IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-121

No. COA20-360

Filed 6 April 2021

Onslow County, Nos. 17 CRS 54937-39

STATE OF NORTH CAROLINA

v.

COREY JOSEPH GREENFIELD

Appeal by Defendant from Judgments entered 9 August 2019 by Judge Henry L. Stevens, IV, in Onslow County Superior Court. Heard in the Court of Appeals 10 March 2021.

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

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Aaron Thomas Johnson, for defendant-appellant.

HAMPSON, Judge.

Factual and Procedural Background

¶ 1 Corey Joseph Greenfield (Defendant) appeals from Judgments entered upon jury verdicts finding him guilty of four counts of Statutory Sexual Offense with a Child 15 Years or Younger. The Record, including evidence adduced at trial, reflects the following:

¶ 2 On 10 April 2018, an Onslow County Grand Jury indicted Defendant on nine charges including "Statutory Sexual Offense" and "Indecent Liberties" with a child. The charges stemmed from alleged conduct involving Defendant's stepchildren Ken, Matthew, and Sarah.[1] Relevant to this appeal, Defendant was charged with four counts of Statutory Sexual Offense with a Child 15 Years or Younger and two counts of Indecent Liberties with Child for conduct involving Ken and Matthew.[2] The Indictments listed N.C. Gen. Stat. § 14-27.30 as the statutory basis for the Statutory Sexual Offense charges and the date ranges for relevant conduct as 1 January 2015 through 26 May 2017. The Indictment connected to conduct with Ken alleged, as facts supporting the charges, Defendant "unlawfully, willfully and feloniously did engage in a sexual act with [Ken], who was 14 years old . . . [and] the defendant was at least six years older than the child and was not lawfully married to the victim." The Indictment connected to conduct with Matthew alleged, as facts supporting the charges, Defendant "unlawfully, willfully and feloniously did engage in a sexual act with [Matthew], who was 15 years old . . . [and] the defendant was at least six years older than the child and was not lawfully married to the victim." The Indictments

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[1] The parties stipulated to these pseudonyms to protect the privacy of the minor victims.

[2] Defendant was also charged with two counts of Statutory Sexual Offense with Child by Adult and one count of Indecent Liberties with Child for conduct involving Sarah, but raises no argument on appeal as to those convictions.

repeated these allegations for each charge of Statutory Sexual Offense with respect to each victim.

¶ 3 Defendant's case came to trial on 6 August 2019. The trial court informed the prospective jurors that Defendant was charged with four counts of Statutory Sexual Offense with a child fifteen years or younger and that the alleged conduct occurred between 1 January 2015 and 26 May 2017. At trial, Matthew, who was born on 7 February 2002 and was the oldest of the siblings, testified Defendant asked Matthew to engage in oral sex when Matthew was "fourteen or fifteen" and when the family lived in a house on Buckskin Drive in Maysville. Matthew also testified Defendant had anal sex with Matthew numerous times when Matthew was "[a]bout fifteen." Matthew also stated he saw Sarah and Ken performing oral sex on Defendant and Defendant performing anal sex on both Sarah and Ken. Matthew testified the sexual contact with Defendant began when Matthew was around eleven years old, but he did not tell anyone about it until Sarah disclosed the abuse on 26 May 2017.

¶ 4 Ken, who was born 27 February 2003, also testified that Defendant had engaged in sexual conduct with Ken. Ken stated, although he could not remember exactly how old he was when Defendant began having sexual contact with Ken, some of the sexual contact occurred when the family lived in the Buckskin Drive home and when Ken was in the first year of middle school. Ken testified Defendant engaged in oral and anal sex with Ken for more than a year and more times than Ken could

count. Ken explained that he and Sarah tried to tell their mother about what Defendant had been doing to the siblings, but their mother did not believe them at first. According to Ken, the sexual contact with Defendant continued after the children told their mother. Ken also stated the alleged abuse caused him to have suicidal ideations. As Defendant concedes, the State's evidence tended to show Defendant engaged in a pattern of abuse of the siblings starting in 2009 with Ken and 2013 with Matthew. This conduct continued into April or May of 2017.

¶ 5 At the close of all the evidence, the trial court again informed the jury Defendant was charged with "Statutory Sex Offense Against an Alleged Victim who is 15 Years or Younger at the Time of the Offense." The trial court instructed the jury:

> For you to find the defendant guilty of this offense, the state must prove four things, beyond a reasonable doubt:
>
> First, that the defendant engaged in a sexual act with the alleged victim. A sexual act includes fellatio, which is any touching by the lips or tongue of one person and the male sex organ of another.
>
> Second, that at the time of the act, the alleged victim was *15 years of age or younger*.
>
> Third, that at the time of the act, the defendant was at least 12 years old and at least six years older than the alleged victim.
>
> And fourth, that at the time of the act, the defendant was not lawfully married to the alleged victim.
>
> If you find from the evidence, beyond a reasonable doubt, that *on*

or about the alleged date, the defendant engaged in a sexual act with the alleged victim who was 15 years old or younger, and that the defendant was at least 12 years old and at least six years older than the victim, and was not lawfully married to the alleged victim, it would be your duty to return a verdict of guilty. If you do not so find, or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

In Count 2, the defendant has been charged with statutory sex offense against an alleged victim who was *15 years of age or younger at the time of the offense*. For you to find the defendant guilty of this offense, the state must prove four things, beyond a reasonable doubt:

First, that the defendant engaged in a sexual act with the alleged victim. A sexual act includes anal intercourse, which is any penetration, however slight, of the anus of any person by the male sex organ of another.

Second, that at the time of the act, the alleged victim was 15 years of age or younger.

Third, that at the time of the act, the defendant was at least 12 years old and at least six years older than the alleged victim.

And fourth, that at the time of the act, the defendant was not lawfully married to the alleged victim.

If you find from the evidence, beyond a reasonable doubt, that *on or about the alleged date*, the defendant engaged in a sexual act with the alleged victim who was 15 years old or younger, and that the defendant was at least 12 years old and at least six years older than the victim, and was not lawfully married to the alleged victim, it would be your duty to return a verdict of guilty. If you do not so find, or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty. (emphasis added)

¶ 6 After deliberating, the jury returned guilty verdicts for all nine charges, including for "Statutory Sex Offense with a Child who is 15 Years or Younger" as listed on the verdict sheets. After polling the jury, the trial court accepted the verdicts.

¶ 7 The trial court then moved to sentencing. The State submitted its proposed Judicial Findings and Order for Sex Offenders forms but stated it did not think "a static 99 form" was necessary given the nature of Defendant's charges.[3] Defense counsel did not wish to be heard on the matter and stated: "No, Your Honor. That is consistent with the law in North Carolina, as its prepared. . . . I believe it makes the appropriate finding about satellite-based monitoring." The trial court agreed and found Defendant had been convicted of a "reportable conviction under G.S. 14-208.6" but was not a "sexually violent predator[.]" The trial court also found Defendant was not a recidivist but that Defendant's conduct did involve "mental or sexual abuse of a minor." Accordingly, the trial court ordered Defendant be subject to Satellite-Based Monitoring for the rest of his natural life upon release from incarceration.

¶ 8 The trial court arrested Judgment on Defendant's Indecent Liberties with Child charges and consolidated the Statutory Sexual Offense charges related to each

[3] Static 99 forms are used to evaluate the risk of recidivism in sexual offense defendants and to assist trial courts in determining whether to impose Satellite-Based Monitoring.

sibling running the sentences consecutively. For those charges related to Ken, the trial court sentenced Defendant to 240 to 348 months in prison. For charges related to Matthew, the trial court also sentenced Defendant to 240 to 348 months in prison**.** Defendant gave oral Notice of Appeal in open court.

Issues

¶ 9 The issues before us on appeal are whether: (I) the Indictments on Statutory Sex Offense with a Child 15 Years or Younger are facially invalid where the date range of the offenses spanned two different statutes addressing the same offense; and (II) the verdicts were fatally ambiguous because the time frame alleged allowed the jury to find Defendant guilty under either N.C. Gen. Stat. § 14-27.7A or N.C. Gen. Stat. § 14-27.30.[4]

Analysis

I. Indictments

[4] Additionally, acknowledging the absence of a filed, written Notice of Appeal, Defendant has filed a Petition for Writ of Certiorari requesting we review the civil Order imposing Satellite-Based Monitoring and additionally, in briefing, asks us to invoke our discretion under N.C.R. App. P. 2 to review this Order notwithstanding the fact Defendant's trial counsel not only did not object to entry of the Order or to the procedure employed by the trial court but, in fact, effectively conceded the Order included the appropriate findings for Satellite-Based Monitoring. Alternatively, Defendant asks us to conclude his trial counsel provided him ineffective assistance of counsel on this issue by failing to preserve any argument on this matter and by failing to file a separate notice of appeal. In our discretion, we deny Defendant's Petition and, therefore, do not reach these arguments.

¶ 10 Defendant argues the trial court did not have subject-matter jurisdiction over the sex-offense charges related to Ken and Matthew against Defendant because the Indictments did not sufficiently inform the trial court what judgment to enter if the jury found Defendant guilty. Specifically, in 2015, the General Assembly enacted legislation that changed the statutory framework for sexual offenses, including enacting N.C. Gen. Stat. § 14-27.30 for Statutory Sexual Offense with a Child Fifteen Years or Younger. An Act to Reorganize, Rename, and Renumber Various Sexual Offenses . . . ., S.L. 2015-181, 2015 N.C. Sess. Laws 460, 463. N.C. Gen. Stat. § 14-27.30 took effect 1 December 2015. *Id.* at 472. For conduct prior to 1 December 2015, N.C. Gen. Stat. § 14-27.7A governed Statutory Sexual Offenses against children fifteen-, fourteen-, or thirteen-years-old. Here, the Indictments alleged a course of conduct from 1 January 2015 through 26 May 2017. Thus, Defendant contends because the date range for the relevant conduct listed in the Indictments spans a period in which the General Assembly changed the statutes regarding Statutory Sexual Offense, the trial court was not on notice as to the proper statute upon which the trial court should enter judgment. We disagree.

¶ 11 Defendant did not raise this issue before the trial court. However, a defendant's subject-matter jurisdiction challenge to an indictment may be raised at any time: "A defendant can challenge the facial validity of an indictment at any time, and a conviction based on an invalid indictment must be vacated. The sufficiency of

an indictment is a question of law reviewed de novo." *State v. White*, 372 N.C. 248, 250, 827 S.E.2d 80, 82 (2019) (citations and quotation marks omitted). "Under a de novo review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *State v. Biber*, 365 N.C. 162, 168, 712 S.E.2d 874, 878 (2011) (citation and quotation marks omitted). One of the central purposes for indictments is "to enable the court to know what judgment to pronounce in case of conviction." *State v. Jones*, 359 N.C. 832, 837, 616 S.E.2d 496, 499 (2005) (citation and quotation marks omitted). But, when an indictment is facially defective, the trial court does not have the subject-matter jurisdiction to hear the case, and we must vacate a judgment entered on a facially invalid indictment. *State v. Rankin*, 371 N.C. 885, 886-87, 821 S.E.2d 787, 790 (2018).

¶ 12 An indictment is fatally defective where the allegations and factual claims fail to sufficiently: (1) inform the trial court what judgment to enter if the jury returns a guilty verdict; and (2) protect the defendant against double jeopardy by allowing subsequent conviction for the same conduct in future prosecutions. *See State v. Miller*, 159 N.C. App. 608, 614, 583 S.E.2d 620, 623 (2003) (The pleadings must give "a defendant notice of the charge against him so that he may prepare his defense and be in a position to plead prior jeopardy if he is again brought to trial for the same offense.").

¶ 13 In *Miller*, we held the indictments against the defendant were facially invalid.

Miller was indicted for "Statutory Sexual Offense" and the indictments alleged the defendant "willfully and feloniously did engage in a sex act with [victims], a child under the age of (13) thirteen . . . [and] the defendant was more than (6) years older than the victim . . . in violation of [N.C. Gen. Stat.] Section 14-27.7A." *Id.* at 612, 583 S.E.2d at 622. At that time, N.C. Gen. Stat. § 14-27.7A made it a crime for a defendant: (1) to engage in a sexual act or vaginal intercourse; (2) with a child who was thirteen, fourteen, or fifteen if the defendant was; (3) at least six years older than the victim; and (4) not legally married to the victim. *Id.* at 613, 583 S.E.2d at 623. However, the jury convicted Miller of violating N.C. Gen. Stat. § 14.27.4(a)(1). That statute made it a crime for a defendant to: (1) engage in a sexual act; (2) with a child under thirteen; (3) if the defendant was at least twelve; and (4) was at least four years older than the victim. *Id.* at 611, 583 S.E.2d at 622. As such, not only was judgment entered upon a charge different than those listed in his indictments, the indictments also "allege[d] a *combination* of the elements of the two separate and distinct offenses . . . without alleging each element of either offense." *Id.* at 612, 583 S.E.2d at 622-23.

¶ 14 Here, the Indictments alleged Defendant violated N.C. Gen. Stat. § 14-27.30, and Defendant was convicted and Judgment entered on this statute. N.C. Gen. Stat. § 14-27.30 makes it a crime for a defendant to engage "in a sexual act with another person who is 15 years of age or younger and the defendant is at least 12 years old and at least six years older than the person . . . ." N.C. Gen. Stat. § 14-27.30(a) (2019).

The Indictments also alleged, as facts supporting the charges, Defendant "unlawfully, willfully and feloniously did engage in a sexual act with [Ken and Matthew], who [were 14 and 15 respectively] years old . . . [and] the defendant was at least six years older than the child and was not lawfully married to the victim." Defendant contends because N.C. Gen. Stat. § 14-27.7A contains similar elements regarding the age of the victim and the age disparity between a defendant and a victim, the Indictments alleged a "combination" of those elements—as in *Miller*—leaving uncertainty as to the proper statute upon which the trial court should enter judgment. However, here, unlike in *Miller*, Defendant was charged under one statute, convicted under that same statute, and the Indictment did not allege a "combination" of elements from two distinct, then-existing statutes.

¶ 15 Moreover, our courts have held indictments need not allege every single element of the crimes listed. *See White*, 372 N.C. at 251, 827 S.E.2d at 82 ("In particular, this Court has held that statutes authorizing short form indictments for rape and first-degree sexual offense 'comport with the requirements of the North Carolina and United States Constitutions,' even though they do not require each essential element of the offense to be alleged."). N.C. Gen. Stat. § 15-144.2(a) allows for short-form indictments for sexual offenses and provides: "it is not necessary to allege every matter required to be proved on the trial[.]" *Id.* (2019). This subsection also provides: "[a short form indictment] is sufficient in describing a sex offense to

allege that the accused person unlawfully, willfully, and feloniously did engage in a sex offense with the victim, naming the victim[.]" *Id.* Thus, the Indictments in this case were facially sufficient to put Defendant and the trial court on notice of the judgment to be entered if the jury found Defendant guilty and to protect Defendant against double jeopardy in later prosecutions. Consequently, the trial court had subject-matter jurisdiction over Defendant's case.

II. Verdicts

¶ 16 Defendant further argues he is entitled to a new trial because the Indictments allege conduct spanning a period in which the General Assembly replaced a controlling statute with regards to some of Defendant's charges and, because the trial court did not instruct the jury that conduct before that statutory change could not apply to the offenses charged under the new statute, the verdicts as to those charges were fatally ambiguous. We disagree.

¶ 17 A criminal defendant may challenge whether a verdict supports a judgment on appeal even if, as is again the case here, the defendant did not object in the trial court. N.C.R. App. P. 10(a)(1) (2021); *State v. Meadows*, 371 N.C. 742, 745-46, 821 S.E.2d 402, 405 (2018) (quoting N.C.R. App. P. 10(a)(1)). "We review the existence of a unanimous jury verdict de novo . . . and in doing so we must examine the verdict, the charge, the jury instructions, and the evidence to determine whether any ambiguity as to unanimity has been removed." *State v. Surrett*, 217 N.C. App. 89, 93, 719 S.E.2d

120, 123 (2011) (citation and quotation marks omitted).

¶ 18 Prior to 1 December 2015, N.C. Gen. Stat. § 14-27.7A criminalized vaginal intercourse or a sexual act by an adult with a thirteen-, fourteen-, or fifteen-year-old. According to Defendant, because the Indictments alleged relevant conduct for the period from 1 January 2015 to 31 November 2015—when N.C. Gen. Stat. § 14-27.7A was in effect—the trial court should have instructed the jury it could only consider conduct occurring after 1 December 2015, when the statute under which Defendant was charged was in effect. Because the trial court did not so instruct the jury, Defendant contends the Verdicts are fatally ambiguous as the jury could have found Defendant guilty of Statutory Sex Offense under either N.C. Sen. Stat. § 14-27.7A or N.C. Gen. Stat. § 14-27.30.

¶ 19 Here, the Indictments charged Defendant with "Statutory Sexual Offense with Child 15 or Younger" in violation of N.C. Gen. Stat. § 14-27.30. As explained above, the Indictments were facially valid as they alleged factual bases sufficient for short-form indictments under N.C. Gen. Stat. § 15-144.2(a). The jury heard evidence that Defendant's conduct started as early as 2009 with Ken and as early as 2013 with Matthew. The jury also heard evidence of Defendant's relevant conduct occurring numerous times after 1 December 2015 and continuing through May 2017.

¶ 20 After both parties presented evidence, the trial court instructed the jury that the offenses related to Ken and Matthew were "statutory sex offenses against an

alleged victim who was 15 years of age or younger at the time of the offense." The trial court specifically instructed:

> For you to find the defendant guilty of this offense, the state must prove four things, beyond a reasonable doubt:
>
> First, that the defendant engaged in a sexual act with the alleged victim. A sexual act includes fellatio, which is any touching by the lips or tongue of one person and the male sex organ of another.
>
> Second, that at the time of the act, the alleged victim was *15 years of age or younger*.
>
> Third, that at the time of the act, the defendant was at least 12 years old and at least six years older than the alleged victim.
>
> And fourth, that at the time of the act, the defendant was not lawfully married to the alleged victim.
>
> If you find from the evidence, beyond a reasonable doubt, that *on or about the alleged date*, the defendant engaged in a sexual act with the alleged victim who was 15 years old or younger, and that the defendant was at least 12 years old and at least six years older than the victim, and was not lawfully married to the alleged victim, it would be your duty to return a verdict of guilty. If you do not so find, or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.
>
> In Count 2, the defendant has been charged with statutory sex offense against an alleged victim who was *15 years of age or younger at the time of the offense*. For you to find the defendant guilty of this offense, the state must prove four things, beyond a reasonable doubt:
>
> First, that the defendant engaged in a sexual act with the alleged victim. A sexual act includes anal intercourse, which is any penetration, however slight, of the anus of any person by the male

> sex organ of another.
>
> Second, that at the time of the act, the alleged victim was 15 years of age or younger.
>
> Third, that at the time of the act, the defendant was at least 12 years old and at least six years older than the alleged victim.
>
> And fourth, that at the time of the act, the defendant was not lawfully married to the alleged victim.
>
> If you find from the evidence, beyond a reasonable doubt, that *on or about the alleged date*, the defendant engaged in a sexual act with the alleged victim who was 15 years old or younger, and that the defendant was at least 12 years old and at least six years older than the victim, and was not lawfully married to the alleged victim, it would be your duty to return a verdict of guilty. If you do not so find, or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty. (emphasis added)

¶ 21 The jury returned verdicts finding Defendant guilty of four counts of "Statutory Sex Offense with a Child who is 15 Years or Younger." The verdict sheets did not specifically reference N.C. Gen. Stat. § 14-27.30. However, the trial court's instructions could not have applied to N.C. Gen. Stat. § 14-27.7A because that statute limits potential victims to persons thirteen-, fourteen-, or fifteen-years-old. Here, the trial court instructed the jury it had to find the victims to have been fifteen-years-old *or younger*. After polling the jury to ensure the verdicts were truly unanimous, the trial court accepted the verdicts.

¶ 22 On 9 August 2019, the trial court entered written Judgments convicting

Defendant of Statutory Sex Offense with a Child 15 Years or Younger under N.C. Gen. Stat. § 14-27.30. Although the Indictments alleged a date range including conduct falling under both N.C. Gen. Stat. §§ 14-27.7A and 14-27.30, the Indictments cite § 14.27.30, and the jury heard evidence of conduct sufficient to find Defendant guilty of violating § 14-27.30 during the relevant time frame. The trial court instructed the jury as to elements of Statutory Sex Offense consistent with N.C. Gen. Stat. § 14-27.30—and not wholly consistent with N.C. Gen. Stat. § 14-27.7A—and the relevant, "alleged date[.]" The jury returned verdicts finding Defendant guilty of Statutory Sex Offense with a Child 15 Years or Younger, and the trial court entered Judgments convicting Defendant of those charges pursuant to N.C. Gen. Stat. § 14-27.30. Further, Defendant, on appeal, concedes the offenses charged consisted of a continuing course of conduct rather than multiple counts arising from individual acts and the evidence supports a determination that acts constituting a violation of N.C. Gen. Stat. § 14-27.30 occurred during the time period in which that statute applied.[5] Therefore, examining "the verdict, the charge, the jury instructions, and the

[5] Indeed, Defendant's arguments would appear to suggest he believes he should have been charged with, indicted on, and convicted of twice as many sex-offenses than he was–with separate indictments and convictions for offenses occurring before 1 December 2015 and those occurring after. Here, the State charged a continuing course of conduct for each type of sex offense that specifically included acts falling under N.C. Gen. Stat. § 14-27.30 rather than charge Defendant under both Sections 14-27.7A and 14-27.30 based on the individual dates of the offenses.

evidence[,]"there was no ambiguity in the unanimity of the verdicts here. *Surrett*, 217 N.C. App. at 93, 719 S.E.2d at 123.

¶ 23 Defendant cites *State v. Walters*, 368 N.C. 749, 782 S.E.2d 505 (2016), to support his argument the Indictments, evidence, and instructions allowed the jury to find him guilty of either N.C. Gen. Stat. § 14-27.7A or N.C. Gen. Stat. § 14-27.30; thus, the trial court could not have been sure the jury was unanimous as to whether Defendant was, in fact, guilty of violating N.C. Gen. Stat. § 14-27.30. In *Walters*, the trial court instructed the jury that it could find the defendant guilty of first-degree kidnapping if the jury found the defendant removed the victim "for the purpose of facilitating *the commission of or flight following the commission of a felony*." *Id.* at 752, 782 S.E.2d at 507. The North Carolina Supreme Court explained disjunctive instructions could render the verdict fatally ambiguous because they could allow the jury to find the defendant guilty "of two underlying acts, *either of which is in itself a separate offense,*" because "it is impossible to determine whether the jury unanimously found that the defendant committed one particular offense." *Id.* at 753, 782 S.E.2d at 507 (quoting *State v. Bell*, 359 N.C. 1, 29-30, 603 S.E.2d 93, 112-13 (2004) (citations and quotation marks omitted)).

¶ 24 However, here, the trial court issued no such disjunctive instruction. In fact, the trial court's instructions on the elements required to find Defendant guilty of Statutory Sex Offense with a Child 15 Years or Younger comported with every

statutory element under N.C. Gen. Stat. § 14-27.30. Moreover, the trial court expressly differentiated the two separate counts applicable to each victim—totaling four counts—by the specific sexual acts. Thus, the jury could not find Defendant guilty of violating the statute for one type of sexual act *or* the other on each count. As such, *Walters* is inapposite here. Thus, we conclude the trial court did not err in entering its Judgments upon the jury verdicts.

Conclusion

¶ 25 Consequently, for the foregoing reasons, there was no error at trial, and the trial court properly entered the Judgments against Defendant.

NO ERROR.

Judges DILLON and GRIFFIN concur.

Report per Rule 30(e).