

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

State of West Virginia,
Plaintiff Below, Respondent

v.) No. 23-512 (Cabell County 21-F-357)

Ronald Eanes,
Defendant Below, Petitioner

MEMORANDUM DECISION

Petitioner Ronald Eanes appeals his convictions for burglary, first-degree robbery, and two counts of first-degree sexual assault, as set forth in the July 20, 2023, order of the Circuit Court of Cabell County.¹ The petitioner argues that 1) the circuit court erred in denying his motion for judgment of acquittal based on the sufficiency of evidence, 2) his first-degree sexual assault convictions violated double jeopardy, and 3) the court erred in failing to declare a mistrial based upon the prosecutor’s statements to the jury. Upon our review, finding no substantial question of law and no prejudicial error, we determine that oral argument is unnecessary and that a memorandum decision affirming the circuit court’s order is appropriate.

The Cabell County grand jury indicted the petitioner on December 8, 2021, charging him with two counts of first-degree sexual assault, one count of first-degree robbery, and one count of burglary. The State asserted that on April 23, 2021, the petitioner forced his way into the Huntington apartment of B.T., a sixty-five-year-old woman, sexually assaulted her, and robbed her. At trial, B.T. testified that she heard a knock, opened her door, and the petitioner—whom she did not know—pushed his way into the apartment, knocking her down. She explained that the petitioner had a knife visible in his jacket, which frightened her, so she complied with the petitioner’s instructions. B.T. testified that the petitioner directed her into the bedroom and told her to remove her clothes; he then removed his own clothes and penetrated her vagina with his penis. B.T. testified that when she made a noise from the pain the petitioner was causing her, he told her to “shut up” and put his hand on her mouth “real hard” causing her mouth to bleed. B.T. testified that the petitioner then forced her head down and made her perform oral sex on him, and that he ejaculated in her mouth. She testified that the petitioner wiped his penis with a washcloth,

¹ The petitioner is represented by Steven T. Cook. The State appears by Attorney General John B. McCuskey and Deputy Attorney General Andrea Nease. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. We use initials in this decision to protect the victim’s privacy. See W. Va. R. App. P. 40(e).

and he left both the washcloth and his shoes behind when he left the apartment. Further, B.T. testified that before leaving the apartment, the petitioner took \$360 from her purse, her shoes, her phone, and her ring.

B.T. admitted that she had been drinking on the day of the assault, that she was an alcoholic, and that she got the petitioner a cup with vodka in it. B.T. explained that after the petitioner left, she stayed in the apartment drinking and did not immediately report these events because she was ashamed that she had been raped. Three days later, her caseworker, who was concerned because B.T. had not answered her telephone, went to the apartment and called 9-1-1 on B.T.'s behalf.

A responding paramedic testified that B.T. was intoxicated, very distraught, and reported that she had been raped three days earlier. A responding police officer also testified that B.T. was distraught and that he took a photo of a small cut on B.T.'s lip. Huntington Police Detective Steven Fitz testified that B.T. later gave a statement at a hospital and she was coherent. During this statement, B.T. described how the suspect forced his way into her apartment, struck her mouth with an open hand, and vaginally penetrated her twice—once on a couch and again on her bed. She also told the detective about the stolen property. At trial, B.T. explained she mistakenly told police that she was assaulted while on the couch instead of the bed. She also admitted that she did not tell the prosecutor or police about the forced oral sex until a couple of weeks before trial because she was “disgusted with [her]self” and “so embarrassed about that part[.]”

During the investigation, B.T. told Detective Fitz that she did not know the perpetrator or his name, but she gave a physical description that was used to create a photo lineup, and she identified the petitioner in the photo lineup. The petitioner had a knife when he was taken into custody. Moreover, forensic experts testified that a washcloth and towel found in B.T.'s apartment contained saliva, sperm cells, and DNA from both the petitioner and B.T.

After his arrest, the petitioner gave a statement to Huntington Police Sergeant Stephanie Coffey. He said that he was “hanging out” at the apartment complex with B.T.'s neighbor Brett Layne when he encountered B.T. During the statement, the petitioner said that B.T. invited him into her apartment, made sexual overtures toward him, drank vodka, and gave him a glass of vodka that he drank. He admitted that alcohol can “alter” him or get him “bent out of shape.” The petitioner told the officer that B.T. voluntarily performed oral sex on him. The petitioner initially denied having vaginal intercourse, but he later admitted that he attempted vaginal intercourse but was unable to. The petitioner also denied ejaculating during the encounter. The petitioner told the officer that B.T. gave him money, her phone, her shoes, and a ring. The petitioner stated that he then returned to Mr. Layne's apartment, showed Layne the phone and ring, and told Layne that B.T. had “messed with me[.]” However, in his testimony at trial, Mr. Layne denied “hanging out” with the petitioner or that he saw any interaction between the petitioner and B.T. He also denied that the petitioner told him B.T. had “messed with” him or showed him a phone or a ring.

After the State rested its case, the petitioner moved for a judgment of acquittal, arguing that “this is essentially a he-said, she-said [case] about consent[.]” and B.T.'s testimony was

“inherently [in]credible” because her excessive alcohol use negatively affected her memory. The court denied the motion, finding that the State had presented enough evidence to allow the jury to render a verdict. The petitioner then rested having presented no evidence.

During closing argument, the prosecutor made the following statements, none of which were objected to by the petitioner’s counsel: “[S]he [B.T.] came in here with the truth”; “[S]he didn’t tell the police about the oral intercourse”; “She didn’t want to tell people. Why? Just like every other sexual assault victim, she didn’t think people were going to believe her”; “alcohol alters him”; “I’d submit to you that’s corroboration of [B.T.]. All of that is corroboration that [B.T.] is telling you: This is what happened and that’s the truth”; and “It’s proof beyond a reasonable doubt. I’m going to remind you of that. You all get to decide what that is.”

Ultimately, the jury convicted the petitioner of all four charges in his indictment. The circuit court sentenced him to ten years of imprisonment for first-degree robbery, fifteen to thirty-five years of imprisonment for each count of first-degree sexual assault, and one to fifteen years of imprisonment for burglary, all to be served consecutively, plus thirty years of supervised release.

On appeal, the petitioner claims that the circuit court erred when it denied his motion for judgment of acquittal based on insufficient evidence, and we review such claims *de novo*. See *State v. Juntilla*, 227 W. Va. 492, 497, 711 S.E.2d 562, 567 (2011). When this Court reviews the sufficiency of evidence, “the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt.” Syl. Pt. 1, in part, *State v. Guthrie*, 194 W. Va. 657, 461 S.E.2d 163 (1995).

The petitioner argues that the State presented insufficient evidence of first-degree sexual assault² because the physical evidence found in B.T.’s apartment is consistent with a consensual sexual encounter. He focuses his argument, however, on B.T.’s credibility, detailing her admitted drinking problem and its negative affect on her memory and perception of reality. The petitioner’s argument in this regard is unavailing, as we have held that a court may not declare a witness’s testimony “incredible as a matter of law” unless it “is so unbelievable on its face that it defies physical laws[.]” Syl. Pt. 8, in part, *State v. Smith*, 178 W. Va. 104, 358 S.E.2d 188 (1987). “Credibility determinations are for a jury[.]” *Guthrie*, 194 W. Va. at 663, 461 S.E.2d at 169, Syl. Pt. 3, in part. This was clearly a factual dispute for the jury to resolve, thus the circuit court did not err in denying the motion for judgment of acquittal regarding the sexual assault charges.

² First-degree sexual assault occurs when “[a] person engages in sexual intercourse . . . with another person, and, in so doing . . . employs a deadly weapon in the commission of the act.” W. Va. Code § 61-8B-3(a)(1)(B). “‘Sexual intercourse’ means any act between persons involving penetration, however slight, of the female sex organ by the male sex organ or involving contact between the sex organs of one person and the mouth or anus of another person.” W. Va. Code § 61-8B-1(7).

The petitioner offers no developed argument or supporting authority to substantiate his claim that there was insufficient evidence to sustain his convictions for first-degree robbery and burglary. *See* W. Va. R. App. P. 10(c)(7) (providing that “[t]he brief must contain an argument clearly exhibiting the points of fact and law presented”). Nevertheless, upon review we find no error. B.T.’s testimony established that the petitioner forced his way into her apartment with the intent to commit robbery and sexual assault, supporting the conviction for burglary.³ Similarly, the State presented sufficient physical and testimonial evidence to affirm the conviction for first-degree robbery.⁴ Thus, we conclude that the court did not err in refusing to grant the petitioner’s motion for judgment of acquittal on these charges.

We will review the petitioner’s remaining two assignments of error under the plain error doctrine because he did not object to these issues in circuit court. *See* W. Va. R. Crim. P. 52(b) (providing that “[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court”). We have long held that “[t]o trigger application of the ‘plain error’ doctrine, there must be (1) an error; (2) that is plain; (3) that affects substantial rights; and (4) seriously affects the fairness, integrity, or public reputation of judicial proceedings.” Syl. Pt. 7, *State v. Miller*, 194 W. Va. 3, 459 S.E.2d 114 (1995).

The petitioner claims that the court plainly erred when it allowed both counts of first-degree sexual assault to go to the jury. The petitioner argues that his convictions for two counts of first-degree sexual assault violate double jeopardy because there was only one act of “sexual intercourse,” and both charges in the indictment were “identical in every way. There is no difference between the two.” We review claims of double jeopardy de novo. *See* Syl. Pt. 1, *State v. McGilton*, 229 W. Va. 554, 729 S.E.2d 876 (2012). We have held that “[w]here a defendant commits separate acts of our statutorily defined term ‘sexual intercourse’ in different ways, each act may be prosecuted and punished as a separate offense.” Syl. Pt. 2, *State v. Carter*, 168 W. Va. 90, 282 S.E.2d 277 (1981). Here, the State presented evidence of two distinct acts of sexual assault: vaginal and oral intercourse. Consequently, the circuit court did not err by allowing both counts of first-degree sexual assault to be considered by the jury, and there is no plain error.

Finally, the petitioner argues that the circuit court plainly erred by failing to declare a mistrial following the State’s closing argument. We consider four factors when

³ *See* W. Va. Code § 61-3-11(a) (providing that a burglary occurs when “[a]ny person . . . breaks and enters, or enters without breaking, a dwelling house of another . . . with the intent to commit a violation of the criminal laws of this state”).

⁴ *See* Syl. Pt. 1, *State v. Harless*, 168 W. Va. 707, 285 S.E.2d 461 (1981) (holding that the definition of robbery is “(1) the unlawful taking or carrying away, (2) of money or goods, (3) from the person of another or in his presence, (4) by force or putting him in fear, (5) with intent to steal the money or goods”); W. Va. Code § 61-2-12(a) (defining first-degree robbery as a robbery by “(1) [c]ommitting violence to the person, including, but not limited to . . . striking or beating or (2) us[ing] the threat of deadly force by the presenting or a firearm or other deadly weapon”).

determining whether improper prosecutorial comment is so damaging as to require reversal: (1) the degree to which the prosecutor's remarks have a tendency to mislead the jury and to prejudice the accused; (2) whether the remarks were isolated or extensive; (3) absent the remarks, the strength of competent proof introduced to establish the guilt of the accused; and (4) whether the comments were deliberately placed before the jury to divert attention to extraneous matters.

Syl. Pt. 6, *State v. Sugg*, 193 W. Va. 388, 456 S.E.2d 469 (1995). Further, this Court will not reverse a conviction based upon "improper remarks" by a prosecuting attorney unless they were "clearly prejudicial or result in manifest injustice[.]" *State v. Critzer*, 167 W. Va. 655, 658-59, 280 S.E.2d 288, 291 (1981).

The petitioner claims that the prosecutor "altered" the court's reasonable doubt instruction by "telling the jury that you as the jury decide what proof beyond a reasonable doubt is." In its charge, the circuit court instructed the regarding reasonable doubt, including that

[a] reasonable doubt is a doubt based upon reason and common sense—the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it.

The court reminded the jury that "a defendant is never to be convicted on mere suspicion or conjecture" and that the "burden is always on the prosecution to prove guilt beyond a reasonable doubt." Measured against that thorough explanation of the reasonable doubt standard, the prosecutor's isolated remark, if improper in the first instance, did not tend to mislead the jury or prejudice the petitioner. Further, as discussed above, the State presented adequate evidence to establish the petitioner's guilt, and there was no indication that the comment was "deliberately placed before the jury to divert attention to extraneous matters." Thus, the petitioner has not established plain error with respect to this comment.

The petitioner also complains that the State's closing arguments included a "number of impermissible statements" that "unfairly bolstered" B.T.'s credibility given her "wildly inaccurate statements[]" and "clearly mislead the jury[]" in violation of the petitioner's rights to a fair trial and due process.⁵ However, a careful review of the record shows that, like the statement discussed

⁵ Although the petitioner compares this case to *State v. Bolen*, 219 W. Va. 236, 632 S.E.2d 922 (2006) (per curiam), *Bolen* is distinguishable. First, in *Bolen* we held that the circuit court erred when it allowed "the State to offer evidence of the victim's religious beliefs in order to bolster the victim's credibility." *Id.* at 238-39, 632 S.E.2d at 924-25, *see also* W. Va. R. Evid. 610 (providing that "[e]vidence of the beliefs or opinions of a witness on matters of religion is not admissible to attack or support the witness's credibility"). In this case, the remarks that the petitioner complains of did not involve B.T.'s religious beliefs. Second, unlike in *Bolen*, here the

above, the prosecutor’s remarks did not necessitate a mistrial. The prosecutor did not vouch for the truthfulness of any specific statement and these remarks were isolated. Moreover, the remarks did not mislead the jury or prejudice the accused because the statements were based upon the evidence presented at trial, and we have long held that “[a] proper closing argument in a criminal case involves the summation of evidence, any reasonable inferences from the evidence, responses to the opposing party’s argument, and pleas for law enforcement generally.” *See State ex rel. Games-Neely v. Yoder*, 237 W. Va. 301, 310, 787 S.E.2d 572, 581 (2016) (citation omitted). The petitioner argues that it was improper for the prosecutor to say that B.T. “came in here with the truth[,]” but the petitioner’s defense essentially challenged the veracity of her testimony, and in response, B.T. testified that she was telling the truth about what happened. The petitioner also argues that the State improperly remarked “[j]ust like every other sexual assault victim, she didn’t think people were going to believe her[,]” but this statement was based upon B.T.’s testimony that she did not immediately report the incident to police because she “was afraid of what people would think about [her] and what if they don’t believe [her].” The petitioner also claims that it was improper for the prosecutor to argue that the petitioner’s version of events was so unlikely that it corroborated the petitioner’s testimony. These remarks were based upon the petitioner’s statement to police that B.T., who had not met him previously, “took advantage of him” by inviting him into her apartment, giving him alcohol, performing oral sex on him, and paying him with her phone, shoes, a ring, and money. Further, the State’s remark that “alcohol alters” the petitioner was based upon the petitioner’s statement to police that that he had a “buzz” during the incident and that alcohol alters him. These remarks did not mislead the jury because they were based upon the evidence developed at trial, and there is no indication that they were extensive or “deliberately placed before the jury to divert attention to extraneous matters.” *See Sugg*, 193 W. Va. at 393, 456 S.E.2d at 474, Syl. Pt. 6, in part. Further, the State established the petitioner’s guilt, absent the remarks, with testimony from B.T., Mr. Layne, and the expert witnesses, all of whom contradicted parts of the petitioner’s statement to Sergeant Coffey. Thus, the court did not commit plain error by not sua sponte declaring a mistrial following the prosecutor’s closing arguments.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: November 25, 2025

CONCURRED IN BY:

Chief Justice William R. Wooton
Justice C. Haley Bunn
Justice Charles S. Trump, IV
Justice Thomas H. Ewing
Senior Status Justice John A. Hutchison

State presented both physical evidence and corroborating testimony to prove the crimes charged against the petitioner. *See Bolen*, 219 W. Va. at 238-39, 632 S.E.2d at 924-25.