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NO. COA08-417

NORTH CAROLINA COURT OF APPEALS

Filed: 16 December 2008

STATE OF NORTH CAROLINA

v.

Mecklenburg County
No. 07 CRS 210305

JASON LAMONT HILL

Court of Appeals

Appeal by defendant from judgment entered 23 August 2007 by Judge Jesse B. Caldwell in Mecklenburg County Superior Court. Heard in the Court of Appeals 8 December 2008.

Attorney General Roy Cooper, by Assistant Attorney General Karissa J. DeVan, for the State

Slip Opinion

Robin E. Strickland for defendant-appellant.

BRYANT, Judge.

On 21 May 2007, Mecklenburg County District Court convicted defendant Jason Lamont Hill of a single count of assault on a female. Defendant appealed the judgment to superior court. On 23 August 2007, a jury convicted defendant of a single count of assault on a female. The trial court entered judgment based on the verdict and sentenced defendant to 150 days in the custody of the Mecklenburg County Sheriff's Department. For the reasons stated below, we hold no error.

At the superior court jury trial, the State called two witnesses - Ebony Carter, the victim, and Officer Casey Dowell. Ms. Carter testified that she and defendant had been in a relationship that lasted one-and-a-half years and that defendant was the father of Ms. Carter's twenty-month-old son.

Ms. Carter testified that on 4 March 2007, defendant informed her over the phone that he was taking their child. Ms. Carter felt that the baby was in danger and immediately drove to see defendant. Ms. Carter pulled up to a residence and exited her vehicle while defendant stood at the door. Ms. Carter described the look on defendant's face as "angry or something." She had seen that look before and got back into her car. Ms. Carter testified that defendant got into the passenger seat and "just started punching [her] in [her] face." Defendant stopped hitting her when Ms. Carter lost consciousness. Defendant got out of the car when defendant's sister brought Ms. Carter's son out of the residence. Defendant then left in another car, and Ms. Carter took her son to her Aunt's house to "calm down and call the police."

Ms. Carter testified that she called the police and, after making a domestic violence report, went to an emergency room. She suffered bruising around her left eye for approximately a week-and-a-half. On 6 March 2007, Ms. Carter reported to Victims' Assistance which took a photograph of Ms. Carter's face. This photograph was admitted into evidence.

On cross-examination, Ms. Carter testified that she wrote a letter to defendant requesting \$300.00, which she claimed defendant

had taken from her. In exchange for the money, Ms. Carter offered not to make defendant attend a court hearing. Ms. Carter testified that the letter referred to a different matter between her and defendant as shown by the court date referenced in the letter. The State then called Officer Dowell of the Charlotte-Mecklenburg Police Department.

Officer Dowell testified that he met Ms. Carter on 4 March 2007 in response to a domestic violence call. When Officer Dowell took Ms. Carter's statement, Ms. Carter was visibly upset and had a large amount of swelling on the left side of her face around the eye.

Following the conclusion of the State's evidence, defendant moved to dismiss the charge on the ground of insufficiency of the evidence, which the trial court denied. Other than moving to admit Ms. Carter's letter into evidence and publishing it to the jury, defendant presented no further evidence. Defendant then renewed his motion to dismiss, which the court denied.

The jury returned a verdict of guilty on the charge of assault on a female. Defendant gave written notice of appeal on 4 September 2007.

Defendant raises only one issue on appeal: whether the trial court erred by denying defendant's motion to dismiss. Defendant argues that Ms. Carter's letter was evidence of extortion and defendant's conviction depends only on her testimony; therefore,

the State's evidence was insufficient to support defendant's conviction for assault on a female. We disagree.

A trial court may properly deny a motion to dismiss where "substantial evidence exists to support each essential element of the crime charged and that defendant was the perpetrator." *State v. Morgan*, 359 N.C. 131, 161, 604 S.E.2d 886, 904 (2004). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Brown*, 310 N.C. 563, 566, 313 S.E.2d 585, 587 (1984). When reviewing a motion to dismiss, we view "the evidence in the light most favorable to the State, giving the State the benefit of all reasonable inferences." *Morgan*, 359 N.C. at 161, 604 S.E.2d at 904.

Under North Carolina General Statute section 14-33(c)(2), a defendant commits the offense of assault on a female if he "[a]ssaults a female, he being a male person at least 18 years of age." N.C. Gen. Stat. § 14-33(c)(2) (2007). We have previously held that "the essential elements of the assault upon a female crime are (1) assault and (2) upon a female person by a male person." *State v. Craig*, 35 N.C. App. 547, 549, 241 S.E.2d 704, 705 (1978). Assault has been defined as

an overt act or an attempt, or the unequivocal appearance of an attempt, with force and violence, to do some immediate physical injury to the person of another, which show of force or menace of violence must be sufficient to put a person of reasonable firmness in fear of immediate bodily harm.

State v. Jeffries, 57 N.C. App. 416, 418, 291 S.E.2d 859, 860-61 (1982).

After a review of the record, we hold that in the light most favorable to the State and giving the State the benefit of all reasonable inferences, there exists sufficient evidence of each element of the charge to survive defendant's motion to dismiss. Therefore, the trial court did not err in denying defendant's motions to dismiss at the conclusion of the State's evidence and at the conclusion of all the evidence. Accordingly, defendant's assignment of error is overruled.

No error.

Judges TYSON and ARROWOOD concur.

Report per Rule 30(e).