IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-934

No. COA 22-7

Filed 29 December 2022

McDowell County, Nos. 18 CRS 050438, 050441, 050477, 050478

STATE OF NORTH CAROLINA

v.

COPPER URION ECKENROD, Defendant.

Appeal by Defendant from judgment entered 12 March 2021 by Judge J. Thomas Davis in McDowell County Superior Court. Heard in the Court of Appeals 10 August 2022.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Lauren M. Clemmons, for the State

Holladay Law Office, by Sarah Holladay, for Defendant-Appellant.

CARPENTER, Judge.

¶ 1 Copper Urion Eckenrod ("Defendant") appeals from judgment after a jury convicted him of three counts of indecent liberties with a child, one count of first-degree sex offense, and one count of first-degree statutory sex offense. On appeal, Defendant argues the trial court erred by denying his motion to dismiss the sex offense charges, and erred, abused its discretion, or plainly erred in admitting certain

expert testimony. After careful review, we conclude Defendant received a fair trial, free from prejudicial error.

I. Factual and Procedural Background

¶ 2 The complaining witness in this matter is Alice,[1] who was twelve years old at the time of trial. Defendant and Alice's mother became romantically involved in December 2012 before getting married in July 2013. At all times relevant to this proceeding, Defendant was Alice's stepfather.

¶ 3 Alice's trial testimony tended to show the following: from March 2013 to October 2013, the parties resided in a three-bedroom trailer at Shady Lane Estates in Marion, North Carolina. One night when Alice was five or six years old, Defendant showed Alice two pornographic videos of a boy and girl engaged in sexual acts. After the videos, Defendant stated he needed "help getting white stuff out of his boy part" and demonstrated how he wanted her to manipulate his "boy part." Alice complied until "white stuff" that "look[ed] like milk" came out. Defendant cleaned up the mess with a paper towel and then watched a cartoon movie with Alice.

"2013 Incident"

¶ 4 From October 2013 to April 2014, the parties resided at Defendant's mother's house on Holly Street. At this location Alice, Defendant, Defendant's mother, and

[1] "Alice" is a pseudonym used to protect the identity of the minor child.

Alice's two younger sisters all shared a bedroom. On one occasion, after demonstrating how to smoke out of a glass object, Defendant instructed Alice to smoke a brown substance with his assistance. Defendant then instructed Alice to remove her pajamas and underwear and he began manipulating her "private" with one finger. Defendant said he was "going to finish [her] up" and then Alice "was going to do him." After instructing her to pull up her pants, Defendant directed Alice to put her hands on his "private parts" and make her hands "go up and down." At this point, Defendant was interrupted by Alice's younger sister entering the room, and Defendant covered himself with a towel. Later that day, Defendant made Alice touch him again for a short time in a bedroom, and she was "grossed out."

¶ 5 From April 2014 to September 2016, the parties resided in a house on Highland Road, but nothing "really happened" at this location because Alice's mother and sisters were always nearby. In September 2016, the parties returned to the house on Holly Street, before moving to Matilda Avenue in December 2017, where the parties resided at the time of Defendant's arrest in March 2018.

"2018 Incident"

¶ 6 On 17 March 2018, when Alice was nine, Defendant and Alice stayed up late watching anime cartoons after Alice's mother went to sleep. Defendant slid a hand down the front of her pants and began manipulating her "girl part" with four fingers, "hard, so it hurt[.]" This continued for approximately ten to twenty minutes.

¶ 7 The next day, while Alice's mother was at work, Alice took a nap wearing the same undergarments as the night before. Alice was subsequently awoken by her mother, who testified she observed a "bloodstain" on Alice's underwear slightly smaller than the size of a quarter. Alice said "[Defendant] touched down there[,]" and Alice's mother called the police.

¶ 8 That same evening, Alice was forensically interviewed by Beth Cali, an experienced forensic interviewer with over 1600 interviews, and medically examined by Beth Browning ("Browning"), a nurse practitioner at Lily's Place, a child advocacy center for children suspected of being abused. Alice's mother was interviewed by Detective Gutierrez of the Marion Police Department, who had also observed Alice's forensic interview. The interview with Alice's mother revealed that Defendant had a history of mental health episodes and failed to properly take prescribed medications, with two previous institutionalizations. During an episode in early 2018, Defendant told Alice's mother that he had touched and hurt Alice, but Alice's mother did not believe him, instead believing his statement was the product of a hallucination.

¶ 9 At trial, Browning was tendered and qualified as an expert in nursing with a specialty in child sexual abuse and assault examinations. Browning testified generally about how she conducts her medical examinations, and specifically about the questions she posed and answers received by Alice, as well as her conclusions from Alice's examination. Browning also illustrated her testimony regarding

prepubescent female anatomy for the jury with two diagrams, which were admitted into evidence.

¶ 10 On 12 March 2021, Defendant was convicted of three counts of indecent liberties with a child, one count of first-degree sex offense for acts occurring in 2013, and one count of first-degree statutory sex offense for acts occurring in 2018. The trial court imposed a prison sentence of 192-to-291 months for the first-degree statutory sex offense, to run consecutively with a prison sentence of 192-to-291 months for the first-degree sex offense. The trial court imposed consecutively running 16-to-29 month prison sentences for each of the three indecent liberties convictions, to run concurrently with the other two judgments. The trial court also imposed satellite-based monitoring for life and sex offender registration. Defendant gave oral notice of appeal in open court.

II. Issues

¶ 11 The issues before this Court are whether: (1) the trial court erred, abused its discretion, or plainly erred in admitting expert testimony by the certified Sexual Assault Nurse Examiner inferring that the child's words referred to her female sexual anatomy; and (2) the trial court erred in denying Defendant's motion to dismiss the sex offense charges where the sufficiency of the evidence on the element of penetration is disputed.

III. Jurisdiction

¶ 12 This Court has jurisdiction to address Defendant's appeal pursuant to N.C. Gen. Stat. § 7A-27(b) (2021) and N.C. Gen. Stat. § 15A-1444(a) (2021).

IV. Analysis

¶ 13 On appeal, Defendant's primary argument concerns the sufficiency of the evidence of penetration, a necessary element of both first-degree sex offenses. The statute in effect at the time of the 2013 incident provided, "[a] person is guilty of a sexual offense in the first degree if the person engages in a sexual act: [w]ith a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim." N.C. Gen. Stat. § 14-27.4(a)(1) (recodified as § 14-27.26 by S.L. 2015-181, § 8(a), eff. Dec. 1, 2015).

¶ 14 The statute applicable to the 2018 incident, which remains in force, provides, "[a] person is guilty of first-degree statutory sexual offense if the person engages in a sexual act with a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim." N.C. Gen. Stat. § 14-27.29 (2021).

¶ 15 Under North Carolina law, "[s]exual act" is defined in relevant part as, "the penetration, *however slight*, by any object into the genital or anal opening of another person's body." N.C. Gen. Stat. § 14-27.20(4) (2021) (emphasis added). "Our appellate courts have held that for purposes of rape offenses, evidence that the defendant entered the labia is sufficient to prove the element of penetration." *State v. Corbett*,

264 N.C. App. 93, 97, 824 S.E.2d 875, 878 (2019) (citation and internal quotations omitted).

A. Expert Testimony

¶ 16 Since our review of Browning's testimony may impact the extent of evidence properly before the trial court for purposes of Defendant's motion to dismiss, we first examine Defendant's arguments that the trial court erred, abused its discretion, or plainly erred in admitting a portion of Browning's expert testimony, which Defendant contends was irrelevant and called for speculation.

¶ 17 As indicated in Defendant's reply brief, the pertinent exchange occurred as follows:

> **Q**: Okay. So if - - if - - if the defendant had been stimulating the head of [Alice's] clitoris, would he have had to penetrate the labia in order to do that?
> **DEFENSE**: Objection.
> **THE COURT**: Overruled. Go ahead.
> **A**: Yes, because again, this is the hood, the clitoral hood that's attached to the labia majora.
> **Q**: And if he had - - if the defendant had touched the urethral area where [Alice] pees from, would he have had to penetrated [sic] the labia majora in order to do that?
> **DEFENSE**: Objection.
> **THE COURT**: Overruled.
> **A**: Yes. You have to - - here again, this is where that is, yes.
> **Q**: [Alice] made reference to a - - I believe she said, "a little hangy thing in my pee pee." So you said that [Alice] did not have any abnormalities, is that right?
> **A**: She did not.

> **Q**: As to a hangy thing in the pee pee, is there an area of [Alice's] anatomy that would be consistent with that description?
> **A**: Again, I don't know what she was referring to - -
> **DEFENSE**: Objection.
> **THE COURT**: Overruled at this point. Go ahead.
> **A**: I don't know what she was referring to, but as I've showed you, the things that it could be consistent with is the clitoris or the urethra there.

1. Preservation

¶ 18 Despite the general nature of defense counsel's relevant objections, which we disfavor on appellate review, Defendant asserts it was apparent that the context of his objections pertained to relevance and the speculation called for in Browning's responses. Additionally, Defendant notes defense counsel objected nine times during Browning's testimony, including asking to be heard on one occasion, which the trial court denied. Conversely, the State argues defense counsel's general objections lacked sufficient specificity to preserve his arguments for appellate review, and that plain error review is proper. After careful review of the record, we agree with Defendant.

¶ 19 Embedded within Rule 10 of the North Carolina Rules of Appellate Procedure is a "specificity requirement." *State v. Bursell*, 372 N.C. 196, 199, 827 S.E.2d 302, 305 (2019). "In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific

grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context." N.C. R. App. P. 10(a)(1).

> Rule 10's specificity requirement serves two purposes. First, the specificity requirement "encourage[s] the parties to inform the trial court of errors in its instructions so that it can correct the instructions and cure any potential errors before the jury deliberates on the case and thereby eliminate the need for a new trial." *State v. Odom*, 307 N.C. 655, 660, 300 S.E.2d 375 (1983); *see also Bursell*, 372 N.C. at 199, 827 S.E.2d [at 305] ("The specificity requirement in Rule 10(a)(1) prevents unnecessary retrials by calling possible error to the attention of the trial court so that the presiding judge may take corrective action if it is required."). Second, the specificity requirement helps to "contextualize[ ] the objection for review on appeal, thereby enabling the appellate court to identify and thoroughly consider the specific legal question raised by the objecting party." *Bursell*, 372 N.C. at 199, 827 S.E.2d [at 305].

State v. McLymore, 380 N.C. 185, 193, 2022-NCSC-12, ¶ 17.

¶ 20 Here, Defendant's objections were consistently raised throughout the challenged line of questioning. Given the timely nature of the objections on the heels of an interaction with the trial court, which had the potential to diminish the vigor of Defendant's subsequent, related objections, we accept Defendant's argument that the relevance and speculative nature of the line of questioning was apparent from context. *See State v. White*, 104 N.C. App. 165, 170, 408 S.E.2d 871, 875 (1991) (concluding the context of a general objection was readily apparent because the "[expert]'s opinion that the white, powder substance 'could' contain cocaine [was]

speculative because a complete chemical analysis had not been performed and therefore should not have been admitted . . . ."). It is sufficiently apparent that defense counsel objected to the two if-then questions based on relevance, because if the evidence did not establish penetration, neither question would be relevant under Rule 401. It is also apparent, based on the timing of the third objection and the start of Browning's answer, that defense counsel was objecting to head off an answer grounded in speculation. *See id.* at 170, 408 S.E.2d at 875. We therefore deem his arguments on this issue properly preserved. *See* N.C. R. App. P. 10(a)(1).

2. Rule 702

¶ 21 We first address Defendant's argument that since Browning did not know what Alice meant by "a hangy thing in the pee pee[,]" the trial court abused its discretion in admitting her subsequent testimony as it could not have been based upon sufficient facts or data. We disagree.

¶ 22 On appeal, Defendant does not challenge the acceptance of Browning as an expert in the field of child sexual abuse and assault examinations in nursing, but rather challenges certain testimony received from Browning after her acceptance as an expert. A trial court's ruling on testimony received from an expert accepted pursuant to Rule 702(a) is reviewed for abuse of discretion. *See State v. Phillips*, 268 N.C. App. 623, 634, 836 S.E.2d 866, 873 (2019) (citing *State v. McGrady*, 368 N.C. 880, 893, 787 S.E.2d 1, 11 (2016)). "A trial court may be reversed for abuse of

discretion only upon a showing that its ruling was manifestly unsupported by reason and could not have been the result of a reasoned decision." *Phillips*, 268 N.C. App. at 634, 836 S.E.2d at 873 (quoting *State v. Riddick*, 315 N.C. 749, 756, 340 S.E.2d 55, 59 (1986)).

¶ 23 Rule 702(a) allows for testimony by qualified experts "in the form of an opinion, or otherwise" if "scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue." N.C. Gen. Stat. § 8C-1, R. 702(a) (2021). "In order to assist the trier of fact, expert testimony must provide insight beyond the conclusions that jurors can readily draw from their ordinary experience." *State v. Phillips*, 268 N.C. App. 623, 634–35, 836 S.E.2d 866, 874 (2019) (citation and internal quotations omitted).

¶ 24 Initially, we note that Alice's actual statement regarding her "hangy thing[,]" which was admitted into evidence through Browning under the medical diagnosis hearsay exception, differed from the formulation posed in the question by the State. The challenged portion of the transcript contains one formulation of Alice's statement, in a question posed by the State, but a different formulation was elicited from Browning earlier in the exchange:

> **BROWNING**: The first question I asked her was, "Why are you here to have your body checked out?" Because like when you go to the doctor, we need to know why you are there. She told me that her dad messed with her, with her

> privates. She said his fingers made her little hangy thing *and* her pee pee go up and down. (emphasis added).

¶ 25 This prior testimony was misstated by the State in its subsequent question contained in the challenged portion of the transcript, which makes it appear the child was ambiguously describing one body part, when in fact she was referring to two, distinct body parts. While we encourage the State to fully develop and clarify witness testimony, it is well established that a prosecuting witness is not required to use any particular form of words to indicate that penetration occurred. *State v. Kitchengs*, 183 N.C. App. 369, 375–76, 645 S.E.2d 166, 171 (2007), *disc. rev. denied*, 361 N.C. 572, 651 S.E.2d 370 (2007); *see also State v. Rogers*, 322 N.C. 102, 105, 366 S.E.2d 474, 476 (1988) (Recognizing "words commonly used by females of tender years to describe these areas of their bodies, of which they are just becoming aware" often diverge from anatomically correct terms).

¶ 26 As a prerequisite to providing medical care, medical professionals conversing with children face unique challenges in deciphering the verbiage a child of tender years may use to describe their body. Contrary to Defendant's argument, Browning was better suited than the jury to comprehend Alice's words given Browning's specialized knowledge derived from extensive experience communicating with, diagnosing, and caring for child victims of sexual assault. Ordinary jury members would not likely have experience diagnosing or treating child sexual assault victims,

informed by a child's statements. *See Phillips*, 268 N.C. App. at 634–35, 836 S.E.2d at 874. Therefore, the trial court did not abuse its discretion in allowing Browning's testimony regarding Alice's statement. *See id.* at 634, 836 S.E.2d at 873.

3. Rules 401 and 403

¶ 27 Defendant further argues that Browning's testimony answering hypothetical questions and speculating as to the meaning of ambiguous terms was irrelevant and should not have been admitted. Defendant also asserts the probative value of Browning's same testimony was substantially outweighed by the potential of unfair prejudice.

¶ 28 "Whether evidence is relevant is a question of law, thus we review the trial court's admission of the evidence *de novo*." *State v. Mitchell*, 240 N.C. App. 246, 251, 770 S.E.2d 740, 744 (2015). "Although the trial court's rulings on relevancy technically are not discretionary and therefore are not reviewed under the abuse of discretion standard applicable to Rule 403, such rulings are given great deference on appeal." *Dunn v. Custer*, 162 N.C. App. 259, 266, 591 S.E.2d 11, 17 (2004) (citation and internal quotations omitted). This is because "the trial court is better situated to evaluate whether a particular piece of evidence tends to make the existence of a fact of consequence more or less probable[.]" *Dunn*, 162 N.C. App. at 266, 591 S.E.2d at 17. If the defendant can show "there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the

trial out of which the appeal arises[,]" then he is entitled to a new trial. N.C. Gen. Stat. § 15A-1443(a) (2021).

¶ 29 "[W]hether to exclude evidence under Rule 403 is a decision within the trial court's discretion." *Mitchell*, 240 N.C. App. at 251, 770 S.E.2d at 744. "Thus, 'a trial court's ruling will be reversed on appeal only upon a showing that the ruling was so arbitrary that it could not have been the result of a reasoned decision.'" *Id.* at 251, 770 S.E.2d at 744 (quoting *State v. Kirby,* 206 N.C. App. 446, 457, 697 S.E.2d 496, 503 (2010)).

¶ 30 "Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *State v. Ford*, 245 N.C. App. 510, 515, 782 S.E.2d 98, 103 (2016) (quoting N.C. Gen. Stat. § 8C-1, R. 401 (2013) (internal quotations omitted)). The threshold question of relevance is a "low bar . . . under our standard." *State v. Triplett*, 368 N.C. 172, 175, 775 S.E.2d 805, 807 (2015). "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice[.]" *State v. Rodriguez*, 280 N.C. App. 272, 280, 2021-NCCOA-594, ¶ 20, *disc. rev. denied*, 871 S.E.2d 533 (N.C. 2022) (quoting N.C. Gen. Stat. § 8C-1, R. 403 (2019)). "Unfair prejudice . . . means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily,

as an emotional one." *Id.* at ¶ 20 (quoting *State v. DeLeonardo*, 315 N.C. 762, 772, 340 S.E.2d 350, 357 (1986)).

¶ 31 Browning's testimony challenged by Defendant undoubtedly clears the "low bar" of relevance on the element of penetration. *See Triplett*, 368 N.C. at 175, 775 S.E.2d at 807. Alice and Defendant were alone during each incident, meaning they are the only two individuals with firsthand knowledge of precisely where Defendant's fingers were, and were not, during each assault. Alice's testimony, particularly as to the 2013 incident when she was much younger, was primarily limited to the sensations generated by Defendant's acts. Therefore, Browning's testimony in response to if-then questions posed by the State are relevant to the question of penetration, based upon her medical examination of Alice. Browning merely informed the jury how and what the generation of those sensations necessarily meant with respect to the question of penetration. Furthermore, while all allegations of child sex offenses necessarily invoke emotion, nothing about Browning's challenged testimony suggested that the jury made a decision on an emotional or otherwise improper basis under Rule 403. *See Rodriguez*, 280 N.C. App. at 280, 2021-NCCOA-594, ¶ 20.

¶ 32 Similarly, Browning did not engage in impermissible speculation in response to the question regarding Alice's statement during the medical exam about her "hangy thing." Rather than speculate what Alice meant by "hangy thing" and "pee

pee[,]" as asserted by Defendant, Browning responded appropriately. Browning candidly indicated she had not fully deciphered the meaning of Alice's tender-year anatomical references, before suggesting two specific aspects of Alice's anatomy her description could be consistent with, based upon her medical evaluation of Alice. *See Rogers*, 322 N.C. at 105, 366 S.E.2d at 476. Browning proceeded to illustrate these two aspects for the jury using a diagram of a child's reproductive anatomy.

¶ 33 Browning's testimony exemplifies one of the daily challenges of her profession—communicating with allegedly abused children with developing vocabularies—in order to understand, diagnose, and treat their injuries. In light of the added context regarding Alice's actual statement to Browning, we cannot say the trial court erred or abused its discretion in its Rule 401 and 403 determinations allowing the admission of Browning's challenged testimony.

B. Motion to Dismiss

¶ 34 Defendant next argues the State failed to present substantial evidence of the element of penetration for purposes of the convictions under N.C. Gen. Stat. § 14-27.4(a)(1) and N.C. Gen. Stat. § 14-27.29, and thus, the trial court erred by denying his motions to dismiss the sex offenses. We disagree.

¶ 35 "The denial of a motion to dismiss for insufficient evidence is a question of law . . . which this Court reviews *de novo*." *State v. Bagley*, 183 N.C. App. 514, 523, 644 S.E.2d 615, 621 (2007) (citations omitted). In ruling on a motion to dismiss, "the trial

court need determine only whether there is substantial evidence of each essential element of the crime and that the defendant is the perpetrator. Substantial evidence is that amount of relevant evidence necessary to persuade a rational juror to accept a conclusion." *State v. Winkler*, 368 N.C. 572, 574, 780 S.E.2d 824, 826 (2015) (citation and internal quotations omitted). In reviewing the trial court's ruling, we must evaluate the evidence in the light most favorable to the State, and any discrepancies in the evidence must be resolved in its favor. *State v. Malloy*, 309 N.C. 176, 179, 305 S.E.2d 718, 720 (1983). The State:

> is entitled to every reasonable intendment and every reasonable inference to be drawn therefrom; contradictions and discrepancies are for the jury to resolve and do not warrant dismissal; and all of the evidence actually admitted, whether competent or incompetent, which is favorable to the State is to be considered by the court in ruling on the motion.

Winkler, 368 N.C. at 574, 780 S.E.2d at 826 (citation omitted).

¶ 36 "If the trial court finds substantial evidence, whether direct or circumstantial, or a combination, to support a finding that the offense charged has been committed and that the defendant committed it, the case is for the jury and the motion to dismiss should be denied." *Id.* at 574, 780 S.E.2d at 826 (citation and internal quotations omitted). "Ultimately, the question for the court is whether a reasonable inference of defendant's guilt may be drawn from the circumstances." *State v. Lee*, 348 N.C. 474, 488, 501 S.E.2d 334, 343 (1998) (citation omitted). Nonetheless, if the

evidence presented at trial is "sufficient only to raise a suspicion or conjecture as to either the commission of the offense or the identity of the defendant as the perpetrator, the motion to dismiss must be allowed." *State v. Golphin*, 352 N.C. 364, 458, 533 S.E.2d 168, 229–30 (2000), *cert. denied* 532 U.S. 931 (2001) (citation omitted).

¶ 37 Having concluded the trial court neither erred nor abused its discretion in admitting Browning's testimony, we must consider it in conjunction with Alice's testimony, which established a pattern of sexual abuse perpetrated by Defendant between some time in 2013 and March 2018, and any other evidence of the contested penetration element.

1. 2013 Incident

¶ 38 The 2013 incident occurred at Shady Lane Estates when Alice was five or six years old. Alice testified as follows: One night, Defendant demonstrated how to smoke an unknown brown substance out of a glass object, before holding the object up to Alice's mouth and instructing her to inhale. The substance "tasted like gum" and "made [her] brain feel funny." After they smoked, Defendant directed Alice to remove her pants and underwear. Using one finger, Defendant "moved" and "wiggled" Alice's "private[,]" directly touching her bare skin. This manipulation generated sensations which "tickled" and felt "weird" and "uncomfortable." The act continued "for a little while" before Defendant said, "he was going to finish [Alice] up,

and then [Alice] was going to do him." Afterwards, Defendant directed her to pull up her pants, "put her hands on his private parts[,]" and "go up and down again."

¶ 39 Browning testified Alice said during the medical exam that "[Defendant's] fingers made her little hangy thing and her pee pee go up and down." In response to the State's questions of whether stimulation to the clitoral head or urethra necessarily required penetration of Alice's labia, Browning answered, "Yes." In addition to the testimony challenged on appeal, Browning testified as follows: Alice's vagina exhibited no abnormalities for a prepubescent child; Alice's medical exam was "unremarkable[,]" with no observable injuries, but "[Browning] was not [surprised]" because "it's extremely rare to find any findings in children where there is digital penetration[;]" Alice's clitoris and urethra were not visible to the eye without applying traction, that is manually spreading or opening the labia majora; and the clitoris "deals with sensation" and has "tons of nerve endings."

¶ 40 Although the trial court expressed reservations about whether Alice's testimony—standing alone—constituted substantial evidence of penetration, Browning's testimony contextualized the sensations Alice described and the act(s) required to generate such sensations in a prepubescent female. Taken together and considered in the light most favorable to the State, we conclude the testimony contains substantial evidence of digital penetration, and the trial court properly

submitted the first-degree sex offense to the jury. *See Malloy*, 309 N.C. at 179, 305 S.E.2d at 720.

2. 2018 Incident

¶ 41 The 2018 incident occurred on Matilda Avenue when Alice was nine years old. Alice testified as follows: One night, Alice and Defendant stayed up on the couch watching anime cartoons after everyone else went to bed. Alice changed her pajamas multiple times because she was "itchy" and "uncomfortable" before returning to the couch wearing a light blue nightgown, pants, and underwear. After lying down next to Defendant, Defendant slid a hand inside the front of her pants and "wiggled [Alice's girl part] again." Alice understood "girl part" to mean "vagina[.]" Defendant used "four" fingers and "he did it hard, so it hurt." Defendant's four fingers "got close to touching the hole where the pee comes out of." In response to the question—"Is that the same way he wiggled your privates the first time he did it?"—Alice answered "Yeah, but the first time he didn't do it hard." This painful act continued for ten to twenty minutes, or the duration of one to two anime cartoon episodes. Defendant stopped after two episodes once Alice got sleepy. The next day, Alice took a nap in her bedroom wearing the same shirt and underwear as the night before.

¶ 42 When Alice's mother woke her up, her mother observed a red spot on the inside of Alice's underwear that Alice's mother believed to be blood, which was unusual

because Alice had not yet begun to menstruate. Alice informed her mother "Daddy touched down there[,]" and Alice's mother called the police.

¶ 43 Relevant here, Browning testified regarding the effect of clitoral stimulation and sensations generated by varied degrees of force.

> [T]he first part of the clitoris is the clitoral . . . head, and that is the first things [sic] that you would see. And then the shaft is further in. It is full of nerve endings. So touching that can be painful. It can also feel good depending on pressure in that area.

Again, Browning testified Alice's clitoris and urethra were beneath the labia, as they were not visible absent some form of digital manipulation.

¶ 44 Here, the evidence of penetration as to the 2018 incident is stronger than the 2013 incident, which itself is bolstered by Alice's testimony that Defendant touched her the same way on both occasions—the only differences being the number of fingers used and degree of force applied. Alice's testimony regarding the painful sensation is consistent with Browning's testimony regarding the effects of clitoral stimulation. Furthermore, although Alice's underwear was not tested for blood or admitted into evidence, and Browning noted no observable injuries during her examination, Alice and her mother's testimony regarding the red spot is additional evidence tending to support penetration as she was not yet menstruating. Browning also testified that during the medical exam, which occurred the evening after the 2018 incident, Alice stated in response to a question about whether Alice was worried about her body, "I

went to the bathroom today, and when my pee came out, it was hot, and *my privates hurt*, and they felt hot." (emphasis added).

¶ 45 Once again, considering the evidence in its totality and in the light most favorable to the State, we cannot conclude the trial court erred in submitting the first-degree statutory sex offense to the jury. *See Malloy*, 309 N.C. at 179, 305 S.E.2d at 720.

V. Conclusion

¶ 46 In sum, we conclude the trial court neither erred nor abused its discretion in admitting Browning's challenged testimony. Furthermore, viewing the evidence in the light most favorable to the State, we conclude the trial court did not err in denying Defendant's motions to dismiss based on insufficient evidence of penetration. Accordingly, we conclude Defendant received a fair trial, free from prejudicial error.

NO ERROR.

Judges MURPHY and JACKSON concur.

Report per Rule 30(e).