NO. COA08-916

NORTH CAROLINA COURT OF APPEALS

Filed: 17 February 2009

STATE OF NORTH CAROLINA

v. Mecklenburg County
No. 05 CRS 227671-75

CHARLES EDWARD BROWN

Appeal by defendant from judgments entered 17 April 2008 by Judge J. Gentry Caudill in Mecklenburg County Superior Court. Heard in the Court of Appeals 15 January 2009.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Anita LeVeaux, for the State.

Parish, Cook & Coughlin, by James R. Parish, for defendant.

STEELMAN, Judge.

Where there was no variance between the evidence presented of the dates the offenses occurred and the dates alleged in the indictment, the trial court did not err in denying defendant's motion to dismiss. Where the expert witness testimony as to the relationship between domestic violence and child sexual abuse formed the basis of his opinion in the case, the trial court did not err by allowing the opinion.

I. Factual and Procedural Background

On 11 June 2005, Charles Brown ("defendant") was indicted for two counts each of indecent liberties and statutory sexual offense

upon his stepdaughter, B.I. Defendant was also indicted for one count each of indecent liberties and statutory sexual offense upon his stepdaughter T.I. During the time period of the alleged offenses, defendant, T.I. and B.I.'s mother, Daisy Brown, T.I., B.I., and Daisy's son shared a home together.

The State's evidence at trial tended to show that defendant sexually abused B.I. from the time that she was ten or eleven years old until the time she was approximately fourteen years old. The evidence also tended to show that defendant engaged in sexual activities with B.I.'s younger sister, T.I., during the same time period.

The case went to trial on 14 April 2008. At the close of the State's evidence, the State voluntarily dismissed the charge of statutory sexual offense against T.I. The jury found defendant guilty of the remaining five charges. The trial court found defendant to be a prior record level I for felony sentencing purposes. The trial court imposed two consecutive presumptive range sentences of 240 to 297 months imprisonment for the statutory sexual offense charges. The remaining indecent liberties charges were consolidated into a third concurrent judgment imposing an active sentence of 16 to 20 months. Defendant appeals.

II. Motion to Dismiss

In his first argument, defendant contends that the trial court erred in failing to dismiss the charges of indecent liberties and statutory sexual offense against him on the grounds that the State

failed to offer evidence that defendant committed the offenses on the dates alleged in the indictments. We disagree.

"In ruling on a motion to dismiss at the close of evidence. . . a trial court must determine whether there is substantial evidence of each essential element of the offenses charged." *State v. Williams*, 154 N.C. App. 176, 178, 571 S.E.2d 619, 620 (2002) (citation omitted). "Evidence is substantial if it is relevant and is sufficient to persuade a rational juror to accept a particular conclusion." *State v. Goblet*, 173 N.C. App. 112, 118, 618 S.E.2d 257, 262 (2005) (citation omitted). The evidence must be considered in the light most favorable to the State. *Id.*

A defendant is guilty of statutory sexual offense if he or she "engages in . . . a sexual act with another person who is 13, 14, or 15 years old and the defendant is at least six years older than the person[.]" N.C. Gen. Stat. § 14-27.7A(a) (2007). In the instant case, the indictment for statutory sexual offense in case number 05 CRS 227672 read, in part, that "on or about the month of August, 2004 . . . [defendant] did unlawfully, willfully, and feloniously engage in a sexual act with [B.I.], a person of the age of fourteen (14) years." The second indictment for statutory sexual offense in case number 05 CRS 227674 charged defendant with committing a sexual offense against B.I. "on or about the month of October, 2004." Defendant argues that the evidence presented at trial did not show that he perpetrated sexual acts on B.I. in August and October of 2004, and contends that "it is only through

conjecture and surmise that allows the Court to find sexual acts occurred on or about the dates alleged in the indictments."

This Court addressed a nearly identical issue in *State v. Burton*, 114 N.C. App. 610, 612, 442 S.E.2d 384, 386 (1994), and held that:

> In cases involving allegations of child sex abuse, temporal specificity requirements are further diminished. Children frequently cannot recall exact times and dates; accordingly, a child's uncertainty as to the time of the offense goes only to the weight to be given that child's testimony. Judicial tolerance of variance between the dates alleged and the dates proved has particular applicability where, as in the case *sub judice*, the allegations concern instances of child sex abuse occurring *years before*. Unless a defendant demonstrates that he was deprived of the opportunity to present an adequate defense due to the temporal variance, the policy of leniency governs.

114 N.C. App. at 613, 442 S.E.2d at 386 (citations omitted).

The evidence presented at trial, viewed in the light most favorable to the State, was that B.I. had been exposed to multiple incidences of sexual abuse by defendant beginning when she was ten or eleven years old. According to B.I.'s testimony, the sexual abuse followed a pattern in which defendant would first send T.I. and B.I.'s brother to the store and then perpetrate acts of sexual abuse against her. B.I. testified that, from the time that she was eleven until the time that she was fourteen, defendant perpetrated acts of sexual abuse against her one to two times per week, and that the pattern of abuse ended when she moved with her mother away from defendant's residence in October 2004. The State also presented evidence of a sexual assault which occurred when B.I. was

fourteen years old. The evidence tended to show that this incident took place on the first day of school when the weather was warm.

We hold that the State offered substantial evidence of defendant's perpetrating statutory sexual offenses against B.I. in the months of August and October 2004.

Further, even assuming *arguendo* that there was a variance between the evidence presented and the indictments, defendant has made no attempt to demonstrate how, if at all, his ability to present a defense was prejudiced. *See State v. Brown*, 178 N.C. App. 189, 195-96, 631 S.E.2d 49, 53-54 (2006); *State v. Ware*, ___ N.C. App. ___, ___, 656 S.E.2d 662, 665 (2008).

This argument is without merit.

III. Testimony of Clinical Social Worker

In his second argument, defendant contends that the trial court erred in allowing Christopher Ragsdale, a clinical social worker, to testify regarding the correlation between domestic violence and a child's risk of sexual abuse on the grounds that Mr. Ragsdale's report provided by the State in discovery did not contain an opinion or conclusion regarding this issue. We disagree.

Pursuant to N.C. Gen. Stat. § 15A-903, the State is required to give notice to the defendant of any expert witnesses the State intends to call, and to furnish to defendant a report of the results of any examination, as well as the expert's opinion and the basis for that opinion. N.C. Gen. Stat. § 15A-903(a)(2) (2007).

In the instant case, prior to trial, the State provided defense counsel with Ragsdale's report containing his opinion that the accounts provided by the two children were consistent with sexual abuse. The State also provided to defendant a powerpoint presentation by Ragsdale that contained statistics regarding intra-familial violence and its affect on sexual abuse in the home and disclosures of that abuse.

At trial, the State asked Ragsdale for his opinion "as to whether domestic violence increases a child's risk for sexual abuse[.]" Defendant objected, and the court overruled his objection. Ragsdale then opined that "the risk for sexual abuse increases in a setting where there is domestic violence."

Defendant argues that, since the trial was "replete with testimony of physical abuse [by defendant] to the mother and the children," Ragsdale's opinion regarding the increased risk for sexual abuse "amounted to an improper bolstering of the credibility of [B.I. and T.I.]."

We disagree with defendant's characterization of Ragsdale's testimony. Contrary to defendant's assertion, Ragsdale did not state that the children were in fact abused, nor did he vouch for their credibility. Instead, Ragsdale offered his observations of B.I.'s and T.I.'s behavior and psychological characteristics, including embarrassment, fear, and fear of retribution. Ragsdale then testified that those behaviors were consistent with sexually abused children. Ragsdale's generic testimony regarding the relationship between domestic violence and sexual abuse merely

contributed to the basis of his opinion as to whether the children's behaviors were consistent with the symptoms and characteristics of sexually abused children. *See State v. Stancil*, 355 N.C. 266, 267, 559 S.E.2d 788, 789 (2002) ("[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."). This testimony was proper, and the trial court did not err by allowing it into evidence.

This argument is without merit.

Defendant's remaining assignments of error are deemed abandoned pursuant to N.C. R. App. P. 28(b)(6) (2008) for failure to argue them in his brief.

NO ERROR.

Judges GEER and STEPHENS concur.

Report per Rule 30(e).