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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-779

Filed 16 September 2026

Catawba County, Nos. 22CR002660-170, 22CR002661-170, 22CR002662-170,
22CR002663-170, 22CR002664-170, 22CR003095-170, 22CR003412-170

STATE OF NORTH CAROLINA

v.

MICHAEL ANTHONY MYERS

Appeal by defendant from judgments entered 11 June 2024 by Judge William
A. Wood II in Catawba County Superior Court. Heard in the Court of Appeals
12 August 2026.

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender James R.
Grant, for defendant.*

*Attorney General Jeff Jackson, by Assistant Attorney General Sarah N. Tackett,
for the State.*

ARROWOOD, Judge.

Michael Anthony Myers (“defendant”) appeals from judgment following jury
trial where he was convicted of 19 offenses. Defendant argues that the court violated
his Sixth Amendment rights under the Confrontation Clause, and alternately that
the trial court erred in prohibiting a line of questioning by his defense counsel

pursuant to Rule 412. For the following reasons, we find no error and no prejudicial error respectively.

I. Introduction

Ms. C gave birth to Rachel¹ on 3 November 2005 and Nicole on 9 June 2008. Defendant met Ms. C in 2012 and they moved in together soon after, marrying in 2017. Defendant is now the biological father of Ms. C's two younger children. Defendant worked as an auto mechanic and was the primary breadwinner for the family, although Ms. C began working after her youngest children reached school age.

From January 2015 until 2020, the family lived together at 3031 Denwood Drive in Claremont. In early 2020, the family moved to a two-bedroom mobile home at 1915 Summer Lane in Claremont, although Rachel mostly stayed with Ms. C's grandparents across the street, later testifying that she did so because she didn't want to be around defendant. In late 2020, the family moved again to a rental property on 1075 U.S. Highway 70 in Newton. At this address, Rachel and Nicole had their own bedrooms on the ground floor, and two upstairs bedrooms were shared by the two younger children and their parents respectively.

A. Abuse Preceding 19 June 2022

The testimony at trial tended to show the following narrative of events. Throughout their marriage, defendant and Ms. C had arguments which often became

¹ Pseudonyms are used for the minor children in accordance with N.C. R. App. P. 42.

physical, with defendant hitting the walls and breaking objects. Nicole testified that she originally loved and trusted defendant, who behaved “like a dad” to her. Rachel testified that defendant “step[ped] in and [did] things for [her] as a father” after her biological father passed away in her infancy. Both testified to pervasive arguments, for which Rachel blamed defendant, who grew “more violent and aggressive towards everyone in the home. . . . His personality had flipped. He went from someone nice to someone that . . . you had to walk on eggshells [around].”

Nicole testified that defendant began sexually abusing her at the Denwood Drive address. After falling asleep on the couch, she awoke in defendant’s bed, where he put his hands under her clothes and inside her vagina. Defendant continued to touch her vagina and breasts “consistently” and the abuse continued after the move to Summer Lane when Nicole was in seventh grade. At this address, defendant put his mouth on her vagina for the first time.

After the family moved to Newton, defendant began having penetrative sex with Nicole several times a week. This began after defendant picked her up from school early one day, took her home, and put his penis in her vagina. Defendant also began trying to get Nicole to touch his penis. Nicole kept the ongoing abuse secret out of embarrassment and because she “didn’t want to cause a huge problem[,]” and when she asked defendant what would happen if she told anyone, he replied that he would kill himself.

Rachel testified to a similar pattern of abuse, also beginning on Denwood

Drive. The abuse began one morning as she was babysitting her younger siblings while her mother worked, and she awoke in Ms. C's bed and felt someone rubbing her breasts over her pajamas. During the following days when Ms. C was at work, defendant began touching Rachel's breasts and vagina. He started performing oral sex on her when she was home sick from middle school one day. He also sometimes forced her to perform oral sex on him.

Defendant first had penetrative sex with Rachel when he told her he was taking her to Walmart but stopped at his automotive shop and brought her to his office, where he pushed her up against the desk, removed their pants and underwear, and put his penis inside her. Defendant handed her a shop rag to wipe herself so she "wouldn't get an infection." She testified of another occasion after the family moved to Newton, when defendant picked her up from high school early, told her to drink several small bottles of alcohol, said she owed him for his contributions to the family, and had vaginal sex with her. Rachel also kept the abuse secret, developing anxiety and depression out of concern that her siblings would be separated and because defendant told her that she would be responsible for destroying her family if she spoke out.

B. The Evening of 19 June 2022

On 19 June 2022, Rachel was on vacation with her grandparents and Nicole was the only person sleeping on the first floor of the Newton home, so when she went to bed, she left the hallway light on. At about midnight, defendant awoke her and

told her to turn off the light. When she did so, defendant pushed her into Rachel's bedroom, where she fell back onto her sister's mattress, and he shut the door. Defendant knelt on the mattress, straddled her legs, and began tugging on the waistband of her pajama bottoms. Before anything further occurred, Ms. C entered and began yelling at defendant, who said, "It's not what it looks like." Ms. C took Nicole away to the living room and asked if anything similar had happened before. She admitted that defendant had been sexually abusing her, and Ms. C took her to her car, where she called 911 at 1:33 a.m. Defendant followed, yelling and pounding on the car windows.

Officer Brian Wallace ("Officer Wallace")² from the Newton Police Department arrived at 1:41 a.m. followed by Lieutenant Briggs, Sergeant Yang, and Lieutenant Will Garrett ("Lieutenant Garrett"), a criminal investigator. Ms. C told Officer Wallace that she woke up in the middle of the night and found defendant on top of her daughter, but he testified that Nicole was too emotional to speak clearly. Lieutenant Garrett arranged for her to be interviewed at the Children's Advocacy and Protection Center ("CAPC"), where Adrienne Opdyke conducted a forensic interview with Nicole at 5:00 a.m. Nicole's interview, which was recorded and included as an exhibit at trial, contained numerous allegations of sexual abuse by defendant.

Social worker Christy Ard testified that when Ms. C called Rachel to tell her

² Wallace was assigned to be an Investigator in April 2024 and is accordingly identified as such in the transcript; however, he was a patrol officer at the time of the relevant events.

about the evening's events, Rachel started crying and hyperventilating and said, "Oh my God, he's been doing this to me too." Rachel also admitted this to her grandmother that day. Both sisters testified that neither knew about the other's experiences until after 19 June 2022. Rachel had two recorded forensic interviews at CAPC in June and July 2022 and disclosed numerous sexual assaults by defendant.

On 1 August 2022, the Catawba County Grand Jury indicted defendant for 23 offenses pertaining to the sexual abuse of Nicole and Rachel. On 6 May 2024, 11 charges were affected by superseding indictments, which altered the specific charges, expanded the date range of the alleged offenses, or both, and the state voluntarily dismissed three charges. The State ultimately charged him with four counts of statutory rape, five counts of indecent liberties, two counts of incest, and six counts of sex act by a substitute parent.

C. The State's LabCorp Reports

On 29 June 2022, Dr. Julia Wetmore ("Dr. Wetmore"), qualified at trial as an expert in child sexual abuse, met with Rachel and Nicole for medical interviews and examinations. In both sisters' genitals, she observed lesions which she diagnosed as human papillomavirus ("HPV"), her only observable physical findings for either girl. She also ordered comprehensive testing for sexually transmitted infections and diseases.

Two weeks before trial, the State told the court it would introduce the results of vaginal swab testing performed by LabCorp and ordered by Dr. Wetmore ("the

LabCorp reports”). The State said it would not have to call LabCorp’s technologists to testify “because [their] doctor relied upon [the results] in her overall opinion[.]” The State would introduce the technologists’ CVs instead. The defense argued that the United States Supreme Court would soon issue its opinion in *Smith v. Arizona*, 602 U.S. 779 (2024), which could possibly forbid the State from introducing the LabCorp results unless defendant had the opportunity to cross-examine the technologists. The defense unsuccessfully requested the trial’s continuation.

The State called Dr. Nathan Harris (“Dr. Harris”), the laboratory’s supervisor, who described the “automated” process and testified that the technologists never “interpret” the results or “form opinions” about them. On cross-examination, he confirmed that he did not personally witness the testing, agreed that the test is not “completely automated” because it requires a person to load the sample, but clarified: “Outside of making sure that the machine doesn’t say that the sample was invalid, they would not form an opinion about the testing.”

Over the defense’s objection, the court allowed the State to introduce the LabCorp reports, which showed both girls tested positive for varying levels of bacterial vaginosis. Dr. Wetmore testified that, based on the LabCorp reports, she diagnosed both girls with bacterial vaginosis and prescribed Rachel medication.

D. The State’s Rule 412 Objection

During Rachel’s testimony, the defense attempted to ask her about a vibrator she received from her aunt for her birthday. The State immediately objected and the

court excused the jury for *voir dire*. Asked why the testimony was relevant, the defense argued:

I believe the prosecutor's intention is to elicit testimony from other witnesses about the fact . . . [that bacterial vaginosis] could be caused by other factors including the use of a vibrator and other sexual activity. I know about the rape shield law, and so I would hesitate to ask about any other sexual activity, but it sounds like there is at least something going on and that would be relevant to that.

The State responded that the testimony was irrelevant because Rachel had never used the vibrator. The court sustained the objection and invited the jury back.

At the close of the State's evidence, defendant moved to dismiss the charges and moved for mistrial. The court dismissed one count and otherwise denied his motions. The defense unsuccessfully renewed the motions following its evidence. The jury convicted defendant of the remaining nineteen charges.

II. Discussion

Defendant argues that the trial court violated his Sixth Amendment rights under the Confrontation Clause by improperly admitting the LabCorp reports because they constitute testimonial hearsay and he had no opportunity to cross-examine the LabCorp technicians who processed the vaginal swabs. Defendant next argues that the court erred in prohibiting the defense's line of questioning about the aunt's birthday gift as a possible alternative source of Rachel's bacterial vaginosis. We discuss each argument in turn.

A. The Confrontation Clause Did Not Guarantee Defendant the Right to Cross-

Examine LabCorp's Technologists

We review *de novo* the trial court's determination as to defendant's rights under the Confrontation Clause. *State v. Clark*, 296 N.C. App. 718, 719 (2024) (citations omitted). The defendant has the burden of establishing a violation of this right. *See, e.g., State v. Thompson*, 359 N.C. 77, 114 (2004).

The Confrontation Clause of the Sixth Amendment bars the State from introducing testimonial hearsay unless the declarant is unavailable and the defendant had a prior opportunity to cross-examine him. *Crawford v. Washington*, 541 U.S. 36, 42 (2004). "In operation, the Clause protects a defendant's right of cross-examination by limiting the prosecution's ability to introduce statements made by people not in the courtroom." *Smith*, 602 U.S. at 779.

Hearsay describes a declarant's out-of-court statements offered to prove the truth of the matter asserted. *See* N.C.G.S. § 8C-1, Rule 801(c) (2026). The rule applies to a "statement," meaning "(1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by him as an assertion." *Id.*, Rule 801(a) (2023). Second, hearsay always originates from a "declarant"—that is, the "*person* who makes a statement." *Id.*, Rule 801(b) (2023) (emphasis added). "By its nature, then, the hearsay rule is tied to a human source." *State v. Lester*, 387 N.C. 90, 96 (2025).

At trial, hearsay issues arise whenever a qualified expert offers an opinion developed in reliance upon somebody's out-of-court statement. "If an expert . . . conveys an out-of-court statement in support of his opinion, and the

statement supports that opinion only if true, then the statement has been offered for the truth of what it asserts.” *Smith*, 602 U.S. at 795. “The jury cannot decide whether the expert’s opinion is credible without evaluating the truth of the factual assertions upon which it is based[,]” so the defendant is entitled to an “opportunity to challenge the veracity of the out-of-court assertions that are doing much of the work.” *Id.* at 796 (citation omitted).

However, the declarant’s intent controls Confrontation Clause issues: “nothing is an assertion unless intended to be one” by the speaker. *Id.*, Rule 801 cmt. (2023). The defendant’s rights apply only to testimonial hearsay, and the “primary purpose” test distinguishes testimonial and non-testimonial hearsay. *Lester*, 387 N.C. at 96. If testimonial, its “primary purpose is to establish or prove past events potentially relevant to later prosecution – in other words, to capture evidence for use at trial.” *Id.* at 97. The test “focuses on *why a statement was made in the first place* – not why it was later retrieved and turned over.” *Id.* at 102 (cleaned up, emphasis added).

“North Carolina courts treat lab reports created *only* to assist in police investigations as testimonial.” *State v. Holt*, No. COA25-560, 2026 WL 1407585, at *3 (N.C. Ct. App. May 20, 2026) (emphasis added) (citing *State v. Clark*, 296 N.C. App. 718, 723 (2024)). A criminal defendant retains the right to “cross-examine an analyst by asking about the tests the analysts performed, the risk of error presented in the tests, and an analyst’s proficiency in interpreting the test results.” *Id.* (citing *Smith*, 602 U.S. at 786). Therefore, where the report was produced with the requisite

intent, and the testifying expert was not the person who originally analyzed or interpreted the lab report to generate the factual statement relied upon for the expert opinion, defendant must have a chance to cross-examine the original analyst. Indeed, the Supreme Court held in *Smith* that “[w]hen an expert conveys an absent analyst’s statements in support of his opinion, and the statements provide that support only if true,” those statements are testimonial hearsay. *Smith*, 602 U.S. at 783.

However, just as not all laboratory reports are created *only* to assist in police investigations, not all laboratory results require a human analyst’s statement or interpretation before an expert witness uses them as the basis of her opinion. Because “machine-generated raw data, if truly machine-generated, are not statements by a person, they are neither hearsay nor testimonial.” *State v. Ortiz-Zape*, 367 N.C. 1, 10 (2013) (cleaned up). Following *Smith v. Arizona*, the North Carolina Supreme Court addressed the issue of machine-generated data in *State v. Lester*, 387 N.C. 90 (2025), discussing the extent to which “raw computer data lack the hallmarks of witness testimony” and drawing a boundary for the Confrontation Clause’s application to this type of evidence. *Lester*, 387 N.C. at 99.

Certain data is “the self-generated record of a computer’s operations resulting from [its] programming” and as such is “created entirely by a machine” which, “[w]hen triggered . . . mechanically processes inputs, extracts information, and generates results” through a process “encoded in the machine’s programming . . . rather than independent choice.” *Id.* at 98 (quotes and citations

omitted). On the other hand, a testifying witness gives a “narrative of past events delivered at some remove in time” from them, telling “a story about the past” to chronicle “how potentially criminal past events began and progressed.” *Id.* at 99 (quoting *Davis*, 547 U.S. at 830–32.) “Computer-generated data, by contrast, capture the here and now” and record “events *as they were actually happening*, rather than describing past events.” *Id.* at 99. “This is a far cry from testimonial statements that recount the past to nail down the truth about [prior] criminal events.” *Id.* at 99 (quoting *Davis*, 547 U.S. at 830).

In drawing this distinction, the Court cited the reasoning of *United States v. Washington*, 498 F.3d 225 (4th Cir. 2007) that a chromatograph’s raw data were not testimonial because they captured “the current condition of the blood in the machines” and “did not involve the relation of a past fact of history as would be done by a witness[.]” *Washington*, 498 F.3d at 332. A machine programmed to generate data of this kind has “no memory to probe, no truthfulness to impugn, and no agenda to uncover” and cannot “sit in the witness chair to explain how it crunched the numbers.” *Lester*, 387 N.C. at 100. Accordingly, because “the very flaws that cross-examination is designed to reveal—ambiguity, dishonesty, or bias—simply do not apply to machines . . . purely machine-made data are not the type of evidence the [Confrontation] Clause was designed to address.” *Id.* The Court held that “machine-generated raw data, *if truly machine-generated*” are therefore “neither hearsay nor testimonial” under the Confrontation Clause. *Id.* (emphasis added).

In so holding, the Court set clear limits on the “unfettered admission of all electronic evidence.” *Id.* Like all exhibits, they must be properly authenticated. N.C.G.S. § 8C-1, Rule 901 (2023). Further, the *Lester* holding applies only where the data was produced “entirely by the internal operations of a computer or other machine, free from human input or intervention.” *Id.* This would exclude both “human interpretations of computer produced data” and “computer-stored evidence,” i.e. “evidence that originates in substance from a human source but is simply housed in electronic form.” *Id.* at 101. As an example of the former, the Court described “a laboratory machine that analyzes the sugar and insulin levels in a blood sample. A physician might review the data and diagnose a patient with diabetes. The machine’s raw results are not testimonial; the diagnosis—a human judgment based on that data—is.” *Id.* Raw results “showing the chemical composition of the blood sample are simply the product of a machine.” *Id.* “The key point is that no human judgment contributes to producing this information—the machine simply records and reports what it measures.” *Id.*

Defendant argues that LabCorp’s reports fall outside this category of machine-generated non-testimonial evidence, and that *Smith* required an opportunity to cross-examine the LabCorp employees who ran the tests. We disagree. This instructive distinction made in *Lester* controls, and we hold that defendant was not guaranteed the right to cross-examine those employees. The LabCorp reports were not testimonial statements by its technologists but a machine’s record of a pathogen in a

biological specimen, present at the time the machine read the sample, and Dr. Wetmore subsequently interpreted the record without the interpretive intervention of a LabCorp technologist, Dr. Harris, or anyone else.

Dr. Harris detailed the work performed by the technologists he oversees as supervisor for the molecular biology division: Once a specimen is routed to this department, a technologist identifies the test ordered for it. The technologist knows the test's purpose insofar as she is aware "what testing is ordered, but we don't know why anyone is testing that. That's up to the physician[,] not us." If the test is automated, as in the present case, it is forwarded to a "special room so that we can load it onto the instruments that are related to that testing." An employee then loads 93 samples into the Roche Cobas 8800 simultaneously and the machine performs an "automated process to take an aliquot from the sample" from which the genetic material is removed or "purif[ied,]" and the instrument then probes the DNA for the present "presence of our pathogens of interest" within the specimen.

Dr. Harris confirmed that the instrument itself is programmed to analyze the sample and that the technologists do not interpret or form opinions on the results, but merely "review the run and make sure there was no instrument failure[.]" It generates a report "every single time" as long as there is no such failure. The technologist will then "say, okay, you can release these results, and they would be transmitted from that instrument into our reporting system and then transmitted to the physician" electronically. The results are only amended or edited "if we can see

that there was an issue of some sort [but t]hat would require higher level leadership investigation at that point. That cannot be done [by] the tech level who are running the instruments.”

In sum, what Dr. Harris describes is a “neutral, self-generated record of information produced via the machine’s electrical and mechanical operations.” *Id.* at 98 (quoting *State v. Armstead*, 432 So. 2d 837 at 839–40 (La. 1983)). A human being programs the machine, inputs the sample, and ensures that there is no “instrument failure[,]” but the sample’s interpretation and generated result are the “fruit of self-sufficient and automated processes” and “the machine’s work alone.” *Id.* Because the specimen was interpreted by the machine itself rather than a LabCorp technologist, the Confrontation Clause does not guarantee the right to cross-examine the technologist.

To be sure, Dr. Wetmore interpreted the report to diagnose Rachel and Nicole with bacterial vaginosis. Her independent interpretation was therefore the proper subject of cross-examination, and defense had the opportunity to cross-examine Dr. Wetmore at trial. But even the finest attorney cannot cross-examine a machine, so a machine’s automated interpretation of a biological specimen and the data it generates in accordance with its automated programming are improper subjects for cross-examination. Therefore, defendant’s argument fails.

B. It Was Erroneous, But Not Prejudicial, to Exclude the Defense’s Line of Questioning About the Sex Toy

In reviewing a trial court's decision to bar the admission of evidence pursuant to Rule 412, we defer to "the sound discretion of the trial court, and its ruling thereon will not be disturbed absent a showing of abuse of discretion." *State v. Edmonds*, 212 N.C. App. 575, 580 (2011). On the question of whether the testimony was relevant, we do not review under the abuse of discretion standard but give deference on appeal insofar as the trial court was "better situated to evaluate whether a particular piece of evidence tends to make the existence of a fact of consequence more or less probable." *State v. Khouri*, 214 N.C. App. 389, 406 (2011) (citing *State v. Tadeja*, 191 N.C. App. 439, 444 (2008)). Where the court erred in barring admission, the appellant must also show that "there is a reasonable probability that had the error not been committed, a different result would have been reached at trial." N.C.G.S. § 15A-1443(a) (2026). A new trial will only be ordered if the appellant shows the error meets this prejudice standard. *State v. Wilkerson*, 363 N.C. 392, 415 (2009).

In rape or sex offense cases, the Rape Shield Statute limits the admissibility of relevant evidence insofar as it concerns the victim-complainant's sexual behavior, i.e. any of her sexual activity "other than the sexual act which is at issue in the indictment on trial." N.C.G.S. § 8C-1, Rule 412 (2026). Her sexual behavior is irrelevant unless it falls under four exceptions, one of which defendant raises here: "evidence of specific instances of sexual behavior offered for the purpose of showing that the act or acts charged were not committed by the defendant[.]" *Id.*, Rule 412(b).

Defendant argues that "if the State was permitted to introduce the patient

report to establish that Rachel had contracted bacterial vaginosis,” then he “should have been permitted to cross-examine her about a potential alternative source of the vaginosis.” The court erred, he argues, in “preventing the defense from pursuing its line of questioning related to the ‘vibrator’ Rachel received from her aunt[,]” and therefore, he is entitled to a new trial because of a “reasonable possibility” that the alleged error affected the verdicts, in that the jury “may not have convicted [defendant] if presented with an alternative explanation for Rachel’s contraction of bacterial vaginosis, particularly as it relates to the charges based on her allegations.”

Defendant here relies upon *State v. Wright*, 98 N.C. App. 658 (1990). In *Wright*, we granted a new trial after the trial court improperly excluded testimony from the complainant’s grandmother that she observed her masturbate with a washcloth and her fingers, and a physician also testified that she “observed internal and external irritation” in the complainant’s vagina “consistent with numerous penetrations and repeated acts of intercourse” or “repeated masturbation and chronic penetration with other objects.” *Wright*, 98 N.C. App. at 659.

At trial, when the defense cross-examined Rachel, the State objected pursuant to Rules 403 and 412, and the court excused the jury before she testified about her aunt’s gift on her sixteenth birthday. During the subsequent *voir dire*, the defense had asked her what the gift was, whether Rachel asked for it or was present for the purchase, and “how that all went down[,]” but said it would not ask any other questions. Rachel testified only that her aunt gave her a “tiny vibrator” that she did

not ask for, that it was a “gag gift[,]” and “didn’t even have batteries or anything.” When asked for the relevance of this testimony, defense counsel responded that he expected the State to elicit testimony about Rachel’s bacterial vaginosis diagnosis and whether it could be “caused by other factors including the use of a vibrator[.]” The State responded that it “struggled with the relevancy” of this testimony: “My only argument would be . . . if there were additional questions asked of [Rachel]. She’s never used it before. It didn’t have batteries in it, and she’s never alleged that this defendant used it with her, introduced it to her, or instructed her to use it in any capacity. . . . The fact that she has it in and of itself and [it] has never been used is not an alternative explanation for bacterial vaginosis or HPV.”

Later, Dr. Wetmore testified that both Nicole and Rachel tested positive for bacterial vaginosis, and that “it can be caused by other things besides sexual contact. However, it is really only isolated in sexually active women and girls. . . . In my own practice I have never diagnosed bacterial vaginosis in anyone who was not sexually active.” She responded affirmatively to the State’s question, “So you talked a little bit about causation. It can be because of sexual activity, but it also can be from other things?” She confirmed again that she had never made the diagnosis in anyone who was not sexually active, and that she had done “about a thousand” child medical examinations. She also testified that both sisters told her during the medical interviews that they had not had sexual contact with anyone but defendant. On cross-examination, she added that non-sexual causes of bacterial vaginosis “would include

things such as douching or cleaning.” Discussing HPV elsewhere, she testified that “[a] sex toy can be a cause of HPV if it’s contaminated.”

We agree with defendant that the court erred when it prohibited the defense’s line of questioning about the vibrator. Questions about the vibrator would have addressed a “specific instance[] of sexual behavior” offered to infer an alternative explanation for the physical evidence of bacterial vaginosis and/or HPV. However, “the relevancy of the evidence which the proponent [sought] to offer in the trial depend[ed] upon the fulfillment of a condition of fact,” and this requires the trial court to “accept evidence on the issue of whether that condition of fact is fulfilled and shall determine that issue.” N.C.G.S. § 8C-1, Rule 412(d) (2026).

This proffered testimony’s relevance depended entirely upon whether Rachel had ever actually masturbated with the vibrator. If she never used the vibrator, it obviously could not have caused her bacterial vaginosis. But the court did not accept evidence from Rachel on this question during the *voir dire*. Instead, the court heard only the State’s assertion that she had not used it, where Rachel would have been the only witness who could offer this evidence. Furthermore, the testimony would have only been relevant to the issue of her HPV lesions had two determinative conditions of fact been supported by evidence (a) that Rachel used the vibrator, and (b) that the vibrator was contaminated by another user with HPV. Again, the court did not hear evidence on those points. Therefore, when it excluded the defense’s line of questioning, the court erred because it failed to properly accept evidence that

determinative conditions of fact were fulfilled before reaching a conclusion as to the testimony's relevancy, as required by Rule 412's plain language.

However, we disagree with defendant that this error was prejudicial. *Wright* is also instructive on this point. In that case, we explained why the court's erroneous exclusion of the grandmother's testimony prejudiced the defendant:

Since prosecutrix's acts of penetrative masturbation were *the only alternative explanation for the condition of her genitalia*, and limitation of testimony concerning prosecutrix's masturbation left the jury with *no alternative to the State's contention that only intercourse would have caused the degree of genital irritation that prosecutrix experienced*, omission of the evidence requires a new trial.

Wright, 98 N.C. App. at 663 (emphasis added). The present case presented a different situation.

Here, the jury did not hear that masturbation with a vibrator was the "only alternative explanation for the condition of [Rachel's] genitalia[.]" On the contrary: when discussing bacterial vaginosis, Dr. Wetmore did not specifically mention sex toys, but testified that the condition can be caused by both sexual and non-sexual behavior, including "douching or cleaning[.]" Accordingly, had the jury heard testimony that Rachel owned *and used* the vibrator, those facts would have been one additional possible cause of bacterial vaginosis among several others, including douching and cleaning. This clearly distinguishes the present case from *Wright*, where the jury heard about only one possible cause of the accuser's genital irritation: abuse by that case's defendant. Furthermore, had the error not occurred, Rachel's

testimony could have only raised a “reasonable possibility that a different result would have been reached at trial” if she actually masturbated with the vibrator. N.C.G.S. § 15A-1443(a) (2026). Neither the record nor defendant’s argument point to any evidence that she ever did this, and without this evidence, defendant’s argument necessarily fails.

Moreover, the jury heard multiple strands of evidence supporting the jury’s verdicts, including consistent, detailed testimony and video interviews from both victims, as well as testimony from Ms. C, in which she described the night she caught defendant alone with her daughter and immediately summoned the police. Even had it been possible for defendant to provide some form of admissible evidence that Rachel used the vibrator at least one time, the hypothetical chance that this caused her bacterial vaginosis would have had no effect on either the testimonial evidence or exhibits about defendant’s abuse of her sister Nicole, let alone Nicole’s bacterial vaginosis. Furthermore, having carefully read the entire record on appeal, we are not satisfied that this hypothetical evidence can have constituted a serious rebuttal to the testimonial evidence about defendant’s prolonged abuse of Rachel, which the jury heard in great detail. Clearly, the jury found these young women to be credible witnesses, such that it determined the State proved every element of every charged offense beyond a reasonable doubt.

Accordingly, though the court erred, the question whether this error prejudiced defendant is not a close one. If defendant pointed to any admissible evidence that

Rachel used the vibrator, this still would not convince us that this would result in a reasonable possibility of the jury reaching a different conclusion in this case, given the record on appeal. Either way, without such evidence, we must conclude that defendant fails to meet his burden to show the requisite prejudice, and despite the trial court's error we do not grant a new trial in this case.

III. Conclusion

For the above reasons, we hold that the court did not err in admitting the LabCorp reports or in permitting Dr. Wetmore to testify as to her expert opinion based on them. We also hold that the court erred by failing to make the required inquiry before excluding testimony pursuant to Rule 412, but that the error did not prejudice defendant.

NO ERROR; NO PREJUDICIAL ERROR.

Judges CARPENTER and FREEMAN concur.

Report per Rule 30(e).