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NO. COA07-993

NORTH CAROLINA COURT OF APPEALS

Filed: 20 May 2008

STATE OF NORTH CAROLINA

v.

Harnett County  
Nos. 01 CRS 920;  
01 CRS 4612

WILLIAM O'NEILL MCDUGALD

Appeal by defendant from judgments entered 14 November 2001 by Judge Wiley F. Bowen in Harnett County Superior Court. Heard in the Court of Appeals 4 March 2008.

*Attorney General Roy A. Cooper, III, by Assistant Attorney General M. Elizabeth Gutman, for the state.*

*Appellate Defender Staples Hughes, by Assistant Appellate Defender Emily H. Davis, for defendant-appellant.*

JACKSON, Judge.

William O'Neill McDougald ("defendant") appeals the trial court's denial of his motion to dismiss the charge of second-degree kidnapping. For the following reasons, we hold no error.

On 2 February 2001, at approximately 8:30 p.m., seventeen year old Patrice Ann Howes ("Howes") was babysitting for her cousin when two of her male friends from school, Jason Criswell ("Criswell") and Chris Griffith ("Griffith"), arrived. Howes had a crush on Criswell.

Criswell, Griffith, and Howes watched a birthday video on the porch. Criswell and Griffith eventually left, but returned at approximately 11:30 p.m. with Griffith's brother, Eddie, and defendant, who was over thirty years old. The four males were at Howes' house for only a short time and all but Criswell stayed outside because Howes' dog was barking at their dogs. Howes was introduced to defendant, whom she had seen around the neighborhood, but did not know. Howes informed the males that it was getting late and asked them to leave. They then left.

Next, Howes used the restroom and went to the laundry room to do some laundry. While Howes was doing her laundry, there was a knock on the back door, located in the laundry room. Howes could not determine who was at the back door, so she opened it, and found defendant there. Defendant tried to talk to Howes about Criswell, telling her that Criswell was a "jerk" and "no good." He also told her that she was better off with him, and that she was a beautiful girl who could "get anybody."

When Howes asked defendant to leave, he did not. Howes and defendant each had a hand on the back door, and when Howes attempted to push defendant back, he stepped into the house and continued to try to talk to Howes. At this point, Howes began cursing at defendant, as she was angered by the fact that he had come into the house. Defendant slapped Howes in the face, closed the back door, closed the laundry room door, picked Howes up, placed her on top of the washer, turned the lights out, and choked

her. Howes was afraid that defendant was going to rape her, and "just sat there and cried."

Defendant continued to slap Howes and choke her because she still was crying. At some point he tried to hug Howes, and turned the light back on, saying, "now you can identify me to the police." He tried to turn the light off again, but Howes fought with him to keep it on. When her dog started to bark, indicating that her cousin was home, defendant opened the laundry room door, then fled through the back door.

Defendant argues that his motion to dismiss the charge of second-degree kidnapping should have been granted, because the State failed to prove that he had the intent to terrorize Howes. We disagree.

When ruling on a defendant's motion to dismiss a charge, the trial court must determine 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." *State v. Powell*, 299 N.C. 95, 99, 261 S.E.2d 114, 117 (1980). "Substantial evidence" is such evidence as a reasonable juror would consider sufficient to support the conclusion that each essential element of the crime exists. *State v. McKinnon*, 306 N.C. 288, 298, 293 S.E.2d 118, 125 (1982).

The evidence is to be considered in the light most favorable to the State; the State is entitled to every reasonable intendment and every reasonable inference to be drawn therefrom; contradictions and discrepancies are for the jury to resolve and do not warrant dismissal; and all of the evidence actually admitted, whether competent or incompetent,

which is favorable to the State is to be considered by the court in ruling on the motion.

*Powell*, 299 N.C. at 98, 261 S.E.2d at 117 (citing *State v. Thomas*, 296 N.C. 236, 250 S.E.2d 204 (1978); *State v. McKinney*, 288 N.C. 113, 215 S.E.2d 578 (1975)). On appeal to this Court, we review the motion to dismiss *de novo*. *State v. Marsh*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 652 S.E.2d 744, 748 (2007) (citing *Hatcher v. Harrah's N.C. Casino Co., LLC*, 169 N.C. App. 151, 155, 610 S.E.2d 210, 212 (2005)).

"Intent is a condition of the mind ordinarily susceptible of proof only by circumstantial evidence.'" *State v. Claypoole*, 118 N.C. App. 714, 717, 457 S.E.2d 322, 324 (1995) (quoting *State v. Pigott*, 331 N.C. 199, 211, 415 S.E.2d 555, 562 (1992)). "Intent to terrorize means more than an intent to put another in fear. It means an intent to '[put] that person in some high degree of fear, a state of intense fright or apprehension.'" *Id.* (quoting *State v. Surrett*, 109 N.C. App. 344, 349, 427 S.E.2d 124, 127 (1993)).

In the case *sub judice*, the State presented evidence that Howes was only seventeen years old, while defendant was over thirty years old at the time of the incident. Howes barely knew defendant. Defendant knew that she was home without adult supervision and he came to the back door late at night. He discussed Howes' involvement with Criswell and attempted to make himself look better by comparison. When Howes tried to push defendant away, he came into the house. When she cursed at him and asked him to leave, he slapped her, closed the doors, turned out

the lights, placed her on the washing machine and proceeded to choke her. Howes was afraid that defendant would rape her. Defendant did not leave until Howes' cousin arrived at home.

During the assault, Howes was crying hysterically and was unable to stop. After her cousin's arrival, Howes still was "pretty much hysterical;" her cousin "couldn't make sense of what she was saying." Howes "pulled her knees up, and she had her face and hands buried in her lap; and she was just crying, babbling, not making a whole lot of sense."

When police responded to the 911 call, they found Howes "teary-eyed, crying, upset, red[-]face[d], [and] nervous." Howes and her uncle accompanied police officers as they searched the neighborhood for defendant. When he was located and brought to the police car for identification purposes, Howes again became hysterical and squirmed to get away from him and to put distance between the two of them. When her statement was taken, Howes still was "extremely upset, physically shaken to the point where she would just sit there. She couldn't hold still. She was still visually [sic] shaken."

Taken in the light most favorable to the State, there was substantial evidence from which a jury could conclude that defendant kidnapped Howes for the purpose of terrorizing her. Therefore, the trial court properly denied defendant's motion to dismiss the charge of second-degree kidnapping.

No error.

Judges WYNN and BRYANT concur.

Report per Rule 30(e).