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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-603

Filed 7 October 2026

Wake County, Nos. 21CR205996-910, 21CR205997-910, 21CR205998-910,
21CR205999-910

STATE OF NORTH CAROLINA

v.

GUILLERMO REYES FLORES

Appeal by defendant from judgments entered 19 February 2024 by Judge A.
Graham Shirley in Wake County Superior Court. Heard in the Court of Appeals 26
August 2026.

*Attorney General Jeff Jackson, by Special Deputy Attorney General Joseph
Finarelli, for the State.*

Blau & Hynson, PLLC, by Daniel M. Blau, for defendant-appellant.

ZACHARY, Judge.

Defendant Guillermo Reyes Flores appeals from the trial court's judgments entered upon a jury's verdicts finding him guilty of three counts of first-degree sexual offense and eight counts of taking indecent liberties with a child. After careful review, we discern no error in part; remand for resentencing on the convictions for taking indecent liberties; reverse and remand for correction of the sex offender registration

orders; and dismiss Defendant’s ineffective assistance of counsel claim without prejudice to his right to assert it in a motion for appropriate relief proceeding before the trial court.

I. Background

In 2010, Defendant began dating Aneli Mendez.¹ Mendez had three children at that time, Jorge, A.Q., and D.Q.;² later, she and Defendant had a daughter. During the relationship, Defendant stayed with Mendez and the children at times, and with his mother or aunt at other times. Mendez and Defendant dated sporadically and the relationship eventually ended in 2013.

Several years later—after D.Q. became concerned for her younger sister’s welfare—D.Q. told Mendez that Defendant had sexually abused her from about age five until age ten. Shortly thereafter, Wake County Department of Social Services (“DSS”) was notified of D.Q.’s allegations.

In January 2021, Munya Ganyo, a DSS child protective services case worker, was assigned to D.Q.’s case. D.Q. disclosed to Ms. Ganyo that

[W]hen sitting on the couch, [Defendant] would sit behind her and put her between his legs. He would place a pillow between her and his penis, and his penis [would] be aroused. So she remember[ed] one time [Defendant] put his hand under her underwear and moved his hand around her. He [would] touch her breast, and he [would] kiss her

¹ We adopt a pseudonym for the juveniles’ mother to protect their identities.

² To protect the juveniles’ identities, we adopt the initials chosen by the parties. *See* N.C.R. App. P. 42(b).

with his tongue.

D.Q. also reported that Defendant would compel her to change clothes in front of him. Ms. Ganyo recommended that D.Q. undergo a child medical evaluation and receive treatment from a therapist.

On 25 January 2021, Ms. Ganyo interviewed A.Q., who reported that Defendant had sexually abused her from the ages of eight to fourteen. A.Q. stated that Defendant had put his hands on her breast, her vagina, and her anus. A.Q. also detailed that on one occasion at Defendant's mother's house, Defendant directed her to get undressed and lie down on the bed. Defendant started to get on top of her when Mendez knocked at the front door. He then directed A.Q. to dress as quickly as she could. A.Q. once attempted to tell Mendez about the abuse. Mendez asked Defendant directly about the allegations, which Defendant denied, and Mendez simply told Defendant not to let it happen again.

DSS notified the Raleigh Police Department of the sexual abuse allegations, and on 21 January 2021, Detective Varnadoe was assigned to the case. Due to D.Q.'s age at the time, Detective Varnadoe referred her to the SAFEchild Advocacy Center, where Scott Rodriguez conducted a forensic interview and pediatric nurse practitioner, Alexandra Flynn, administered a physical examination. In that A.Q. was an adult, Detective Varnadoe conducted her interview. At trial, video recordings of both interviews were admitted into evidence and published to the jury.

Subsequently, D.Q. received counseling from Taylor Britt, a licensed clinical

social work associate, and Alison Burke, a child and adolescent therapist. Ms. Burke diagnosed D.Q. as suffering from PTSD and generalized anxiety disorder.

Defendant's case came on for trial in Wake County Superior Court on 12 February 2024. Defense counsel moved to dismiss the charges for insufficient evidence at the close of the State's evidence and renewed the motion at the close of all evidence; the court denied the motion on both occasions.

On 19 February 2024, the jury returned verdicts finding Defendant guilty of all charges. That same day, the trial court entered judgments sentencing Defendant to 300 to 369 months' imprisonment for each of the three counts of first-degree sexual offense and 16 to 29 months' imprisonment for each of the eight counts of taking indecent liberties, to be served consecutively in the custody of the North Carolina Department of Adult Correction. The court also ordered that Defendant register as a sex offender for 30 years for each of the convictions for taking indecent liberties and register as a sex offender for the remainder of his natural life for each of the convictions for first-degree sexual offense.

II. Discussion

On appeal, Defendant asserts that the trial court (1) "plainly erred by allowing the State to present irrelevant and prejudicial hearsay evidence"; (2) "erred and plainly erred by allowing multiple State's witnesses to vouch for the alleged victims' credibility"; (3) "erred by denying [Defendant's] motion to dismiss the first-degree sex offense charges where the State's evidence was insufficient"; (4) "erred by imposing

sentences on each indecent-liberties charge that exceeded the maximum authorized by law”; and (5) “erred by finding that [Defendant] was convicted of aggravated offenses and by ordering [Defendant] to register as a sex offender for life.” Defendant also contends that he received ineffective assistance of counsel at trial. We address each challenge in turn.

A. Evidentiary Challenges

1. Standard of Review

Generally, “we review the trial court’s evidentiary rulings for abuse of discretion.” *State v. Livengood*, 206 N.C. App. 746, 747, 698 S.E.2d 496, 498, *disc. review denied*, 364 N.C. 609, 704 S.E.2d 276 (2010). “Abuse of discretion is a ruling so arbitrary that it could not have been the result of a reasoned decision.” *Id.* (extraneity omitted).

However, 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).

“For error to constitute plain error, a defendant must demonstrate that a fundamental error occurred at trial” *State v. Caballero*, 383 N.C. 464, 473, 880 S.E.2d 661, 668 (2022) (citation omitted). Additionally, the defendant is “required to show 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 473–74, 880 S.E.2d at 668 (extraneity omitted). Probable impact “requires a showing that the outcome is significantly more likely than not.” *State v. Reber*, 386 N.C. 153, 159, 900 S.E.2d 781, 787 (2024). “In ordinary English usage, an event will ‘probably’ occur if it is ‘almost certainly’ the expected outcome.” *Id.* (citation omitted). “Finally, the defendant must show that the error is an exceptional case that warrants plain error review, typically by showing that the error seriously affected the fairness, integrity or public reputation of judicial proceedings.” *Id.* at 158, 900 S.E.2d at 786 (extraneity omitted).

2. Video Recording of A.Q.’s Interview

At trial, the court admitted into evidence a video of A.Q.’s interview with Detective Varnadoe and published this exhibit to the jury with a limiting instruction. Defendant acknowledges that he did not object to the admission of either the video or the now-challenged statements within it. Nonetheless, Defendant maintains that the admission of certain of A.Q.’s statements amounted to plain error and that he was prejudiced by their admission. We disagree.

Prior to publication of the video, the trial court instructed the jury:

Members of the jury, the State has informed me that it’s going to play now a video recording of the interview with [A.Q.] The statement which was made at an earlier time may conflict or be consistent with her testimony at this trial. You must not consider her earlier statements as evidence of the truth of what was said at that earlier time since it was not made under oath at this trial.

During her interview with Detective Varnadoe, A.Q. made the following

statements that Defendant challenges on appeal:

And then they just make it seem so normal cause at his mom's house—at his mom's house, him and—him, his brother, and then his—his sister's ex-husband would do it to—to her son too, but they would do it as a joke. They would put their hand in his pants and then just squeeze his—his testicles, and then they would just act like it was a joke, and they would like make names as well, like, they would call him, I think it was like “Sir Balls” or something, and then they would all just go around and do it to him, but he was a child too. And then her daughter would also tell me that she remembers that one time when she was a child, that someone in her family tried to rape her as well, and that she remembers it vividly, but her mom told her that it's just in her mind.

Rule 404(b) Evidence

Defendant first asserts that these statements are “improper Rule 404(b) evidence” because “there was zero similarity between the alleged assaults involving A.Q. and D.Q. and those A.Q. described in her interview”; “[t]he former involved groping and kissing young girls in secret for the purpose of sexual gratification, while the latter involved touching a boy with other family members as a joke” and an assault on another girl in Defendant's family, with which Defendant had no involvement.

“Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith.” N.C. Gen. Stat. § 8C-1, Rule 404(b) (2025). Nevertheless, “[i]t may . . . be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan,

knowledge, identity, or absence of mistake, entrapment or accident.” *Id.*

This Court has “characterized Rule 404(b) as a general rule of *inclusion* of relevant evidence of other crimes, wrongs or acts by a defendant, subject to but *one exception* requiring its exclusion”—namely, “if its *only* probative value is to show that the defendant has the propensity or disposition to commit an offense of the nature of the crime charged.” *State v. Gray*, 210 N.C. App. 493, 496, 709 S.E.2d 477, 481 (2011) (extraneity omitted), *disc. review denied*, 365 N.C. 555, 723 S.E.2d 540 (2012).

“The test for determining whether such evidence is admissible is whether the incidents establishing the common plan or scheme are sufficiently similar and not so remote in time as to be more probative than prejudicial under the balancing test of Rule 403.” *State v. Lopez*, 295 N.C. App. 239, 244, 905 S.E.2d 272, 276 (2024) (extraneity omitted). “Prior acts are considered sufficiently similar if there are some unusual facts present in both crimes, although these facts need not rise to the level of the unique and bizarre.” *Id.* at 244–45, 905 S.E.2d at 276 (extraneity omitted). Significantly, our appellate “courts have liberally allowed evidence of similar offenses in trials on sexual crime charges.” *Id.* (extraneity omitted).

In response to Defendant’s argument, the State contends that A.Q.’s statement regarding Defendant touching a boy’s testicles with and in front of other family members “establish[ed] the permissive environment at [Defendant’s] mother’s home, and, therefore, evidence of the opportunity for Defendant to touch the genitals of A.Q. and D.Q. without arousing undue suspicion.” We agree.

At trial, both A.Q. and D.Q. testified that Defendant touched them while they were at his mother's house and D.Q. testified that other adults, usually Defendant's mother, would see what was happening. A.Q.'s recorded statement tended to show that the atmosphere in Defendant's mother's house was such that touching a child's genitals in plain view of other adults was commonplace and, consequently, provided easy opportunity for Defendant to inappropriately touch A.Q. and D.Q.

Defendant also challenges A.Q.'s statements that another female in Defendant's family told her that, when she was a child, "someone in her family tried to rape her as well." Defendant contends that "[t]he only purpose for this evidence was to show that [Defendant] and his family had a propensity to commit sexual assaults against children" and was, therefore, inadmissible.

Rule 404(b) expressly limits its application to the admissibility of evidence of *a defendant's prior acts*. Rule 404(b) "evidence is admissible as long as it is relevant to any fact or issue other than *the defendant's* propensity to commit the crime." *State v. Beckelheimer*, 366 N.C. 127, 130, 726 S.E.2d 156, 159 (2012) (emphasis added). This statement clearly does not implicate Defendant.

Additionally, the statement explains why A.Q. waited years to report the abuse. In the video, A.Q. states that when another female relative disclosed sexual abuse to her mother, "her mom told her that it's just in her mind." This, combined with her own mother's earlier response to A.Q.'s report that Defendant was abusing her, makes it more probable that A.Q. would be reluctant to report the abuse.

Accordingly, the trial court did not err or plainly err by admitting into evidence the video of A.Q.'s interview containing these challenged statements.

Hearsay

Defendant argues that “A.Q. never testified that [Defendant] and his family had squeezed a boy’s testicles or raped another girl in the family[,]” and because those are “unrelated facts . . . not referred to in her trial testimony and . . . did not add weight or credibility to [A.Q.’s] testimony, her [now-challenged recorded] statement was inadmissible [hearsay] and should have been excluded.” We disagree.

“ ‘Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” N.C. Gen. Stat. § 8C-1, Rule 801(c). “Hearsay is not admissible except as provided by statute or by” the Rules of Evidence. *Id.* § 8C-1, Rule 802.

“Prior statements admitted for corroborative purposes are not hearsay because they are not offered for the truth of the matter asserted.” *State v. Lindsay*, 292 N.C. App. 641, 650, 899 S.E.2d 25, 31 (2024). “Corroborative testimony is testimony which tends to strengthen, confirm, or make more certain the testimony of another witness.” *Id.* (extraneity omitted). “To be admissible as corroborative evidence, prior consistent statements merely must tend to add weight or credibility to the witness’s testimony.” *Id.* (extraneity omitted). “[I]t is well established that such corroborative evidence may contain new or additional facts when it tends to strengthen and add credibility to the testimony which it corroborates.” *Id.*

When she was young, A.Q. told her mother about the abuse. At trial, A.Q. recounted that conversation:

I told her that this wasn't a one-time thing, that this was continuous, and it had been happening for years.

. . . .

And . . . [Mendez] called [Defendant] over to where we were living, and she waited for him to come there. And we went out on the balcony, and she asked him if he did what I said he did. And, of course, he said "No." He said that he wouldn't ever do that to us, that he just wanted to be a parent. And all my mom said was to just not let it happen again. And it continued to happen for years after that.

Neither A.Q. nor D.Q. reported the abuse again until they were older.

In the recorded interview, A.Q. described the "permissive" atmosphere at Defendant's mother's house and reported that another girl in Defendant's family told her that when she was assaulted, the girl's mother "told her it's just in her mind." Both of these statements serve to corroborate A.Q.'s and D.Q.'s explanations for the delay in reporting their allegations against Defendant until many years after the abuse had ended. That the recorded interview "contain[ed] new or additional facts" does not render it inadmissible. *Id.* Because it "tend[ed] to strengthen and add credibility" to A.Q.'s reasons for delaying disclosure of the abuse, *id.*, the evidence was admitted for corroborative purposes and was not hearsay. The trial court did not err, much less plainly err, by admitting statements from the recorded interview.

Prejudice

Even assuming, *arguendo*, that the trial court erred in admitting these statements, Defendant cannot show prejudice, that is, that the jury probably would have reached a different result in light of the other evidence admitted at trial. *See Caballero*, 383 N.C. at 473–74, 880 S.E.2d at 668.

On plain error review, this Court “examines the state of 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.” *Reber*, 386 N.C. at 162, 900 S.E.2d at 789.

Here, there was ample evidence presented of Defendant’s guilt. The jury heard the testimony of A.Q., D.Q., multiple mental health professionals, Detective Varnadoe, a forensic interviewer, and a DSS child protective services case worker. A.Q. and D.Q. testified in detail concerning the allegations against Defendant, giving the jury abundant opportunity to assess their credibility. Additionally, the court admitted into evidence treatment and progress notes from three different therapists and the child protective services case worker, and the two video recordings of interviews with A.Q. and D.Q., all of which were published to the jury.

Defendant has failed to establish that, absent A.Q.’s challenged interview statements, the jury probably would have reached a different verdict given the other evidence presented. Therefore, we discern no plain error.

3. Vouching

Defendant next challenges statements made at trial by Taylor Britt and

Munya Ganyo as impermissibly vouching for the credibility of A.Q. and D.Q. On appeal, Defendant states that Ms. Britt's challenged statement was admitted over his objection and is preserved for appellate review. Defendant acknowledges that Ms. Ganyo's statements were admitted without objection and, therefore, requests plain error review.

Taylor Britt's Testimony

Defendant alleges that "[t]he trial court allowed [Ms. Britt] to tell the jury, over objection, that D.Q. was scared of coming to court for fear of being re-exposed to trauma and having to face things she did not want to remember," and that this testimony constituted improper vouching.

Yet careful review of the transcript reveals that although Defendant objected at trial to the admission of this testimony, he presented a different basis for his objection before the trial court than he does on appeal.

Our Rules of Appellate Procedure provide that

[i]n order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context. It is also necessary for the complaining party to obtain a ruling upon the party's request, objection, or motion.

N.C.R. App. P. 10(a)(1).

"Where a defendant objects to the admission of evidence before the trial court and states a specific ground as the basis for that objection, but raises a different

ground as the basis for his argument on appeal, the issue is not preserved.” *State v. Gettleman*, 275 N.C. App. 260, 272, 853 S.E.2d 447, 455 (2020). Our Supreme Court “has long held that where a theory argued on appeal was not raised before the trial court, the law does not permit parties to swap horses between courts in order to get a better mount.” *State v. Sharpe*, 344 N.C. 190, 194, 473 S.E.2d 3, 5 (1996) (extraneity omitted).

In the case at bar, defense counsel objected to Ms. Britt’s challenged testimony on relevancy grounds, arguing:

Your [H]onor, I don’t see how it’s relevant to anything but treating her in therapy. I mean, the line of questioning is directed towards how they feel coming to trial. That has nothing to do with the elements of the crime or making it more or less likely that any of those claims occurred. That is only relevant to . . . the fact that we’re here at trial.

The trial court overruled Defendant’s objection. Defendant did not make, nor did the trial court rule upon, any challenge on the basis of impermissible vouching. Thus, this issue was not preserved for appellate review.

Defendant cannot now “swap horses” and argue that the testimony amounted to improper vouching. *Id.* Consequently, Defendant may not present his new challenge to Ms. Britt’s statements for appellate review.

Munya Ganyo’s Statements

Defendant seeks plain error review of two of Ms. Ganyo’s statements that he contends constituted improper vouching. We discern no error.

“Our courts have consistently held it is improper for one witness to vouch for the veracity of another.” *State v. Aguilar*, 292 N.C. App. 596, 601, 898 S.E.2d 914, 918 (2024) (extraneity omitted). “[I]t is fundamental to a fair trial that a witness’s credibility be determined by a jury.” *State v. Warden*, 268 N.C. App. 646, 650, 836 S.E.2d 880, 883 (2019), *aff’d*, 376 N.C. 503, 852 S.E.2d 184 (2020). “This prohibition against vouching for the credibility of the complainant or another witness applies to the testimony of a lay witness as well as an expert witness.” *Id.* at 650, 836 S.E.2d at 884. Lay witness “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.” N.C. Gen. Stat. § 8C-1, Rule 701.

In the present case, Defendant argues that “Ms. Ganyo testified she would believe whatever the reporting child told her,” which Defendant characterizes as “improper vouching.” Yet “[o]ur review of the full testimony, in proper context and beyond the isolated excerpts that Defendant challenges on appeal, reveals” that Ms. Ganyo’s statements did not amount to vouching for the credibility of A.Q. *State v. Perdomo*, 276 N.C. App. 136, 141, 854 S.E.2d 596, 601 (2021).

During direct examination, the State inquired into Ms. Ganyo’s case notes regarding A.Q.:

Q. And when you talked to [A.Q.], do you review your notes with her?

. . . .

A. Correct.

Q. And that's after?

A. So, yeah, sometimes, if I make referral to somebody, I will write the notes. It depends what's going on, but you—you know.

Q. And do you have her go back and verify that the notes are accurate?

A. So whatever the child or the person told me, that's what I believe, and that's what I write down.

Later, on cross-examination, Defendant asked:

Q. Okay. You didn't independently verify any of the claims [A.Q. and D.Q. are] making?

A. So my job is to go and visit the family. Whatever they will tell me, that's what I would write down. *I don't verify true, not true.*

(Emphasis added).

Ms. Ganyo had a clear understanding of her role: to listen and record what D.Q. and A.Q. reported to her, without making any determination as to the veracity of the allegations. Indeed, Ms. Ganyo explicitly states that it is not her job to verify whether the asserted claims are true. Viewed in context, Ms. Ganyo did not express an opinion that “sexual abuse ha[d] *in fact* occurred.” *State v. Orellana*, 260 N.C. App. 110, 117, 817 S.E.2d 480, 485 (2018). Hence, this challenged statement did not amount to improper vouching.

Defendant further contends that Ms. Ganyo's testimony that “it was correct

that A.Q. had been abused between the ages of 11-13” constituted improper vouching. In light of Ms. Ganyo’s entire testimony, this statement does not amount to vouching.

At trial, Ms. Ganyo testified that “[A.Q.] said [Defendant] molested her between the ages of 8 and 14.” Several questions later, the State asked:

Q. And do you recall writing in there that [A.Q.] was 11 to 13 at that time?

A. Yes.

Q. And that was when she was abused?

A. Correct.

Later, during cross examination, Defendant clarified and Ms. Ganyo agreed that she had only testified to what A.Q. and D.Q. told her.

Defendant has failed to establish that Ms. Ganyo’s testimony constituted improper vouching. Ms. Ganyo did not testify that “sexual abuse ha[d] *in fact* occurred.” *Id.* Rather, she testified that A.Q. *said* that Defendant molested her from age 11 to 13, not that A.Q. *was* molested by Defendant.

Taken as a whole, neither of Ms. Ganyo’s statements constitute vouching. Accordingly, the trial court did not err, much less plainly err, by admitting this testimony into evidence. Defendant’s arguments are overruled.

B. Motion to Dismiss

On appeal, Defendant asserts that “the only question for the jury was whether [Defendant] . . . penetrated A.Q. with his fingers,” and that the trial court erred in denying his motion to dismiss because the “evidence was insufficient to prove

penetration.” We disagree.

1. Standard of Review

“The question for a court on a motion to dismiss for insufficient evidence is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of [the] defendant’s being the perpetrator of such offense.” *State v. Bradsher*, 382 N.C. 656, 658, 879 S.E.2d 567, 569 (2022) (extraneity omitted). “Substantial evidence is the amount necessary to persuade a rational juror to accept a conclusion.” *State v. Ditenhafer*, 373 N.C. 116, 125, 834 S.E.2d 392, 399 (2019) (extraneity omitted).

“In evaluating the sufficiency of the evidence to support a criminal conviction, the evidence must be considered in the light most favorable to the State; the State is entitled to every reasonable intendment and every reasonable inference to be drawn therefrom.” *Id.* at 125–26, 834 S.E.2d at 399. “Our courts have established that a substantial evidence inquiry examines the sufficiency of the evidence presented *but not its weight*, which is a matter for the jury.” *State v. McNeill*, 243 N.C. App. 762, 770, 778 S.E.2d 457, 463 (2015) (extraneity omitted), *disc. review denied*, 368 N.C. 689, 781 S.E.2d 482 (2016). Yet, “[i]f the evidence is sufficient only to raise a suspicion or conjecture as to either the commission of the offense or the identity of the defendant as the perpetrator, the motion to dismiss must be allowed.” *State v. Sharpe*, 289 N.C. App. 84, 87, 887 S.E.2d 116, 119 (2023) (extraneity omitted).

“This Court reviews the trial court’s denial of a motion to dismiss *de novo*.

Under a de novo review, this Court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” *State v. Fraley*, 299 N.C. App. 463, 469, 918 S.E.2d 910, 915 (2025) (extraneity omitted) (citations omitted).

2. Analysis

Defendant was charged with three counts of first-degree sex offense with a child under former N.C. Gen. Stat. § 14-27.4A (2009),³ which criminalized the commission of “(1) a sexual act, (2) with a victim under the age of 13 years, (3) by a person who is at least 18 years old.” *State v. Johnson*, 253 N.C. App. 337, 346, 801 S.E.2d 123, 128 (2017). Our General Statutes define a “sexual act” as “[c]unnilingus, fellatio, analingus, or anal intercourse Sexual act also means the penetration, however slight, by any object into the genital or anal opening of another person’s body.” N.C. Gen. Stat. § 14-27.20(4).

This Court has long held “that penetrating a victim’s labia constitutes a sexual act sufficient to establish the penetration element of the first-degree sexual offense charge.” *State v. Burns*, 278 N.C. App. 718, 721, 862 S.E.2d 431, 434 (2021) (citing *State v. Bellamy*, 172 N.C. App. 649, 658, 617 S.E.2d 81, 88 (2005)). Additionally, “a victim’s testimony of being touched in between the labia is sufficient evidence to survive a motion to dismiss by the defendant.” *Id.* at 722, 862 S.E.2d at 435.

At trial, A.Q. testified that Defendant “would touch [her] vagina, but he would

³ N.C. Gen. Stat. § 14-27.4A is now codified at N.C. Gen. Stat. § 14-27.28.

also . . . put his finger . . . at the vaginal opening.” In her recorded statement with Detective Varnadoe, which was published to the jury, A.Q. reported that Defendant “would put his hands inside of [her] pants, and he would put his—he would put his hand like, right there, and he would make sure he would put his middle finger like *right in between*.” (Emphasis added). She also stated that “[h]e would put his hand inside [her] pants and [her] underwear, and he would kind of spread, like, the vagina lips, and then place his hands like right in front of the entrance, his middle finger.”

Taken in the light most favorable to the State, A.Q.’s testimony at trial and statements to Detective Varnadoe constitute “sufficient evidence to survive a motion to dismiss.” *Id.* Accordingly, the trial court did not err by denying Defendant’s motion to dismiss the first-degree sexual offense charge.

C. Ambiguous Verdicts for Sentencing Purposes

Defendant argues, and the State concedes, that the “trial court erred by imposing sentences on each [i]ndecent-[l]iberties charge that exceeded the maximum authorized by law.” Defendant maintains that the jury’s verdict was ambiguous for sentencing purposes and that, resolving the ambiguity in his favor, he must be sentenced under the lower sentencing regime. We agree.

1. Standard of Review

“We review de novo whether the sentence imposed was authorized by the jury’s verdict.” *State v. Mosley*, 256 N.C. App. 148, 150, 806 S.E.2d 365, 367 (2017) (citation omitted).

2. Analysis

“[T]rial courts are limited to whatever punishment the jury’s verdict authorizes.” *State v. Norris*, 360 N.C. 507, 516, 630 S.E.2d 915, 921 (2006). “[A]n ambiguous verdict is construed in favor of a defendant.” *State v. Demick*, 288 N.C. App. 415, 427, 886 S.E.2d 602, 612 (2023) (extraneity omitted). “When a general verdict is sufficient to support a unanimous conviction but ambiguous for sentencing purposes, neither we nor the trial court is free to speculate as to the basis of [the] jury’s verdict.” *Id.* at 426, 886 S.E.2d at 611.

In *Demick*, the jury returned general verdicts finding the defendant guilty of felony child abuse without specifying the dates of the offenses. *Id.* at 423, 886 S.E.2d at 609. However, there was evidence at trial that the offenses occurred both before and after a modification of the felony classification for felony child abuse. *Id.* at 424, 886 S.E.2d at 610. This Court determined that “the verdicts fail[ed] to resolve which classifications appl[ied] by omitting the operative dates or range of dates of offense,” rendering the jury’s verdicts ambiguous for sentencing purposes. *Id.* at 426–27, 886 S.E.2d at 612. Consequently, we concluded that the defendant was entitled to be sentenced under the statute providing for the lower felony classification. *Id.* at 428, 886 S.E.2d at 612–13.

In the instant case, the jury also returned ambiguous verdicts for sentencing purposes. A Wake County grand jury indicted Defendant for three counts of taking indecent liberties with D.Q. from 26 August 2009 to 25 August 2014, and five counts

of taking indecent liberties with A.Q. from 8 February 2010 to 8 February 2016. The jury returned general verdicts finding Defendant guilty of all of these charges without any indication of the dates of the offenses. The trial court sentenced Defendant, as a prior record level I offender, to 16 to 29 months for each conviction for taking incident liberties. However, on 1 December 2011, the North Carolina General Assembly modified the presumptive maximum sentencing range for a Class F felony committed by a prior record level I offender from 16 to 20 months to 16 to 29 months. *Compare* N.C. Gen. Stat. § 15A-1340.17(c)–(d) (2009), *with* N.C. Gen. Stat. § 15A-1340.17(c)–(d) (2012). Thus, it is possible that the incidents of taking indecent liberties for which the jury convicted Defendant occurred during the period when the lower presumptive maximum sentencing range was in effect.

Because the jury returned general verdicts with no findings of specific offense dates, and “neither we nor the trial court is free to speculate as to the basis of [the] jury’s verdict,” *Demick*, 288 N.C. App. at 426, 886 S.E.2d at 611, the trial court erred by sentencing Defendant according to the sentencing grid providing for a longer sentence. *See id.* at 427, 886 S.E.2d at 612. Accordingly, we remand 21CR205997-910, 21CR205998-910, and 21CR205999-910 to the trial court for resentencing for each taking incident liberties conviction pursuant to the sentencing grid providing for a shorter sentence, that is, with a presumptive range of 16 to 20 months.

D. Sex Offender Registry

Defendant asserts, and the State concedes, that “[t]he trial court erred by

finding that [Defendant] was convicted of aggravated offenses and by ordering [him] to register as a sex offender for life.” We agree.

1. Appellate Jurisdiction

“[S]ex offender registration . . . [is] civil in nature and thus require[s] written notice of appeal.” *State v. Harris*, 243 N.C. App. 728, 732, 778 S.E.2d 875, 878 (2015); *see also* N.C.R. App. P. 3(a), (c). In the present case, Defendant did not give written notice of appeal from the trial court’s orders. Recognizing the error, Defendant filed a petition for writ of certiorari with this Court.

“Certiorari is a discretionary writ, to be issued only for good and sufficient cause shown[,]” where the petition “show[s] merit or that error was probably committed below.” *State v. Grundler*, 251 N.C. 177, 189, 111 S.E.2d 1, 9 (1959), *cert. denied*, 362 U.S. 917, 4 L. Ed. 2d 738 (1960). Defendant has shown, and the State acknowledges, that error was likely committed below. Accordingly, we allow Defendant’s petition for writ of certiorari to address the trial court’s order regarding lifetime sex offender registration.

2. Standard of Review

“When a trial court acts contrary to a statutory mandate and a defendant is prejudiced thereby, the right to appeal the court’s action is preserved, notwithstanding [the] defendant’s failure to object at trial.” *Johnson*, 253 N.C. App. at 345, 801 S.E.2d at 128 (extraneity omitted). “Defendant alleges a violation of a statutory mandate, and alleged statutory errors are questions of law and as such, are

reviewed de novo.” *Id.* (extraneity omitted).

3. Analysis

“Our General Assembly has established registration programs to assist law enforcement in the protection of the public from persons who are convicted of sex offenses or of certain other offenses committed against minors.” *Id.* at 344, 801 S.E.2d at 127. “A person who a recidivist, who is convicted of an aggravated offense, or who is classified as a sexually violent predator shall maintain registration for the person’s life.” N.C. Gen. Stat. § 14-208.23 (2025). An aggravated offense is defined as:

Any criminal offense that includes either of the following:
(i) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim of any age through the use of force or the threat of serious violence; or (ii) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim who is less than 12 years old.

Id. § 14-208.6(1a).

Here, the State does not contend that Defendant is a recidivist or a sexually violent predator. However, the trial court relied on the third category for its imposition of lifetime registration: that Defendant had been convicted of an aggravated offense, that is, first-degree sexual offense. First-degree sexual offense is codified at N.C. Gen. Stat. § 14-27.4(a)(1), which provides:

(a) A person is guilty of a sexual offense in the first degree if the person engages in a sexual act:

(1) With a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim.

While a violation of N.C. Gen. Stat. § 14-27.4(a)(1) is a reportable offense, N.C. Gen. Stat. § 14-208.6(4), it is not an aggravated offense. *Johnson*, 253 N.C. App. at 348–49, 801 S.E.2d at 130. Therefore, the trial court erred by finding that Defendant had been convicted of an aggravated offense and ordering that he register as a sex offender for the remainder of his natural life. In light of this error, “[w]e reverse the registration order[s] and remand to the trial court for entry of . . . registration order[s] based upon proper findings.” *Id.* at 349, 801 S.E.2d at 130.

E. Ineffective Assistance of Counsel

Finally, Defendant contends that he received ineffective assistance of counsel at trial. In support of this claim, Defendant identifies several alleged deficiencies in trial counsel’s performance.

“Generally, a claim for ineffective assistance of counsel should be considered through a motion for appropriate relief before the trial court in post-conviction proceedings and not on direct appeal.” *State v. Allen*, 262 N.C. App. 284, 285, 821 S.E.2d 860, 861 (2018). “When an ineffective-assistance claim is brought on direct appeal, appellate counsel and the court must proceed on a trial record not developed precisely for the object of litigating or preserving the claim and thus often incomplete or inadequate for this purpose.” *Id.* at 285, 821 S.E.2d at 861 (citing *Massaro v. United States*, 538 U.S. 500, 504–05, 155 L. Ed. 2d 714, 720–21 (2003)). “[O]ur review is limited to the record before us, without the benefit of information provided by the defendant to trial counsel, as well as [the] defendant’s thoughts, concerns, and

demeanor that could be provided in a full evidentiary hearing on a motion for appropriate relief.” *Id.* at 286, 821 S.E.2d at 861 (extraneity omitted).

“Ineffective assistance of counsel claims brought on direct review will be decided on the merits when the cold record reveals that no further investigation is required.” *State v. Campbell*, 359 N.C. 644, 691, 617 S.E.2d 1, 30 (2005) (extraneity omitted), *cert. denied*, 547 U.S. 1073, 164 L. Ed. 2d 523 (2006). “Therefore, on direct appeal we must determine if these ineffective assistance of counsel claims have been prematurely brought. If so, we must dismiss those claims without prejudice to the defendant’s right to reassert them during a subsequent motion for appropriate relief proceeding.” *Id.* (extraneity omitted).

Defendant highlights eight categories of alleged deficient performance for review. Yet there is insufficient evidence in the record to determine whether his trial counsel’s conduct fell “below an objective standard of reasonableness and prejudice[d] the defense.” *State v. Fair*, 354 N.C. 131, 167, 557 S.E.2d 500, 525, *reconsideration denied*, 354 N.C. 576, 558 S.E.2d 862 (2001), *cert. denied*, 535 U.S. 1114, 153 L. Ed. 2d 162 (2002). As such, Defendant has prematurely asserted his claim for ineffective assistance of counsel. Thus, we dismiss the claim without prejudice to Defendant’s right to reassert it during a subsequent motion for appropriate relief filed with the trial court. *Id.*

III. Conclusion

STATE V. FLORES

Opinion of the Court

For the foregoing reasons, we discern no error in the trial court's admission of evidence or denial of Defendant's motion to dismiss. We remand for resentencing on the convictions for taking indecent liberties. We reverse the sex offender registration orders and remand to the trial court for further proceedings. We dismiss Defendant's ineffective assistance of counsel claim without prejudice to his right to reassert it before the trial court in a motion for appropriate relief.

NO ERROR IN PART; REMANDED FOR RESENTENCING IN PART;
REVERSED IN PART AND REMANDED; AND DISMISSED WITHOUT
PREJUDICE IN PART.

Judges COLLINS and HAMPSON concur.

Report per Rule 30(e).