

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Colleton County
Honorable R. Lawton McIntosh, Circuit Court Judge
Appellate Case Tracking No. 2017-000785

RECEIVED

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SC Court of Appeals

The State,

Respondent,

vs.

Michael Anthony Bodison,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. The trial court did not err in denying Appellant's motion for a directed verdict because the State presented evidence Appellant used force or coercion to accomplish the sexual battery against his granddaughter.

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

The victim, a sixteen year old girl suffering from sickle cell trait and scoliosis, lived with Appellant, who was her grandfather, and other family members. (T.50-51; R.____). The victim's father was not in the house and the only male figure was her grandfather. She indicated she loved her grandfather, but was also afraid of him. (T.52; 65; R.____). The victim was in pain as a result of her sickle cell and had prescription ibuprofen from a doctor. When it ran out, she no longer had medication for the pain but received pain medication from Appellant. (T.56-57; R.____).

On night in early August, 2015, the rest of the victim's family went to church, but Appellant and the victim went for a car ride. (56; 58; R.____). During the car ride, the child victim secretly recorded Appellant talking to her. (T.60; State's Exhibit 2G video from phone; R.____). She began recording him because she was "fed up with it happening to me" and was concerned about the things Appellant was saying to her. (T.60; R.____).

During the car ride, Appellant told the victim "I'm doing what I'm doing cause I think a lot of you and trying to help you." (State's Exhibit 2G). He then tell her: "Going to make you a woman I want you to be a young lady and know everything about life; sex all the way down to everything." (State's Exhibit 2G, 00:49-01:03). Appellant then tells his sixteen year old granddaughter: "I want those shorts on with no panties." (State's Exhibit 2G, 01:40-01:43). Appellant then tells the victim "I got your back. I'm not going to hurt you and look out for you and everything." (State's Exhibit 2G, 01:46-01:51). Appellant then reminds his granddaughter to get on the shorts he wants her wearing with no panties. (State's Exhibit 2G, 03:20-03:25).

Appellant then again reminds her to get her shorts while he gets "the rest of the pills." (State's Exhibit 2G, 03:50-03:57). He then issues a warning to the victim: "I don't want nobody

to know where you get those damn pills . . . don't be running your God dang mouth.” (T.63; State’s Exhibit 2G, 03:58-04:02; R.____). Appellant then continued explaining his plan: “Going to make you a young lady in a good way.” (State’s Exhibit 2G, 04:44-04:48). He tells her he has a lot of things “to say and do.” (State’s Exhibit 2G, 04:51-04:53). Appellant again tells his granddaughter he wants her to “know from sex to everything else.” (State’s Exhibit 2G, 04:58-05:05). The recording concludes when they get to the house and Appellant instructs: “Run in the house, put your shorts on under that, pull your panties off. I want them off.” (State’s Exhibit 2G 05:57-06:05).

According to the victim, the conversation was the result of Appellant offering to give her pills in return for doing “things” to her. (T.64; R.____). She understood that the instructions regarding the shorts and panties was because Appellant “wanted to get to [her] private area easier.” (T.64; R.____). Appellant’s granddaughter said she put on the shorts, but left on her panties. She indicated she mostly complied because she was scared—“scared he might hurt [her] more than what he was going to do.” (T.65-66; R.____). She testified she expected Appellant to hurt her and that she felt “[p]ressured into something I didn’t want to do.” (T.66; R.____).

Appellant drove his granddaughter to the place where they went fishing. (T.68; R.____). Appellant handed the victim the pills, climbed into her “area” of the car, and started touching her. (T.69; R.____). Appellant touched his granddaughter under her shirt and inside her pants. She testified he touched her breasts under her bra and put his finger inside her vagina. (T.71-72; R.____). Appellant then took out his penis and put on a condom. He then climbed onto the victim in her seat and “forced it into [her].” (T.73; R.____). Appellant was able to get his penis inside his granddaughter’s vagina and continued until she pushed him off of her. (T.73-74; R.____).

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001). “On appeal from the denial of a directed verdict, [the Appellate] Court views the evidence and all reasonable inferences in the light most favorable to the State.” State v. Butler, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014). As the South Carolina Supreme Court reiterated: “[W]hen ruling on a directed verdict motion, the trial court views the evidence in the light most favorable to the State and must submit the case to the jury if there is “any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.”” State v. Bennett, 415 S.C. 232, 236-37, 781 S.E.2d 352, 354 (2016) (quoting State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924 (1955)). “Therefore, although the jury must consider alternative hypotheses, the court must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt.” Id. “Accordingly, in ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt.” Id.

ARGUMENT

I. The trial court did not err in denying Appellant's motion for a directed verdict because the State presented evidence Appellant used force or coercion to accomplish the sexual battery against his granddaughter.

Appellant, the sixteen year old victim's grandfather, contends the trial court erred in denying his motion for a directed verdict because the State failed to present evidence he used force or coercion to accomplish the sexual battery against his granddaughter. The State presented sufficient evidence to warrant sending the case to the jury for a determination of whether the granddaughter's consent was voluntary or was coerced by the relationship between her and her grandfather, as well as the actions and statements of Appellant.

A person is guilty of criminal sexual conduct in the third degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven:

(a) The actor uses force or coercion to accomplish the sexual battery in the absence of aggravating circumstances.

S.C. Code Ann. § 16-3-654(a) (Supp. 2016). The only element at issue in this case is whether Appellant used "force or coercion to accomplish the sexual battery." The South Carolina Supreme Court explained the requirement of "force or coercion:"

Criminal sexual conduct in the third degree requires that the sexual battery be accomplished through "force or coercion." Force and coercion as used in the statute, have basically the same meaning. They "mean to make a person ... follow a prescribed and dictated course; ... to inflict or impose: force one's will on someone."

State v. Hamilton, 276 S.C. 173, 178, 276 S.E.2d 784, 786 (1981) (citing American Heritage Dictionary, p. 513). The Court continued: "Therefore, criminal sexual conduct in any degree means 'that the sexual battery occurred under circumstances where the victim's consent was lacking.'" Id. (citing State v. Cox, 274 S.C. 624, 266 S.E.2d 784 (1980)).

The requirements of force or coercion were again examined by this Court in State v. Richardson, 358 S.C. 586, 595 S.E.2d 858, (Ct. App. 2004). In Richardson, the defendant “presented himself as someone who could provide significant financial assistance to [the victim’s] family and her church. . . . Based on [her] values, [the victim] was afraid that she would be punished if she did not do what Richardson asked her to do.” Id. at 592–93, 595 S.E.2d at 861. The defendant preyed on the victim’s fears “that her family and church would be deprived of Richardson’s assistance if she failed to comply with his requests. Additionally, she denied she was a willing participant.” Id.

This Court did not rely solely on her initial refusals to find coercion. Instead, this Court explained:

Based on this evidence, a jury could reasonably infer that Richardson used coercion to accomplish the sexual battery on [the victim]. [The victim] viewed Richardson as an authority figure who relied on religion to support his actions. This authority coupled with Richardson’s repeated threat to withhold his assistance could have intimidated [the victim] to the point of overcoming her will. See State v. Hardy, 104 N.C.App. 226, 409 S.E.2d 96, 98 (1991) (“**[A]uthority itself intimidates; the implicit threat to exercise it coerces.** Coercion ... is a form of constructive force.” (quoting State v. Etheridge, 319 N.C. 34, 352 S.E.2d 673, 681–82 (1987))).

Id. at 593, 595 S.E.2d at 861 (emphasis added). Furthermore, this Court found statements made by the defendant intending to convince the victim not to disclose the sexual relationship also have a coercive effect. Id.

Other courts have construed language in their statutes to include physical as well as mental or emotional means of compulsion or coercion. In Commonwealth v. Rhodes, 510 A.2d 1217 (Pa. 1986), the Pennsylvania Supreme Court examined the requirements of “forcible compulsion” and reasoned:

There is an element of forcible compulsion ... inherent in the situation in which an adult who is with a child who is younger, smaller, less psychologically and emotionally mature, and less sophisticated than the adult, instructs the child to submit to the performance of sexual acts. This is especially so where the child knows and trusts the adult. In such cases, forcible compulsion ... derives from the respective capacities of the child and the adult sufficient to induce the child to submit to the wishes of the adult ... without the use of physical force or violence or the explicit threat of physical force or violence.

Id. at 1227.

In State v. Etheridge, 352 S.E.2d 673 (N.C. 1987)¹, the North Carolina Supreme Court examined the requirement of a sexual assault in the second degree occur “by force and against the will of the other person.” The Court explained the requisite force may be established either by actual, physical force or by constructive force in the form of fear, fright, or coercion. Id. at 680. While the facts involved a parent and child, the analysis is certainly pertinent to the instant case when the grandfather was the central male figure in his granddaughter’s life. The Court explained:

Sexual activity between a parent and a minor child is not comparable to sexual activity between two adults with a history of consensual intercourse. The youth and vulnerability of children, coupled with the power inherent in a parent’s position of authority, creates a unique situation of dominance and control in which explicit threats and displays of force are not necessary to effect the abuser’s purpose.

Id. at 681. The Court continued: “As one commentator observes, force can be understood in some contexts as the power one need not use. Estrich, Rape, 95 Yale L.J. 1087, 1115 (1986). . . . In such cases the parent wields authority as another assailant might wield a weapon. The authority itself intimidates; the implicit threat to exercise it coerces. Coercion, as stated above, is a form of constructive force.” Id. at 681-682.

¹ This case was quoted with approval by this Court in Richardson, 358 S.C. at 593, 595 S.E.2d at 861.

Additionally, this Court should find issues involving consent, coercion, and use of force are quintessential jury questions. See e.g., State v. Fleming, 254 S.C. 415, 420, 175 S.E.2d 624, 627 (1970) (finding a determination of whether sexual intercourse happened with or without consent was an issue for the jury); State v. Burroughs, 328 S.C. 489, 495, 492 S.E.2d 408, 411 (Ct.App.1997) (finding trial court did not err in denying defendant's motion for a directed verdict in case involving criminal sexual conduct, third degree, given credibility question was created where defendant claimed the encounter was consensual and the victim testified she refused and was in fear for her life); Parrish v. State, 494 So.2d 705, 709 (Ala.Crim.App.1985), quoting Hutcherson v. State, 441 So.2d 1048, 1052 (Ala.Crim.App.1993) (“Issues involving ‘consent, force and intent to gratify the sexual desire of either [party]’ are generally questions for the trier of fact.”).

The evidence presented in this case is sufficient for a jury to reasonably infer Appellant used coercion to accomplish the sexual battery on his granddaughter. Appellant, a grandfather the victim indicated she loved and also feared, waited until everyone had left to take the victim alone. Knowing she suffered pain as a result of her sickle cell trait and that she was without pain medication, he offered to give her pain medication in exchange “for doing things to [her.]” (T.63-64; R. ____). He repeatedly informed her he planned to “make [her] a woman” and wanted her to know “everything about life” including sex. He instructed her multiple times to put on shorts and leave off her underwear so he could have easy access to her vagina. She testified the only reasons she complied were because she was “scared he might hurt me more than what he was going to do” and she was “[p]ressured into something [she] didn’t want to do.” (T.65-66; R. ____). He also warned her “I don’t want nobody to know where you get those damn pills . . .

don't be running your God dang mouth." (State's Exhibit 2G). She testified Appellant "forced" his penis inside her and that she did not willingly participate. (T.73; 77; R. ___).

Appellant used his position as the only male figure in his granddaughter's life, as well as his knowledge of her need for his pain medication, to coerce his granddaughter into having sex with him in exchange for the pills. He isolated her from everyone else, explained he planned to make a woman out of her, told her what to wear so he could have easy access to the victim's private area, explicitly and strenuously warned her to not run her "God dang mouth" about where she got the pills, and then took advantage of her fear and pain by having sex with her in exchange for the pills. The fact he maintains she did not explicitly refuse his advances, especially after his significant use of mental and emotional "force or coercion" against her does not preclude sending this case to the jury. There was ample evidence from which a jury could reasonable infer coercion was used based on the fear instilled in the victim by her grandfather who was manipulating her and using her pain as a means of fulfilling his desire to have "make [her] a woman" by having sex with her.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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May 8, 2018

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Colleton County
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The State,

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Michael Anthony Bodison,

Appellant.

PROOF OF SERVICE

I, Anne A. Mueller, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing copies of the same in the United States mail, postage prepaid, addressed to:

David Alexander, Esquire
S.C. Commission on Indigent Defense
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I further certify that all parties required by Rule to be served have been served.
This 8th day of May, 2018.



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MAY 08 2018
SC Court of Appeals

RE: State v. Michael Bodison
Appellate Case Tracking No. 2017-000785

Dear Mr. Alexander:

I am enclosing copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case. If you have any questions, please do not hesitate to contact me.

Sincerely,

William M. Blich, Jr.
Assistant Attorney General
S.C. Bar No. 15608

Enclosures

cc: Honorable Jenny A. Kitchings (original and one enclosed)
Victim Advocacy Division