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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-1112

Filed 7 October 2026

Wake County, Nos. 22CR252014-910, 22CR252016-910

STATE OF NORTH CAROLINA

v.

TIMOTHY MICHAEL THOMAS, Defendant.

Appeal by Defendant from judgments entered 28 February 2025 by Judge Warren McSweeney in Wake County Superior Court. Heard in the Court of Appeals 12 August 2026.

Attorney General Jeff Jackson, by Assistant Attorney General Narcisa Woods, for the State.

The Sweet Law Firm, PLLC, by Kaelyn N. Sweet, for Defendant–Appellant.

MURRY, Judge.

Timothy M. Thomas (Defendant) appeals from the trial court’s judgments entered upon a jury verdict finding him guilty of statutory rape of a child fifteen years of age or younger, statutory sex offense with a child fifteen years of age or younger, indecent liberties with a child, and nine counts of second-degree sexual exploitation of a minor. Defendant argues that the trial court erred (1) by denying his motion to dismiss all nine counts of second-degree sexual exploitation, (2) by denying his motion

to dismiss three of those sexual-exploitation counts on separate grounds; (3) by excluding the proffered testimony of a witness that the victim had previously admitted to a false accusation of rape under N.C. Evidence Rule 412 (Rule); and (4) by limiting the scope of the victim's cross-examination on that same subject. For the reasons below, this Court holds no error as to the charges of statutory rape, statutory sex offense, indecent liberties, and seven of the nine counts of second-degree sexual exploitation of a minor. The State concedes evidentiary error as to the remaining two counts of second-degree sexual exploitation of a minor. This court vacates those two convictions and remands for resentencing.

I. Background

This matter arises from Defendant's solicitation and statutory rape of the victim, his sister-in-law, on multiple occasions when she was fifteen to sixteen years old. The victim, Savannah, was born in November 2002.¹ Defendant was born in January 1989. Between January and March 2018, Defendant raped Savannah on four occasions at his Fuquay-Varina apartment. In 2019, Defendant repeatedly solicited nude photographs from her over Snapchat, a social-media platform. She consented to these requests at multiple points. Savannah did not disclose these incidents for approximately four years but eventually told her parents about Defendant's actions

¹ In accordance with North Carolina Rule of Appellate Procedure 42(b), we refer to the minor complainant by a pseudonym to protect her identity. *See* N.C. R. App. P. 42(b).

in early May 2022. On 4 May 2022, Savannah and her mother filed a report in the Fuquay-Varina Police Department with Officer Dominic Trump.

On 24 May 2022, Sergeant Chad Williford obtained a search warrant for Defendant's phone, which Defendant surrendered the next day. On 6 June 2022, Detective James Tice of the Carolina Beach Police Department performed a Cellebrite extraction of the phone and obtained the passcode. Sergeant Williford used the passcode to unlock the phone and discovered a locked folder containing fourteen nude and partially nude photographs of Savannah, with capture dates between 14 April 2019 and 28 June 2019. On 23 August 2022, a grand jury indicted Defendant on one count of statutory rape of a child fifteen years or younger, one count of statutory sex offense with a child fifteen years or younger, one count of indecent liberties with a child, and twelve counts of second-degree sexual exploitation of a minor.

Prior to the 24 February 2025 trial, the trial court heard the State's motion *in limine* under Rule 412 to exclude evidence of a December 2017 rape accusation that Savannah made against a different male. At the *in camera* hearing, Savannah's sister-in-law, Taylor Cary, testified to an earlier rape accusation from 6 April 2018. Approximately one month after Savannah had undergone a Child Medical Evaluation (CME) on 27 February 2018 in connection with this prior accusation, Savannah told Cary that she "did technically say yes to" a male she later accused of rape in December 2017 because "she felt pressured to have sex with him" in the moment.

The trial court ruled that “the sexual behavior of the complainant is irrelevant to any issue . . . and does not meet any” of Rule 412 exceptions. As a result, it prohibited both parties from introducing evidence of her sexual behavior with persons other than Defendant. The trial court determined, however, that Savannah’s failure during the 27 February 2018 CME to name Defendant when asked whether anyone had done anything or touched her in a way that made her uncomfortable was an inconsistent statement relevant to her credibility. It thus permitted both parties to ask Savannah a single, narrowly framed question on cross-examination about that omission.

At trial, Savannah testified that she had sex with Defendant on four separate occasions at his apartment. Each followed a common pattern: Defendant and his wife Christina gave Savannah alcohol; Christina became ill and went to bed; and Defendant then touched Savannah’s genitals, performed oral sex on her, and had vaginal intercourse with her. As to the photographs, Savannah testified that Defendant would ask her “for nude[] [pictures] or pictures while using a sex toy that he had provided for [her],” and that within minutes of sending each photograph to Defendant, she received a notification confirming that the recipient had downloaded or screenshotted it.

Sergeant Williford testified that, upon unlocking Defendant’s phone, he discovered fourteen explicit photographs of Savannah in a passcode-protected locked folder, and that the Snapchat, email, TikTok, and Facebook accounts were each

Defendant's. He also testified that the phone contained a contact for Christina labeled *Wife* and photographs of Defendant's children. Detective Tice confirmed that the photographs' embedded capture dates ranged from 14 April 2019 through 28 June 2019 and that the images were moved into the folder on 22 March 2022.

The State submitted the photographs to the jury as fourteen numbered images corresponding to specific counts. Three counts are at issue on appeal. Count #4 of 22 CR 252016-910 is supported by an image described by Sergeant Williford as "a nude female exposing her breast," with the vagina not visible. Count #5 of 22 CR 252016-910 is supported by an image described as "a partially nude female with her buttocks exposed," with the vagina not visible. Count #8 of 22 CR 252016-910 is supported by an image described as "a fully nude female lying down on a purple blanket." At the close of the State's evidence, Defendant moved to dismiss all charges for insufficient evidence. The trial court denied the motion except as to three counts of second-degree sexual exploitation of a minor: Count #6 of 22 CR 252014-910 and Counts #6–#7 of 22 CR 252016-910, which it dismissed. Defendant renewed the motion at the close of all evidence, and the trial court again denied it.

On 28 February 2025, the jury returned guilty verdicts on all remaining counts. Defendant was sentenced to consecutive terms of 240–348 months for statutory rape and for statutory sex offense, a concurrent term of 16–29 months for indecent liberties, and a consolidated concurrent term of 25–90 months for the nine second-degree sexual exploitation convictions. Defendant timely appealed.

II. Jurisdiction

This Court has jurisdiction over Defendant’s appeal from the trial court’s final judgment under N.C.G.S. §§ 7A-27, 15A-1444. *See* N.C.G.S. § 7A-27(b) (2025) (final judgment of a trial court); *id.* § 15A-1444(a) (2025) (pleaded not guilty but found guilty).

III. Analysis

On appeal, Defendant argues that the trial court reversibly erred (1) by denying his motion to dismiss nine sexual-exploitation counts for insufficient evidence of image receipt, (2) by denying his motion to dismiss three of those nine counts for an additional failure to adhere to certain statutory image depictions, (3) by declining to admit lay-witness testimony regarding the victim, and (4) by delimiting the victim’s cross-examination as to that would-be testimony. We review the motions to dismiss *de novo* and the evidentiary questions for abuse of discretion. *See, e.g., State v. Smith*, 186 N.C. App. 57, 62 (2007) (motions to dismiss); *State v. Khouri*, 214 N.C. App. 389, 406 (2011) (evidence relevance or admissibility).

A. Motions to Dismiss

First, Defendant argues that the trial court erred as to all twelve of his sexual-exploitation counts on two distinct grounds. As to the nine counts, he asserts that the State “introduced evidence that [Defendant] *possessed*” the charged images but failed to produce substantial evidence that he “specifically *received*” them. (Brackets omitted.) He further attacks three of those 22 CR 252016-910 counts for failing to

depict the statutory element of “sexual activity” necessary for conviction. We disagree with his collective argument about the nine counts but agree in part with his discrete argument (and the State’s concession) as to two of those three 22 CR 252016-910 counts. Thus, we hold that the trial court did not err by denying his motion to dismiss the motions on possessory grounds but did err in part by denying his motion to dismiss Counts #4–#5 of the 22 CR 252016 indictment on sexual-activity-element grounds.

Both statutory-element arguments turn on whether the State presented “substantial evidence (1) of each essential element of the offense charged . . . and (2) of defendant’s being the perpetrator of such offense.” *State v. Fritsch*, 351 N.C. 373, 378 (2000) (quoting *State v. Powell*, 299 N.C. 95, 98 (1980)). Substantial evidence is any “relevant evidence as a reasonable mind might accept as adequate to support a conclusion,” *State v. Franklin*, 327 N.C. 162, 171 (1990), and only requires “more than a scintilla of evidence,” *State v. Earnhardt*, 307 N.C. 62, 66 (1982), viewed “in the light most favorable to the State” with “the benefit of every reasonable inference” on appeal, *State v. Dover*, 381 N.C. 535, 547 (2022). Circumstantial evidence may support a conviction “even when the evidence does not rule out every hypothesis of innocence.” *State v. Stone*, 323 N.C. 447, 452 (1988). But dismissal is proper where the evidence only “raise[s] a suspicion or conjecture as to either the commission of the offense or the identity of the defendant as the perpetrator of it.” *Fritsch*, 351 N.C. at 378.

1. Receipt

Section 14-190.17 criminalizes in relevant part (1) the “receipt of” (2) “material that contains a visual representation” (3) “of a minor engaged in sexual activity” (4) while “knowing the character or content of that material.”² N.C.G.S. § 14-190.17(a)(2) (brackets omitted). Although possession alone of this material is a lesser third-degree offense, *id.* § 14-190.17A, *receipt* and *possession* are legally distinct acts, *see State v. Anderson*, 194 N.C. App. 292, 298–300 (2008). Because the State did not charge Defendant under N.C.G.S. § 14-190.17A, it bore the burden of proving the element of receipt for each count of second-degree sexual exploitation at trial.

Viewed in the light most favorable to the State, the evidence allowed a reasonable jury to find that Defendant received those seven challenged photographs. *Dover*, 381 N.C. at 547. Savannah testified that she acquiesced to Defendant’s repeated requests for nude photographs over Snapchat, and that the application notified her within minutes of each transmission that he had either downloaded or screenshotted the image. Defendant stored those photographs in a passcode-protected subfolder on his smartphone. The phone’s Snapchat account bore Defendant’s initials and last name; its email, TikTok, and Facebook accounts all identified Defendant;

² Defendant challenges only the first element on appeal.

and it contained a contact for his wife Christina labeled *Wife* and photographs of his children.

In speculating that someone else might have actually received those photos, Defendant asks us to view the evidence in the light *least* favorable to the State. That we cannot do. *State v. Anderson* does not preclude a jury from inferring receipt from both possession itself and other circumstantial evidence linking the defendant to the transmission. “[W]hen reasonable minds, acting within the limitations prescribed by the rules of law, might reach different conclusions, the evidence *must* be submitted to the jury.” *State v. Clark*, 183 N.C. 733, 734–35 (1922) (emphasis added). Because the State provided that additional evidence here, we hold that the trial court did not err in denying Defendant’s motion to dismiss Counts #1–#5 of 22 CR 252014-910 and Counts #3, #8 of 22 CR 252016-910.

2. Sexual Activity

Section 14-190.13 defines in relevant part § 14-190.17’s criminalized “sexual activity” element as either the “[t]ouching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, buttocks or breasts of a human female,” or the “lascivious exhibition of the genitals or pubic area of any person.” N.C.G.S. § 14-190.13(5)(c), (g) (ellipses omitted). The trial court instructed on both of these definitions.

a. Count Eight

We have defined *lascivious* as “tending to arouse sexual desire,” *State v. Corbett*, 264 N.C. App. 93, 100 (2019), and have held that any partial visibility of a minor’s pubic area meets the “lascivious exhibition” definition, *see State v. Shelton*, 293 N.C. App. 154, 158–59 (2024). As a matter of public policy, we broadly construe this statutory language “to provide minors with the maximum reasonably available protection from sexual exploitation.” *State v. Fletcher*, 370 N.C. 313, 329 (2017). As in *State v. Corbett*, the photograph here centers the victim’s naked body in a bedroom setting and exposes a portion of her pubic area. A reasonable juror could conclude that this image was “clearly intended to elicit a sexual response based on the context in which it was taken.” *Corbett*, 264 N.C. App. at 100. Thus, we hold that the trial court did not err in denying Defendant’s motion to dismiss Count #8 of 22 CR 252016-910 on these grounds.

b. Counts Four & Five

We note the State’s concession of error on Counts #4–#5 of 22 CR 252016-910 because neither source image depicts a “touching” of the areas specified in N.C.G.S. § 14-190.13(5)(c), (g). As noted above, the State must present substantial evidence that the material at issue depicts a minor engaged in “sexual activity” within the meaning of N.C.G.S. § 14-190.13(5). *Fritsch*, 351 N.C. at 379. Neither image shows the victim touching an enumerated area in an apparent act of sexual stimulation or abuse under (5)(c), or exhibiting her genitals or pubic area under (5)(g). The State failed to establish an essential element of second-degree sexual exploitation as to

Counts #4–#5. We hold that the trial court erred in denying Defendant’s motion to dismiss those two counts of 22 CR 252016-910 and thus vacate these two convictions and remand for resentencing on the seven remaining second-degree sexual exploitation convictions.³

B. Exclusions of Evidence

Second, Defendant argues that the trial court erred by excluding Taylor Cary’s proffered testimony under Rule 412 and by delimiting his cross-examination of the victim on that would-be testimony. Both challenges rest on the same premises: that Savannah made a false rape accusation against a different male in December 2017, and that Cary’s testimony would have established as much. We review these decisions only for abuse of discretion. *See State v. Hennis*, 323 N.C. 279, 285 (1988). Because these premises do not withstand the discretionary scrutiny afforded to trial courts, we disagree with Defendant.

1. Rule 412 Proffered Testimony

³ While both images at issue were taken by Savannah at Defendant’s request and transmitted to Defendant’s phone, and both images depict “sexually explicit nudity” as defined in N.C.G.S. § 14-190.13(6), the definition of “sexual activity” in N.C.G.S. § 14-19.13(5) is narrower under second-degree sexual exploitation as these counts were charged. Had the State charged the conduct underlying these two counts as taking indecent liberties with a child under N.C.G.S. § 14-202.1(a)(1), the analysis would change as Defendant’s solicitation of sexually oriented conduct from a minor for the purpose of arousing or gratifying sexual desire is the paradigmatic indecent liberty. *See State v. Slade*, 81 N.C. App. 303, 306–07 (1986); *State v. Every*, 157 N.C. App. 200, 205–06 (2003); *State v. Etheridge*, 319 N.C. 34, 49–50 (1987). The State’s charging decision, however, is not ours to revise.

For evidentiary purposes, *sexual behavior* is the “sexual activity of the complainant other than the sexual act . . . at issue in the indictment on trial.” Rule 412(a). The Rules exclude evidence on this discrete topic subject to four narrow exceptions, *id.* 412(b). Our Supreme Court recently confirmed that, where the proffered “evidence . . . falls squarely within this definition of sexual activity, we give effect to Rule 412’s plain language excluding the evidence of prior sexual abuse.” *State v. Washington*, 386 N.C. 265, 266 (2024). Rule 412 does not bar evidence of a prior *false* accusation of sexual activity because that “is not sexual activity.” *State v. McCarroll*, 336 N.C. 559, 563 (1994). But we have held that a trial court does not err by excluding evidence of a prior accusation where the proponent produces no evidence tending to show the accusation was false in fact. *See State v. Anthony*, 89 N.C. App. 93, 96–97 (1988).

As the trial court correctly recognized, Cary’s proffer described Savannah’s prior sexual conduct—not evidence tending to show that the victim fabricated her December 2017 accusation. Her contemporaneous belief of a coerced-consent encounter might have supported prosecution in the December 2017 investigation but does not establish per se the accusation’s falsity at Defendant’s later trial. The State’s contemporaneous decision to decline prosecution then proves nothing now: “[T]here are many reasons why charges . . . [may be] dropped.” *Anthony*, 89 N.C. App. at 96.

Unlike the defendants in *State v. Baron*, 58 N.C. App. 150 (1982), and *State v. Durham*, 74 N.C. App. 159 (1985), Defendant did not proffer evidence tending to show

the necessary falsity. And unlike *State v. Younger*, 306 N.C. 692 (1982), and *State v. Ginyard*, 122 N.C. App. 25 (1996), on which Defendant relies for his cross-examination argument, this case involves no prior sworn statement by the complainant, no evidence of an accusation withdrawn, and no consent defense.⁴ The trial court's Rule 412 ruling thus fell within its sound discretion.

2. Cross-Examination

The trial court's cross-examination limitation was similarly proper. Consistent with *State v. Martin*, 241 N.C. App. 602, 610 (2015), and *State v. Edmonds*, 212 N.C. App. 575, 580 (2011), it looked beyond Rule 412's four exceptions to consider the credibility of Cary's proffer and then conducted a Rule 403 balance as to the one point that arguably warranted impeachment: the victim's failure to mention Defendant during the 27 February 2018 CME. In response to this point, the trial court narrowly tailored its ruling to permit cross-examination on that specific inconsistency while excluding the balance of the proffer. Defense counsel put the question to Savannah before the jury, and Savannah answered. That approach was neither manifestly unsupported by reason nor arbitrary. *Hennis*, 323 N.C. at 285.

IV. Conclusion

For the reasons above, this Court holds that the trial court (1) did not err by denying his motion to dismiss seven of his nine counts of second-degree sexual

⁴ Consent is not a defense to statutory rape or statutory sex offense with a child fifteen years of age or younger. See N.C.G.S. §§ 14-27.25, -27.30.

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exploitation of a minor, (2) did not err by excluding the challenged witness's testimony as to the victim's previous rape accusation, and (3) did not err by delimiting the scope of the victim's cross-examination on that same subject, but (4) did err in part by denying his motion to dismiss at least those sexual-exploitation Counts #4–#5 of 22 CR 252016-910. Thus, this Court vacates in part Defendant's convictions for only these two latter counts and remands for resentencing on the seven remaining second-degree sexual exploitation convictions.

NO ERROR IN PART; ERROR IN PART; VACATED IN PART AND REMANDED.

Chief Judge DILLON and Judge FLOOD concur.

Report per Rule 30(e).