IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-83

Filed: 5 January 2016

Cumberland County, Nos. 12CRS055758-63, 12CRS007721

STATE OF NORTH CAROLINA

v.

KADEEM KIRK, Defendant.

Appeal by Defendant from judgments entered 12 June 2014 by Judge Reuben F. Young in Cumberland County Superior Court. Heard in the Court of Appeals 24 September 2015.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Kathleen N. Bolton, for the State.

Mark Montgomery for the Defendant.

DILLON, Judge.

Kadeem Kirk ("Defendant") appeals from judgments entered following a jury trial convicting him of various charges stemming from events in which he recruited a minor to engage in acts of prostitution. On appeal, Defendant argues that there was insufficient evidence to support his convictions for human trafficking and first degree kidnapping. Defendant also argues that the trial court erred by not declaring a

mistrial due to alleged errors on the verdict sheets. For the following reasons, we find no error.

I. Background

At trial, the State's evidence tended to show that Defendant met Roberta,[1] the minor victim, when Roberta was thirteen (13) years old and Defendant was twenty (20) years old. Defendant and Roberta interacted via text messaging and phone calls, and on several occasions, Roberta snuck out of her house to see Defendant. One night in late April 2012, Defendant arranged for Roberta to be picked up at her home and dropped off at a hotel. At the hotel, Defendant gave Roberta marijuana to smoke, after which Defendant instructed two other men to help Roberta put on a short dress and apply makeup. Defendant informed Roberta that they were "going out to make money." Defendant arranged for Roberta to engage in oral and vaginal sex with several different men in exchange for money.

Over the course of the evening, Roberta engaged in oral and/or vaginal sex with several men for money. These encounters were arranged by Defendant. At some point during that night, Defendant provided Roberta cocaine to help her "stay awake and get through the night." Shortly after snorting the cocaine, Roberta engaged in oral and vaginal sex with two other men for money, again an encounter arranged by

[1] A pseudonym.

Defendant. A little later, Roberta's mother "burst into the [hotel] room" to rescue her daughter, and Defendant fled the premises.

II. Analysis

A. Motions to Dismiss

Defendant first argues that the trial court erred in denying his motion to dismiss the human trafficking and first degree kidnapping charges. The denial of a motion to dismiss for insufficient evidence is a question of law, which this Court reviews *de novo*. *See State v. Bagley,* 183 N.C. App. 514, 523, 644 S.E.2d 615, 621 (2007).

A motion to dismiss is properly denied if the trial court finds "substantial evidence" of each essential element of the offense charged and of the defendant being the perpetrator of the offense. *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (2000). Substantial evidence is the "amount of relevant evidence necessary to persuade a rational juror to accept a conclusion." *State v. Mann*, 355 N.C. 294, 301, 560 S.E.2d 776, 781 (2002). When resolving this question, reviewing courts must view the evidence in the light most favorable to the State, giving the State the benefit of all reasonable inferences. *Fritsch*, 351 N.C. at 378-79, 526 S.E.2d at 455. The trial court should be concerned only about whether the evidence was sufficient to be considered by the jury, not about the weight of the evidence. *Id.* at 379, 526 S.E.2d at 455-56.

1. Human Trafficking

We hold that the trial court did not err in denying Defendant's motion to dismiss the charge of human trafficking at the close of the State's evidence.

Defendant was convicted of human trafficking under N.C. Gen. Stat. § 14-43.11. A person is guilty of human trafficking where he "knowingly recruits [or] entices . . . by any means another person with the intent that the other person be held in . . . sexual servitude." N.C. Gen. Stat. § 14-43.11(a) (2012).

"Sexual servitude" is defined, in part, as "[a]ny sexual activity . . . for which anything of value is directly or indirectly given, promised to, or received by any person, which conduct is induced or obtained by coercion[.]" N.C. Gen. Stat. § 14-43.10(a)(5) (2012).

"Coercion" is defined, in part, as "[p]roviding a controlled substance," such as marijuana or cocaine. N.C. Gen. Stat. § 14-43.10 (a)(1)(d) (2012).

Accordingly, a person may be convicted of human trafficking where there is substantial evidence showing that he recruited a victim with the intent to coerce that person to engage in oral or vaginal sex for money, where the coercion was by means of providing the victim marijuana or cocaine.

Here, Defendant argues that there was evidence to suggest that Roberta engaged in sexual acts with men *voluntarily* in order to please Defendant. However, when viewed in the light most favorable to the State, there is substantial evidence

from which a jury could infer that Defendant intended to hold Roberta in sexual servitude by means of coercion. At the time of the offense, Roberta was a young teenager, and Defendant was in his early twenties. Defendant enticed Roberta to meet him at a hotel, gave her controlled substances, and instructed two men to dress her provocatively. Defendant arranged for Roberta to perform oral and vaginal sex with adult men in exchange for money. Before one such encounter, Defendant provided Roberta cocaine. Defendant's argument is overruled.

2. First-Degree Kidnapping

Defendant also argues that the State presented insufficient evidence to support his conviction for first-degree kidnapping. The State contends that Defendant has failed to preserve this issue for appellate review. We agree.

Rule 10(a)(3) of the North Carolina Rules of Appellate Procedure states, in relevant part:

> [I]f a defendant fails to move to dismiss the action or for judgment as in case of nonsuit at the close of all the evidence, he may not challenge on appeal the sufficiency of the evidence to prove the crime charged.

N.C. R. App. P. 10(a)(3). Here, the record shows that Defendant moved to dismiss certain charges against him at the close of the State's evidence by specifically referencing the charges by name and setting forth the reasons they should be dismissed. Defendant renewed these motions to dismiss after electing not to present evidence. However, Defendant's counsel failed to reference the kidnapping charge at

either juncture. Thus, Defendant has failed to preserve this issue for appellate review. *See* N.C. R. App. P. 10(a)(3).

Assuming *arguendo* that Defendant had properly preserved this issue, we believe his argument lacks merit. Specifically, Defendant argues that the State failed to offer substantial evidence that he did not release Roberta in a safe place, the grounds relied upon by the State to obtain a conviction for *first-degree* kidnapping. *See* N.C. Gen. Stat. § 14-39(b) (2012) (providing that if a person kidnapped is not released in a safe place, the offense is kidnapping in the first degree).

Our Supreme Court has held that "release" inherently contemplates an affirmative or "willful action on the part of the defendant to assure that his victim is released in a place of safety." *State v. Jerrett*, 309 N.C. 239, 262, 307 S.E.2d 339, 351 (1983). The release of the victim must be voluntary. *Id*. Release of a victim is not voluntary when the victim reaches a place of safety by "effecting an escape" or by being rescued. *Id*.

We hold that there was sufficient evidence from which the jury could have reasonably inferred that Defendant did not release Roberta in a safe place. There was evidence which showed that Roberta was "rescued" by her mother, rather than being voluntarily released by Defendant. Therefore, it was proper for the trial court to allow the jury to resolve potential conflicts in this evidence.

B. Motion for Mistrial

Finally, Defendant asserts that the trial court improperly denied his motion for mistrial following the reading of the verdict and the discharge of the jury. We disagree.

A mistrial is a drastic remedy and should be reserved for "such serious improprieties as would make it impossible to attain a fair and impartial verdict." *State v. Taylor*, 362 N.C. 514, 538, 669 S.E.2d 239, 260 (2008). N.C. Gen. Stat. § 15A-1061 provides for a mistrial on motion by the court or the defendant "at any time *during the trial*" if there has been "substantial and irreparable prejudice to the defendant's case." N.C. Gen. Stat. § 15A-1061 (2012) (emphasis added). The decision of whether to grant a motion for mistrial is within the sound discretion of the trial court and will not be disturbed on appeal absent a manifest abuse of discretion. *State v. Sanders*, 347 N.C. 587, 595, 496 S.E.2d 568, 573 (1998).

Defendant challenges the trial court's denial of his motion for mistrial on the grounds that the bailiff indicated to the trial court that the jurors had some questions with regard to the verdict forms. The bailiff reported the jurors' concerns to the trial court after the court had individually polled each juror about each separate offense and each juror had affirmed the verdict. After polling the jurors, the trial judge informed the jury that its work in the case was concluded and the jurors were "now discharged."

Our Supreme Court has previously held that even in a situation involving serious misconduct by a juror, the proper motion after the conclusion of the trial and dismissal of the jurors is a motion for a new trial. *State v. Miller*, 271 N.C. 646, 661, 157 S.E.2d 335, 347 (1967). In this case, the presiding judge considered the timing of the motion – especially the fact that the jury had already been discharged – and argument of counsel before exercising his discretion to deny Defendant's motion for mistrial. We are unable to conclude that these actions constitute an abuse of discretion by the trial court. *See State v. Gardner*, 322 N.C. 591, 594, 369 S.E.2d 593, 595 (1988) ("[A] trial court is held to have abused its discretion only when 'its ruling [is] so arbitrary that it could not have been the result of a reasoned decision.'"). Accordingly, Defendant's argument is overruled.

NO ERROR.

Judges HUNTER, JR. and DIETZ concur.

Report per Rule 30(e).