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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-769

No. COA22-251

Filed 15 November 2022

Brunswick County, Nos. 18CRS53205, 18CRS53215-23, 20CRS863

STATE OF NORTH CAROLINA

v.

JOHN CHRISTIAN MARSTON, Defendant-Appellant.

Appeal by Defendant-Appellant from judgments entered 1 June 2021 by Judge Jason C. Disbrow in Brunswick County Superior Court. Heard in the Court of Appeals 5 October 2022.

*Attorney General Joshua H. Stein, by Assistant Attorney General Amalia Mercedes Restucha-Klem, for the State.*

*Glover & Petersen, P.A., James R. Glover, for the Defendant-Appellant.*

DILLON, Judge.

¶ 1 James Marston (“Defendant”) appeals from judgments entered upon jury verdicts finding him guilty of several crimes based on evidence that he had engaged in sexual activities with his daughter beginning when she was in elementary school. We conclude that Defendant received a fair trial, free of reversible error.

I. Background

¶ 2 In 2011, Kate<sup>1</sup> began living with Defendant (her father) in North Carolina when she was in 5th grade. When she began struggling with her classwork, Defendant would become very upset and punish her. Over time, Defendant escalated his punishment of Kate to “sexually please” him, often making her choose between physical abuse or sexual acts.

¶ 3 After living with her mother out of state during 6th grade, Kate moved back to North Carolina to live with Defendant in 7th grade where she remained for the next four years. Defendant continued to require Kate to engage in sexual acts with him, eventually forcing her to engage in sexual intercourse with him.

¶ 4 Once Kate reached the 11th grade, she moved back with her mother. The following year while in 12th grade, Kate reached out to Defendant because she was doing well in school and “wanted to give [her] dad a second chance at being a dad.” They planned a two-week trip for Kate to visit Defendant, beginning with a two-day stay in Myrtle Beach, South Carolina. During her visit, Kate expressed her desire to have a normal father-daughter relationship. However, Defendant told her that he wanted to continue their sexual relationship; and, as a result, Defendant and Kate engaged in sexual intercourse throughout the trip. After returning home, Kate

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<sup>1</sup> A pseudonym.

disclosed the sexual abuse to her mother. Defendant was subsequently indicted.

¶ 5 After a jury trial, Defendant was found guilty of 19 charges submitted to the jury. Defendant appeals several of his convictions.

## II. Analysis

¶ 6 Defendant argues the trial court erred by failing to dismiss certain charges for insufficiency of the evidence. To survive a motion to dismiss, there must be substantial evidence of each essential element of the crime and that the defendant is the perpetrator. *State v. Winkler*, 368 N.C. 572, 574, 780 S.E.2d 824, 826 (2015). When considering the motion, evidence must be considered in the light most favorable to the State; and the State is entitled to every reasonable inference from the evidence. *Id.* at 574, 780 S.E.2d at 826. We address each challenged conviction in turn.

### A. Second-Degree Rape and Sexual Offense

¶ 7 Defendant challenges his convictions for second-degree forcible rape and second-degree sexual offense, contending there was no evidence he used force. Indeed, second-degree forcible sexual offense occurs when a person engages in a sexual act with another person “[b]y force and against the will of the other person.” N.C. Gen. Stat. § 14-27.27 (2018). Likewise, second-degree forcible rape occurs when a person engages in vaginal intercourse with another person “by force and against the will of the other person.” N.C. Gen. Stat. § 14-27.22 (2018).

¶ 8 Our Supreme Court has instructed that “force” may be either actual or

constructive in nature. *State v. Etheridge*, 319 N.C. 34, 45, 352 S.E.2d 673, 680 (1987). Constructive force occurs when the victim assents to the advances because of “fear, fright, or coercion” and “is demonstrated by proof of threats or other actions by the defendant which compel the victim’s submission to sexual assaults.” *Id.* In *Etheridge*, our Supreme Court upheld a defendant’s conviction for second-degree forcible offense on the basis that constructive force could be reasonably inferred from the parent-child relationship, recognizing that a “parent wields authority as another assailant might wield a weapon. The authority itself intimidates; the implicit threat to exercise it coerces.” *Id.* at 48, 352 S.E.2d at 682.

¶ 9 Like in *Etheridge*, the evidence here shows that Defendant began abusing Kate when she was young and continued to do so over the period of several years. At trial, Kate testified that she lived in fear and felt she had no choice but to comply with Defendant’s commands. She “felt like there was no escape.” It is true that the sexual abuse during her two-week visit occurred after she turned 18. However, we hold there was sufficient evidence for a jury to reasonably find that Defendant’s parental authority carried from Kate’s childhood sufficient to show constructive force.

#### B. Human Trafficking and Sexual Servitude

¶ 10 Next, Defendant challenges his convictions for human trafficking and sexual servitude for his encounter with Kate during their trip to Myrtle Beach.

¶ 11 Human trafficking occurs when:

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*Opinion of the Court*

(a) A person commits the offense of human trafficking when that person (i) knowingly or in reckless disregard of the consequences of the action recruits, entices, harbors, transports, provides, or obtains by any means another person with the intent that the other person be held in involuntary servitude or sexual servitude...

N.C. Gen. Stat. § 14-43.11(a)(i) (2018).

¶ 12 Defendant makes no argument that he did not recruit and entice Kate; and we, otherwise, conclude there was sufficient evidence to support such a finding.

¶ 13 Rather, Defendant argues there was insufficient evidence that Kate was held in a state of sexual servitude through coercion involving bodily violence or threats of inflicting bodily violence.

¶ 14 Sexual servitude is defined as including:

a. Any sexual activity as defined in G.S. 14-190.13 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 or deception or which conduct is induced or obtained from a person under the age of 18 years; or

b. Any sexual activity as defined in G.S. 14-190.13 that is performed or provided by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years.

N.C. Gen. Stat. § 14-43.10(5) (2018).

¶ 15 After a careful review of the record, we conclude there was sufficient evidence to show Defendant used coercive means to subject his daughter to sexual servitude.

Throughout her testimony, Kate repeatedly stated that through the years she felt helpless to refuse Defendant's sexual requests due to her fear that Defendant would inflict physical abuse and harm. For instance, when the abuse began, Defendant would become angry at Kate and violently spank her often. When Kate was in 7th grade, Defendant would often make her choose between manual labor, physical abuse, or sexual favors. When Kate was in 10th grade, Defendant beat her with his hands and threw her across the room out of anger, which led to her placement into foster care. Lastly, when Defendant refused to cease sexually abusing Kate during their Myrtle Beach trip, she felt that she "just really couldn't say no... [b]ecause even if [she] did say no, it would result in him getting very, very angry."

¶ 16 Also, there was evidence of Defendant's use of "quid pro quo" exchanges to coerce Kate into performing sexual acts. She testified that upon arriving to Myrtle Beach, she noticed that Defendant had purchased her several items for the trip, including clothing and a bathing suit. She testified that because of her father's purchases, she had to pay the price of "[s]exual arrangements or any type of oral touching, sexual-related activities." Anytime Defendant purchased something for her, "[t]here was always a price to pay."

### C. Statutory Rape and Incest

¶ 17 Defendant challenges his convictions for statutory rape and incest, which require evidence that he engaged in vaginal intercourse with Kate when she was 13

or younger. Defendant argues that there was insufficient evidence of Kate's age, as the evidence consisted only of Kate's uncorroborated testimony that she was 13 years old at the time of the events.

¶ 18           However, the general rule in North Carolina is that “the testimony of a single witness will legally suffice as evidence upon which the jury may found a verdict.” *State v. Vehaun*, 34 N.C. App. 700, 704, 239 S.E.2d 705, 709 (1977). *See also State v. Newman*, 308 N.C. 231, 237, 302 S.E.2d 174, 179 (1983) (stating a conviction for sexual assault may be based upon the unsupported testimony of the prosecuting witness). Our Supreme Court has held that “a conviction for incest may be had against a father upon the uncorroborated testimony of the daughter if such testimony suffices to establish all of the elements of the offense beyond a reasonable doubt.” *State v. Wood*, 235 N.C. 636, 637, 70 S.E.2d 665, 666-667 (1952).

¶ 19           During trial, Kate testified as to the school year in which the vaginal intercourse began. Any further issues regarding “[w]hether the testimony is true or false, and what it proves if it be true are matters for the jury.” *Id.* at 638, 70 S.E.2d at 667. Accordingly, Kate's testimony was sufficient to allow the jury to find Defendant guilty of statutory rape and incest.

### III. Conclusion

¶ 20           There was sufficient evidence to support each of the challenged conviction. We, therefore, hold that Defendant received a fair trial, free from reversible error.

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NO ERROR.

Judges DIETZ and ARROWOOD concur.

Report per Rule 30(e).