2024) (quoting *Strickland*, 466 U.S. at 689) (cleaned up). To show that his counsel was ineffective, a defendant “must show that his counsel’s conduct fell below an objective standard of reasonableness.” *Id.* at 866 (quoting *Braswell*, 312 N.C. at 561–62). To do this, a defendant must satisfy a two-part test:

First, the defendant must show that counsel’s performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the “counsel” guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

Strickland v. Washington, 466 U.S. 668, 687 (1984); accord *Braswell*, 312 N.C. at 562. “Prejudice is established by showing ‘that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.’” *State v. Campbell*, 359 N.C. 644, 690 (2005) (quoting *Strickland*, 466 U.S. at 694).

As discussed above, we find no reasonable probability that defendant would have obtained a more favorable outcome at trial had his counsel objected when witnesses used certain subliminal terms. See *Womble*, 272 N.C. App. at 402. Accordingly, we deny defendant’s ineffective assistance of counsel claim.

V. Conclusion

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Opinion of the Court

The trial court did not plainly err by allowing the alleged vouching testimony and we deny defendant's ineffective assistance of counsel claim.

NO ERROR.

Judges HAMPSON and CARPENTER concur.

Report per Rule 30(e).