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NO. COA13-204
NORTH CAROLINA COURT OF APPEALS

Filed: 17 September 2013

STATE OF NORTH CAROLINA

v.

Guilford County
No. 09 CRS 87053

JAMAL MOHAMMAD AL NAJJAR

Appeal by defendant from judgment entered 14 September 2012 by Judge William Z. Wood, Jr., in Guilford County Superior Court. Heard in the Court of Appeals 9 September 2013.

Attorney General Roy Cooper, by Assistant Attorney General M. Lynne Weaver, for the State.

J. Darren Byers for defendant appellant.

McCULLOUGH, Judge.

Defendant Jamal Mohammad Al Najjar appeals from a judgment consistent with a jury verdict finding him guilty of sexual battery. For the following reasons, we find no error.

The State's evidence tended to show that in July 2009, defendant and his business partner, Mr. Asad Alhmouz, owned a hookah bar in Greensboro, North Carolina. Seventeen-year-old D.A., who had spent time at the hookah bar with her friends,

asked Mr. Alhmouz if he needed additional help at the bar, as she was looking for a summer job. Mr. Alhmouz acknowledged that he needed help, so he hired D.A. On 23 July 2009, after working a couple of days, Mr. Alhmouz told D.A. to call defendant about her work schedule for the day. Defendant informed D.A. that she needed to come to work early, around 4:00 p.m., because the hookah bar was hosting a party that night.

After D.A. received a ride to work from a girlfriend, she helped defendant unload drinks from the trunk of his car. When they finished, defendant gave D.A. a "sideways" hug and told her to "be careful[] you might pop them." D.A., who was wearing a two-button polo shirt, asked defendant what he meant. Defendant stated, "they're big. They can pop." D.A. responded, "I'm only 17. Leave me alone, you know, I'm here to work."

D.A. then started to wash ashtrays at the sink when defendant came behind her, turned her around, and held her down. Defendant proceeded to grab D.A.'s breasts, kiss her, and tell her he could "take care of [her]" with "cars and money[.]" D.A. testified, "[a] 50-year-old man's tongue down a 17-year-old's throat. It's just disgusting. And I tried to push him off of me[.]" D.A. finally "wiggled out" of defendant's grasp and stated that she needed to take out the trash.

D.A. took a few boxes to the dumpster located behind the hookah bar, then called three friends. Upon returning to the bar, D.A. told defendant she needed to go to the hospital because her mother just called to tell her that D.A.'s brother was in a motorcycle accident. D.A. "made up a story" "so [defendant] wouldn't be suspicious as to why [she] was upset and why [she] needed to leave." D.A. waited outside for her three friends. When her friends arrived, they drove her across the street to a gas station where she called the police. Afterwards, D.A. did not return to the hookah bar, and did not pick up her pay check because she "didn't want it." D.A. testified that defendant did not ask her to clean the hookah bar bathroom and, if he had, she would have cleaned it.

Defendant denied touching D.A. or making suggestive statements to her. Defendant testified that he had instructed D.A. to clean the bathroom and that she had refused; that defendant told D.A. that if she did not clean the bathroom, he did not need her help; that D.A. begged defendant not to fire her because she needed the money to pay bills; and that D.A. left shortly thereafter, saying that her brother had been in a motorcycle accident.

At the charge conference, defendant objected to the trial court's inclusion of "for the purpose of sexual arousal" in its instruction on sexual battery. The trial court overruled defendant's objection and instructed the jury in pertinent part:

So if you find from the evidence, beyond a reasonable doubt, that on or about the alleged date the defendant engaged in sexual contact; that is, touched the breast of another person; that when he did so, the defendant acted for the purpose of sexual arousal or sexual gratification; and that this contact was by force and against the will of the other person, then it would be your duty to return a verdict of guilty.

The jury found defendant guilty of sexual battery. The trial court sentenced defendant to sixty days in the custody of the Guilford County Sheriff's Department, suspended the sentence and placed him on supervised probation for twenty-four months. Defendant appeals.

Defendant contends "the trial court erred in instructing the jury that it could find [him] guilty of sexual battery if [defendant] acted for the purpose of sexual arousal when there was no evidence in support of that theory." We disagree.

The issue of jury instructions "is a matter within the trial court's discretion and will not be overturned absent a showing of abuse of discretion." *State v. Nicholson*, 355 N.C. 1, 66, 558 S.E.2d 109, 152 (2002). The elements of sexual

battery are: (1) engaging in sexual contact with another person, (2) by force and against the will of the other person, and (3) for the purpose of sexual arousal, sexual gratification, or sexual abuse. N.C. Gen. Stat. § 14-27.5A (2011). Our Supreme Court has stated that sexual arousal "may be inferred from the evidence of the defendant's actions." *State v. Rhodes*, 321 N.C. 102, 105, 361 S.E.2d 578, 580 (1987).

Here, the victim testified that defendant hugged her while making suggestive comments to her, then held her down, grabbed her breasts, kissed her, and put his "tongue down [her] throat." This testimony from the victim is sufficient for "the jury [to] infer that [the] defendant's action . . . was for the purpose of arousing or gratifying his sexual desire." *State v. Bruce*, 90 N.C. App. 547, 551, 369 S.E.2d 95, 98 (1988) (discussing a charge of taking indecent liberties with a child which includes the element "for the purpose of arousing or gratifying sexual desire"). We conclude defendant's actions provided sufficient evidence from which the jury could infer he acted for the purpose of sexual arousal, and therefore, the trial court's instruction on sexual battery was proper. Defendant's argument is without merit.

No error.

Judges HUNTER (Robert C.) and BRYANT concur.

Report per Rule 30(e).