

Appendix A

North Carolina Supreme Court Opinion

North Carolina

16 CRS 58002

v.

16 CRS 58003

Darwin J. Peralta

Durham County

United States Supreme Court

Writ for Certiorari

Supreme Court of North Carolina

STATE OF NORTH CAROLINA

v

DARWIN JOSUE PERALTA

From N.C. Court of Appeals
(18-374)
From Durham
(16CRS58002 16CRS58003)

ORDER

Upon consideration of the petition filed on the 8th of December 2019 by Defendant in this matter for discretionary review of the decision of the North Carolina Court of Appeals pursuant to G.S. 7A-31, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Denied by order of the Court in conference, this the 1st of April 2020."

s/ Davis, J.
For the Court

The following order has been entered on the motion filed on the 10th of December 2019 by Defendant to include COA Opinion with Petition for Discretionary Review:

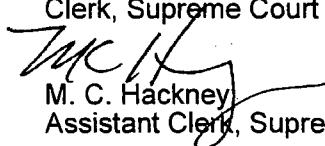
"Motion Allowed by order of the Court in conference, this the 1st of April 2020."

s/ Davis, J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 6th day of April 2020.



Amy L. Funderburk
Clerk, Supreme Court of North Carolina


M. C. Hackney
Assistant Clerk, Supreme Court Of North Carolina

Copy to:

North Carolina Court of Appeals

Mr. Craig M. Cooley, Attorney at Law, For Peralta, Darwin Josue - (By Email)

Ms. M. Elizabeth Guzman, Assistant Attorney General, For State of North Carolina - (By Email)

Ms. Anne M. Middleton, Special Deputy Attorney General - (By Email)

Ms. Danielle Marquis Elder, Special Deputy Attorney General, For State of North Carolina - (By Email)

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Lexis-Nexis - (By Email)

Appendix B

North Carolina Court of Appeals Opinion

North Carolina	16 CRS 58002
v.	16 CRS 58003
Darwin J. Peralta	Durham County

United States Supreme Court
Writ for Certiorari

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-374

Filed: 5 November 2019

Durham County, Nos. 16 CRS 58002-03

STATE OF NORTH CAROLINA

v.

DARWIN JOSUE PERALTA

Appeal by defendant from judgments entered 4 October 2017 by Judge Henry W. Hight, Jr., in Durham County Superior Court. Heard in the Court of Appeals 13 March 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General M. Elizabeth Guzman, for the State.

Cooley Law Office, by Craig M. Cooley, for defendant-appellant.

BRYANT, Judge.

Where an expert witness did not impermissibly vouch for the credibility of another witness, the trial court did not err in admitting the expert witness testimony. Where defendant sought to admit impermissible character evidence, the trial court did not err in denying the testimony. Where the admission of witness testimony was proper, the trial court did not err in its instructions to the jury regarding that witness testimony.

On 3 October 2016, a Durham County Grand Jury indicted defendant Darwin Josue Peralta on one count of statutory rape of a child by adult offender and three

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poo") many times with his hands and his private part; that defendant "spit in his hand" and touched his private part; and that defendant touched her in all the rooms in the house. In particular, Delia described defendant bringing her to his bedroom, taking off her clothes along with his clothes, and touching her while they were both naked in bed. She stated this occurred sometimes while they were playing hide-n-seek with other children in the house. Delia further testified that she hid in the bathroom because defendant would touch her.

Ryan, Delia's ten-year-old brother, testified at trial that Delia would sometimes ask him to stand at the door while she used the bathroom. He stated that one day while playing hide-n-seek, he saw defendant and Delia laying on the bed under the covers. Delia's clothes were on the floor, and Delia was lying on her back while defendant was looking in her direction and touching her private part. Ryan testified to also observing the following behavior of defendant towards Delia: that defendant "told [Delia] to go with [him] and then he [would] give her candy;" that defendant kept candy in a blue bowl under his bed; and that defendant would only play with Delia in the room during hide-n-seek and "never went [to] find [the other children]." Ryan further testified that he asked Delia about lying down with defendant and that she told him defendant touched her private parts. Ryan urged her to tell their parents, but she was scared. Finally, she told them what defendant had been doing to her.

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Dr. Herold, a nurse practitioner at CANMEC, testified about the physical examination she performed on Delia, which was based on Delia's statements provided by Snider, and the CANMEC team evaluation.

Although called as a witness for defendant, Detective Jesus Sandoval, who investigated the case, testified about his interview with Delia, in which she told him about the sexual acts performed by defendant: "She told me about the kids playing a game, and that [defendant] called her into [another] room. . . . She said, 'he was touching me.' And I said, 'How did he touch you?' And that is when she stated that he pulled her pants down and 'put his fingers in [her].'. . . . And I said, 'Where did he put his fingers?' She said, 'Right here,' and she pointed down to her genitals. And she was on video, but she gestured down her genital area." Detective Sandoval further testified: "[B]asically she said that he carried her to the room. She said, 'No' so he picked her up and carried her there. . . . And I asked her, 'Did that happen a lot or just one time?' And she said, 'A lot of times.'"

After being found guilty on all counts, defendant was sentenced to 300 to 420 months for statutory rape of a child, 300 to 420 months for three counts of statutory sex offense with a child by an adult, and 16 to 29 months for three counts of indecent liberties with a child. All sentences were to run consecutive to each other. Defendant was ordered to register as a sex offender upon his release from prison and enroll in satellite-based monitoring for the remainder of his life. Defendant appeals.

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error had a probable impact on the jury's finding that the defendant was guilty." *Id.* (citation and quotation marks omitted).

Our courts have

set out the limits and restrictions on expert testimony in child sexual abuse cases. 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. [A]n expert witness may testify, upon a proper foundation, as to the profiles of sexually abused children and whether a particular complainant has symptoms or characteristics consistent therewith.

State v. Wallace, 179 N.C. App. 710, 714, 635 S.E.2d 455, 459 (2006) (internal citations and quotation marks omitted).

In the instant case, defendant directs this Court's attention to *State v. Trent*, 320 N.C. 610, 359 S.E.2d 463 (1987), *State v. Parker*, 111 N.C. App. 359, 432 S.E.2d 705 (1993), and *State v. Bates*, 140 N.C. App. 743, 538 S.E.2d 597 (2000),³ in

³ In *State v. Trent*, our Supreme Court held that the expert gave a "limited basis" for his diagnosis—presumably relying *exclusively* on the child's statements of sexual abuse—where he "repeatedly testified that his diagnosis was based upon the results of the pelvic exam, [which showed the child's hymen was not intact], and the history given to him by the victim. He cited no other basis for his diagnosis." 320 N.C. 610, 614, 359 S.E.2d 463, 465–66 (1987). The expert's testimony was ruled to be inadmissible.

Similarly, in *State v. Parker*, this Court held the expert's testimony to be inadmissible where he testified that the child "had been sexually abused over a long period of time" and his opinion was based "only on his interview with [the child] in which [the child] related a history of sexual abuse and the fact that [the child's] hymenal ring was not intact." 111 N.C. App. 359, 366, 432 S.E.2d 705, 709–10 (1993) (emphasis added).

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[DR. HEROLD]: We do complete medical evaluations. And that include[s] speaking to a caretaker, whoever brings the child; and we will speak to the caretaker and get a complete medical history. . . . And we also [complete] a social history, which [involves] speaking to the patient and finding out who lives in the home. We do -- I get an evaluation that include[s] risk factors, so I [can] do a full parent interview.

[T]he social worker will then be getting a medical history from the child at the same time. And after . . . our social worker is done getting a medical history from the child, and I know how I need to treat the child, I will then do a medical exam on the child, and do any necessary labs or test, or anything that have been determined are necessary through the obtaining of medical history that the social worker will have done.

[THE STATE]: And did you do that in this case?

[DR. HEROLD]: Yes, ma'am.

Dr. Herold detailed the examination process of a pre-pubescent child and her findings from Delia's examination—in which she revealed that Delia had a “normal genital exam”—and testified that the absence of physical evidence was not uncommon after 72 hours of initial contact for a majority of cases involving children who had been sexually abused.

On cross-examination, Dr. Herold was expressly asked by defense counsel the following questions:

[DEFENSE COUNSEL]: And now on September 8, 2016, [Delia] is in your clinic, correct?

[DR. HEROLD]: Yes.

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On redirect, Dr. Herold clarified that a conclusive finding for child sexual abuse can be medically diagnosed in four situations: the child is pregnant, the child has gonorrhea, the child has chlamydia, or the child has HIV. Dr. Herold further testified to the significant parts of Delia's team evaluation:

[DR. HEROLD]: The statements that [Delia] provided and she provided clear statement[s] describing sexual abuse. She described the alleged perpetrator putting saliva, or she called it droul [sic] on his hand. She described details of him placing his finger inside of her genital, in her anus, and in her vagina. She described clear statements of these events occurring.

At five years of age[,] this child was able to tell us what had happened, and give details that were details that were clear and concise details which led us to have the medical findings that we did.

Following redirect, defense counsel expressly asked if the team evaluation relied solely on Delia's statements, in which Dr. Herold testified as such:

[DEFENSE COUNSEL]: So what she said matters much more than any physical evidence that you did or did not find; correct?

[DR. HEROLD]: We did a medical exam well after three days from when this child last had alleged contact with the alleged perpetrator. Therefore, I would not expect to find any findings on her medical exam. The most important part of a child's evaluation, if it has been greater than 72 hours, is the statement that the child provides.

....

[DEFENSE COUNSEL]: But you did find [that] sexual abuse happened, correct?

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Throughout Dr. Herold's direct testimony, she repeatedly stated that Delia's statements about sexual abuse were "allegations." However, on cross-examination, defendant deliberately elicited testimony from Dr. Herold regarding whether she had made a medical diagnosis that Delia had been sexually abused and what data she collected to connect defendant to the alleged penetration. Therefore, defendant is precluded from asserting prejudice from Dr. Herold's statements when he invited the error for which he now seeks relief from on appeal. *See N.C. Gen. Stat. § 15A-1443(c) (2017)* ("A defendant is not prejudiced by the granting of relief which he has sought or by error resulting from his own conduct.").

Notwithstanding defendant's invited error, defendant has not demonstrated that the jury would have reached a different result in light of all the other unchallenged evidence presented at trial. This includes strong testimony from Delia at trial and during videotaped interviews; from Ryan, who testified, *inter alia*, to seeing defendant and Delia in bed together; from Snider; and from Detective Sandoval. Thus, we conclude the trial court did not err by admitting Dr. Herold's testimony.

II

Defendant next argues the trial court erred by not allowing the testimony of two defense witnesses who allegedly asked Delia's mother to stop talking about sex in front of children. We disagree.

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In the instant case, defendant sought to introduce testimony of witnesses that he proffered as relevant to prove a "central part of his theory of defense [] that [Delia] heard these type[s] of statements and these type[s] of sexual statements from [her mother] when she was around her boyfriends or talking about her boyfriends[.]" However, it is clear that defendant's attempt to introduce the testimony was premised on "undermining the truthfulness of [Delia's] statements," in other words, to "raise doubts about the origin of [Delia's] ability to graphically describe certain sex acts."

Although premised as an attempt to impeach the mother's credibility, defendant's proposed testimony was, in reality, an attempt to put forth impermissible character testimony as to Delia's credibility. Neither witness could offer an opinion as to Delia's credibility. All they could offer was speculation that comments made by Delia's mother "might" serve as the basis of Delia's explicit statements of sexual abuse, not whether Delia personally experienced the abuse. Defendant was unable to demonstrate that the proposed witnesses had sufficient personal knowledge to form an opinion about Delia's credibility.

Thus, because the proffered testimony was too speculative and not within the witnesses' personal knowledge, the trial court did not err in excluding the testimony.

III

Finally, defendant argues the trial court erred by failing to properly issue limiting instructions to the jury as to Dr. Herold's testimony regarding the statistics

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the jury, was significant and sufficient evidence for the jury to find defendant guilty. Even assuming the trial court erred in not giving limiting instruction as to Dr. Herold's testimony, there is no probability that the jury would have reached a different result under the circumstances.

Accordingly, for the reasons stated herein, we hold defendant received a fair trial, free from any prejudicial error.

NO ERROR.

Judges DILLON and ARROWOOD concur.