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NO. COA11-320
NORTH CAROLINA COURT OF APPEALS

Filed: 20 September 2011

STATE OF NORTH CAROLINA

v.

Mecklenburg County
Nos. 08 CRS 201428-29, 201433

LATRON HOOVER

Appeal by Defendant from judgments entered 24 May 2010 by Judge Forrest D. Bridges in Mecklenburg County Superior Court. Heard in the Court of Appeals 6 September 2011.

Attorney General Roy Cooper, by Assistant Attorney General Amanda P. Little, for the State.

Winifred H. Dillon, for Defendant-appellant.

HUNTER, JR., Robert N., Judge.

Latron Hoover ("Defendant") appeals from judgments entered upon a jury verdict finding him guilty of second-degree kidnapping, robbery with a dangerous weapon, and conspiracy to commit robbery with a dangerous weapon. The trial court consolidated defendant's kidnapping and robbery convictions for the purposes of judgment, and sentenced defendant to a term of 117 to 150 months imprisonment. The court sentenced defendant

to a consecutive term of 45 to 63 months imprisonment for his conspiracy conviction. Defendant gave notice of appeal in open court.

Defendant argues the trial court erred in denying his motion to dismiss the charge of second-degree kidnapping because the State failed to present substantial evidence that the restraint and removal of the victim was not an inherent part of the armed robbery. Because we find the State presented sufficient evidence to withstand a motion to dismiss, we find no error.

The State's evidence tended to show the following: On the evening of 28 December 2007, Allister Statia was at home in Charlotte with his children. Mr. Statia was expecting his teenaged neighbor, known as "KT," to stop by to pay for a cell phone Mr. Statia had purchased for him. KT arrived with defendant and another male, neither of whom Mr. Statia recognized. Defendant and the other man initially stayed on the street while KT approached Mr. Statia, who was standing in the front yard talking on his cell phone. After KT and Mr. Statia began talking, defendant and the other male approached and pointed guns at Mr. Statia, telling him to move into his garage. As Mr. Statia moved into his garage, KT also drew a gun.

When he reached the garage, Mr. Statia was made to lie down in a prone position while Defendant and the two others pointed

their guns at his head. The three men went through Mr. Statia's pockets and took his money and cell phone. When Mr. Statia's seven-year-old son came into the garage, one of the men grabbed the child, put a gun to his head, and threw him to the ground next to Mr. Statia. Defendant and the other man went to search the house and came back with Mr. Statia's daughter and her friend. After Mr. Statia asked the men not to hurt his children, KT kicked him in the mouth.

While Mr. Statia and his son were still lying on the floor, the garage door began to open. Mr. Statia could see that it was his girlfriend, but KT could not, and asked Mr. Statia who it was. Mr. Statia said it was the police. Defendant, KT, and the other man ran back into the house and then towards KT's home. Mr. Statia picked up his son and told everyone to run, which they did. Defendant was arrested on 11 January 2008.

To survive a motion to dismiss, the State must present substantial evidence of each essential element of the charged offense and that Defendant is the perpetrator of the offense. *See State v. Cross*, 345 N.C. 713, 716-17, 483 S.E.2d 432, 434 (1997). "In ruling on the motion to dismiss, the trial court must view all of the evidence . . . in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor." *Id.* at 717, 483 S.E.2d at 434. "If there is more than a scintilla

of competent evidence to support the allegations in the warrant or indictment, it is the court's duty to submit the case to the jury." *State v. Horner*, 248 N.C. 342, 344-45, 103 S.E.2d 694, 696 (1958).

"Under N.C.G.S. 14-39, a defendant commits the offense of kidnapping if he: (1) confines, restrains, or removes from one place to another; (2) a person; (3) without the person's consent; (4) for the purpose of facilitating the commission of a felony." *State v. Mann*, 355 N.C. 294, 302, 560 S.E.2d 776, 782, *cert. denied*, 537 U.S. 1005, 154 L. Ed. 2d. 403 (2002). When a defendant is charged with kidnapping in connection with the commission of another felony, the State must present substantial evidence that the confinement, restraint or removal was not an inherent part of the other felony charged. See *State v. Fulcher*, 294 N.C. 503, 523, 243 S.E.2d 338, 351 (1978). The determinative question is "whether the kidnapping charge is supported by evidence from which a jury could reasonably find that the necessary restraint for kidnapping exposed [the victim] to greater danger than that inherent in the armed robbery itself[.]" *State v. Stephens*, 175 N.C. App. 328, 336, 623 S.E.2d 610, 615 (2006) (citations and quotation marks omitted).

Defendant argues that the restraint and harm Mr. Statia suffered was an inherent part of the robbery. We disagree. Here, the restraint necessary and inherent to the armed robbery

of Mr. Statia was met when defendant and his accomplices threatened Mr. Statia with their guns outside the garage. The robbers went beyond the restraint inherent to the robbery when they forced Mr. Statia into the garage, made him lie down on the floor, and then kicked him in the mouth when he pleaded for the safety of his children. These acts exceeded the level of force necessary to complete the robbery. See *State v. Pigott*, 331 N.C. 199, 210, 415 S.E.2d 555, 561 (1992) ("[A]ll the restraint necessary and inherent to the armed robbery was exercised by threatening the victim with the gun. When [the] defendant bound the victim's hands and feet, he exposed [the victim to a] greater danger than that inherent in the armed robbery itself." (citation and quotation marks omitted)); see also *State v. Boyce*, 361 N.C. 670, 674-75, 651 S.E.2d 879, 882-83 (2007) (holding sufficient evidence of restraint apart from that necessary for a robbery existed where the defendant prevented the victim's escape by pulling her back into her home prior to the onset of the robbery). Accordingly, we hold the trial court properly denied Defendant's motion to dismiss the charge of the second-degree kidnapping of Mr. Statia.

No error.

Judges MARTIN and THIGPEN concur.

Report per Rule 30(e).