IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA20-157

Filed: 6 October 2020

Forsyth County, Nos. 13 CRS 52220-28, 52230

STATE OF NORTH CAROLINA

v.

BASIR RAZZAK

Appeal by defendant from judgments entered 15 August 2013 by Judge A. Moses Massey in Forsyth County Superior Court. Heard in the Court of Appeals 8 September 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Amber I. Davis, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Katherine Jane Allen, for defendant.

ARROWOOD, Judge.

Basir Razzak ("defendant") appeals from judgment entered upon his conviction for statutory sexual offense under N.C. Gen. Stat. § 14-27.7A(a). For the following reasons, we find no error in defendant's trial.

I. Background

In the summer of 2012, defendant was living in Winston-Salem with his wife, one biological child, U.R., and three adopted children, T.M. ("Tony"), B.M. ("Brittany"), and J.M. ("Julie")[1] On one evening, thirteen-year-old Julie came into the house after playing basketball outside, and sat with defendant while watching television. Defendant began to warn Julie that she "shouldn't be like Brittany," who is a lesbian, or else defendant would "pop" Julie. As early as 2010, defendant had begun touching Brittany's genitals as a means of "checking her" sexual orientation. There is a plethora of evidence and testimony regarding an ongoing pattern of sexual misconduct toward and sexual abuse of Brittany by defendant. Because defendant does not raise any issues on appeal with regards to his convictions for those actions, we do not detail them in this opinion.

On the evening at issue in this case, defendant demonstrated his punishment by striking Julie on her buttocks. Defendant then inserted his hand between Julie's basketball shorts and underwear, and then inside Julie's underwear. Defendant moved his hand down to Julie's genitals, and told her to "spread [her] legs." Julie testified that defendant used his finger to touch her "going through the back side . . . where boys stick their fingers in[,]" so that defendant's finger was "[o]n [her] vagina, right there[,]" on the "hole," but that defendant's finger "didn't go inside the hole[.]"

[1] Pseudonyms are used to protect the identity of the juveniles and for ease of reading. *See* N.C.R. App. P. 3.1(b) (2020).

After Julie told defendant to stop, defendant told her "don't go running your mouth to [her] mother." Julie went upstairs and told her sister Brittany what had happened. Julie then woke up her mother and "told her what her husband had done," which caused defendant's wife to get out of bed and start crying.

On 22 April 2013, a Forsyth County Grand Jury indicted defendant on charges of indecent liberties with a child, statutory sexual offense, and felony child abuse for a sexual act against Julie and Brittany. The charges were tried before a jury in Forsyth County Superior Court during the 12 August 2013 term. On 15 August 2013, the jury returned verdicts finding defendant guilty of ten counts of statutory sexual offense, nine of which concerned defendant's adopted daughter Brittany, and one of which concerned defendant's adopted daughter Julie. In the case currently before us, 13 CRS 52230, the trial court entered judgment sentencing defendant to a term of 144 to 233 months incarceration. Defendant timely appealed.

II. Discussion

On appeal defendant contends the trial court erred by denying defendant's motion to dismiss the tenth count of statutory sexual offense of which Julie was the victim. For the following reasons, we find no error.

We review the trial court's denial of a motion to dismiss *de novo*. *State v. McKinnon*, 306 N.C. 288, 298, 293 S.E.2d 118, 125 (1982). To survive a motion to dismiss for insufficient evidence, the State must present "substantial evidence of all

the material elements of the offense charged and that the defendant was the perpetrator of the offense." *State v. Campbell*, 368 N.C. 83, 87, 772 S.E.2d 440, 444 (2015) (citing *State v. Myrick*, 306 N.C. 110, 113-14, 291 S.E.2d 577, 579 (1982)). Substantial evidence is such evidence as a reasonable mind might accept as adequate to support a conclusion. *State v. Herring*, 322 N.C. 733, 738, 370 S.E.2d 363, 367 (1988) (citing *State v. Smith*, 300 N.C. 71, 265 S.E.2d 164 (1980)). In making its determination, the trial court must consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor. *State v. Rose*, 339 N.C. 172, 192-93, 451 S.E.2d 211, 223 (1994) (citing *State v. Sumpter*, 318 N.C. 102, 107, 347 S.E.2d 396, 399 (1986)).

In North Carolina, the definition of a sexual act includes "the penetration, however slight, by any object into the genital or anal opening of another person's body." N.C. Gen. Stat. § 14-27.1(4) (2013). "A defendant is guilty of a Class B1 felony if the defendant engages in vaginal intercourse or 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, except when the defendant is lawfully married to the person." N.C. Gen. Stat. § 14-27.7A(a) (2013). This Court has previously held that the penetration of a female victim's vulva or labia, however slight, is sufficient to meet

the element of penetration under N.C. Gen. Stat. § 14-27.1. *State v. Bellamy*, 172 N.C. App. 649, 658, 617 S.E.2d 81, 88 (2005).

Additionally, this Court has held that testimony by a prosecuting witness that a defendant touched the "vaginal area," with additional details regarding the penetration of the victim's labia, was sufficient evidence to defeat a motion to dismiss. *State v. Corbett*, 264 N.C. App. 93, 99, 824 S.E.2d 875, 879, *appeal dismissed*, 372 N.C. 714, 831 S.E.2d 91, and *appeal dismissed*, 373 N.C. 176, 833 S.E.2d 809 (2019). In *Corbett*, the prosecuting witness testified that the defendant "grabbed [her] legs open . . . [and] tried to touch [her] vagina." *Id.* at 98, 824 S.E.2d at 879. When the prosecutor expressly asked if the defendant had actually gone between the labia of the prosecuting witness, she responded "[y]es." *Id.*

Defendant argues that there was insufficient evidence of penetration because Julie testified that defendant's finger "didn't go inside the hole." We disagree. Julie testified that defendant's finger was "right there," on the "hole." This testimony, taken in the light most favorable to the State, is substantial evidence to support a finding by the jury that defendant's finger was inserted between Julie's labia, and therefore is sufficient evidence of penetration under N.C. Gen. Stat. § 14-27.1 to survive a motion to dismiss. Therefore, we find no error.

III. Conclusion

For the foregoing reasons, we hold defendant received a fair trial free of error.

NO ERROR.

Judges BRYANT and ZACHARY concur.

Report per Rule 30(e).