

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2019-KA-00928-SCT

LOUIS WINSTON SCOTT

v.

STATE OF MISSISSIPPI

DATE OF JUDGMENT: 05/17/2019
TRIAL JUDGE: HON. JOHN R. WHITE
TRIAL COURT ATTORNEYS: JOSHUA SHEY WISE
KELLY LEE MIMS
KYLE DAVID ROBBINS
WILLIAM C. BRISTOW
COURT FROM WHICH APPEALED: LEE COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT: OFFICE OF STATE PUBLIC DEFENDER
BY: GEORGE T. HOLMES
MOLLIE MARIE McMILLIN
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: ALLISON ELIZABETH HORNE
DISTRICT ATTORNEY: JOHN WEDDLE
NATURE OF THE CASE: CRIMINAL - FELONY
DISPOSITION: AFFIRMED - 11/05/2020
MOTION FOR REHEARING FILED:
MANDATE ISSUED:

BEFORE RANDOLPH, C.J., ISHEE AND GRIFFIS, JJ.

ISHEE, JUSTICE, FOR THE COURT:

¶1. Using a cell-phone app that simulated a flashing police light, Louis Scott impersonated an undercover police officer and pulled over a young woman late at night. Scott approached the woman's vehicle and threatened her with a knife through the car window, but the woman escaped by driving away suddenly. Based on this act, Scott was

convicted of attempted kidnapping, and evidence was adduced that Scott had kidnapped and raped another young woman later the same evening.

¶2. On appeal, Scott contends that evidence of the second attack was substantially more prejudicial than probative under Mississippi Rule of Evidence 403. This argument is without merit, since Scott's kidnapping and rape of the second victim was highly probative of his intent with regard to the attempted kidnapping charge. Scott also contends, for the first time on appeal, that his indictment was defective because it failed to specifically allege Scott failed in the kidnapping attempt. This Court has held in the past that such allegation is not required. We affirm Scott's conviction and sentence.

FACTS

¶3. Amber Williams testified that around 1:30 a.m. on August 26, 2017, she left the gym and started driving toward the McDonald's in Saltillo, Mississippi. A black car pulled behind her, flashing red and blue lights. Williams assumed it was an undercover law-enforcement officer and pulled over to the side of the road. The black car drove up next to Williams's vehicle with its passenger-side window down, and the man inside yelled at Williams to "slow it down." The man was holding a cell phone by his head, and Amber no longer saw the flashing lights. The black vehicle continued down the road and turned into a Dollar General parking lot.

¶4. Williams drove past the Dollar General and saw the black car sitting with its headlights on. Williams had decided to go home, but as she passed, the black car pulled out

and followed her. Williams was careful to drive below the speed limit, but once again she saw red and blue flashing lights, and she pulled over again. This time, the black car pulled over behind her. Williams watched the driver exit the car in her rearview mirror. He was wearing a heavy jacket, camouflage skull cap, and gloves, which Williams thought was unusual since it was August, and the weather was warm. The man had something in his hand, which Williams initially believed was a gun. Williams suspected the man was not an undercover police officer and started to “panic.” She reached for her pepper spray and tried to roll up her window, but the man got to her window “too fast.” The man stuck a knife against Williams’s shoulder and said, “Don’t move or I’ll [expletive] cut you.”

¶5. At that point, Williams realized her car was still in drive and that she was stopped only because she was holding the brake pedal down. Williams leaned as far away from the man as she could and drove away quickly. Once she was sure the man was not following her, Williams called the police. Officers from the Lee County Sheriff’s Department took a report from Williams that night. After she got home, Williams posted about her experience on Facebook to warn others. By the next morning, Williams’s post had been shared two or three thousand times.

¶6. Investigators in neighboring Union County became aware of Williams’s incident and noted the similarities to a crime committed against a woman in Union County the same night. The descriptions of the perpetrator’s appearance, dress, and vehicle were similar, and both cases involved the use of flashing red and blue lights to impersonate a police officer. In the

Union County incident, the victim had been kidnapped at knifepoint and raped.

¶7. Law enforcement received a tip from a confidential informant that Scott was involved. Scott matched the general description of the perpetrator. An officer then drove by Scott's residence and saw a black car consistent with the one described by both victims. Investigators recorded Scott's voice during a traffic stop, and both victims identified Scott's voice as the voice of their attacker. A warrant was issued for Scott's arrest, and Scott was apprehended hiding in a waist-high bean field about five miles from his home. He was arrested and taken into custody the same day.

¶8. Following Scott's arrest, substantial incriminating evidence was discovered. A forensic examination of Scott's cell phone revealed he had downloaded an application called "Free Police Light App" on the night of the crimes. An officer tested the application and confirmed that the flashing lights could be seen over a vehicle's headlights. A dark coat, black gloves, tennis shoes, and plaid shorts were found in Scott's car, consistent with both victims' descriptions of the perpetrator's attire. A receipt from a gas station near the first incident was found in Scott's vehicle, timestamped at 11:00 p.m. on August 25, 2017. Scott was identified on video surveillance at the gas station purchasing a box of L&M cigarettes, consistent with the second victim's testimony that her attacker had a pack of red and white cigarettes in his cup holder. Further, Scott was seen removing a dark colored coat while still sitting inside his vehicle before entering the gas station. Scott's vehicle was identified in surveillance footage at 1:45 a.m. on August 26, 2017, and was seen following the second

victim out of the parking lot just before her abduction. Scott's vehicle also did not have a license plate at that time, consistent with the second victim's testimony. Finally, a GPS device in Scott's vehicle placed it at the scene of Williams's attempted kidnapping and the second victim's kidnapping and rape.

¶9. Scott called his ex-wife to testify as an alibi witness. She testified that Scott was asleep on her porch between 11:00 p.m. and 12:00 a.m. on the night of August 25, 2017. The jury convicted Scott of attempted kidnapping. Scott had two prior convictions for sexual battery and was found to be a habitual offender under Mississippi Code Section 99-19-83 (Rev. 2015). He was sentenced to life without the possibility of parole.

DISCUSSION

1. Admissibility of the Second Attack

¶10. "Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." MRE 404(b)(1). But such "evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." MRE 404(b)(2).

¶11. Scott concedes that the trial court did not err by admitting evidence of the second incident under the complete-story or *res gestae* exceptions to the general rule against admitting evidence of the defendant's prior bad acts. *See* MRE 404(b)(2). This Court has held "that evidence of other crimes or bad acts is admissible to tell the complete story so as

not to confuse the jury.” *Bell v. State*, 963 So. 2d 1124, 1131 (Miss. 2007) (citing *Ballenger v. State*, 667 So. 2d 1242, 1257 (Miss. 1995)). Evidence of other bad acts is also admissible “where another crime or act is ‘so interrelated [to the charged crime] as to constitute a single transaction or occurrence or a closely related series of transactions or occurrences’” *Id.* (first alteration in original) (quoting *Duplantis v. State*, 644 So. 2d 1235, 1246 (Miss. 1994)).

¶12. We find this issue to be without merit. Clearly, the evidence of Scott’s attacking another woman that night was prejudicial. But it was not *unfairly* prejudicial. Scott’s attack on the victim in this case was unsuccessful, and he was charged with attempted kidnapping. The key element of attempt is intent, and so Scott’s intent in the abortive first attack was at issue. What Scott did to the second victim following his second assault, which he completed, was highly probative of what he would have done to the first victim had she not escaped. Scott’s identity was also at issue, and the second attack was probative on that point as well, given the shared modus operandi. *See* MRE 404(b). Moreover, the trial court made efforts to limit the prejudicial effect of the testimony; it instructed the prosecution not to present the lurid details of the second attack to avoid inflaming the jury. And it gave a limiting instruction before allowing the evidence; the court told the jury it was only to consider the other acts evidence “for the limited purpose of establishing identity, intent, or a common plan or scheme.” The Court repeated that admonition when it instructed the jury at the close of the case.

¶13. We find that this issue is without merit.

2. Sufficiency of Scott's Indictment

¶14. Scott next argues that his indictment was insufficient because it failed to include an essential element of the crime of attempt, that the attempt failed. Scott's indictment alleged, in relevant part, that Scott

did willfully, unlawfully and feloniously without lawful authority attempt to kidnap, forcibly seize and/or confine Amber Williams with intent to cause her to be confined or imprisoned against her will by directing her to not move and threatening to cut her, in violation of Mississippi Code Annotated, Section 97-3-53;

¶15. Scott contends that failure is an essential element of attempt. But this Court has not required it to be alleged in indictments. In *Maxie v. State*, 330 So. 2d 277, 277-78 (Miss. 1976), this Court held that an indictment under Mississippi Code Section 97-1-7 "must set forth two elements: (1) the intent to commit the offense, and (2) an overt act toward its commission." The *Maxie* Court noted that Section 97-1-7 in the Code of 1972 was "substantially unchanged since Hutchinson's Code of 1848." *Id.* at 277. To this day, Section 97-1-7(1) remains, in all material respects relevant to this case, identical to Section 97-1-7 in the 1972 Code. *Maxie* cited *Ford v. State*, 218 So. 2d 731 (1969), which itself noted the same holding under substantially the same statutory definition of attempt in *Miller v. State*, 130 Miss. 730, 95 So. 83 (1923). *Miller* had quoted with approval *Hogan v. State*, 39 So. 464, 465 (Fla. 1905), that it is "not necessary to allege failure in the attempt" *Miller*, 95 So. at 84.

¶16. So far as we are aware, this Court has not been called on to reaffirm this line of cases

since 1976. The Court of Appeals, however, has done so repeatedly and has held that the use of the word “attempt” is, itself, sufficient to put the defendant on notice that the attempt failed. *E.g.*, *Neal v. State*, 936 So. 2d 463, 467 (Miss. Ct. App. 2006); *Spearman v. State*, 58 So. 3d 30, 36 (Miss. Ct. App. 2011); *Glenn v. State*, 996 So. 2d 148, 155-56 (Miss. Ct. App. 2008).

¶17. Scott largely fails to acknowledge these authorities, and he has presented this Court no compelling reason to abandon them. This issue is without merit.

3. Constructive Amendment of Scott’s Indictment

¶18. Finally, Scott contends that the circuit court erred by constructively amending his indictment, since the circuit court specifically instructed the jury that it had to find Scott had failed in his attempt. The jury instruction properly stated the law, and, as we have previously held, the indictment put Scott on notice of the allegations against him. Thus, we find no constructive amendment of Scott’s indictment and no error.

¶19. **AFFIRMED.**

RANDOLPH, C.J., KITCHENS AND KING, P.JJ., COLEMAN, MAXWELL, BEAM, CHAMBERLIN AND GRIFFIS, JJ., CONCUR.