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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-981

Filed 6 February 2024

Mecklenburg County, Nos. 14 CRS 11612-14, 11616

STATE OF NORTH CAROLINA

v.

RICHARD JONES, Defendant.

Appeal by defendant from judgment entered 18 March 2022 by Judge Jacqueline Grant in Mecklenburg County Superior Court. Heard in the Court of Appeals 26 April 2023.

Attorney General Joshua H. Stein, by Assistant General Counsel South A. Moore, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Aaron Johnson, and Glover & Petersen, P.A., by James R. Glover for the defendant-appellant.

STADING, Judge.

Richard Wendell Jones (“defendant”) appeals from a judgment after a jury found him guilty of two counts of first-degree rape, two counts of first-degree sexual offense, first-degree kidnapping, and first-degree burglary. For the reasons below, we hold no error.

I. Background

At 3:00 a.m. on 18 February 1982, R.T. awoke to an unknown man in her bedroom.¹ The intruder held a knife to R.T.'s throat and covered her mouth. He told her that he would cut her throat if she made any noise. He tied R.T.'s arms behind her back and legs to the bed posts. The intruder tore off R.T.'s nightgown and performed oral sex on her. He exited the room for five minutes, then returned to perform oral sex on her again a second time. Afterward, he bent R.T.'s legs and placed his penis inside her vagina. Then, he removed his penis, repositioned it inside her, and ejaculated. After threatening to "rough [her] up a little," the intruder left R.T. tied to the bed and exited her home. After he left, R.T. was able to untie herself and call 911.

The police arrived and transported R.T. to the hospital for an examination. She gave a statement to the police describing the events as stated above. The police officers wrote a report and conducted an investigation but could not locate the perpetrator. At the hospital, the doctors and nurses completed a sexual assault exam on R.T. and collected several DNA samples. However, because DNA technology did not exist then, the samples were not tested until later.

¹ To protect the victim's identity, the parties have agreed to refer to her by her initials.

In 2013, a DNA analyst managed to develop a partial male DNA profile from the 1982 samples, which were matched to defendant. At this time, defendant was incarcerated in Georgia, serving a sentence for a 2000 sexual assault conviction. After further investigation, a grand jury indicted defendant on several charges relating to the attack on R.T., including two counts of first-degree rape and two counts of first-degree sexual assault.

The case proceeded to trial and the jury heard testimony from R.T. describing the events of 18 February 1982. She testified: “[h]e bent my knees . . . and then he entered me from behind. . . . His penis I guess entered my vagina. And he did it twice, and I think he came the second time.” She then clarified, stating defendant’s penis “came back out and then . . . he put it back in a second time.” Along with her testimony, the State introduced R.T.’s original statement, the original police reports, and the sexual assault kit into evidence.

At the close of the State’s evidence, defendant moved to dismiss all charges against him and the trial court denied the motion. Defendant renewed the motion at the close of his evidence, and the trial court again denied it. Subsequently, the jury found him guilty of all counts. At sentencing, the trial court consolidated the first-degree rape convictions and the first-degree sexual assault convictions into two consecutive life sentences. Defendant entered a notice of appeal in open court following sentencing.

II. Jurisdiction

As a final judgment, this Court has jurisdiction to hear this appeal pursuant to N.C. Gen. Stat. § 7A-27(b) and 15A-1444(a) (2021).

III. Analysis

The single issue on appeal is whether the trial court erred in denying defendant's motion to dismiss. This Court reviews a trial court's denial of a motion to dismiss *de novo*. *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007). "When reviewing a defendant's motion to dismiss a charge on the basis of insufficiency of the evidence, this Court determines whether the State presented substantial evidence in support of each element of the charged offense. Substantial evidence is relevant evidence that a reasonable person might accept as adequate, or would consider necessary to support a particular conclusion." *State v. Fisher*, 228 N.C. App. 463, 470–71, 745 S.E.2d 894, 900 (2013) (internal citations and quotation marks omitted).

In evaluating the sufficiency of evidence to support a criminal conviction, "the evidence must be considered in the light most favorable to the State[.]" *State v. Dover*, 381 N.C. 535, 547, 873 S.E.2d 267, 275 (2022). "Any contradictions or conflicts in the evidence are resolved in favor of the State, and evidence unfavorable to the State is not considered." *Id.* (citing *State v. Miller*, 363 N.C. 96, 98, 678 S.E.2d 592, 594 (2009)). "[A] substantial evidence inquiry examines the sufficiency of the evidence presented but not its weight, which is a matter for the jury. Thus, if there is substantial evidence—whether direct, circumstantial, or both—to support a finding

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that the offense charged has been committed and that the defendant committed it, the case is for the jury and the motion to dismiss should be denied.” *Fisher*, 228 N.C. App. at 471, 745 S.E.2d at 900.

On appeal, defendant argues R.T.’s testimony does not describe two acts of vaginal intercourse. In support of this argument, he cites cases in which the North Carolina Supreme Court or this Court found multiple penetrations over a short period of time constituted multiple counts of rape. *State v. Dudley*, 319 N.C. 656, 356 S.E.2d 361 (1987); *State v. Small*, 31 N.C. App. 556, 230 S.E.2d 425, *cert. denied*, 291 N.C. 715, 232 S.E.2d 207 (1977); *State v. Lancaster*, 137 N.C. App. 37, 527 S.E.2d 61 (2000); *State v. Grimes*, 96 N.C. App. 489, 386 S.E.2d 214 (1989); *State v. Midyette*, 87 N.C. App. 199, 360 S.E.2d 507 (1987). Defendant contends that “[w]hile penetration of the vagina by the penis is an essential part of vaginal intercourse, the term intercourse commonly involves much more, movement during which a penis may be momentarily dislodged, replaced in the vagina and more movement, sometimes to the point of ejaculation.” However, defendant’s argument is misplaced and misconstrues the law.

In North Carolina, “[a] person is guilty of first-degree forcible rape if the person engages in vaginal intercourse with another person by force and against the will of the other person” while using, threatening to use, or displaying “a dangerous or deadly weapon.” N.C. Gen. Stat. § 14-27.21(a) (2021). “[R]ape is not a continuous offense, but each act of intercourse constitutes a distinct and separate offense.” *Dudley*, 319 N.C. at 659, 356 S.E.2d at 363. Our Court has defined “vaginal

intercourse” as “penetration, however slight, of the female sex organ by the male sex organ.” *State v. Combs*, 226 N.C. App. 87, 90, 739 S.E.2d 584, 586 (2013) (citing *State v. Fletcher*, 322 N.C. 415, 424, 368 S.E.2d 633, 638 (1988)). “Generally, a jury may find a defendant guilty of an offense based solely on the testimony of one witness.” *Id.* (citations omitted).

While the cases defendant cites found multiple acts of penetration after movement or position changes, he does not cite a case that holds such movement or change of position is required to constitute multiple penetrations. Here, R.T.’s testimony, coupled with her original statement and police reports corroborating her testimony, details two distinct acts of penetration. *See id.* (“Generally, a jury may find a defendant guilty of an offense based solely on the testimony of one witness.” (citations omitted)). Although the State’s evidence does not provide that the penetration happened in a different room, like in *Midyette*, 87 N.C. App. at 202, 360 S.E.2d at 509, or demonstrate a distinct change in position, like in *Lancaster*, 137 N.C. App. at 43, 527 S.E.2d at 66, the law does not require such additional acts or movement. All that is needed to establish different acts of rape is a slight penetration of the female sex organ by the male sex organ. *Combs*, 226 N.C. App. at 90, 739 S.E.2d at 586. R.T.’s testimony and the exhibits provide that defendant inserted his penis into R.T.’s vagina, removed it, and repositioned it inside her a second time. Taken in the light most favorable to the State, this testimony and corroborating evidence provide substantial evidence of two acts of first-degree rape.

Furthermore, although defendant is correct in asserting that “the issue of whether the evidence supports conviction for multiple counts of rape turns on whether there was proof of multiple separate and distinct acts of vaginal intercourse”, it is an undertaking reserved for the jury to “weigh evidence, assess witness credibility, [and] assign probative value to the evidence . . . [to] determine what the evidence proves or fails to prove.” *State v. Massey*, 287 N.C. App. 501, 511, 882 S.E.2d 740, 749 (2023) (citations omitted). At trial, the court determined a reasonable inference of defendant’s guilt on two separate counts of first-degree rape could be drawn by R.T.’s testimony. Subsequently, the jury found that the testimony, taken either on its own or with the other evidence presented at trial, satisfied the burden of finding defendant guilty beyond a reasonable doubt. Here, the evidence was sufficient to permit the jury to find, beyond a reasonable doubt, that defendant committed two acts of first-degree rape.

IV. Conclusion

We therefore hold that the trial court did not err in denying defendant’s motion to dismiss.

NO ERROR.

Judges HAMPSON and CARPENTER concur.

Report per Rule 30(e).