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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-492

Filed 5 December 2023

Caswell County, Nos. 16 CRS 50435, 36

STATE OF NORTH CAROLINA

v.

STEVEN FORREST WADE

Appeal by Defendant from judgment entered 2 May 2022 by Judge Stanley L. Allen in Caswell County Superior Court. Heard in the Court of Appeals 20 November 2023.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Tamika L. Henderson, for the State.*

*William D. Spence, for the Defendant.*

WOOD, Judge.

**I. Factual and Procedural Background**

On 1 August 2016, warrants were issued for the arrest of Steven Wade (“Defendant”) for first-degree sexual offense and indecent liberties with his step-granddaughter (“Ann”)<sup>1</sup> and for indecent liberties taken with another step-

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<sup>1</sup> A pseudonym is used to protect the identity of the individual.

granddaughter (“Sue”).<sup>2</sup> On 9 April 2019, Defendant was charged with sexual offense with a child under the age of thirteen by an adult and two counts of indecent liberties in Caswell County file 16 CRS 50435 and three counts of indecent liberties with a separate child in file 16 CRS 50436. Defendant’s trial on these charges began on 25 April 2022. During trial, Ann testified that Defendant, her step-grandfather, attempted to rub her abdomen while she was sleeping on his couch when she was four or five years old. Shortly after this incident, Ann testified “just about every weekend” she visited her grandparents, Defendant would enter the room she was sleeping in, begin rubbing her stomach, place her clitoris between his pointer finger and middle finger, and “rub [her clitoris] back and forth until [she] [orgasmed].” Ann clarified that in order for Defendant to touch and rub her clitoris, he had to go in between the “outer” lips of her genitalia and he “touched each side with both of his fingers.” Ann testified this touching occurred multiple times.

Additionally, Dr. Hagele, a child abuse pediatrician and Clinical Assistant Professor at the University of North Carolina Chapel Hill provided testimony that the clitoris is an internal structure of the female genitalia surrounded by the “outer lip” or the labia and stated, “For a doctor to examine and find the clitoris, you must move the external tissue out of the way to physically visualize it.” Defendant made a motion to dismiss at the conclusion of the State’s evidence and again, at the close of

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all the evidence. Both motions were denied.

On 2 May 2022, the jury found Defendant guilty as charged in each count. The trial court sentenced Defendant to an active term of 200-249 months imprisonment for the consolidated charges of sexual offense with a child under the age of thirteen by an adult and two counts of indecent liberties, followed by a consecutive active term of 16-20 months imprisonment for two counts of indecent liberties with a child, followed by an active term of 16-20 months imprisonment for the remaining charge of indecent liberties with a child. Defendant gave oral notice of appeal in open court.

## **II. Analysis**

Defendant argues the trial court erred by denying Defendant's motion to dismiss the charge of first-degree sexual offense with a child made at the close of all the evidence because there was insufficient evidence of penetration to support the charge. Alternatively, Defendant argues Ann's testimony was ambiguous, vague, and indefinite because "it was unclear exactly where [he] put his finger(s) and unclear what exactly he did there." Neither argument has merit.

This Court reviews whether the State presented evidence sufficient to survive a motion to dismiss *de novo*. *State v. Bagley*, 183 N.C. App. 514, 523, 644 S.E.2d 615, 621 (2007). Under a *de novo* review, this Court considers "the matter anew and freely substitutes its own judgment for that of the lower tribunal." *State v. Williams*, 362 N.C. 628, 632, 669 S.E.2d 290, 294 (2008) (citation omitted). In ruling on a motion to dismiss, "the trial court need determine only whether there is substantial evidence of

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each essential element of the crime and that the defendant is the perpetrator.” *State v. Crockett*, 368 N.C. 717, 720, 782 S.E.2d 878, 881 (2016) (citation omitted). Substantial evidence is such relevant evidence sufficient to persuade a rational juror to accept a particular conclusion. *State v. Smith*, 300 N.C. 71, 78-79, 265 S.E.2d 164, 169 (1980). “A defendant’s motion to dismiss must be denied if the evidence considered in the light most favorable to the State permits a rational jury to find beyond a reasonable doubt the existence of each element of the charged crime and that defendant was the perpetrator.” *State v. Campbell*, 359 N.C. 644, 681, 617 S.E.2d 1, 24 (2005) (citation omitted).

Under N.C. Gen. Stat. § 14-27.28(a), “[a] person is guilty of statutory sexual offense with a child by an adult if the person is at least 18 years of age and engages in a sexual act with a victim who is a child under the age of 13 years.” N.C. Gen. Stat. § 14-27.28(a). A sexual act is defined, inter alia, by “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). “Any object” may include a human finger. *State v. Lucas*, 302 N.C. 342, 345-46, 275 S.E.2d 433, 435 (1981).

In *State v. Bellamy*, this Court affirmed that, for purposes of first-degree sexual offense, “evidence that the defendant entered the labia is sufficient to prove the element of penetration.” 172 N.C. App. 649, 658, 617 S.E.2d 81, 88 (2005) (citation omitted). In *State v. Burns*, this Court held sufficient evidence of entering the labia can be shown by testimony that the defendant touched the victim on parts of their

anatomy “located within the labia.” 278 N.C. App. 718, 721, 862 S.E.2d 431, 434 (2021). In *Burns*, the victim testified the defendant used his fingers to rub and touch her on her urethral opening. *Id.* Noting that the urethral opening “is located within the labia minora, below the clitoris and above the vaginal opening,” we determined there was substantial evidence defendant “penetrated her labia by rubbing his fingers in circles on her vulva” thus supporting the element of penetration for first-degree sexual offense with a child under the age of thirteen by an adult. *Id.*

In the present case, there is sufficient evidence Defendant penetrated Ann’s labia by rubbing her clitoris between his fingers. Ann testified Defendant had to go between the “outer” lips of her genitalia in order to reach her clitoris. Additionally, Dr. Hagele testified the clitoris is an internal structure of the female genitalia surrounded by the “outer lip” or the labia. Ann’s testimony, supported by the medical testimony of Dr. Hagele, is sufficient to support the finding that Defendant penetrated her labia. We conclude Ann’s testimony was not ambiguous or vague.

### **III. Conclusion**

Viewing Ann’s testimony in the light most favorable to the State, we hold the State presented substantial evidence supporting the element of penetration from which reasonable jurors could have concluded Defendant committed a first-degree sexual offense. Accordingly, we find no error.

NO ERROR.

Judges COLLINS and CARPENTER concur.

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Report per Rule 30(e).