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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-549

Filed: 19 December 2017

Duplin County, Nos. 15CRS051942-43

STATE OF NORTH CAROLINA

v.

ADRIAN LAMONT BONEY, Defendant.

Appeal by Defendant from judgments entered 7 October 2016 by Judge Phyllis M. Gorham in Duplin County Superior Court. Heard in the Court of Appeals 7 December 2017.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Kimberley A. D'Arruda, for the State.

William D. Spence for the Defendant.

DILLON, Judge.

Adrian Lamont Boney (“Defendant”) appeals from judgments entered upon jury verdicts finding him guilty of second degree kidnapping and assault on a female. We find the verdicts are supported by sufficient evidence and thus hold the court did not err by denying Defendant’s motion to dismiss.

I. Background

Opinion of the Court

The State presented evidence tending to show that during the morning of 19 September 2015, Dennis Chester accepted the invitation of Ms. Claudine Washington to come to the mobile home she shared with her daughter (“Fran”) for a cup of coffee. Fran answered the door and invited him to enter. Mr. Chester sat in a chair, watched television and dozed off. Mr. Chester and Fran were the only people in the mobile home.

A short time later, Mr. Chester heard a door open and close, and saw a man, whom he identified in court as Defendant, walk in and ask Fran for “his money.” He saw Defendant walk down a hallway and into the kitchen. Defendant came back to the living room and again asked Fran for money. “[S]eeing how things were getting kind of heated[,]” Mr. Chester decided to leave the residence. As Mr. Chester walked toward the front door, followed by Fran, Defendant stepped in front of the door and told Fran that she was not going anywhere. Mr. Chester turned and walked out the back door instead. As Mr. Chester walked out of the house, he observed two burners of the stove were lighted; and he saw Defendant throw a paper bag on the stove.

Mr. Chester saw a neighbor two houses down who was sitting in a vehicle and asked her to call 911 because he was afraid Defendant was going to hurt Fran. He stood around and watched the mobile home. About seven to eight minutes later, he observed smoke coming out of the mobile home and saw Fran come out the front door with Defendant right behind her. Defendant grabbed Fran by the neck and walked

her back into the mobile home. Mr. Chester next saw Fran and Defendant walk out of the home after fire and law enforcement personnel arrived in response to the 911 call and put out the fire.

A deputy, responding to a dispatch, arrived at the scene. Firefighters who had already put out the fire identified Defendant as a suspect in starting the fire. The deputy detained Defendant in his patrol car. He also interviewed Fran, who was crying. She stated that Defendant put a paper bag on the stove and turned it on, and also removed a blanket from her and placed it on the stove. She also stated that Defendant would not let her leave the residence.

Fran testified that on that morning, Defendant called her on the telephone and claimed that she owed money to him. Defendant later came to her residence and “jumped on” her as she was laying on the couch. Defendant went into the kitchen, turned on the burners of the stove, and sprinkled sugar that was in a paper bag on the stove. Defendant came back and pulled off the comforter covering Fran and threw it on the stove. The comforter caught fire. She ran out of the house but Defendant tackled her to the ground, grabbed her by the neck and forced her to go back inside the smoke-filled house. Defendant told her that they were “going to die together.” She then heard a siren. Firefighters came into the house and took her out. She later received treatment for smoke inhalation.

Opinion of the Court

One of the firefighters testified that he entered the smoke-filled mobile home and observed the smoke coming from the electric stove and a smoldering bed comforter atop the stove. He removed the comforter and turned off the stove.

A certified fire and arson investigator with the Duplin County Sheriff's Department testified that he went to the mobile home on 19 September 2015. Upon arrival, he was directed to Fran, whom he described as follows:

She appeared terrified. She was physically shaking tremendously. She was in tears. She couldn't – she couldn't even control herself long enough to speak to me. She was crying. There were tears streaming down her face. She had snot running out of her nose. Her voice was shaking so bad that I literally had to spend about 10 to 12 minutes just putting my arm – my hand on her and getting her to calm down. I had to keep telling her to take some deep breaths. I even thought she was going to pass out. She was just that caught up in crying and sniffing and trying to catch her breath. And so once she was finally able to calm down, after 10 or 12 minutes of me talking to her, she was able to tell me what happened.

Fran told the officer that she and Mr. Chester were inside the residence when Defendant came in through the front door, punched her in the mouth, and demanded that she give him \$20. The officer observed that Fran's left cheek was swollen. Fran further related that she and Mr. Chester got up to leave but Defendant blocked the door. Defendant then walked into the kitchen of the single-wide mobile home, poured sugar on the stovetop, turned on the burners, and placed a paper bag on the burner. The paper bag caught fire and the mobile home began to fill with smoke, Defendant

snatched a blanket from Fran and threw it on the stove. She and Chester ran out of the mobile home. Defendant chased after her and tackled her to the ground. Defendant dragged her back into the mobile home. While back inside the mobile home, Defendant punched her again and demanded money from her. Defendant called someone on the telephone and told the person that he had set the house on fire, and “[i]f she don’t give me the money, I’m gonna take it to the next level.” Fran’s phone then rang. Defendant allowed her to answer the call, which was from her neighbor, who told her that she would call 911. Fran told Defendant that 911 had been called and that he should leave, but Defendant refused.

The jury found Defendant guilty of (1) second degree kidnapping for the purpose of terrorizing and (2) assault on a female. The court sentenced Defendant to imprisonment for 23 to 37 months for the former offense and 150 days for the latter offense, to run consecutively. Defendant gave notice of appeal in open court.

II. Analysis

The sole question presented for decision is whether the court erred by denying Defendant’s motion at the close of the evidence to dismiss the charge of second degree kidnapping. “Upon defendant’s motion for dismissal, 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. Fritsch*,

351 N.C. 373, 378, 526 S.E.2d 451, 455 (2000). “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *State v. Smith*, 300 N.C. 71, 78-79, 265 S.E.2d 164, 169 (1980). “In making its determination, the trial court must consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor.” *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994). “This Court reviews the trial court’s denial of a motion to dismiss *de novo*.” *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007).

The crime of kidnapping is defined in pertinent part as follows:

Any person who shall unlawfully confine, restrain, or remove from one place to another, any other person 16 years of age or over without the consent of such person . . . shall be guilty of kidnapping if such confinement, restraint or removal is for the purpose of . . . (3) Doing serious bodily harm to or terrorizing the person so confined, restrained or removed[.]”

N.C. Gen. Stat. § 14-39(a)(3) (2015). Kidnapping is second degree if the person kidnapped was released in a safe place and was not seriously injured or sexually assaulted. N.C. Gen. Stat. § 14-39(b).

Defendant contends the evidence is insufficient to establish that the confinement, restraint or removal of Fran was for the purpose of terrorizing her or that she was, in fact, terrorized. We disagree.

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. Moore*, 315 N.C. 738, 745, 340 S.E.2d 401, 405 (1986). In determining whether the evidence is sufficient to support a conclusion that the defendant acted with this purpose, “the test is not whether subjectively the victim was in fact terrorized, but whether the evidence supports a finding that the defendant’s purpose was to terrorize her.” *Id.* “The presence or absence of the defendant’s intent or purpose to terrorize [the victim] may be inferred by the factfinder from the circumstances surrounding the events constituting the alleged crime.” *State v. Baldwin*, 141 N.C. App. 596, 605, 540 S.E.2d 815, 821 (2000).

We conclude that the evidence, viewed in the light most favorable to the State, was sufficient for a jury to reasonably conclude that that Defendant’s purpose in restraining or confining Fran was to terrorize her.

We hold Defendant received a fair trial, free of prejudicial error.

NO ERROR.

Chief Judge McGEE and Judge STROUD concur.

Report per Rule 30(e).