An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA02-636

NORTH CAROLINA COURT OF APPEALS

Filed: 31 December 2002

STATE OF NORTH CAROLINA

v.

JOE ROBERT REYNOLDS

Forsyth County
No. 00 CRS 052951

Appeal by defendant from judgment dated 13 March 2002 by Judge James M. Webb in Forsyth County Superior Court. Heard in the Court of Appeals 30 December 2002.

Attorney General Roy Cooper, by Assistant Attorney General Kathleen M. Waylett, for the State.

Carlton, Rhodes & Carlton, by Gary C. Rhodes, for defendant appellant.

GREENE, Judge.

Joe Robert Reynolds (Defendant) appeals from a judgment dated 13 March 2002 entered consistent with a jury verdict finding him guilty of second-degree rape.

Before trial, the trial court noted the indictment lacked any indication by the foreman of the grand jury as to whether the listed witnesses had testified or had been sworn in by the grand jury. Following this acknowledgment, Defendant moved to quash the indictment but did not present evidence to show any irregularity in the grand jury proceedings in this case. The motion was denied,

and the case went to trial.

The State's evidence at trial tends to show through testimony of Allison Burden (Victim) that on the morning of 7 May 2000, Defendant entered Victim's car through the passenger's side door while she waited at a stoplight to turn onto Martin Luther King Drive in Winston-Salem. Defendant told Victim he was not going to hurt her but needed a ride home. Seeing no one around to whom she could yell for help, Victim drove with Defendant on to Martin Luther King Drive when the light turned green. Defendant was "talkative" and offered Victim money for gas. He directed Victim to turn left on to Waughtown Street and offered to allow her to stop for gas at the intersection. Wanting Defendant out of her car as soon as possible, Victim declined. Victim drove down Waughtown Street until Defendant directed her onto Salem Lake Road. Although Victim was unfamiliar with the area she did as she was told. When Victim saw "a dirt road and nothing in front of [her]," Victim began to slow the car. As the vehicle came to a stop, Defendant announced, "[Y]ou're about to get raped." He "shoved the car into park," removed the keys from the ignition, and put them on the dashboard. Victim thought she "was going to die."

Defendant attempted to grab Victim, but she repeatedly pushed him away from her and "tried everything [she] had heard to try," including telling Defendant she had a sexually transmitted disease. After resisting for "[m]aybe a minute," Victim began to cry, begging Defendant "not to do it." Defendant became visibly "aggravated." Unable to exit the vehicle and afraid of making

Defendant more angry, Victim cooperated with Defendant. At his direction, she removed her shorts and underwear and tilted the steering wheel away from her. Defendant then climbed on top of Victim and had vaginal intercourse with her for approximately three minutes. After losing his erection, Defendant returned to the passenger's seat and allowed Victim to put on her clothes. Victim started the car, assuring Defendant she would not tell the police what had happened. As she drove, Victim asked Defendant a series of questions hoping to obtain information about him. Defendant told Victim to drop him off at the stop sign before the intersection of Waughtown Street and Martin Luther King Drive. Once Defendant exited the car, Victim went directly to the office of the Winston-Salem State campus police to report the incident.

Victim gave a statement to Winston-Salem Police Officer Scott Doss consistent with her trial testimony. She was taken to Forsyth Medical Center for an examination which revealed generalized redness and "fresh" abrasions in Victim's vaginal opening in a location consistent with her account of the sexual assault.

Winston-Salem Police Officer Richard L. Taylor (Officer Taylor) testified he interviewed Defendant on 27 June 2000. When asked about his activities on 7 May 2000, Defendant initially denied getting into a vehicle on Martin Luther King Drive. Defendant subsequently claimed to have accepted a ride from a female who was using the telephone at a BP gas station at the intersection of "First and Martin Luther King." Defendant further stated he smoked crack cocaine while he and the female were

driving. The female told Defendant she needed money for gas and agreed to have sex with him for twenty dollars. According to Defendant, he had consensual sex with the female near Salem Gardens apartments, after which he threw his condom out of the window. In giving his tape-recorded statement to Officer Taylor, Defendant changed one detail of his account, admitting that he approached the female's car at the traffic light at First and Martin Luther King. Officer Taylor testified the police did not find a condom in the area identified by Defendant.

Defendant offered no evidence at trial. His counsel's cross-examination of the State's witnesses pursued the theory Victim had engaged in consensual sex with Defendant for money. Defendant's motion to dismiss at the conclusion of the evidence was denied by the trial court. The jury found Defendant guilty of second-degree rape but acquitted him of second-degree kidnapping.

The issues are whether: (I) the failure of the grand jury foreman to note which witnesses had been sworn in or testified before the grand jury, by itself, renders the indictment fatally defective; (II) there was substantial evidence Defendant committed the crime of second-degree rape; and (III) the acquittal of Defendant on the charge of second-degree kidnapping was inconsistent with a conviction of second-degree rape.

I

Defendant first claims the indictment under which he was tried was fatally defective because the grand jury foreman failed to mark

on the form whether the listed witnesses were sworn by the foreman or testified before the grand jury. It is well established, however, "the mere absence of such an endorsement is not sufficient to overcome the presumption of validity of the indictment arising from its return by the grand jury as 'a true bill.'" *State v. Tudor*, 14 N.C. App. 526, 528, 188 S.E.2d 583, 585 (1972); N.C.G.S. § 15A-623(c) (2001) ("[f]ailure to comply with this provision does not vitiate a bill of indictment or presentment"). While Defendant points to statements made by the trial court reflecting its awareness of similar errors made by the grand jury in other cases, there is no evidence in the record rebutting the presumption of validity accorded the "true bill" returned in this case. *See State v. Mitchell*, 260 N.C. 235, 238, 132 S.E.2d 481, 482 (1963).

II

Defendant next asserts the trial court erred in denying his motion to dismiss. A motion to dismiss should be denied if there is substantial evidence to support each essential element of the offense presented at trial. *State v. Roseborough*, 344 N.C. 121, 126, 472 S.E.2d 763, 766 (1996). "Substantial evidence is evidence from which any rational trier of fact could find the fact to be proved beyond a reasonable doubt." *State v. Sumpter*, 318 N.C. 102, 108, 347 S.E.2d 396, 399 (1986). The State is entitled to all reasonable inferences supported by the evidence, *see State v. Jaynes*, 342 N.C. 249, 274, 464 S.E.2d 448, 463 (1995), and its witnesses are deemed credible. *See State v. Locklear*, 322 N.C. 349, 358, 368 S.E.2d 377, 383 (1988). "The crime of second[-

]degree rape consists of engaging in vaginal intercourse, by force and against the will of the other person." *State v. Martin*, 126 N.C. App. 426, 428, 485 S.E.2d 352, 354 (1997). Force "may be established either by actual, physical force or by constructive force in the form of fear, fright, or coercion." *State v. Etheridge*, 319 N.C. 34, 45, 352 S.E.2d 673, 680 (1987). Threats that compel the victim's submission to non-consensual sex may constitute constructive force. *Id.* Such "[t]hreats need not be explicit so long as the totality of circumstances allows a reasonable inference that such compulsion was the unspoken purpose of the threat." *Id.* (citing *State v. Barnette*, 304 N.C. 447, 284 S.E.2d 298 (1981)). A showing the victim submitted to unwanted sexual intercourse is insufficient to establish the crime of rape "absent evidence that the defendant used force or threats to overcome the will of the victim to resist the sexual intercourse." *State v. Alston*, 310 N.C. 399, 409, 312 S.E.2d 470, 476 (1984).

In this case, Victim's testimony, as corroborated by other witnesses, was sufficient to withstand a motion to dismiss the rape charge. *See generally State v. Grimes*, 96 N.C. App. 489, 493, 386 S.E.2d 214, 217 (1989) (evidence of sexual intercourse and evidence of force and against victim's will sufficient to withstand motion to dismiss). Victim testified Defendant led her to an isolated area under the pretext of needing a ride home. Once in this secluded location, Defendant removed the keys from the vehicle's ignition and told Victim that she was "about to get raped." Defendant tried to grab Victim, and she tried to keep Defendant off

of her by using her hands. When these efforts proved unavailing, she began to cry and beg. Defendant became visibly "aggravated[,]" causing Victim to fear angering him further. Defendant then had vaginal intercourse with Victim against her will. By placing Victim in an area where help was unavailable, announcing he was going to "rape" her, and attempting to grab her while she pushed him off Defendant applied sufficient actual and constructive force to satisfy this element of second-degree rape. Even in its lay sense, the term "rape" denotes an act of non-consensual sexual intercourse accomplished by force. *See, e.g., The American Heritage Dictionary* 1132 (3d ed. 1993). Defendant's stated intention to rape Victim could thus reasonably be construed as an explicit threat of force designed to compel her submission. The State has thus presented substantial evidence Defendant committed the offense of second-degree rape, sufficient to overcome Defendant's motion to dismiss.

III

In his remaining assignment of error, Defendant argues the trial court should have set aside the guilty verdict for second-degree rape in light of the jury's finding he did not kidnap Victim. We find no merit to this argument. A jury's verdicts need not be consistent. *See State v. Black*, 14 N.C. App. 373, 378, 188 S.E.2d 634, 637 (1972). Moreover, there is no inconsistency between the verdicts reached here. The jury could have reasonably concluded Victim consented to give Defendant a ride but did not consent to have sex with him.

Accordingly, Defendant’s conviction of second-degree rape is upheld.

No error.

Judges TIMMONS-GOODSON and TYSON concur.

Report per Rule 30(e).