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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-163

Filed 7 May 2025

Stanly County, Nos. 20CRS000291-830; 20CRS051722-830; 20CRS051723-830;
21CRS000396-830

STATE OF NORTH CAROLINA

v.

DERRICK LINDSEY, Defendant.

Appeal by defendant from judgments entered 24 July 2023 by Judge Dawn M. Layton in Stanly County Superior Court. Heard in the Court of Appeals 29 January 2025.

Attorney General Jeff Jackson, by Special Deputy Attorney General Tracy Nayer, for the State.

Parry Law, PLLC, by Edward Eldred, for defendant-appellant.

DILLON, Chief Judge.

Defendant Derrick Lindsey appeals from his convictions for various crimes arising from his inappropriate physical/sexual contact he had with two children.

I. Background

On 8 July 2020, a mother (“Mother”) was watching her six-year-old daughter (“Sadie”) and Sadie’s five-year-old friend (“Debbie”) as they played in the front of her apartment in Albemarle.¹ Mother spotted Defendant—whom she had known much of her life—sitting on the porch of a home a few doors down. Mother testified that on that day, he was wearing a Carolina Panthers shirt and black pants. At some point, she went inside her home to use the restroom. About three to five minutes later, her daughter Sadie ran into the house and locked the door.

Sadie said, “Mommy, he touched me.” Mother later acknowledged in her testimony that Sadie did not use or know Defendant’s name. Nevertheless, Mother said she knew “without a shadow of a doubt” who touched Sadie. Sadie explained further that “he” had patted her on the butt and tried to unbuckle her pants; he also touched Debbie. Mother called 911 and reported Defendant by name.

Mother also called Debbie’s mother, who testified that Debbie said, “He touched me too,” and more specifically, “a tall black man with dreads” put his hands down her pants. Debbie did not know Defendant by name either.

Officers suggested Debbie’s mother take Debbie to a hospital for an examination. That night, a nurse conducted a genital exam of Debbie and found mild redness on her “hymenal tissue.”

¹ “Sadie” and “Debbie” are pseudonyms.

On the same day, Defendant went to the Albemarle police department because he said people who believed that he had inappropriately touched Sadie were threatening to kill him. He spoke with a detective who recorded the interview. In the interview, Defendant claimed that he was walking through an Albemarle apartment complex and ran into some kids, one of whom he talked to and put his arm around before walking away.

In a recording of the interview, Defendant is seen to be a black man wearing a Carolina Panthers football jersey with the number “17” on the front, and shorts; his hair is in “dreads,” and he has facial hair on his chin.

On 21 July 2020, a recorded forensic interview was conducted with Debbie at the Butterfly House Children’s Advocacy Center, which is associated with the Atrium Health Stanly Hospital in Albemarle. During the interview, Debbie said that a man with short braids and a twisted beard smacked Sadie’s butt and put his hand down Debbie’s pants under her panties and touched her genitals. The recorded interview was admitted as substantive evidence over objection from Defendant.

On 31 July 2020, Defendant was arrested. On 14 September 2020, the State indicted Defendant on one count of first-degree statutory sex offense against Debbie, taking indecent liberties with Debbie, and taking indecent liberties with Sadie, and trespassing.

Both Sadie and Debbie testified at trial as to the events of 8 July 2020. Sadie testified that a man approached them and “took us on the side of the house and told

[Debbie] to sit on his lap.” And, “He had took me on the side of the house and tried to pull down my pants” after he had unbuttoned two of the three buttons on her pants. Debbie testified that a man touched them, and specifically, touched her genitals with his hand, inside her clothes.

Defendant filed a motion for mistrial and motions to dismiss all charges. The trial court denied those motions. Defendant was found guilty by a jury of committing the charged offenses.

II. Analysis

Defendant makes four arguments alleging error on the part of the trial court. We address each in turn.

A. Evidence of Prior Convictions

Defendant first argues the trial court erred in denying his motion for a mistrial because evidence about his prior convictions came in after the court had ordered that the jury not be told about them.

We review a trial court’s denial of a motion for a mistrial for an abuse of discretion. *State v. Blackstock*, 314 N.C. 232, 243 (1985).

Our General Statutes provide that “[t]he judge must declare a mistrial upon the defendant’s motion if there occurs during the trial an error or legal defect in the proceedings . . . resulting in substantial and irreparable prejudice to the defendant’s case.” N.C.G.S. § 15A-1061.

When prejudicial evidence is erroneously put before a jury, ordinarily the error

may be cured by a withdrawal of the evidence and a limiting instruction, *State v. Black*, 328 N.C. 191, 200 (1991), because this Court usually assumes the jury obeyed the limiting instruction. *State v. Ray*, 212 N.C. 725, 729 (1938).

Pre-trial, the trial court heard Defendant's motion in limine seeking to prohibit the State "from introducing into evidence any mention of prior charges, convictions or prior arrests[.]" The trial court allowed the motion and ordered the State to "redact any statements made concerning Defendant's past criminal record" and for the State to remove "the statement the Defendant makes to detectives about prior convictions[.]"

During the trial, the State played the recording of Defendant's 8 July 2020 interview with the detective. A few minutes into the interview, the jury heard Defendant say that he had lived at a certain address since after he "got out of prison." The trial court immediately instructed the jury to disregard Defendant's statement, excused the jury from the courtroom, and addressed the prosecutor. Defendant moved for a mistrial. The trial court recessed for the day without ruling on the motion for a mistrial.

The next day, the trial court called the jury into the courtroom and stated that "an improper statement came into evidence, [Defendant] resided at an address since he was released from prison." The trial court repeated its instruction from the day before that it struck the evidence and that the jury could not consider it. The trial court then asked the jurors if they could follow that instruction. After one of the

jurors said that she could not, the trial court released her from the jury and replaced her with an alternate juror.

Because the trial court immediately gave the curative instruction and took actions to make sure the jury could follow that instruction, we cannot say that the court abused its discretion in denying Defendant's motion for a mistrial.

B. Insufficient Evidence

Next, Defendant argues the trial court erred in denying his motion to dismiss all charges, alleging there was insufficient evidence to identify him as the perpetrator of any of the offenses. We review a trial court's motion to dismiss *de novo*. *State v. Golder*, 374 N.C. 238, 250 (2020).

In reviewing the denial of a motion to dismiss, "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. Powell*, 299 N.C. 95, 98 (1980). "The trial court's function is to test whether a *reasonable inference* of the defendant's guilt of the crime charged may be drawn from the evidence." *Id.*, 299 N.C. at 99 (emphasis in the original). "If so[,] the evidence is substantial and the defendant's motion to dismiss must be denied." *State v. Mallow*, 309 N.C. 178, 179 (1983).

Defendant claims that the State did not present any direct evidence showing he committed any crime and that the State's circumstantial evidence was weak.

However, the record shows: Sadie testified that the man who touched her and Debbie was a black man who had dreads and was wearing a blue and black “basketball shirt.” Debbie testified that she did not know the man’s name, nor did she recall what the man was wearing on the day that he touched her. However, during her recorded interview at the “Butterfly House,” Debbie told the interviewer that a strange grown-up man with short braids, a twisted beard, wearing a black and blue shirt with some kind of name and number on his shirt suddenly “came up and messed with [them].” The detective who interviewed Defendant testified that Mother told him that Defendant had been in the area for two days prior to the assaults and on the day he assaulted the girls, she saw him—who she claimed to know for her whole life—and he was wearing a blue and black Panthers jersey. In the video recording of Defendant’s interview with the detective on the day of the incident, Defendant can clearly be observed with dreads, facial hair, and wearing a blue and black Panthers jersey. Finally, Defendant admitted to being in the community, interacting with, and touching the girls on that day.

We conclude there was substantial evidence in the record from which a jury could reasonably find Defendant as perpetrator of the offense.

C. Penetration Evidence

Defendant argues the trial court erred in denying the motion to dismiss the first-degree statutory sex charge because there was no evidence of penetration. He claims that the State’s entire case on the charge relied on “one passing statement” by

the nurse who examined Debbie at the hospital and that it was wholly insufficient to take the case to the jury on the element of penetration.

This Court reviews a trial court's denial of a motion to dismiss *de novo*. *Golder*, 374 N.C. at 250.

“A person is guilty of first-degree statutory sexual offense if the person engages in a sexual act with a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim.” N.C.G.S. § 14-27.29 (2020).² A “sexual act” means “the penetration, however slight, by any object into the genital . . . opening of another person’s body.” N.C.G.S. § 14-27.20(4) (2020). “[T]he standard of proving penetration for a sexual offense [is] the same as that of rape: ‘evidence that the defendant entered the labia is sufficient to prove the element of penetration.’ ” *State v. Lopez*, 274 N.C. App. 439, 446 (2020) (quoting *State v. Bellamy*, 172 N.C. App. 649, 658 (2005), *appeal dismissed and disc. review denied*, 360 N.C. 290 (2006)). In this case, the record shows that a nurse examined Debbie at a hospital emergency department on the evening of the alleged assault. This nurse testified that she noted some mild redness at the 1:00 and 11:00 position of Debbie’s hymenal tissue which is located past the labia. The nurse testified that such redness could have been caused by trauma. Debbie also testified that the man touched her vagina with his hand inside her clothes. And Debbie testified that when the man did

² We reference the statutes from 2020 because that is the year the offense was committed by Defendant.

this, she felt his big and sharp fingernails in her underwear.

We conclude the evidence taken in the light most favorable to the State is sufficient for a jury to reasonably find penetration had occurred.

D. Admittance of Child Victim's Interview

Lastly, Defendant argues that the trial court erred in admitting as substantive evidence Debbie's recorded interview at the Butterfly House under the exception to hearsay for statements made for the purpose of obtaining medical diagnosis or treatment. He contends Debbie's out-of-court statements were prejudicial to his case since "[t]he evidence against [him] was not otherwise overwhelming."

This Court reviews *de novo* a preserved challenge to the admission of an out-of-court statement. *State v. Corbett*, 376 N.C. 799, 811 (2021).

Statements made for the purposes of medical diagnosis may be admitted as substantive evidence under an exception to the hearsay rule. N.C.G.S. § 8C-1, R. 803(4). Such statements are inherently reliable because the declarant's health may depend on the accuracy of information supplied. *State v. Hinnant*, 351 N.C. 277, 284–85 (2000).

The evidence shows that Debbie's statements were made during an interview in a location associated with the Atrium Health Stanly Hospital in Albemarle and was given by a registered nurse and forensic interviewer. She began the interview by telling Debbie her name, that she worked at the Butterfly House, and that her job was "to make sure that boys and girls are happy, healthy, and safe." The nurse also

testified that she “always” tells the children the police are watching. Indeed, a police officer and detective, unseen, were observing the interview from a separate conference room.

Assuming the evidence was inadmissible hearsay, we conclude that Defendant has failed to show prejudice by its admission. There was much evidence before the jury of the assaults against Sadie and Debbie and identifying Defendant as the perpetrator of those assaults, including from the testimonies of Mother, Sadie, Debbie, Debbie’s examiners, and the recording of Defendant’s interview with the detective, showing his appearance as described by the witnesses.

III. Conclusion

We conclude that Defendant received a fair trial, free of reversible error.

NO ERROR.

Judges STROUD and STADING concur.

Report per Rule 30(e).