IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-329

No. COA21-396

Filed 3 May 2022

Cumberland County, No. 19CRS50445

STATE OF NORTH CAROLINA

v.

WILLIAM ENOCH THOMAS, Defendant.

Appeal by defendant from judgment entered 19 February 2021 by Judge James F. Ammons Jr. in Cumberland County Superior Court. Heard in the Court of Appeals 14 December 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Joseph L. Hyde, for the State-appellee.

Mark L. Hayes for defendant-appellant.

GORE, Judge.

¶ 1 Defendant, William Enoch Thomas, appeals from a jury's verdicts finding him guilty of first-degree forcible rape and first-degree forcible sexual offense. He argues that the trial court erred in denying his motion to dismiss the charges against him. We disagree and find no error.

I. Background

¶ 2 On the evening of 11 October 2018, Tyesha Williams ("victim") and Angel Murray purchased crack cocaine, the two began using the crack cocaine and eventually got split up. Ms. Murray eventually began walking home when she saw Pam Williams and got a ride from her. When Ms. Murray and Ms. Williams arrived at Ms. Williams's home the victim and defendant were there together. The victim and defendant got into Ms. Williams's car and began using the crack cocaine that had been purchased earlier in the evening, before all parties drove to buy more crack cocaine. After buying more crack cocaine, all four occupants of the car went to Windsor Park to use the crack cocaine purchased.

¶ 3 After using crack cocaine in the park Ms. Williams began driving home. On the way home Ms. Williams let the victim out of the car at the corner of Central and Liberty. Ms. Williams, Ms. Murray, and defendant proceeded to drive down the street to Ms. Murray's home. Once there they parked in the driveway continued to smoke the remainder of the crack cocaine in the car. Eventually, defendant told Ms. Williams and Ms. Murray he was going to walk home through the park, got out of the car, and proceeded to walk in the direction where they had dropped the victim off.

¶ 4 The victim's body was found in a ditch in Windsor Park the next morning. The victim's body was found with her pants partially pulled down and with numerous abrasions and contusions on her body. The victim's cause of death was a physical

assault, including blunt force injury to the head. Police used a sexual assault kit to obtain DNA samples from the victim's vagina, anus, thigh/external genitalia, the perineum, the perianal, and the mons pubis.

¶ 5 On 9 March 2020, a grand jury returned a True Bill of Indictment for defendant Defendant on the charges of first-degree kidnapping, first-degree forcible rape, first-degree forcible sexual offense, and common law robbery. Defendant was also indicted for first-degree murder.

¶ 6 The matter proceeded to a jury trial on 15 February 2021. The State's evidence presented at trial included testimony from Lora Weis, an expert in the field of forensic biology. Ms. Weis's testimony included an explanation of the process used to analyze DNA samples. Ms. Weis testified that the analysis of samples from a sexual assault kit involves an additional step not performed in the analysis of DNA samples collected in other manners. This additional step separates the sample into two fractions. Fraction one contains non-sperm DNA and fraction two consists of sperm cell DNA. Ms. Weis went on to testify that she had conducted the analysis, which separates the DNA samples into two fractions on samples collected from the victim's vaginal swab, rectal swab, oral swab, mons pubis, thigh, perineal swab, and anal/perianal swabs. Ms. Weis testified that the DNA sample contained in fraction two of these analyses matched defendant's DNA profile.

¶ 7 At the close of the State's evidence and again at the close of all evidence defendant moved the dismiss the charges for insufficient evidence. The trial court denied defendant's motions. The jury returned not guilty verdicts on the charges of first-degree kidnapping, common law robbery, and first-degree murder. The jury returned guilty verdicts on the charges of first-degree forcible rape and first-degree forcible sexual offense. Defendant was sentenced to two consecutive active sentences of 240 to 348 months imprisonment.

¶ 8 Defendant entered notice of appeal on 26 February 2021.

II. Discussion

¶ 9 "Upon defendant's motion for dismissal, the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense. If so, the motion is properly denied." *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455, *cert. denied*, 531 U.S. 890, 148 L. Ed. 2d 150 (2000) (quoting *State v. Barnes*, 334 N.C. 67, 75, 430 S.E.2d 914, 918 (1993)). "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). "In making its determination, the trial court must consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions

in its favor." *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994), *cert. denied*, 515 U.S. 1135, 132 L. Ed. 2d 818 (1995).

A. Petition for Writ of Certiorari

¶ 10 Defendant filed a Petition for Writ of Certiorari in an attempt to cure an apparent defect in his notice of appeal. Defendant alleges he entered oral notice of appeal in open court, however such oral notice of appeal does not appear in the transcript. As an attachment to his petition, defendant provides an affidavit from trial counsel that oral notice of appeal was entered, but it appears the court reporter paused the transcription for defendant to privately confer with his attorney and did not restart transcribing until after notice of appeal was entered. Defendant's trial counsel also entered a written notice of appeal for the trial court clerk to have on file, but this was not served on the prosecutor because oral notice of appeal had been entered.

¶ 11 The State argues the appeal is subject to dismissal because the oral notice of appeal is not in the transcript and written notice of appeal failed to designate to which court appeal was taken, as required by N.C.R. App. P. 4.

¶ 12 We conclude defendant did not issue proper notice of appeal primarily due to an error in the transcript and not through fault of his own. Thus, we grant certiorari in our discretion afforded under N.C.R. App. P. 21(a)(1).

B. Nonconsensual Sexual Contact

¶ 13 Defendant first argues that the trial court erred in denying his motion to dismiss because there was insufficient evidence presented that any sexual contact between defendant and the victim was nonconsensual. For the following reasons we disagree.

¶ 14 Defendant was convicted of first-degree forcible rape under N.C. Gen. Stat. § 14-27.21 and first-degree forcible sexual offense under N.C. Gen. Stat. § 14-27.26. Both offenses require the State to prove nonconsensual contact beyond a reasonable doubt. N.C. Gen. Stat. §§ 14-27.21(a) & 14-27.26(a) (2020); *State v. Booher*, 305 N.C. 554, 561, 290 S.E.2d 561, 564 (1982).

¶ 15 In *State v. Trull*, 349 N.C. 428, 509 S.E.2d 178 (1998), our Supreme Court held t when the evidence tends to show that the sex occurred where the victim's body was found, there is evidence that the victim was abducted, and the defendant fails to present any evidence that sex was consensual then the evidence viewed in the light most favorable to the State is sufficient for a rational trier of fact to conclude sexual contact was nonconsensual. *Trull*, 349 N.C. at 448-49, 509 S.E.2d at 192. Further, in *State v. Moseley*, 338 N.C. 1, 449 S.E.2d 412 (1994), *cert. denied*, 514 U.S. 1091, 131 L. Ed. 2d 738 (1995), our Supreme Court held that where the defendant's DNA profile matches sperm taken from the vaginal cavity of the victim and the victim was severely beaten before she died, "[t]he jury could reasonably infer from this evidence that [the victim] was forced, both physically and by fear and intimidation, to have

sexual intercourse with [the] defendant against her will." *Moseley*, 338 N.C. at 48, 449 S.E.2d at 440.

¶ 16 In the case *sub judice*, the State's evidence showed that the victim had been severely beaten, cut, and strangled. The victim's pants were partially pulled down when her body was found. Additionally, defendant's DNA profile matched the sperm cells found inside of the victim's vagina and anus. We conclude this evidence, when viewed in the light most favorable to the State, amounts to substantial evidence of nonconsensual contact and the trial court did not err in denying defendant's motion to dismiss.

C. Penetration by the Male Sex Organ

¶ 17 Defendant next argues there was insufficient evidence presented to establish penetration by the male sex organ. First-degree forcible rape requires a showing of vaginal penetration by the male sex organ. N.C. Gen. Stat. § 14-27.21(a). Defendant asserts that because the State's expert witness used conditional language when describing the process of separating sperm cells from other cells within a DNA sample, the State's evidence does not establish vaginal penetration. Additionally, defendant argues, even though first-degree forcible sexual offense includes any number of sex acts, the indictment in this case limited the charge to an act of anal intercourse. Defendant relies on the same argument surrounding the conditional language used by the State's expert witness to support this argument.

¶ 18 Defendant is correct in stating that Ms. Weis used conditional language, such as "if" and "possibly," at times when discussing the process of separating sperm cells from a DNA sample. However, defendant fails to acknowledge that these portions of Ms. Weis's testimony referred only to the general process of separating sperm cells within a DNA sample. Defendant does not address Ms. Weis's subsequent testimony asserting that when she conducted the test described earlier, she found sperm cells that matched defendant's DNA profile in the victim's vaginal and anal cavities.

¶ 19 DNA evidence tending to show that the defendant's sperm was found on an anal swab from the victim was "unequivocal evidence of penetration . . . ." *State v. Person*, 187 N.C. App. 512, 525, 653 S.E.2d 560, 568 (2007), *rev'd in part on other grounds*, 362 N.C. 340, 663 S.E.2d 311 (2008). In the case *sub judice*, defendant's DNA profile matched sperm cells found and recovered from inside the victim's vaginal and anal cavities. Thus, even assuming, *arguendo,* that defendant's argument asserting that the indictment limited the first-degree sexual offense charge to anal intercourse is valid, we find the State presented sufficient evidence to support the charges of first-degree forcible rape and first-degree sexual offense.

III. Conclusion

¶ 20 For the foregoing reasons we hold the trial court did not err in denying defendant's motion to dismiss the charges of first-degree forcible rape and first-degree sexual offense.

NO ERROR.

Judges TYSON and CARPENTER concur.

Report per Rule 30(e).