IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-645

No. COA22-4

Filed 20 September 2022

Alexander County, Nos. 20CRS50664, 50667-68

STATE OF NORTH CAROLINA

v.

SHAWN BEAU CROTEAU, Defendant.

Appeal by Defendant from judgments entered 21 July 2021 by Judge Joseph N. Crosswhite in Alexander County Superior Court. Heard in the Court of Appeals 9 August 2022.

Attorney General Joshua H. Stein, by Special Deputy Attorney General M. Denise Stanford, for the State.

W. Michael Spivey for Defendant-Appellant.

INMAN, Judge.

¶ 1 Shawn Beau Croteau ("Defendant") appeals from judgments entered on convictions for three counts of statutory rape and four counts of indecent liberties with a child after raping his minor stepdaughter in the family's home over the course of one month. His sole argument on appeal is the trial court erred in denying his motion to dismiss one count of statutory rape for lack of evidence to corroborate his

confession. After careful review of the record and our caselaw, we affirm the trial court's denial of the motion to dismiss.

I. FACTUAL & PROCEDURAL HISTORY

¶ 2 The record below discloses the following:

¶ 3 On the morning of 19 July 2020, Defendant's wife, Kimberly Croteau ("Ms. Croteau"), discovered Defendant in the act of raping their eleven-year-old daughter, Becky,[1] in their son's bedroom. After Ms. Croteau walked into the bedroom, Defendant pulled his erect penis out of Becky's vagina, and Ms. Croteau immediately took Becky to a garage on the property, which the family called the "doghouse." Ms. Croteau asked her husband "how long this had been going on," and Defendant responded "a couple of weeks . . . the first time was in our bed, the second time was in the doghouse[,] and the third time is now." Ms. Croteau called the police, and they took Defendant into custody.

¶ 4 Defendant waived his Miranda rights and Detective Ben Brown conducted a video-recorded interview with him the same morning. Defendant recalled that earlier that morning, Becky came into her brother's room where Defendant was laying down. He described that he and Becky were "messing around," and then Becky took off one of her pant legs and got on top of him. Defendant admitted he "g[o]t hard," Becky "sat

[1] We use a pseudonym to protect the identity of the minor child.

on [his penis]," and they "start[ed]" to have sex, but he claimed he was unable to penetrate her vagina with his penis. Beyond that morning, he confessed to having "sex" and doing "it" with Becky on three or four occasions—twice at the house, once in the main bedroom and once in the "doghouse," and another time in a hotel room.

¶ 5 A victim advocate and forensic interviewer conducted a video-recorded interview with Defendant's daughter, Becky. Becky reported that Defendant had raped her three times over the course of "a couple of weeks." She recalled that the last time Defendant "put his penis in her vagina" was in her brother's room days earlier and that he did the same thing another time in the doghouse. Although she remembered that Defendant first sexually assaulted her in her parents' bedroom, she could not recall the specific details of the sexual acts. Becky also told the interviewer that Defendant had showed her pornography and that he had taken nude pictures of her with his phone in either the doghouse or the home, which law enforcement recovered.

¶ 6 On 19 August 2020, a grand jury indicted Defendant on four counts of statutory rape of a child by an adult and four counts of indecent liberties with a child. The alleged offenses occurred between 19 June 2020 and 19 July 2020. Defendant waived his right to a jury trial, and the case came before the trial court on 19 July 2021. At trial, Ms. Croteau, law enforcement, and the forensic interviewer testified consistent with the above recitation of facts, and the trial court reviewed both video-recorded

interviews. On cross-examination, the forensic interviewer acknowledged Becky only explicitly identified two instances of vaginal penetration. At the close of the State's evidence and again at the close of all evidence, defense counsel moved to dismiss all charges, and, especially, "at least two of the allegations for the rape of a child" because there was not sufficient evidence of vaginal penetration. The State conceded it had failed to offer evidence of one of the statutory rape charges, so the trial court dismissed one charge of statutory rape but denied the motion as to the remaining charges. The trial court found Defendant guilty of three counts of statutory rape and four counts of indecent liberties. The trial court consolidated the convictions into three consecutive sentences of 300 to 420 months in prison. Defendant gave oral notice of appeal.

II. ANALYSIS

¶ 7 The sole issue before us is whether the trial court erred in denying Defendant's motion to dismiss because the State failed to establish the *corpus delicti*[2] for one statutory rape charge.

A. Standard of Review

¶ 8 When reviewing the trial court's denial of a motion to dismiss for insufficiency of the evidence, we consider "whether there is substantial evidence (1) of each

[2] "Literally, the phrase '*corpus delicti*' means the 'body of the crime.'" *State v. Parker*, 315 N.C. 222, 231, 337 S.E.2d 487, 492 (1985) (citation omitted).

essential element of the offense charged . . . and (2) of defendant's being the perpetrator of such offense." *State v. Sweat*, 366 N.C. 79, 84, 727 S.E.2d 691, 695 (2012) (citations omitted). Substantial evidence is "relevant evidence that a reasonable person might accept as adequate, or would consider necessary to support a particular conclusion." *State v. Abshire*, 363 N.C. 322, 328, 677 S.E.2d 444, 449 (2009) (quotation marks and citation omitted). We examine "the sufficiency of the evidence presented but not its weight." *State v. McNeil*, 359 N.C. 800, 804, 617 S.E.2d 271, 274 (2005) (cleaned up). We view the evidence in the light most favorable to the State, and the State is entitled to every reasonable inference to be drawn from the evidence. *State v. Cox*, 367 N.C. 147, 150, 749 S.E.2d 271, 274 (2013) (citation omitted).

B. Applicable Law

1. Statutory Rape

¶ 9 "A person is guilty of statutory rape of a child by an adult if the person is at least 18 years of age and engages in vaginal intercourse with a victim who is a child under the age of 13 years." N.C. Gen. Stat. § 14-27.23(a) (2021). "Vaginal intercourse means the slightest penetration of the sexual organ of the female by the sexual organ of the male." *State v. Baker*, 369 N.C. 586, 595, 799 S.E.2d 816, 822 (2017) (cleaned up). Where the State charges a defendant with multiple sexual offenses by indictments that lack specific details distinguishing one offense from another, the

State must offer sufficient evidence to support each offense by evidence of an equal or greater number of such offenses during the relevant period. *See State v. Lawrence*, 360 N.C. 368, 373-76, 627 S.E.2d 609, 612-13 (2006) ("[A] defendant may be unanimously convicted of indecent liberties even if: (1) the jurors considered a higher number of incidents of immoral or indecent behavior than the number of counts charged, and (2) the indictments lacked specific details to identify the specific incidents.").

2. **Corpus Delicti *Rule***

¶ 10 Our Supreme Court has long held that "an extrajudicial confession, standing alone, is not sufficient to sustain a conviction of a crime." *Parker*, 315 N.C. at 229, 337 S.E.2d at 491. "[T]o guard against the possibility that a defendant will be convicted of a crime that has not been committed," the *corpus delicti* rule requires corroborative evidence. *Id.* at 235, 337 S.E.2d at 494. The traditional rule requires the State to produce evidence independent of the extrajudicial confession to show that the injury or harm constituting the crime occurred and was caused by criminal activity. *Cox*, 367 N.C. at 151, 749 S.E.2d at 275. The *corpus delicti* rule for non-capital cases announced in *Parker* eliminated the requirement that there be "independent proof tending to establish the *corpus delicti* of the crime charged *if the accused's confession is supported by substantial independent evidence tending to establish its trustworthiness, including facts that tend to show the defendant had the*

opportunity to commit the crime." 315 N.C. at 236, 337 S.E.2d at 495 (emphasis added). Instead, "when independent proof of loss or injury is lacking, there must be *strong* corroboration of *essential* facts and circumstances embraced in the defendant's confession." *Id.* (emphasis in original).

C. Strong Corroborative Evidence of Defendant's Extrajudicial Confession

¶ 11 Defendant contends he did not confess to three separate instances of penile-vaginal penetration for the statutory rape charges; instead, he admitted to various sexual acts with Becky, including "sex" and doing "it," and the other evidence, namely Becky's recorded interview in which she could only account for two instances of vaginal penetration, did not supply strong corroborative evidence of his extrajudicial confession. The State, on the other hand, argues that Defendant admitted, and its corroborative evidence supported, three counts of statutory rape—once when Ms. Croteau found Defendant raping Becky in their son's bedroom on 19 July 2020, once in the parents' bedroom, and a third time in the doghouse.

¶ 12 In summarizing the corroborative evidence offered by the State, Defendant ignores his confession to his wife immediately after she caught him raping Becky on the morning of 19 July 2020. Defendant admitted that he had done "this," what Ms. Croteau witnessed as vaginal-penile penetration, a total of three times: "the first time was in our bed, the second time was in the doghouse[,] and the third time is now."

¶ 13 Defendant compares this case to two cases, *State v. Smith*, 362 N.C. 583, 669 S.E.2d 299 (2008), and *State v. Blankenship*, 259 N.C. App. 102, 814 S.E.2d 901 (2018), in which our courts held the State's corroborative evidence was insufficient to establish the *corpus delicti* of the sex offense. The corroborative evidence in those cases fell far short of the evidence in this case. In *Smith*, the victim twice denied that a first-degree sexual offense had occurred at all, the defendant's extrajudicial confession and his in-court statement were vague, and the testimony from a friend that the defendant admitted to engaging in oral sex with the victim immediately after his interview with police was not independent in time or place from his extrajudicial confession. 362 N.C. at 593-96, 669 S.E.2d at 306-08. In *Blankenship*, we held the State failed to satisfy the *corpus delicti* rule because the defendant's confession did not match the victim's statement, and the confession did not otherwise fit a pattern of sexual misconduct. 259 N.C. App. at 123-24, 814 S.E.2d at 917-18.

¶ 14 Defendant then seeks to distinguish his case from two others, *State v. Sweat*, 366 N.C. 79, 727 S.E.2d 691 (2012), and *State v. DeJesus*, 265 N.C. App. 279, 827 S.E.2d 744 (2019), in which our courts held there was sufficient corroborative evidence of the *corpus delicti*. The independent evidence identified by the Supreme Court in *Sweat* was: (1) the defendant, as the victim's uncle, had the opportunity to commit the sex offenses; (2) the victim provided a parallel account to the defendant's extrajudicial confession of four instances of fellatio; (3) the fellatio fit within a pattern

of the defendant's other sex crimes against the victim; and (4) the defendant's confession evidenced his familiarity with details which would only be known by the perpetrator. 366 N.C. at 85-87, 727 S.E.2d at 696-97. In *DeJesus*, this Court identified the following corroborative evidence of three counts of statutory rape: (1) as the live-in boyfriend of the victim's mother, the defendant had the opportunity to perpetrate the crimes; (2) the twelve-year-old victim became pregnant following the rapes; (3) the defendant's confession was voluntary; and (4) he admitted he engaged in vaginal intercourse with the victim on at least three occasions. 265 N.C. App. at 286-87, 827 S.E.2d at 750.

¶ 15 Here, Defendant's extrajudicial confession to three instances of, at the very least, "sex" or "it," was strongly corroborated by Ms. Croteau's testimony about Defendant's confession to her after she observed him raping Becky and by Becky's own recollection of three instances of sexual acts, at least two of which expressly involved penile-vaginal penetration. And several other sources of evidence corroborate Defendant's testimony. First, as the victim's father, living in the same household, Defendant had "ample opportunity" to rape Becky, a factor recognized by this Court as constituting strong corroborating evidence of essential facts. *Blankenship*, 259 N.C. App. at 124, 814 S.E.2d at 917 ("Defendant had 'ample opportunity' to commit the crimes. Defendant, Rose's father, often spent time alone with Rose at their home. Defendant's opportunity corroborates 'essential facts

embodied in the confession.'" (quoting *Sweat*, 366 N.C. at 86, 727 S.E.2d at 696)). Second, there is no allegation of deception or coercion in this case. *See DeJesus*, 265 N.C. App. at 286, 827 S.E.2d at 750 ("[W]e note that there is no contention in the instant case that Defendant's extrajudicial confession was the product of deception or coercion."). Defendant waived his Miranda rights and voluntarily confessed to the crimes.

¶ 16 Next, unlike the defendant's admission to a friend in *Smith* immediately following his confession to police, Defendant's confession to Ms. Croteau on the morning she discovered him raping their daughter occurred before police questioned him. *Cf. Smith*, 362 N.C. at 594, 669 S.E.2d at 307 (holding statements a defendant made to a friend and the defendant's demeanor immediately after the extrajudicial confession were insufficient to corroborate the defendant's confession to police because they were not independent from the confession itself). Fourth, unlike in *Blankenship* and similar to the defendant in *Sweat*, the third count of statutory rape fits within Defendant's established sexual misconduct, namely the rape of his daughter on at least two other occasions and numerous other sexual offenses against her, and Becky's and Ms. Croteau's accounts match Defendant's confession. *See Sweat*, 366 N.C. at 85-87, 727 S.E.2d at 696-97. *Cf. Blankenship*, 259 N.C. App. 123-24, 814 S.E.2d at 917-18. Finally, "[D]efendant's confession and corroborating evidence show that [D]efendant was familiar with details related to the crimes likely

to be known only by the perpetrator," such as the location, frequency, and timing of each sex offense, as in *Sweat*. 366 N.C. at 87, 727 S.E.2d at 696.

¶ 17 We hold the State presented "*strong* corroboration of *essential* facts and circumstances embraced in the defendant's confession" to all three statutory rape charges. *Parker*, 315 N.C. at 236, 337 S.E.2d at 495 (emphasis in original). As such, viewing the corroborative evidence of Defendant's extrajudicial confession in the light most favorable to the State, *Cox*, 367 N.C. at 150, 749 S.E.2d at 274, we conclude the trial court did not err in denying Defendant's motion to dismiss another statutory rape charge.

III. CONCLUSION

¶ 18 For the foregoing reasons, we affirm the trial court's denial of Defendant's motion to dismiss one statutory rape charge.

AFFIRMED.

Judges TYSON and GORE concur.

Report per Rule 30(e).