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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA20-187

Filed: 15 December 2020

Onslow County, No. 18 CRS 051429

STATE OF NORTH CAROLINA

v.

JOSHUA CHRISTIAN BULLOCK, Defendant.

Appeal by defendant from judgment entered 10 October 2019 by Judge Nathan Hunt Gwyn, III in Superior Court, Onslow County. Heard in the Court of Appeals 6 October 2020.

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

Appellate Defender Glenn Gerding, Assistant Appellate Defender Michele A. Goldman, for the defendant.

McGEE, Chief Judge.

Joshua Christian Bullock (“Defendant”) appeals from judgment entered upon his conviction for child abduction and contributing to the undisciplined status of a minor. Defendant contends that the trial court erred by denying his motions to

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dismiss the charges for insufficient evidence. We hold that the trial court erred in denying Defendant's motions to dismiss, and reverse defendant's conviction.

I. Factual & Procedural History

Defendant was indicted on 13 November 2018 by a grand jury on charges of abduction of a child under N.C. Gen. Stat. § 14-41 and contributing to the delinquency of a minor under N.C. Gen. Stat. § 14-316.1. At trial, the State's evidence tended to show as follows.

Defendant first began communicating with the minor, A.A., who was 16 years old at the time, in June 2017. A.A. was interested in theological discussions, and was invited by a school friend to join a group-chat called "Luther's Academy" on the Discord website. Defendant and A.A. first communicated through the group-chat for about "four or five days," and then began communicating directly with each other, discussing Protestantism as well as other aspects of their lives, including Defendant's move from southern California to Wisconsin. A.A. testified that she thought Defendant was "really interesting. . . . really nice. . . . [and] a good guy." As their conversations progressed, A.A. testified that she and Defendant "fell in love."

Within a couple of weeks, A.A.'s mother, Stephanie, became aware that Defendant was communicating with A.A. Stephanie confronted A.A., who then told her mother about Defendant, their conversations, and A.A.'s desire to court and potentially marry Defendant. Stephanie responded by taking away the cellphone

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A.A. was using to communicate with Defendant, and forbidding A.A. from communicating with Defendant. Stephanie also sent a message to Defendant saying that A.A. was grounded and that Stephanie was not interested in Defendant communicating with A.A. any further. Defendant responded that he wanted to meet A.A., and Stephanie did not respond.

In October 2017, Stephanie returned the phone to A.A., when A.A. visited a friend in Washington, D.C. While visiting her friend, A.A. resumed communications with Defendant, telling him that she wanted to continue their relationship in secret. In December 2017, Defendant flew to see A.A. in Jacksonville, North Carolina, and the two met in the middle of the night for several hours. Shortly thereafter, Stephanie learned that Defendant and A.A. were continuing their relationship and had met in person. The situation “explode[d]” into a big fight, and Stephanie took A.A.’s electronic devices away. Stephanie also reported a tip to the National Center for Missing and Exploited Children (“NCMEC”) regarding the situation.

Stephanie and A.A. went to the Onslow County Sheriff’s Office and spoke to Detective Daryl Lawrence on 2 February 2018. Detective Lawrence asked A.A. about the reported tip, and after A.A. described her relationship and contact with Defendant, Detective Lawrence “educate[d] [her] on the dangers of meeting people on social media, things like that.” Detective Lawrence did not file any charges or pursue the matter further.

Defendant and A.A. continued to see each other in secret, with Defendant returning to Jacksonville on several weekends. During Defendant's visits, he stayed at a hotel, and A.A. would sneak out to spend time with him, which included "either driv[ing] somewhere, get[ting] food and hang[ing] out, or go[ing] back to the hotel room and hang[ing] out." A.A. testified that their relationship continued to become more serious, and that she was sexually intimate with Defendant during at least one of these visits.

Stephanie learned on 2 March 2018 that A.A. was still communicating with Defendant and had repeatedly met with him. Stephanie confronted A.A. and searched A.A.'s room for a second cellphone that Defendant had given to A.A. Unable to find that phone, Stephanie took A.A.'s primary cellphone, and on 3 March 2018, changed the internet password for the home router so that unknown devices would not be able to connect. A.A. testified that during the confrontation, Stephanie told her specifically, "I don't care if you go live with your dad. I don't care if you go run off with him. I don't care what you do, but if you sneak out again, don't come back in again."

Based on this fight, which A.A. described as "the straw that broke the camel's back[.]" A.A. "decided to leave." A.A. contacted Defendant and told him about the confrontation, including her feelings that she "didn't think [she] could take it anymore," and that she "didn't want to go back there." A.A. told Defendant that she

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“was going to leave, whether [she] went with him or just out on [her] own[,]” and then asked Defendant “if [they] could go together, because [she] didn’t have anywhere else to go.” A.A. and Defendant then formulated a plan to drive to South Carolina to get married, and then travel back to Wisconsin. A.A. and Defendant had originally agreed to wait to get married until A.A. was 18 years old, but A.A.’s decision to leave home changed their plans.

Around midnight on 4 March, Defendant arrived in Jacksonville to pick up A.A. in her neighborhood, as they had done during their previous meetings. Prior to leaving, A.A. left a four-page handwritten letter, dated 2 March 2018, explaining her decision to leave home. A.A. and Defendant then spent the night in a rented room in Topsail, and completed the drive to South Carolina on 4 March 2018.

Stephanie discovered that A.A. had left and found her letter on A.A.’s bed on the morning of 4 March 2018. Stephanie contacted the police and met with Detective Keith Johnston that afternoon. Detective Johnston, a member of the Onslow County Sheriff’s Office special victims unit, testified that he had received a report of a runaway juvenile, identified as A.A. After gathering background information on A.A. and Defendant from the conversation with Stephanie and other sources, Detective Johnston inquired about an Amber alert, but determined that A.A. did not qualify for an Amber alert because “from all indications . . . this was a voluntary leaving of the

residence.” Detective Johnston then published a missing person advertisement, listing A.A. as a runaway juvenile.

On the night of 4 March, A.A. and Defendant learned from a text message that A.A. was the subject of a missing person search. Upon learning of the investigation, A.A. was “pissed off,” and texted Stephanie to ask if she was responsible for the missing person poster. Stephanie confirmed that she was and told A.A. to call Detective Johnston. Detective Johnston spoke to both A.A. and Defendant and directed them to go to the nearest police station. A.A. and Defendant then went to the Police Department in Bishopville, South Carolina and met with Officer Olin Kirkland, who then interviewed A.A. and Defendant separately. Officer Kirkland described A.A. as initially being “very calm,” but that she eventually became “a little bit upset,” upon learning that she was going to be going back home. Officer Kirkland also testified that A.A. was “confused” by the missing person report and news coverage, and that A.A. said “she left because her mother had given her permission to leave and said that she didn’t care where she went, and she could go and get married to [Defendant] if she wanted to.” A.A. was then taken into juvenile custody. Officer Kirkland conducted a longer interview with Defendant to confirm the details of their relationship, their plan, and how they had traveled to South Carolina. Defendant also explained that there had been a misunderstanding, and as soon as

they learned that A.A. had been reported missing, they communicated with Detective Johnston to clear everything up at the nearest police station.

Defendant then voluntarily returned to North Carolina, and Stephanie retrieved A.A. from juvenile custody. Detective Johnston then conducted separate interviews with A.A., Stephanie, and Defendant. During these interviews, both A.A. and Defendant stated that they believed they had permission from Stephanie for A.A. to leave home and marry Defendant. Detective Johnston testified that “all the evidence support[ed]” that A.A. left home of her own free will.

Detective Johnston testified that despite the statements from A.A. and Defendant, as well as Stephanie’s statement that she may have told A.A. that she “could move out or marry the boy from Wisconsin,” Detective Johnston personally believed that it was “nonsense” that Stephanie had given A.A. permission to leave with Defendant. When asked about his decision to charge Defendant with a crime, Detective Johnston testified that he worked with facts, not opinions, and that those facts were derived from “the totality of the circumstances, what information [he was] receiving from victims, witnesses, suspects in some cases, and physical evidence” Upon further questioning by the State, Detective Johnston testified that most cases go uncharged, and that by making a decision to charge, he was aware of elements that must be proven beyond a reasonable doubt. When asked whether he would have charged Defendant if the evidence and the totality of the circumstances had indicated

that Defendant had consent, Detective Johnston replied “I would not[,]” and agreed that he would have had an obligation not to. Defense counsel did not object to this line of questioning.

At the close of the State’s evidence, Defendant moved to dismiss both charges. The motions were denied. Defendant did not present any evidence.

The trial court instructed the jury on the charges of child abduction and contributing to the undisciplined status of a juvenile. During the first three-and-a-half hours of deliberation, the jury made three requests for reinstruction and clarification of the child abduction instruction. The final request stated:

1. Juror #2 has concerns about her participation going forward with trial deliberation. She feels too emotionally close to the situation. She does not feel she will change her mind.
2. What happens if we cannot decide on both charges.

(emphasis in original). The trial court brought the jury back into the courtroom at 4:55 p.m. and gave the following instruction:

All right, Madam Foreperson, I’ve been handed yet another concern/question. At this point, I am going to instruct you to continue the process of deliberating. I can tell you, I’m not going to keep you here all night but, if it becomes necessary, well, then we’ll simply take an evening recess and pick it back up again in the morning. So that’s as candid as I can be with you, with what I am allowed to say. So I’m telling you now to go back and to continue your deliberations and remember my instructions throughout the trial.

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The jury returned to the jury room at 4:57 p.m. At 5:16 p.m., the jury returned to the courtroom and delivered guilty verdicts on both charges. Defendant was sentenced to a term of 13 to 25 months, suspended on 36 months of supervised probation. Defendant was also ordered to register as a sex offender for a period of 30 years. Defendant appeals.

II. Analysis

Defendant presents three arguments on appeal: (1) the trial court erred by denying Defendant's motion to dismiss; (2) the trial court plainly erred by allowing Detective Johnson to testify regarding his decision to charge Defendant; and (3) the trial court coerced a verdict by failing to answer a question from a deadlocked jury by giving an *Allen* instruction.

A. Motion to Dismiss

Defendant contends that the trial court erred in denying Defendant's motion to dismiss for insufficient evidence on both charges. We agree.

1. Standard of Review

"This Court reviews a trial court's denial of a motion to dismiss [for insufficient evidence] *de novo*. *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007). Denial of a motion to dismiss will be upheld if there is substantial evidence of each essential element of the offense and that the defendant was the perpetrator. *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (2000) (citation omitted). "Substantial

evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *State v. Smith*, 300 N.C. 71, 78-79, 265 S.E.2d 164, 169 (1980) (citations omitted). The standard of substantial evidence requires more than “a suspicion or conjecture as to either the commission of the offense or the identity of the defendant as the perpetrator of it.” *State v. Miller*, 363 N.C. 96, 104, 678 S.E.2d 592, 597 (2009) (citation omitted). When reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State. *Fritsch*, 351 N.C. at 378-79, 526 S.E.2d at 455.

2. Child Abduction

The elements of abduction of a child are satisfied where a person who, without legal justification or defense, abducts or induces any minor child who is at least four years younger than the person, to leave any person, agency, or institution lawfully entitled to the child’s custody, placement, or care. N.C. Gen. Stat. § 14-41(a) (2019). It is “not necessary for the State to show [the minor child] was carried away by force, but evidence of fraud, persuasion, or other inducement exercising controlling influence upon the child's conduct would be sufficient to sustain a conviction” for this offense. *State v. Lalinde*, 231 N.C. App. 308, 312, 750 S.E.2d 868, 872 (2013) (quoting *State v. Ashburn*, 230 N.C. 722, 723, 55 S.E.2d 333, 333-34 (1949)). If there is no force or inducement and the departure of the child is entirely voluntary, there is no abduction. *State v. Burnett*, 142 N.C. 577, 581, 55 S.E. 72, 74 (1906).

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In this case, there is no dispute that in March 2018, A.A. was a minor and Defendant was more than four years older than A.A. The primary issue is whether there was substantial evidence that Defendant persuaded or otherwise induced A.A. to leave her mother's custody.

The State argues that Defendant, during months of "furtive communications," enticed A.A. with a promise of marriage and financial support. The State relies heavily on *State v. Ashburn*, 230 N.C. 722, 55 S.E.2d 333 (1949), in which our Supreme Court held that there was sufficient evidence to find the defendant induced the victim, and the case was properly before the jury. In *Ashburn*, the minor child was 11 years old, and the defendant "told her he wanted to marry her and asked her to marry him, and she consented. . . . during the noon recess, he drove to [her] school in an automobile, and said to her, 'Come on, let's go,'" after which defendant drove with the minor child to South Carolina, returning to North Carolina after an absence of six days. *Id.* at 723, 55 S.E.2d at 333.

We disagree with the State's argument and find this case distinguishable from *Ashburn*. In this case, there is substantial evidence that the communications between the Defendant and A.A. and the plan to leave North Carolina and get married in South Carolina were mutual and initiated by A.A. As noted in the letter to her mother, her interviews with Officer Kirkland and Detective Johnston, and in her testimony at trial, A.A. made the decision to leave home without prompting,

persuasion, or inducement from Defendant. While the circumstances in *Ashburn* were unilaterally driven by the defendant's advances, the circumstances in this case are distinguishable. Accordingly, we hold that the motion to dismiss should have been granted, and reverse Defendant's conviction for child abduction.

3. Contributing to the Undisciplined Status of a Minor

Defendant contends that the motion to dismiss the charge of contributing to the undisciplined status of a juvenile should have been granted because the act alleged in the indictment did not constitute the crime. We agree.

"It is a well-established rule in this [state] that it is error, generally prejudicial, for the trial [court] to permit a jury to convict upon some abstract theory not supported by the bill of indictment." *State v. Taylor*, 301 N.C. 164, 170, 270 S.E.2d 409, 413 (1980) (citations omitted). An indictment must allege all the essential elements of the offense[] charged, . . . but an indictment couched in the language of the statute is generally sufficient to charge the statutory offense. *State v. Mostafavi*, 370 N.C. 681, 685, 811 S.E.2d 138, 141 (2018) (citation omitted). Our Supreme Court has recently declined to uphold a conviction based on acts the State did not allege in an indictment. *State v. Ditenhafer*, 373 N.C. 116, 127, 834 S.E.2d 392, 400 (2019) (holding that the indictment failed to allege any criminal conduct on the part of a person convicted for accessory after the fact for failing to report sexual abuse).

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The elements of the charge of contributing to the undisciplined status of a minor are: a person must be at least 16 years old, and knowingly or willfully cause, encourage, or aid any juvenile within the jurisdiction of the court to be in a place or condition, or to commit an act whereby the juvenile could be adjudicated delinquent, undisciplined, abused, or neglected. N.C. Gen. Stat. § 14-316.1 (2019). An undisciplined juvenile is defined as a juvenile who is 16 or 17 years of age and who is regularly disobedient to and beyond the disciplinary control of the juvenile's parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours. N.C. Gen. Stat. § 7B-1501(27)(b) (2019).

In this case, the indictment charged Defendant with “unlawfully and willfully did knowingly . . . cause, encourage, and aid [A.A.], age 16, a juvenile, to commit an act, leaving Stephanie [A.]’s care, custody, and control and crossing the state line in South Carolina, whereby that juvenile could be adjudicated undisciplined.” Although the State argues this wording sufficiently tracked the statutory language, we disagree. In *Mostafavi*, the indictment clearly stated that the defendant, through false pretenses, knowingly and designedly obtained “United States Currency from Cash Now Pawn.” *Mostafavi*, 370 N.C. at 685, 811 S.E.2d at 141. The Court held that the indictment was sufficient, and that the indictment did not need to include the amount of money obtained. *Id.* at 686, 811 S.E.2d at 141. The indictment in this

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case, however, does not sufficiently track the statute. Although the structure of the indictment generally tracks the statute, Defendant correctly argues that simply crossing the state line in South Carolina does not satisfy the requirements for the statutory definition of an undisciplined juvenile. Accordingly, we hold that the trial court erred in denying the motion to dismiss, and reverse the conviction for contributing to the undisciplined status of a minor.

B. Defendant's Remaining Arguments

Because we hold that the trial court erred in denying Defendant's motions to dismiss, we do not reach Defendant's remaining arguments on appeal.

III. Conclusion

For the foregoing reasons, we hold that the trial court erred in denying Defendant's motions to dismiss and reverse Defendant's conviction.

REVERSED.

Judges Stroud and Arrowood concur.

Report per Rule 30(e).