IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-471

No. COA20-437

Filed 7 September 2021

Beaufort County, No. 17 CRS 50395-400

STATE OF NORTH CAROLINA,

v.

STEPHANIE LYN BECKWITH, Defendant.

Appeal by Defendant from judgment entered 11 September 2019 by Judge Walter H. Godwin, Jr. in Beaufort County Superior Court. Heard in the Court of Appeals 23 March 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Catherine R. Laney, for the State.

Mark Hayes, for Defendant-Appellant.

WOOD, Judge.

¶ 1 Defendant Stephanie Beckwith ("Defendant") appeals her conviction for six counts of taking indecent liberties with a child, three counts of statutory rape/sex offense, and three counts of statutory rape of a child. On appeal, Defendant argues that she received ineffective assistance of counsel when her attorney failed to request

a jury instruction on duress and that the trial court erred in failing to give the jury such an instruction. We disagree.

I. Factual and Procedural Background

¶ 2 In early 2010, Defendant met and began an intimate relationship with José Vasquez ("Vasquez"). At the time, Defendant was approximately sixteen years old,[1] and Vasquez was twenty-eight years old. Approximately two years later, Defendant moved into a home with Vasquez that was located across the street from Defendant's mother. In December 2013, Vasquez's sister and his nephew, "Yarvin,"[2] moved to North Carolina from Guatemala.

¶ 3 Defendant met Yarvin shortly after he moved from Guatemala. Yarvin was twelve years old and resided with his mother, stepfather, and four siblings. When Defendant and Yarvin first met, Yarvin "respected [Defendant] like an aunt." Defendant often visited Yarvin's house where they "play[ed] games, normal games, like tabletop games." After knowing Yarvin for approximately six months, Defendant arrived at Yarvin's home while he was alone. Defendant was dropping Yarvin's sister off at the residence and waited until she and Yarvin were alone before "ask[ing] if [he] would touch her." Defendant told Yarvin to "touch her" on "her private area,"

---

[1] Defendant testified that her birthdate is July 27, 1993, and she first met Vasquez when she was approximately fourteen years old. Defendant also testified she began her relationship with Vasquez when she was fifteen and a half years old.

[2] A pseudonym to protect the identity of the juvenile.

underneath her clothing. Yarvin did as Defendant instructed him to do, and "touched" Defendant "underneath her clothes," while Defendant "touch[ed]" him on his back.

¶ 4 Yarvin testified the touching of this manner lasted for approximately six months until a relative of Yarvin's passed away in Guatemala. After the relative passed away, Yarvin described how Defendant's behavior escalated. Yarvin testified he "felt like she started to take more advantage of me" after the relative passed away. Yarvin stated Defendant began telling Yarvin "to let her touch [him] in [his] private parts in the front." According to Yarvin's testimony, Defendant began "touching [Yarvin] all the time," "all over [his] body." Defendant "touched" Yarvin in this manner approximately twice a week when Yarvin was home alone after school.

¶ 5 Shortly after Yarvin turned thirteen years old, Defendant "came to the house [and] start[ed] touching [Yarvin] like always." Defendant then took Yarvin into his bedroom, where she removed her own and Yarvin's clothing. Then, Defendant instructed Yarvin on how to have sexual intercourse with her. Thereafter, "they engaged in vaginal intercourse there at his residence" approximately once every two weeks.

¶ 6 Then, because Yarvin's family was at the residence more often, Defendant began instructing Yarvin "to go out at night." Defendant messaged Yarvin through Facebook Messenger to arrange a time and place for him to wait for her to pick him

up in her vehicle. Yarvin testified he "snuck out" of his home and met Defendant at a nearby intersection as instructed. Defendant picked Yarvin up and drove him to a nearby "wooded area" where she smoked marijuana before engaging in sexual intercourse with Yarvin in her vehicle. Yarvin and Defendant were alone each time they engaged in sexual intercourse.

¶ 7 Defendant also sent Yarvin explicit photographs of herself through Facebook Messenger. Defendant continued to have vaginal intercourse with Yarvin until 2016 when Yarvin's mother discovered the Facebook Messenger messages between them and contacted law enforcement. Thereafter, Jonathan Fowler ("Fowler"), a major crimes investigator with the Beaufort County Sherriff's Office, contacted Defendant. Fowler informed Defendant he was conducting an investigation and invited her to engage in a noncustodial interview. Defendant agreed and spoke with Fowler on February 6, 2017.

¶ 8 After Fowler contacted Defendant, Defendant's mother called Fowler to tell him Defendant did not have sexual intercourse with Yarvin or any other minor child. In her interview with Fowler, Defendant confessed to having sexual intercourse with Yarvin but alleged Vasquez forced her to do so by holding a knife to her throat. Defendant also alleged Vasquez had access to her Facebook account and was responsible for the messages between Defendant and Yarvin.

¶ 9 Defendant described her relationship with Vaquez as physically abusive.

According to Defendant, Vasquez was very controlling and did not allow Defendant to communicate with others or leave their residence without permission. Fowler encouraged Defendant to produce any evidence that could substantiate her claim that Vasquez was forcing her to have sexual intercourse with Yarvin under duress. Defendant did not provide evidence Vasquez held her at knifepoint, nor did Defendant provide Fowler with evidence to substantiate the allegation that Vasquez physically abused Defendant. Fowler tried without success to contact Defendant for two weeks to gather evidence that might substantiate her claims without success. Investigators conducted an independent investigation into Vasquez's alleged abuse of Defendant but found no evidence of domestic violence. Fowler also investigated whether Defendant's Facebook account had been breached, but Facebook's business records did not indicate Defendant's account had ever been breached.

¶ 10 At trial, Defendant reiterated Vasquez forced her to have sexual intercourse with Yarvin by holding a knife to her throat at the couple's residence multiple times. Defendant conceded Vasquez did not hold a knife to Defendant's throat every time she had sexual intercourse with Yarvin. She also conceded that although she began having sexual intercourse with Yarvin in 2014, she never contacted law enforcement or otherwise sought help to escape from Vasquez's alleged coercion. Defendant testified she did not seek help because Vasquez threatened to kill Defendant and her family and report her to law enforcement. However, Defendant terminated her

relationship with Vasquez and moved into her mother's residence in 2016.

¶ 11 Defendant had sexual intercourse with Yarvin at least three times after she terminated her relationship with Vasquez. Defendant testified Vasquez called Defendant to instruct her to drive to Yarvin's home, allow him in her car, and then drive herself and Yarvin to the wooded area one or two days after he called. Defendant would wait until the scheduled time before driving to Yarvin's house to pick him up in her vehicle and then would have sexual intercourse with him in the backseat of her vehicle. Defendant conceded at trial that Vasquez was not in her vehicle when she picked Yarvin up or while she had sexual intercourse with Yarvin.

¶ 12 On February 4, 2019, Defendant was indicted on three counts of statutory rape/sex offense, six counts of indecent liberties with a child, and three counts of statutory rape of a child. Defendant's trial occurred in September 2019. After hearing testimony from Yarvin, Vasquez, Fowler, and Defendant, a Beaufort County jury convicted Defendant of all counts. Defendant timely appealed in open court.

II. Discussion

¶ 13 Defendant raises two issues on appeal. First, Defendant contends the trial court committed plain error when it failed to instruct the jury on the affirmative defense of duress. Second, Defendant contends she received ineffective assistance of counsel when defense counsel failed to request such an instruction.

¶ 14 As defense counsel did not object during the charge conference, whether the

trial court should have given an instruction on duress is reviewed for plain error. *See* N.C. R. App. P. 10(a)(4); *see also State v. White*, 349 N.C. 535, 570, 508 S.E.2d 253, 275 (1998). To reach the level of plain error, the error in the trial court's instructions must be "so fundamental as to amount to a miscarriage of justice or which probably resulted in the jury reaching a different verdict than it otherwise would have reached." *State v. Bagley*, 321 N.C. 201, 213, 362 S.E.2d 244, 251 (1987), *cert. denied*, 485 U.S. 1036, 108 S. Ct. 1598, 99 L. Ed. 2d 912 (1988).

¶ 15 When a defendant presents evidence to support an affirmative defense, she is entitled to an instruction on that defense. *State v. Anderson*, 40 N.C. App. 318, 325, 253 S.E.2d 48, 53 (1979). However, when the evidence does not support every element of a defense, a trial court is not required to give the requested instruction. *See State v. Partin*, 48 N.C. App. 274, 285, 269 S.E.2d 250, 257 (1980). The burden of proving an affirmative defense to the satisfaction of the jury is upon the defendant in a criminal trial. *State v. Hageman*, 307 N.C. 1, 27, 296 S.E.2d 433, 448 (1982).

> The elements of duress have been stated as follows: "[i]n order to successfully invoke the duress defense, a defendant would have to show that his 'actions were caused by a reasonable fear that he would suffer immediate death or serious bodily injury if he did not so act.' Furthermore, a defense of duress 'cannot be invoked as an excuse by one who had a reasonable opportunity to avoid doing the act without undue exposure to death or serious bodily harm.' "

State v. Miller, 258 N.C. App. 325, 329, 812 S.E.2d 692, 696 (2018) (emphasis and

citation omitted). Defendant contends she was entitled to the duress instruction because "[b]eing forced to perform an act with a knife to one's throat is a quintessential example of duress."

¶ 16 However, Defendant failed to produce substantial evidence that she had a "well-grounded apprehension of death or serious bodily harm" or that she had no "reasonable opportunity to avoid doing the act." *See State v. Kearns*, 27 N.C. App. 354, 357, 219 S.E.2d 228, 230 (1975). A defendant seeking a duress instruction must show "the coercion or duress [was] present, imminent or impending, and of such a nature as to induce a well-grounded apprehension of death or serious bodily harm if the act is not done." *Id.* at 354, 357, 219 S.E.2d at 230-31. Duress "cannot be invoked as an excuse by one who had a reasonable opportunity to avoid doing the act without undue exposure to death or serious bodily harm." *Id.* at 357, 219 S.E.2d at 231. Because Defendant failed to present substantial evidence of each element of the defense, we hold a duress instruction was not warranted, and there is no reasonable probability that the result of the proceeding would have been different had counsel requested it. *See State v. Henderson*, 64 N.C. App. 536, 540, 307 S.E.2d 846, 849 (1983).

¶ 17 Defendant testified Vasquez held a knife to her throat and forced her to have intercourse with Yarvin. However, Defendant did not produce evidence of Vasquez's violent nature to substantiate this allegation. Defendant's own testimony reveals

Vasquez did not threaten Defendant at knifepoint every time she had sexual intercourse with Yarvin. Moreover, Defendant's contention is directly contradicted by Yarvin's testimony that he and Defendant were alone each time she "touched" and had vaginal intercourse with him.

¶ 18 Further, Defendant admitted at trial, after ending her relationship with Vasquez and while living with her mother, she had sexual intercourse with Yarvin at least three additional times.

¶ 19 While Defendant contends she feared Vasquez would cause her future harm if she did not have sex with Yarvin, future harm is not sufficient to satisfy this element of the duress defense. *See State v. Smarr*, 146 N.C. App 44, 55, 551 S.E.2d 881, 888 (2001). Because Defendant willingly drove herself and Yarvin, a minor, to the wooded area to have sexual intercourse and conceded Vasquez did not hold her at knifepoint every time she engaged in sexual relations with Yarvin, Defendant was not entitled to the duress instruction.

¶ 20 Additionally, Defendant failed to show she lacked a "reasonable opportunity to avoid doing the [illegal] act without undue exposure to death or serious bodily harm." *See Miller*, 258 N.C. App. at 333, 812 S.E.2d at 698 (alteration in original) (citation omitted); *see also Kearns*, 27 N.C. App at 356-57, 219 S.E.2d at 230-31; *State v. Burrow*, 248 N.C. App. 663, 666-67, 789 S.E.2d 923, 926-27 (2016).

¶ 21 In *State v. Kearns*, this Court held the defendant was not entitled to a jury

instruction on the affirmative defense of duress because the defendant had an opportunity to escape from the alleged coercers and avoid aiding and abetting the crime. 27 N.C. App. at 356-57, 219 S.E.2d at 230-31. In so doing, this Court noted the defendant waited outside a convenience store while the alleged coercers committed armed robbery, rather than driving away from the scene of the crime. *Id.* Similarly in *State v. Smarr*, the duress defense was inapplicable to a defendant who failed to use two opportunities to escape from the alleged coercers: first, when the alleged coercers entered a gas station and the defendant remained outside to pump gas for the van; and second, when the defendant stopped to tie his shoe for a few moments and the alleged coercers continued walking out of defendant's line of sight. 146 N.C. App. at 55, 551 S.E.2d at 888.

¶ 22 Here, Defendant failed to demonstrate she did not have a reasonable opportunity to avoid committing the crime without unduly exposing herself to serious bodily harm. While Defendant's testimony suggests Vasquez "controlled" her and would not allow her to be apart from him, she admitted she went to work and socialized publicly with friends and family. Defendant had her own cell phone, but the record does not reveal she ever used it to call law enforcement. Thus, Defendant had numerous opportunities to avoid committing the illegal act of having sexual intercourse with Yarvin, a minor child.

¶ 23 Notably, Defendant did not attempt to surrender herself to law enforcement

after having sexual intercourse with Yarvin, and Vasquez, as alleged, was no longer holding her at knifepoint. Evidence of a "bona fide effort to surrender" is an "indispensable element" of the duress defense. *United States v. Bailey*, 444 U.S. 394, 412-13, 100 S. Ct. 624, 635-36, 62 L. Ed. 2d 575, 592 (1980). In *State v. Cheek*, this Court recognized defendants forfeit the duress defense when, "[d]uring the extended course of the crimes against [the victim], [a] defendant had several opportunities to report that he had been forced by duress to commit these crimes and to seek help." 351 N.C. 48, 62, 520 S.E.2d 545, 553 (1999). Assuming *arguendo* Defendant was under duress at any time during the two to three years she had a sexually intimate relationship with a minor child, she forfeited this defense by failing to contact law enforcement during that time. *See Henderson*, 64 N.C. App. at 540, 307 S.E.2d at 849 (holding that a defendant has a duty to surrender himself to law enforcement once the defendant is no longer under the coercive influence); *see also Cheek*, 351 N.C. at 62, 520 S.E.2d at 553.

¶ 24 Next, Defendant contends she received ineffective assistance of counsel because her counsel failed to request the duress instruction. We disagree.

¶ 25 The standard of review for an ineffective assistance of counsel claim is *de novo*. *State v. Graham*, 200 N.C. App. 204, 214, 683 S.E.2d, 437, 444 (2009). To prove ineffective assistance of counsel, the defendant must prove his "counsel's conduct fell below an objective standard of reasonableness" by satisfying a two-part test:

> First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

State v. Fletcher, 354 N.C. 455, 481, 555 S.E.2d 534, 550 (2001) (citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984)).

¶ 26 In the present appeal, Defendant failed to make the requisite showing of prejudice. Trial counsel's failure to request a jury instruction on the duress defense did not prejudice Defendant because Defendant did not qualify for this instruction. As Defendant was not prejudiced, we need not address whether counsel was actually deficient. *See State v. Braswell*, 312 N.C. 553, 563, 324 S.E.2d 241, 249 (1985) ("[I]f a reviewing court can determine at the outset that there is no reasonable probability that in the absence of counsel's alleged errors the result of the proceeding would have been different, then the court need not determine whether counsel's performance was actually deficient.").

III. Conclusion

¶ 27 We hold the trial court did not plainly err by failing to instruct the jury on the affirmative defense of duress, as Defendant was not so entitled. Accordingly, because Defendant was not entitled to such an instruction, we find she was not prejudiced by

counsel's failure to request the duress instruction.

NO ERROR.

Judges INMAN and GRIFFIN concur.

Report per Rule 30(e).