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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-269

Filed: 17 November 2015

Catawba County, Nos. 13 CRS 4770, 51818

STATE OF NORTH CAROLINA

v.

APRIL JEAN ANDERSON

Appeal by Defendant from judgments entered 16 July 2014 by Judge Linwood O. Foust in Catawba County Superior Court. Heard in the Court of Appeals 9 September 2015.

Attorney General Roy Cooper, by Special Deputy Attorney General Kimberley A. D'Arruda, for the State.

James N. Freeman, Jr., for Defendant.

STEPHENS, Judge.

Defendant April Jean Anderson was convicted after a jury trial in Catawba County Superior Court on two counts of felony obstruction of justice. Anderson argues that the trial court erred in denying her motion to dismiss one of the charges for insufficient evidence. After due deliberation, we hold that the trial court did not err.

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Factual Background

On 25 December 2011, Defendant April Jean Anderson called the Catawba County Sheriff's Office after her 11-year-old daughter, "Jane,"¹ informed Anderson that she had been molested by Jane's stepfather, Nicky Lee Anderson. That same day, Anderson took Jane to the Town of Catawba Police Department, where Chief Michael Nash interviewed them separately. During her interview with Chief Nash, Jane disclosed an incident when her stepfather "gave her a shower," asked if "she was ticklish down there," and requested that she perform oral sex on him. When Chief Nash asked Anderson if she could confirm the accuracy of Jane's report, Anderson told him that Jane was a chronic liar and that she had made the accusations against her stepfather immediately after having an argument with him about the family dog earlier that day. Anderson also told Chief Nash that Jane had been acting normally all week and had not complained of any pain, and that Jane's stepfather had refused to bathe Jane since her first birthday.

On 27 December 2011, Anderson drove Jane back to the Catawba Police Department to speak with Chief Nash again. This time, Jane told Chief Nash that she had dreamed about the incident and made up the story about her stepfather molesting her. However, when Chief Nash urged Jane to be truthful with him, Jane told him that the incident really did occur and that she had been raped by her

¹ For the purpose of protecting her privacy, in accordance with Rule 3.1 of our Rules of Appellate Procedure, we refer to the minor victim by a pseudonym throughout this opinion.

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stepfather. Although he had concerns about Jane's credibility, Chief Nash continued his investigation into her allegations by contacting the Catawba County Department of Social Services ("DSS").

On 28 December 2011, DSS investigator Jennifer Owen conducted a forensic interview with Jane at the Children's Advocacy & Protection Center ("CAC") in Conover. Before the interview, Anderson initially refused to allow Jane to be interviewed unless she could be present in the interview room with her daughter. After Owen explained that CAC's protocol requires that only the interviewer and the child be present in the interview room, Anderson became upset and stated that "she wanted to make sure that [Owen] didn't lead her child into saying something that wasn't true and that was going to falsely accuse her husband of something." Anderson eventually relented and allowed Owen to interview Jane. During the interview, Jane told Owen that her stepfather had sexually abused her, and described an incident when he asked her to watch internet pornography with him, fondled her in the shower, rubbed her vaginal area and inserted his index and middle fingers inside of her, told her to kiss his penis, and then "grabbed her by the shoulder" and "put his penis inside her butt" when she tried to crawl away from him. When Owen asked Jane why she told Chief Nash during her 27 December 2011 interview that the incident with her stepfather never happened, Jane replied that Anderson had told her that if her stepfather was arrested and removed from the home, they would lose

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their home and Jane would lose her pet dogs and would have to move to Oregon, where Anderson's relatives lived. After interviewing Jane, Owen spoke to Anderson, who told her that her daughter "was a compulsive liar. That she had some mental health needs. That she was not being consistent. That she had changed her story again." Although Owen had some concerns Anderson might have manipulated her daughter into changing her story, she initially took Anderson at her word when she described Jane's habit of dishonesty. Chief Nash subsequently interviewed Anderson again, but ultimately did not charge her or Jane's stepfather with any crimes in light of Jane's inconsistent statements and the lack of any physical evidence.

On 15 March 2013, Jane became upset at school during a seventh grade lesson on recognizing sexual assault and sexual abuse, was taken to see her guidance counselor, Grace Ann Sevier, and subsequently disclosed that she had been sexually assaulted and that Anderson knew about it. Sevier later testified that, according to Jane, when she told her mother about the December 2011 incident, Anderson "said that if they went any further with the information, because it was against [her stepfather], that they could possibly lose their income, because [he] was the only source of income for the family. So, she ended up changing her story and telling a different story at that time." Sevier reported Jane's disclosure to DSS. After reviewing the DSS intake report's prior history summary, which described the December 2011 investigation and noted that there was a concern that Jane had changed her story,

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social worker Amber Mecimore and Catawba County Sheriff's Office Senior Investigator Marcella McCombs decided to conduct a forensic interview with Jane at school in order to avoid any outside influences. During that interview, Jane described the December 2011 incident. She also provided detailed descriptions of three subsequent incidents of sexual abuse by her stepfather, which occurred at her home and in vacant, foreclosed homes in Burke County and South Carolina. Jane also stated that when she told Anderson about the December 2011 incident, "her mother kept telling her that they were going to be homeless if her [stepfather] went to jail. That they would have nothing. That he was their source of income, and they would have to get rid of their pets. And [Jane] was very close to her pets she explained." When Mecimore asked Jane if she had told Anderson about the three more recent incidents, Jane replied that "she didn't tell her mom, because she would not believe [her] like she didn't last time."

After interviewing Jane, Mecimore and McCombs went to Anderson's home to speak with her while Jane was still at school. When they identified themselves, Anderson's first reaction was to ask, "What lies are being told now?" When Mecimore explained that DSS had received a new report regarding allegations of sexual abuse by Jane's stepfather, Anderson became upset, refused to let Mecimore and McCombs into her home, and stated that Jane was a pathological liar, that Jane "just wants Nicky, her stepfather, out of their lives," that Jane had made a previous allegation

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but the case was dropped because her allegation was not true, and that there was no way anything could have happened because Jane had not been alone with her stepfather since the previous allegation in December 2011. Anderson eventually allowed the investigators into her home, then stated that she wanted Jane to tell her what happened in front of Mecimore and McCombs. Mecimore explained this would violate the forensic interview protocol and risk potentially re-traumatizing Jane, and requested that Anderson not discuss the allegations with Jane. Anderson stated that she was Jane's legal guardian and had a right to know what had happened. She then refused to discuss the matter with the investigators until her daughter told her what had happened. When the investigators asked whether Anderson had told Jane during the December 2011 investigation that if her stepfather went to jail they would be homeless and have to get rid of their pets, Anderson replied, "Yes, because that was true," given that her husband was the family's only source of income. When Mecimore explained that Jane and her sister might need to be placed outside the home for a time, Anderson stated that "she had thought about sending [Jane] away and that she just may do it this time," possibly to relatives in Oregon. Anderson then called her husband and told him that he could not come home and would need to stay at his brother's house because Jane "was telling her lies again."

When Jane returned home that afternoon, Mecimore and McCombs met her at the school bus and explained that her mother wanted Jane to repeat the allegations

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to her, and that Jane had a right not to do so, but that they would be there for support if she felt comfortable enough to say something. When Jane entered the home, she told her mother “it was true,” and when Anderson responded, “What’s true?,” Jane said, “It’s true that [her stepfather] was sexually abusing her.” Anderson became upset and told Jane that she would not be allowed to go to 4-H camp as planned and also told her she would have to stay in her room for the weekend and would not be allowed to use her iPod or Kindle or any other electronics because she did not want Jane to communicate with anyone until the case was cleared up. At one point, Jane made a face at her mother, which Anderson responded to by saying, “Don’t make faces at me, this is your fault,” and then ordering Jane to clean her room. When Mecimore asked Anderson why she appeared to be punishing Jane for making the disclosures, Anderson replied that Jane was telling “[b]ullshit lies and [Jane] can deal with the consequences of lying.” Although Anderson had previously agreed to keep her husband out of the home, Mecimore and McCombs grew concerned about Jane’s safety and also feared their investigation might be compromised by what they perceived as potential attempts by Anderson to influence her daughter. Accordingly, DSS took Jane and her sister into twelve-hour custody and placed them in foster care because there was no family member available to take them.

On 20 March 2013, Mecimore conducted a second forensic interview with Jane, during which Jane described the same four incidents she had previously disclosed on

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15 March 2013 in greater detail. Jane drew layouts of the vacant homes where her stepfather had taken her to sexually abuse her. She also described the shelf at Wal-Mart where her stepfather purchased condoms and explained how he kept condoms in his wallet. In addition, Jane once again explained that the reason she changed her story in December 2011 was her mother's warning that she would be homeless and lose her pets if her stepfather went to jail. After Mecimore followed up on the details Jane had provided and corroborated her account, McCombs obtained a search warrant for the Anderson residence and subsequently seized "computers, phones, and anything that could capture pictures." McCombs then obtained an arrest warrant for Nicky Lee Anderson and, although he fled the area before she could serve it on him, he eventually pled guilty to multiple counts of raping Jane.

On 1 April 2013, McCombs executed an arrest warrant against April Anderson for one count of misdemeanor child abuse and one count of obstruction of justice. After she was taken into custody and advised of her *Miranda* rights, Anderson told McCombs that her husband was abusive and controlling and that she was planning to leave him; that she had not spoken to Jane about the December 2011 case until after DSS closed the case; that she had never told Jane the family would be homeless or lose their pets, but Jane might have made such an assumption on her own; that she believed Jane had lied because she changed her original story; that she was aware her husband had acted inappropriately by showing Jane internet pornography; that

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she suspected Jane might have wanted to have a romantic relationship with her stepfather and that she worried they were getting too close; and that although she did not trust Jane or her husband, she could never imagine them having sex and was convinced that DSS was lying about the allegations and the police could not prove that any molestation had ever occurred.

Procedural History

On 16 September 2013, a Catawba County Grand Jury indicted Anderson on two separate counts of felony obstruction of justice by “unlawfully, willfully and feloniously . . . threatening, coercing and punishing [Jane] in an effort to get her to change her statements regarding sexual abuse by Nicky Lee Anderson during a child sexual abuse investigation,” with one count related to the events that occurred in December 2011 and one count arising from her conduct on 15 March 2013. Both indictments alleged that Anderson had acted “in secrecy and malice, or with deceit and intent to defraud.”

A jury trial was held during the 14 July 2014 criminal session of Catawba County Superior Court. At trial, Jane testified during the State’s case-in-chief that before her 27 December 2011 interview with Chief Nash, her mother told her that she would be homeless and lose her pets if she continued to say her stepfather had molested her. When asked whether her mother’s warning had influenced the statement she gave Chief Nash during her second interview, Jane answered, “A

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little.” However, on cross-examination, Jane also testified that Anderson never explicitly told her to change her story. In addition, when asked on direct examination how it made her feel when Anderson called her a liar and took away her electronic devices and told her she could not talk to anyone and had to stay in her room on 15 March 2013, Jane testified:

A. Bad I guess.

Q. Did that make you want to tell the truth about what happened?

A. No.

Q. Did it make you want to change your story?

A. A little.

The State also introduced testimony from the law enforcement officers and DSS workers who investigated Jane’s December 2011 and March 2013 disclosures. Chief Nash testified that he initially became concerned about Jane’s credibility after his conversation with Anderson on 25 December 2011, explaining, “In my opinion, talking to the mom destroyed [Jane’s] credibility. You know from being told that she’s a chronic liar. That she’s not going to tell me the truth, and she has a history with, you know, gifted schools or whatnot, it did challenge her credibility.” Chief Nash testified further that, at the time, he “had no idea” that Anderson and Jane had discussed her allegations before her second interview on 27 December 2011, but confirmed that Jane’s second statement “completely hindered our investigation”

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because “at that point I felt [Jane] was being deceitful towards us.” According to Chief Nash, the concerns over Jane’s credibility due to her inconsistent statements and the lack of any physical evidence to corroborate her accusations were the most significant factors in his decision not to pursue any criminal charges based on the December 2011 allegations. In a similar vein, Owen testified that the fact that Anderson was so “adamant about this not happening, and that [Jane] had made this up, and that she was continuing to change her story, and she didn’t believe her” raised serious doubts about Jane’s credibility. Owen testified further that although she initially believed that Anderson was trying to be cooperative and was telling the truth about her daughter’s history of dishonesty, she grew suspicious after the 28 December 2011 interview at CAC that Anderson had manipulated Jane into changing her statement.

Mecimore testified that she understood Anderson might have been angry or upset during their 15 March 2013 meeting at her home, given the disturbing nature of Jane’s allegations and the realization that the process of DSS being involved in her family’s life was starting over again. Mecimore testified further that while she did not think it was unreasonable in general for a parent to discuss the consequences of lying with her child, she was alarmed by Anderson’s decision to punish Jane on account of her new disclosures of sexual abuse, and also by Anderson’s admission that she had told Jane during the December 2011 investigation that they would be homeless and lose their pets if her stepfather went to jail, because, as Mecimore

explained, “That’s very scary for a child.” McCombs testified that Anderson was belligerent and uncooperative during the 15 March 2013 interview, and that she grew concerned when Anderson demanded to know the details of Jane’s allegations and would not agree not to confront her daughter about them, since that “would hinder my investigation because I wouldn’t be able to know what she would say to [Jane] and what information she would give to [Jane].” McCombs testified further that Anderson’s decision to send Jane to her room and take away her electronics and other privileges was “really not appropriate” since it seemed “like [Anderson was] punishing [Jane] for telling the truth,” and raised additional concerns that Anderson would again attempt to influence her daughter into changing her statement after the investigators left their home. When asked what additional information she had that did not exist during the initial investigation in December 2011, McCombs replied:

A. What additional information did I have? I was able to corroborate what [Jane] was saying about her mom telling her if she told the story that she wouldn’t have a home, or have animals, or anything. That was something that came together from the first [investigation] to the second [investigation].

Q. And then that provided an explanation for why [Jane] might say . . .

A. Yes, it showed me that—that gave me a way to see that there was possibly some truth to what she was saying, because she was afraid of what she was going to lose. And she turned her story around, because that was one of the questions we had for her, why did she turn her story around. She was adamant

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about what her mother had told her.

When asked whether she believed the only reason no charges were brought pursuant to Jane's December 2011 allegations was because of Jane's statement during the second interview on 27 December 2011, McCombs said she agreed.

At the close of the State's evidence, Anderson made a motion to dismiss both felony obstruction of justice charges. In support of her motion, Anderson argued that the State had failed to prove she ever willfully caused Jane to change her story because the evidence indicated that she had merely told her daughter the truth about the consequences of lying. When the trial court denied her motion to dismiss, Anderson recalled Jane to the stand. Jane testified that she did not believe her mother ever talked to her about any aspects of the investigation. Anderson also called her husband, Nicky Lee Anderson, to testify about what happened on 25 December 2011. He stated that Jane had accused him of sexual abuse after a family argument, that the matter had ended that night after his wife explained what happened to the police, and that she was not allowed to discuss the matter in front of Jane. On cross-examination, he admitted to having pled guilty on 20 May 2014 to two counts of raping Jane. At the close of all the evidence, Anderson made another motion to dismiss the charges against her, which the trial court summarily denied.

On 16 July 2014, the jury found Anderson guilty on both counts of felony obstruction of justice, and the trial court sentenced her to serve two consecutive terms

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of 6 to 17 months imprisonment. Anderson gave notice of appeal to this Court on 16 July 2014.

Analysis

Anderson argues that the trial court erred in denying her motion to dismiss the felony obstruction of justice charge relating to her conduct on 15 March 2013. We disagree.

As this Court's prior decisions make clear, "[w]hen ruling on a defendant's motion to dismiss, the trial court must determine whether there is substantial evidence (1) of each essential element of the offense charged, and (2) that the defendant is the perpetrator of the offense." *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007) (citations omitted). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Cummings*, 46 N.C. App. 680, 683, 265 S.E.2d 923, 925 (citation omitted), *affirmed*, 301 N.C. 374, 271 S.E.2d 277 (1980). "[A]ll evidence admitted, whether competent or incompetent, must be considered in the light most favorable to the State, giving the State the benefit of every reasonable inference to be drawn from the evidence and resolving in its favor any contradictions in the evidence." *State v. Worsley*, 336 N.C. 268, 274, 443 S.E.2d 68, 70-71 (1994) (citation omitted). Thus, a defendant's motion to dismiss "is properly denied if the evidence, when viewed in the above light, is such that a rational trier of fact could find beyond a reasonable doubt

the existence of each element of the crime charged.” *Id.* at 274, 443 S.E.2d at 71 (citation omitted). This Court reviews the trial court's denial of a motion to dismiss *de novo*. *Smith*, 186 N.C. App. at 62, 650 S.E.2d at 33.

In order to convict a defendant of the common law offense of obstruction of justice, the State must prove that she “had committed an act that prevented, obstructed, impeded, or hindered public or legal justice.” *State v. Taylor*, 212 N.C. App. 238, 246, 713 S.E.2d 82, 88 (citation omitted), *disc. review denied*, 365 N.C. 342, 717 S.E.2d 558 (2011). As we have previously explained, “this State has a policy against parties deliberately frustrating and causing undue expense to adverse parties gathering information about their claims” *State v. Cousin*, __ N.C. App. __, __, 757 S.E.2d 332, 338 (citation and internal quotation marks omitted), *disc. review denied*, 367 N.C. 521, 762 S.E.2d 446 (2014). Moreover,

[a]lthough obstruction of justice is ordinarily a common law misdemeanor, N.C. Gen. Stat. § 14-3(b) provides that, if a misdemeanor offense as to which no specific punishment is prescribed be infamous, done in secrecy and malice, or with deceit and intent to defraud, the offender shall . . . be guilty of a Class H felony. For that reason, under N.C. Gen. Stat. § 14-3(b) (1979), for a misdemeanor at common law to be raised to a Class H felony, it must be infamous, or done in secret and with malice, or committed with deceit and intent to defraud. If the offense falls within any of these categories, it becomes a Class H felony and is punishable as such.

Taylor, 212 N.C. App. at 246, 713 S.E.2d at 88 (citations, internal quotation marks, and certain brackets omitted). Thus, the elements of felony obstruction of justice are

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(1) unlawfully and willfully (2) committing an act that prevents, obstructs, impedes, or hinders justice (3) in secret and with malice or with deceit and intent to defraud. *See, e.g., Cousin*, __ N.C. App. at __, 757 S.E.2d at 339 (denying the defendant's motion to dismiss because a jury question existed as to whether he "(1) unlawfully and willfully (2) obstructed justice by providing false statements to law enforcement officers [during a criminal investigation] (3) with deceit and intent to defraud").

In the present case, Anderson concedes that the evidence presented at trial was sufficient to overcome her motion to dismiss the charge relating to the events that occurred in December 2011. However, Anderson contends that the trial court erred in denying her motion to dismiss the charge relating to her conduct on 15 March 2013. Specifically, because all of the events that could support the charge took place in the presence of Mecimore and McCombs, Anderson argues there was no evidence that she had acted in secrecy. Anderson argues further that there was no evidence she acted with deceit and intent to defraud on 15 March 2013 because the evidence tended to show that she had never previously heard Jane's new allegations, which she did not believe, and wanted to hear the story directly from Jane in order to punish her dishonesty. In support of this argument, Anderson relies exclusively on our prior decision in *State v. Preston*, 73 N.C. App. 174, 325 S.E.2d 686 (1985). In *Preston*, the defendant was indicted for common law obstruction of justice after supplying money to pay a fine and court costs to a person who essentially stood in as an imposter for

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the defendant's girlfriend and pled guilty to a crime for which she had been charged. *Id.* at 175, 325 S.E.2d at 688. At trial, although the indictment did not allege the defendant had acted with deceit, the court instructed the jury that it could find the defendant "[g]uilty of obstructing justice by deceit" if it found that his actions were "calculated and intended . . . to deceive and to defraud the [c]ourt." *Id.* at 176, 325 S.E.2d at 88. The jury returned a verdict convicting the defendant of felony obstruction of justice. On appeal, this Court vacated his conviction because the indictment "fail[ed] to charge the essential elements of deceit and intent to defraud which are necessary to elevate the misdemeanor offense of obstruction of justice to a felony." *Id.*

Here, given that both indictments specifically alleged that Anderson acted "in secrecy and malice, or with deceit and intent to defraud," Anderson's reliance on *Preston* is misplaced. Because Anderson challenges the sufficiency of the *evidence* offered to elevate the charge to a felony, rather than the sufficiency of the indictment's allegations of the essential elements necessary to do so, we find her argument more analogous to the one this Court rejected in *Cousin*. There, the defendant was convicted of seven counts of felony obstruction of justice after giving investigators eight conflicting statements implicating various individuals as the perpetrator of a shooting. ___ N.C. App. at ___, 757 S.E.2d at 339. On appeal, the defendant argued that the trial court erred in denying his motion to dismiss these charges because "the State

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offered no evidence that any of his statements were false or misleading and instead simply relied on the contradictory nature of [his] statements.” *Id.* In rejecting that argument, we emphasized the fact that the record included testimony from law enforcement officers that the defendant’s conflicting statements had imposed a significant burden on their investigation, which ultimately determined that each person the defendant had implicated had an alibi and was not present at the scene of the crime. *Id.* We therefore concluded that when considered collectively in the light most favorable to the State, the defendant’s conflicting statements provided substantial evidence of each element of the offense and of the defendant being the perpetrator, and we held that the trial court properly denied the motion to dismiss. *Id.*

Similarly here, while Anderson may be correct that there is no evidence she acted in secrecy on 15 March 2013, we conclude that, when viewed in the light most favorable to the State, there is evidence in the record that “a reasonable mind might accept as adequate to support [the] conclusion,” *see Cummings*, 46 N.C. App. at 683, 265 S.E.2d at 925, that Anderson acted with deceit and intent to defraud on 15 March 2013 when she told the investigators that Jane was lying, refused to comply with investigative protocol by insisting she be allowed to confront Jane, and attempted to punish Jane by taking away her electronics and prohibiting her from attending 4-H camp or communicating with anyone until the investigation concluded.

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This is especially true in light of Anderson's similar pattern of conduct during the December 2011 investigation, which the record indicates was closed due in large part to concerns over Jane's credibility. According to Chief Nash and Owen, those concerns first arose based on their initial conversations with Anderson, during which she called Jane a liar. Their concerns then escalated when Jane changed her story during the 27 December 2011 interview. The record also indicates that although she initially cooperated with the December 2011 investigation, Anderson attempted to prevent Owen from interviewing Jane outside her presence at CAC, during which interview Jane repeated her original allegation against her stepfather and described how in the days between her first and second statements to Chief Nash, Anderson warned her that if her stepfather went to jail, the family would be homeless and she would lose her pets. At trial, Sevier, Mecimore, and McCombs testified Jane told them on 15 March 2013 that this warning was the reason she changed her story. Anderson subsequently confirmed to investigators that she made this statement, and although Anderson argues that the statement was true and that she believed her daughter had lied in December 2011 and was lying again on 15 March 2013, the record also includes testimony from Owen, Mecimore, and McCombs that they believed Anderson's statements and conduct in both instances were intended to influence and manipulate Jane into changing her story. Indeed, although Jane ultimately did not change her

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story after 15 March 2013, she testified at trial that her mother's conduct that day did not make her want to tell the truth about what happened.

Taking the evidence in the record in the light most favorable to the State, we conclude that here, as in *Cousin*, there was substantial evidence of each element required to convict Anderson on the charge of felony obstruction of justice. Specifically, given the evidence relating to Anderson's attempts to punish Jane and her refusal to cooperate with Mecimore and McCombs on 15 March 2013, we conclude that a jury question existed as to whether Anderson (1) unlawfully and willfully (2) obstructed justice (3) with deceit and intent to defraud. *See Cousin*, __ N.C. App. at __, 757 S.E.2d at 339. Accordingly, we hold that the trial court did not err in denying Anderson's motion to dismiss the felony obstruction of justice charge relating to her conduct on 15 March 2013.

NO ERROR.

Judges MCCULLOUGH and ZACHARY concur.

Report per Rule 30(e).