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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1240

Filed: 3 July 2018

Brunswick County, No. 15 CRS 51051; 16 CRS 18

STATE OF NORTH CAROLINA

v.

KENNETH LAATEEF MCKNIGHT, Defendant.

Appeal by defendant from order entered 26 September 2016 by Judge Ola M. Lewis in Brunswick County Superior Court. Heard in the Court of Appeals 2 May 2018.

*Attorney General Joshua H. Stein, by Assistant Attorney General Rebecca E. Lem, for the State.*

*Sarah Holladay for defendant-appellant.*

ZACHARY, Judge.

Defendant Kenneth Laateef McKnight appeals from the trial court's order denying his motion to dismiss the charge of sex offense in a parental role. We affirm.

**Background**

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Defendant was charged with statutory sex offense against a person who is 13, 14, or 15 years old by a defendant who is at least six years older than the victim, sex offense in a parental role, and taking indecent liberties with a minor.

The evidence at trial tended to show that Defendant, after several months of dating the child's mother, moved in with the mother, the child, and the child's twin sister. The child and her twin sister were twelve or thirteen years old when Defendant moved in with them. The mother became pregnant with Defendant's child after Defendant moved in, and the mother gave birth to their daughter—the twins' half-sister—in June 2013. Defendant and the mother purchased a new, larger home four or five months after the child's half-sister was born. The family lived together for the next several years. According to the mother, she anticipated “having [Defendant] in a stepfather type scenario,” because Defendant “actually had got me a ring and he asked me to marry him.” The mother agreed to marry Defendant.

The child described her relationship with Defendant as “some like friends, some like enemies.” The child and her twin sister testified that their mother was the primary disciplinary authority in the home. Defendant, however, would play a role in enforcing the mother's rules, primarily by alerting the mother whenever the twins would misbehave. The twins described Defendant's disciplinary role as that of a “tattletale” to their mother, although Defendant would sometimes threaten to

physically discipline the twins when they broke the rules. Nonetheless, the child testified that “most of the time, we were friends.”

The family lived together without significant incident for several years. However, in February 2015, the child claimed that Defendant entered her room and sexually assaulted her. After the assault, the child testified that Defendant pulled out a twenty dollar bill and said, “I’ll give you this \$20 bill, but don’t tell.” The child told her mother, and her mother called the police.

Defendant was charged with statutory sex offense against a person who is 13, 14, or 15 years old by a defendant who is at least six years older than the victim, taking indecent liberties with a minor, and sex offense in a parental role. Defendant moved to dismiss the charges at the close of the State’s evidence and again at the end of all evidence. The trial court denied Defendant’s motion to dismiss and convicted Defendant on all charges. The trial court consolidated Defendant’s convictions and sentenced him to 254 to 365 months’ imprisonment. Defendant timely appealed.

On appeal, Defendant challenges his conviction of sex offense in a parental role. Defendant argues that the evidence was insufficient to establish that he had assumed a parental role in the child’s home. Thus, Defendant argues that the trial court erred in denying his motion to dismiss that charge. We disagree.

### **Standard of Review**

On a defendant's motion to dismiss a charge for insufficient evidence, the court is tasked with determining whether

the evidence is legally sufficient to support a verdict of guilty on the offense charged[.] . . . [The court] must view the evidence in the light most favorable to the State and afford the State every reasonable inference that may arise from the evidence. There must be substantial evidence to support a finding that an offense has been committed and that the defendant committed it. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

*State v. Ballew*, 113 N.C. App. 674, 681-82, 440 S.E.2d 565, 570 (1994) (citations omitted).

### **Discussion**

“If a defendant who has assumed the position of a parent in the home of a minor victim engages in . . . a sexual act with a victim who is a minor residing in the home, the defendant is guilty of a Class E felony.” N.C. Gen. Stat. § 14-27.31(a) (2017). To survive a motion to dismiss for insufficient evidence of a charge under N.C. Gen. Stat. § 14-27.31(a), there must be substantial evidence “that the defendant had (1) assumed the position of a parent in the home, (2) of a minor victim, and (3) engaged in a sexual act with the victim residing in the home.” *State v. Oakley*, 167 N.C. App. 318, 322, 605 S.E.2d 215, 218 (2004), *disc. review denied*, 359 N.C. 285, 610 S.E.2d 386 (2005) (citation omitted). N.C. Gen. Stat. § 14-27.31(a) “has generally been used to prosecute stepparents[; h]owever, there is no legal requirement that a defendant

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be the victim's stepparent.” *State v. Bailey*, 163 N.C. App. 84, 93, 592 S.E.2d 738, 744, *disc. review denied*, 358 N.C. 733, 601 S.E.2d 861 (2004) (citing *State v. Hall*, 330 N.C. 808, 412 S.E.2d 883 (1992); *State v. Cooke*, 318 N.C. 674, 351 S.E.2d 290 (1987); and *State v. Hoover*, 89 N.C. App. 199, 204, 365 S.E.2d 920, 923 (1988)).

In order to establish that a defendant “has assumed the position of a parent” for purposes of N.C. Gen. Stat. § 14-27.31(a), “the evidence of the relationship between the defendant and child-victim must provide support for the conclusion that the defendant functioned in a parental role.” *Bailey*, 163 N.C. App. at 93, 592 S.E.2d at 744. This can be shown at trial with a variety of factors. “Such a parental role will generally include evidence of emotional trust, disciplinary authority, and supervisory responsibility.” *Id.*

In the instant case, Defendant bases his contention that he had not assumed a parental role in the child's home chiefly on the fact that he did not have the authority to discipline the child and her sister. However, disciplinary authority is but one relevant factor to be considered under N.C. Gen. Stat. § 14-27.31(a). Even assuming, *arguendo*, that Defendant did not have significant disciplinary authority over the child and her twin sister, the record contains ample evidence to otherwise support the conclusion that Defendant had assumed a parental role in the child's home.

The record reveals that at the very least Defendant maintained a supervisory role in the household. For example, the child testified to the following:

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Q. How did your mom and the defendant handle parenting of yourself and your sister[]?

A. They would choose stuff together, how to discipline us.

Q. So [Defendant] was—you considered him a parent figure in your life?

A. Basically, because my father wasn't in my life.

Q. And would he make rules for you or your sister?

A. No, ma'am. My mom would make the rules.

Q. . . . Did he have the ability to enforce the rules?

A. He would tell us—he would tell us what to do; like when my mom made rules, he would tell us to follow those rules that she made.

Q. Okay. And did he ever discipline you guys by himself?

A. No, ma'am. He would tell my mom.

Q. Okay. So he would supervise?

A. Yes, ma'am.

In addition to policing the household rules, Defendant would often argue with the child whenever Defendant believed that the child had been “disrespectful” toward him. Also, Defendant would sometimes threaten to physically discipline the twins when they broke the rules. This evidence of Defendant’s “supervisory responsibility” tends to indicate that Defendant had “assumed the position of a parent” in the child’s

home. *Bailey*, 163 N.C. App. at 93, 592 S.E.2d at 744 (citation and quotation marks omitted).

Evidence was also introduced of the support and emotional dynamics of the relationship between Defendant and the child. Defendant would often take the child to the store and buy her food and other items, and would sometimes give her money for various activities, including trips to the nail salon. *See Oakley*, 167 N.C. App. at 323, 605 S.E.2d at 219 (defendant's motion to dismiss properly denied where the evidence tended to show, among other things, that the defendant would give the victim spending money, would purchase clothing for the victim, and would buy various other gifts for the victim). Defendant had also purchased diamond rings for the twins on their birthday. On one occasion, Defendant found a condom in the child's pocket. The child denied that it was hers, and Defendant said, "Well, then let's just keep this between me and you." Defendant then tried to give the child parental-like advice, telling her to not "be messing with boys" because "They ain't after but one thing, and that's so they can talk about you[.]" These facts tend to show that Defendant had established a level "of emotional trust" and support, and indicate that he had "assumed the position of a parent." *Bailey*, 163 N.C. App. at 93, 592 S.E.2d at 744.

It is also significant that Defendant was romantically involved with the child's mother. *Cf. Bailey*, 163 N.C. App. at 94, 592 S.E.2d at 745 ("[The mother] clearly did

not regard defendant as her boyfriend or a *de facto* stepfather to her children. Thus, defendant's relationship with J.B.'s mother does not provide any support for the conclusion that defendant had assumed the 'position of a parent' in J.B.'s household."). In fact, Defendant and the mother were engaged to be married, and the mother considered Defendant to have taken on the role of a stepparent. Defendant also fathered the child's half-sister, and Defendant, the mother, and the three sisters all lived together in the new home that Defendant and the mother had purchased for the family. The nature of the family unit and the introduction of the child's half-sister further indicates that Defendant "abused a quasi-parental relationship of trust" rather than having "simply overpowered his young victim." *Bailey*, 163 N.C. App. at 94, 592 S.E.2d at 745.

Thus, after viewing all of the above evidence in the light most favorable to the State, we conclude that there was sufficient evidence to support the conclusion that Defendant had "assumed the position of a parent in the home," as required by the provisions of N.C. Gen. Stat. § 14-27.31(a). Accordingly, the trial court did not err in denying Defendant's motion to dismiss that charge.

### **Conclusion**

For the reasoning set forth above, the trial court's order denying Defendant's motion to dismiss is

**AFFIRMED.**



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Judges ELMORE and TYSON concur.

Report per Rule 30(e).