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NO. COA01-1378

NORTH CAROLINA COURT OF APPEALS

Filed: 16 July 2002

STATE OF NORTH CAROLINA

v.

Wayne County
Nos. 00 CRS 51117
00 CRS 51118
00 CRS 51119

TRENTON CANTRELL

Appeal by defendant from judgments entered 7 March 2001 by Judge Jerry Braswell in Wayne County Superior Court. Heard in the Court of Appeals 1 July 2002.

Attorney General Roy Cooper, by Assistant Attorney General Sue Y. Little, for the State.

Benjamin M. Turnage, for defendant-appellant.

BRYANT, Judge.

Defendant pled guilty on 7 March 2001 to two counts of taking indecent liberties. At the plea and sentencing hearing, the State offered the confession of defendant in which defendant stated that while babysitting the two victims, he touched and rubbed the victims' genitals as they sat in his lap. The victims, fraternal twins, were five years old at the time. The children also told their parents and investigators that defendant had touched them in their private areas.

In sentencing defendant, the court found as factors in

aggravation in each case that the victim was very young and that defendant took advantage of a position of trust or confidence to commit the offense. As factors in mitigation, the court found that defendant voluntarily acknowledged wrongdoing at an early stage of the criminal process, that defendant accepted responsibility for his criminal conduct, and that defendant has a positive employment history or is gainfully employed. The court found that the factors in aggravation outweighed the factors in mitigation and imposed consecutive active terms in the aggravated range of a minimum of sixteen months and a maximum of twenty months.

Defendant contends that the court erred by finding as an aggravating factor in each case that the victim was very young. When age is an element of the offense, as here, the trial court may find the victim's young age as a factor in aggravation if the evidence, by its greater weight, shows that the age of the victim caused the victim to be more vulnerable to being victimized. *State v. Farlow*, 336 N.C. 534, 540, 444 S.E.2d 913, 917 (1994). Defendant argues the evidence fails to show that the victims were more vulnerable because of their age. We disagree.

A victim's age makes the victim more vulnerable when it impedes the victim from fleeing, fending off attack, recovering from its effects, or otherwise avoiding being victimized. *State v. Hines*, 314 N.C. 522, 525, 335 S.E.2d 6, 8 (1985). The defendant is considered more blameworthy or culpable because the victim's young or old age makes it less likely that the victim will be able to effectively intervene or defend himself. *State v. Thompson*, 318

N.C. 395, 398, 348 S.E.2d 798, 800 (1986). When the victim's age is at or near the beginning of the age spectrum for an offense having age as an element, the prosecution may establish vulnerability by merely relating the victim's age and the crime committed. *State v. Ahearn*, 307 N.C. 584, 603, 300 S.E.2d 689, 701 (1983).

A defendant is guilty of taking indecent liberties if he or she takes, or attempts to take, an indecent liberty with a child under the age of sixteen years. N.C.G.S. § 14-202.1 (2001). The age of five is near the beginning of the age spectrum for commission of this offense. A five-year-old is also more likely, as compared to an older child or teenager, to sit in the lap of an adult male. While seated in the adult's lap, the child is less able to flee from or resist the predatory touches of a lecherous adult. The child, therefore, is more vulnerable to victimization.

We conclude the finding of the aggravating factor is supported by the greater weight of evidence. We affirm the court's sentence.

No error.

Judges MARTIN and HUNTER concur.

Report per Rule 30(e).