NO. COA02-116

NORTH CAROLINA COURT OF APPEALS

Filed: 17 September 2002

STATE OF NORTH CAROLINA

v. Forsyth County
Nos. 00 CRS 013021, 028695

RICKY DENARD COSTON

Appeal by defendant from judgment entered 12 September 2001 by Judge Lindsey Davis in Superior Court, Forsyth County. Heard in the Court of Appeals 26 August 2002.

*Attorney General Roy Cooper, by Assistant Attorney General Neil Dalton, for the State.*

*Kay S. Murray for defendant-appellant.*

McGEE, Judge.

Defendant was indicted on 17 July 2000 for second degree kidnapping and being an habitual felon. The State presented evidence at trial which tended to show that defendant called his wife, Nujma Abdul Smith (Smith), and asked her to drive over to his grandmother's house on 16 March 2000. Earlier in the morning, Smith had tried to locate defendant and found his truck parked at a local hotel. Smith was angry with defendant for staying out all night. She left a note on defendant's truck stating that she had reported the truck as stolen. Upon arriving at the house, Smith

and defendant began to argue, with defendant explaining why he had not come home the night before. Defendant's mother left, and defendant's mood began to change. Smith testified that defendant told her that he believed she liked it when he got violent, and defendant began to choke Smith and punched her in the face. Smith was in the driver's seat of her car at the time and she jumped into the passenger's seat to get away from defendant. Defendant pulled Smith out of the car and began hitting and kicking her. Smith yelled for help. She got up and tried to get back in the car, but defendant entered the car and got into the driver's seat. Defendant ordered Smith to drive, but she refused. Defendant began driving the car while the bottom part of Smith's body was hanging out of the car. Smith testified that she tried to get away, but defendant had her by her shirt and pulled her back into the car.

Smith told defendant she wanted to go to the hospital and to school, but defendant refused. Smith testified that defendant told her he was going to drown her, and that when he pulled up to a field, she was scared because she thought he would drown her. Defendant drove to a gas station and very briefly went into the store. Smith testified that she stayed in the car because she was too weak to get out. Defendant drove the car back to his grandmother's house, and again Smith stayed in the car.

A police officer drove by, but Smith testified that she did not do anything to get the officer's attention because defendant had threatened to hurt her if she did. Defendant came back to the car and told Smith he wanted to have sex with her. Smith testified

that she did not want to have sex with defendant but did so because she was afraid of what would happen if she refused. Finally, defendant took Smith to the hospital.

Defendant was found guilty by a jury of second degree kidnapping. Defendant admitted his habitual felon status. Defendant was sentenced to a term of 108 to 139 months imprisonment. Defendant appeals.

Defendant first argues that the trial court erred in denying his motion to dismiss because there was insufficient evidence that he kidnapped Smith for the purpose of terrorizing her. Defendant contends that the acts relied upon by the State to show that defendant terrorized her were completed before the removal or restraint. Specifically, defendant argues that the assault ended before he drove away with Smith. Additionally, defendant contends that the evidence presented by the State did not rise to the level of terror required by the kidnapping statute. We disagree.

In order to survive a motion to dismiss, the State must present substantial evidence of each essential element of the charged offense. *State v. Cross*, 345 N.C. 713, 716-17, 483 S.E.2d 432, 434 (1997). "'Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.'" *Id.* at 717, 483 S.E.2d at 434 (quoting *State v. Olson*, 330 N.C. 557, 564, 411 S.E.2d 592, 595 (1992)).

The elements charged in defendant's indictment for second degree kidnapping were (i) removal, (ii) restraint, and (iii) for the purpose of terrorizing Smith. "Terrorizing is defined as 'more

than just putting another in fear. It means putting that person in some high degree of fear, a state of intense fright or apprehension.'" *State v. Davis*, 340 N.C. 1, 24, 455 S.E.2d 627, 639, *cert. denied*, 516 U.S. 846, 133 L. Ed. 2d 83 (1995)(quoting *State v. Moore*, 315 N.C. 738, 745, 340 S.E.2d 401, 405 (1986)). In the case before us, Smith testified that she tried to get away, but defendant pulled her back into the car. Defendant then told her he was going to drown her, knowing that Smith could not swim. Smith stated that she was scared by defendant's threats. Smith further testified that when they went back to defendant's grandmother's house, defendant left her in the car, but she did not attempt to contact a police officer who drove by because defendant threatened to hurt her if she did, and Smith believed him. Finally, defendant told her he wanted to have sex with her, and she agreed. Smith testified that she did not want to have sex with defendant, but did so because she feared that if she refused, "something would have happened." We conclude that this evidence, when taken in the light most favorable to the State, was sufficient to prove that defendant restrained and removed Smith for the purpose of terrorizing her. See *State v. Williams*, 127 N.C. App. 464, 468, 490 S.E.2d 583, 586 (1997) (defendant's pointing of gun at victim during restraint plus threats to kill are sufficient evidence of intent to terrorize). Accordingly, this assignment of error is overruled.

Defendant next argues that the combined use of the Structured Sentencing Law and the Habitual Felon Act constitutes double punishment for the same offense in violation of the double jeopardy

clause of the United States Constitution. However, as defendant acknowledges, his argument was rejected by this Court in *State v. Brown*, 146 N.C. App. 299, 552 S.E.2d 234, *disc. review denied, appeal dismissed*, 354 N.C. 576, 559 S.E.2d 186 (2001), and we are bound by *Brown*. *See In the Matter of Appeal from Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989) (where one panel of Court of Appeals "has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court"). We therefore find no error.

No error.

Judges WYNN and CAMPBELL concur.

Report per Rule 30(e).