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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-317

Filed 3 September 2024

Gaston County, No. 21CRS55086

STATE OF NORTH CAROLINA

v.

VINCENT PERNELL SUMMERS

Appeal by defendant from judgment entered 6 October 2023 by Judge David A. Phillips in Gaston County Superior Court. Heard in the Court of Appeals 19 August 2024.

Attorney General Joshua H. Stein, by Special Deputy Attorney General, Mary W. Scruggs, for the State.

Drew Nelson for the defendant-appellant.

PER CURIAM.

Vincent Pernell Summers (“Defendant”) appeals from a judgment entered on a jury’s verdict finding him guilty of first-degree statutory sex offense and taking indecent liberties with a child. He argues the trial court erred in denying his motion to dismiss for insufficiency of the evidence. We discern no reversible error.

I. Background

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Twelve-year-old I.M. was helping her mother and her mother's boyfriend, Defendant, clean up after a family cookout on 25 April 2021. *See* N.C. R. App. P. 42(b) (pseudonyms used to protect the identity of minors). When I.M. and Defendant were alone, Defendant grabbed her wrist and pulled her into his bedroom. He pulled her shirt up, pulled her pants and underwear down, and began to kiss and lick her chest and pubic area.

When Defendant heard I.M.'s mother returning from the store, he quickly grabbed her pants and tried to pull her shirt down. I.M.'s mother noticed I.M.'s underwear was bunched up underneath her pants and that Defendant's pant zipper was down. She asked I.M. what had happened while she was gone. I.M. responded Defendant had touched her inappropriately. I.M.'s mother contacted her adult daughter to remove I.M. from the house and called 911 for help.

At trial, I.M. testified Defendant had kissed her around her "private parts" and touched them with his tongue. When she was asked to elaborate on what the private part of the body is used for, I.M. responded: "[y]ou use it to go to the bathroom, but in time when you get older you, eventually, have that to make babies." I.M. testified Defendant licked her "everywhere" around her private area.

Defendant moved to dismiss the charges against him at the close of the State's evidence and again at the close of all evidence. The trial court denied both motions. The jury convicted Defendant of first-degree statutory sex offense and of taking indecent liberties with a child. The two counts were consolidated into one judgment,

and Defendant was sentenced to an active term of a minimum of 240 months to a maximum of 348 months imprisonment. Defendant gave oral notice of appeal in open court.

II. Jurisdiction

Jurisdiction lies with this court pursuant to N.C. Gen. Stat. § 7A-27(b) and N.C. Gen. Stat. § 15A-1444 (2023).

III. Motion to Dismiss

Defendant argues the trial court erred by denying his motion to dismiss the count of first-degree statutory sex offense and asserts there was insufficient evidence to establish cunnilingus with the victim.

A. Standard of Review

To survive a motion to dismiss, there must be “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.” *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (2000) (citation omitted). Substantial evidence is defined as relevant evidence a reasonable person might accept as adequate to support a conclusion. *State v. Blake*, 319 N.C. 599, 604, 356 S.E.2d 352, 355 (1987).

“The State is entitled to all inferences that may be fairly derived from the evidence” when the sufficiency of the evidence is challenged on appeal.” *State v. Porter*, 198 N.C. App. 183, 186, 679 S.E.2d 167, 169 (2009). A motion to dismiss should be granted if “the evidence raises no more than a suspicion of guilt.” *State v.*

Bradshaw, 366 N.C. 90, 93, 728 S.E.2d 345, 347 (2012). Denial of a motion to dismiss is reviewed *de novo*. *State v. Hooks*, 243 N.C. App. 435, 441, 777 S.E.2d 133, 138 (2015).

B. Analysis

Defendant argues the State presented insufficient evidence of contact with I.M.'s genitalia to support his conviction of committing a first-degree statutory sex offense. He asserts I.M. did not allege Defendant had contacted her genitalia in specific, anatomical terms. We disagree.

The elements of a first-degree sexual offense with a child under the age of 13 years are: (1) the defendant engaged in a sexual act with a victim, (2) the victim was under 13 years of age at the time of the act, and (3) the defendant is at least 12 years of age and is at least four years older than the victim. N.C. Gen. Stat. § 14-27.29 (2023). In this case, the purported sexual act is cunnilingus, which entails “stimulation by the tongue or lips of any part of a woman’s genitalia.” *State v Ludlum*, 303 N.C. 666, 672, 281 S.E.2d 159, 162 (1981).

Defendant’s argument asserts the evidence is insufficient because I.M. did not use anatomical terms in her description. In *State v. Weathers*, the victim testified the defendant had his tongue “not in [her] vagina, but he was going around it.” 322 N.C. 97, 100, 366 S.E.2d 471, 473 (1988). Our Supreme Court held the victim’s testimony was sufficient to establish contact with the external genitalia, and establish the act of cunnilingus. *Id.*

In *State v. Stancil*, the victim testified the defendant had licked her “privacy,” which she identified on an anatomical doll as the vaginal area. 146 N.C. App. 234, 245, 552 S.E.2d 212, 218 (2001). This Court held the victim’s testimony was sufficient to establish the act of cunnilingus, holding “an alleged victim’s testimony is sufficient to establish [] the accused committed a completed act of cunnilingus by placing his tongue on her pubic area.” *Id.* (citation omitted).

Here, I.M. testified Defendant kissed her around her private parts with his lips and tongue. She defined private parts as those she “[used] to go to the bathroom, but in time when you get older you, eventually, [you] have that [part] to make babies.” I.M. also testified Defendant had touched her private area “everywhere” with his tongue. As in *Weathers* and *Stancil*, this testimony is sufficient evidence for a reasonable juror to conclude Defendant’s lips and tongue made contact with I.M.’s genitalia, which is sufficient to establish the act of cunnilingus. *Id.*; *Weathers*, 322 N.C. at 100, 366 S.E.2d at 473. The trial court properly denied Defendant’s motion to dismiss.

IV. Conclusion

The trial court properly denied Defendant’s motion to dismiss the count of first-degree statutory sex offense. Defendant received a fair trial, free from prejudicial errors he preserved and argued on appeal. Defendant failed to demonstrate reversible or prejudicial error in the jury’s verdicts or in the judgment entered thereon. *It is so ordered.*

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NO ERROR.

Panel Consisting of Judges Tyson, Zachary, and Hampson.

Report per Rule 30(e).