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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-625

Filed 5 February 2025

Pasquotank County, Nos. 20CR051323, 21CR000745

STATE OF NORTH CAROLINA

v.

MICHAEL ANTHON WEBB, Defendant.

Appeal by defendant from judgment entered 17 January 2024 by Judge R. Andrew Womble in Pasquotank County Superior Court. Heard in the Court of Appeals 15 January 2025.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Kimberly D. Potter, for the State.

Drew Nelson for defendant-appellant.

PER CURIAM.

Defendant, Michael Anthon Webb, appeals from the trial court's judgment finding him guilty of one count of taking indecent liberties with a child. On appeal, Defendant argues the trial court erred in denying his motion to dismiss the charge, where the State had failed to present substantial evidence of the crime. Upon review, we conclude the State presented substantial evidence of the crime, as it was for the

jury to weigh the credibility of the witness's testimony. We therefore affirm the trial court's denial of Defendant's motion and find no error in Defendant's jury conviction and judgment entered thereon.

I. Factual and Procedural Background

Defendant was indicted on 16 August 2021 by a grand jury for taking indecent liberties with a child. A trial was held on 16 January 2024.

At trial, the minor child, C.B.,¹ testified to the following 12 November 2020 incident: thirteen-year-old C.B. was asleep on the living room couch of the home where she lived with her mother, who at the time of this incident was dating Defendant. Sometime just before sunrise, Defendant carried a fan into the living room, awakening C.B. Although it was still dark outside, the living room was lit by the light of the television. C.B. pretended to continue sleeping, and at trial, testified that she turned to face "into the couch."

C.B. alleged that Defendant began to masturbate in the living room near her. C.B. observed Defendant walking to the back of the house several times to check whether C.B.'s mother was still sleeping. C.B. testified that Defendant eventually sat down on the couch near C.B.'s feet without any of his clothes on. C.B. claimed, while sitting on the couch, Defendant "was playing with himself" and making "grunting" noises.

¹ A pseudonym is used to protect the juvenile's identity, pursuant to N.C.R. App. P. 42(b).

That same night, during one of Defendant's trips to the back of the house, C.B. texted her father several times asking him to come and get her. C.B.'s father tried calling her, but C.B. did not answer. She testified that she did not answer her father's phone call because she did not want Defendant to know she was awake.

During another one of Defendant's trips to the back of the house, C.B. ran out of the house, got into her mother's car, locked the doors, and called her brother, who shared the same mother. C.B.'s brother testified that, after receiving this call from C.B., he called their mother and asked her to make Defendant leave the house. After C.B. saw Defendant leave the house, she returned inside, and C.B.'s father arrived soon thereafter. Her father testified that, when he arrived, C.B. ran to him crying, telling him her account of what happened. He then reported this matter to the police.

During cross-examination, defense counsel questioned C.B. about her ability to see, but did not question C.B. about which direction she faced on the couch.

At the close of the State's evidence, Defendant moved to dismiss the charge for insufficient evidence, and the trial court denied this motion. Defendant did not testify or present any evidence, and at the close of all evidence, Defendant renewed his motion to dismiss, which the trial court again denied. The jury found Defendant guilty of taking indecent liberties with a child, and Defendant timely appealed.

II. Jurisdiction

This Court has jurisdiction to review an appeal from a final judgment of a superior court, pursuant to N.C.G.S. §§ 7A-27 (2023) and 15A-1444 (2023).

III. Analysis

On appeal, Defendant argues the trial court erred in denying his motion to dismiss, contending the State failed to present substantial evidence in support of a finding of indecent liberties with a child. Specifically, Defendant alleges the State's evidence does no more than raise a suspicion, arguing C.B.'s testimony lacked specificity and credibility, based on her diminished ability to see in the dark room while facing into the couch. We disagree.

This Court reviews de novo a trial court's denial of a motion to dismiss. *State v. Norris*, ___ N.C. App. ___, 903 S.E.2d 225, 228 (2024). A trial court may properly deny a motion to dismiss for insufficient evidence "if there is substantial evidence (1) of each essential element of the offense charged . . . and (2) of [the] defendant's being the perpetrator of such offense." *State v. Gallion*, 282 N.C. App. 305, 334–35 (2022) (citation omitted). "The State is entitled to every reasonable inference to be drawn from the evidence. Contradictions and discrepancies do not warrant dismissal of the case; rather, they are for the jury to resolve." *State v. Franklin*, 327 N.C. 162, 172 (1990) (citation omitted). "The trial court, in considering a motion to dismiss, may not weigh the credibility of the witnesses." *State v. Lewis*, 172 N.C. App. 97, 107 (2005). "When the evidence raises no more than a suspicion of guilt, a motion to dismiss should be granted[; h]owever, so long as the evidence supports a reasonable inference of the defendant's guilt, a motion to dismiss is properly denied[.]" *State v. Miller*, 363 N.C. 96, 99 (2009) (citation omitted).

In *Lewis*, the defendant was found guilty of taking indecent liberties with two children. 172 N.C. App. at 107. The evidence at trial had “included testimony and statements from both [the minor children] that [the] defendant had them perform sexual acts on each other and on him.” *Id.* at 107. On appeal, the defendant argued that because “the children’s accounts contain conflicting details and therefore lack credibility[,]” the trial court should have granted his motion to dismiss due to insufficient evidence. *Id.* at 107. Upon review, we held “it is the province of the jury to weigh the credibility of the witnesses[,]” and any “discrepancies must be resolved in favor of the State.” *Id.* at 107. We therefore concluded the trial court did not err in denying the defendant’s motion to dismiss. *Id.* at 107.

Like the defendant in *Lewis*, Defendant’s only argument on appeal is that C.B.’s testimony, as the only witness to the incident, is not credible due to potential discrepancies and opposing inferences. As we held in *Lewis*: “it is the province of the jury to weigh the credibility of the witness[,]” and any “discrepancies must be resolved in favor of the State.” *Id.* at 107. Accordingly, we conclude the trial court did not err in denying Defendant’s motion to dismiss, and Defendant’s argument on appeal is overruled.

IV. Conclusion

Upon review, we conclude the trial court did not err in denying Defendant’s motion to dismiss for insufficient evidence, where the State presented substantial evidence of the crime for which Defendant was charged, and it was for the jury to

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weigh the credibility of the witness. We therefore affirm the trial court's denial of Defendant's motion and find no error in Defendant's jury conviction and judgment entered thereon.

NO ERROR.

PANEL CONSISTING OF JUDGES TYSON, ZACHARY, AND FLOOD.

Report per Rule 30(e).