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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-130

Filed: 4 October 2016

Forsyth County, No. 14 CRS 55861

STATE OF NORTH CAROLINA

v.

LOWELL THOMAS MANRING

Appeal by defendant from judgment entered 6 May 2015 by Judge L. Todd Burke in Forsyth County Superior Court. Heard in the Court of Appeals 9 August 2016.

Attorney General Roy Cooper, by Assistant Attorney General James Bernier, Jr., for the State.

Franklin E. Wells, Jr., for defendant-appellant.

BRYANT, Judge.

Where there was evidence of restraint against the victim separate and apart from that inherent in the robbery itself, we hold no error in the trial court's denial of defendant's motion to dismiss the kidnapping charge.

On 6 April 2015, a superseding indictment was issued by a Forsyth County grand jury against defendant Lowell Thomas Manring for the offenses of first-degree burglary, second-degree kidnapping, and common law robbery. The matters came on

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for trial during the 4 May 2015 criminal session of Forsyth County Superior Court, the Honorable Todd Burke, Judge presiding.

At trial, the evidence tended to show that Debra Lynn Everhart, a widow and great-grandmother, had lived at 6770 Brussels Court, in Walkertown for thirty-two years. On 13 June 2013, at 3:00 a.m., Everhart awoke to a knock at her door.

A. . . . I heard a voice, "Mama, Mama, let me in. This is Bridgette. Larry's going to beat me up. He's after me." I said, "What?" She said, "Open the door. Please let me in." She said, "Larry's after me. He's going to beat me."

Q. And who's Bridgette?

A. That's my granddaughter.

Q. And who's Larry?

A. That's her boyfriend.

Q. So what did you do at that point?

A. I told her to wait a minute. Just wait a minute until I get the door opened. I opened the door, and it's just like something said, Don't open it. And I went to push back. When I did, the door just shoved open.

Everhart testified that a man grabbed her by the arm and threw her against the wall. He twisted her hand behind her and then "slung" her from the wall down onto a love seat, put his knee in her back, and held her down. Everhart told her attacker that she could not breathe. "He said, 'I'm going to let you up, and sit up straight up.' He said, 'But, if you try to do anything or even try to get up or anything –' he said, 'I ain't

had to hurt nobody yet,' he said, 'but that don't mean I won't hurt you.' ” Everhart sat up. In addition to her attacker, three females entered her home and began to ransack it; all were wearing hooded sweatshirts and bandannas. Everhart was told not to look at anyone, but she recognized a voice: “Leah [West] spoke, and I recognized her voice.” Leah was related to Everhart through marriage. Everhart had conversed with her before. Everhart also glanced at one of the women who entered her kitchen and recognized the woman as Tiffany Hicks, a woman who had previously been in Everhart’s house with Mandy Bowles, Everhart’s niece. After Tiffany and the third woman left the home, Leah told Everhart’s attacker to get one of the televisions and leave. “[W]hen they all got out the door and everything, he turned and told me -- he said, ‘If you call the law, I will be back, and I'll kill you.’ ”

After the intruders left, Everhart immediately glanced out of her door to see the vehicle leaving, locked her door, and called law enforcement officers. She described the vehicle as a grey SUV. When deputies from the Forsyth County Sheriff’s Office arrived, she told them that she recognized Leah West’s voice. Photos of Everhart’s master bedroom showed the drawers had been dumped onto her bed and onto the floor and a lamp had been knocked over. Everhart testified that the intruders took jewelry and a television from the master bedroom. From a second bedroom, the intruders took Everhart’s coin collection. From the den, a second television was taken. Everhart recovered most of the items taken the next day.

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Deputy Joseph Miller of the Forsyth County Sheriff's Office responded to the scene on 13 June 2014 shortly after 3:00 a.m. and took Everhart's statement. Deputy Miller notified other officers on patrol that Everhart recognized the voice of one of the intruders, Ms. Leah West, and that the intruders left in a grey SUV. Another deputy on patrol recognized Leah's name, was aware of her associates, and radioed addresses to check. Sergeant J.S. Dowd, the sergeant on patrol, then heard over the radio that a grey SUV was spotted traveling at a high rate of speed on Baux Mountain Road. Leah West's address was 4780 Baux Mountain Road. At 3:30 a.m., law enforcement officers gathered near that address and observed a grey SUV in the driveway. As Sergeant Dowd approached the residence, the front door opened, and the officer observed two people, one of whom was holding a television box. A woman then shouted, "It's the cops," and attempted to run into the house. Sergeant Dowd and another deputy followed and were able to arrest both suspects, Tiffany Hicks and Mandy Bowles. The officers then did a protective sweep of the residence for other suspects and weapons. They initially found no one. But upon questioning, Tiffany directed the officers to a trap door in a closet floor. There, Sergeant Dowd found defendant and Leah West lying in the crawl space. Defendant was wearing a grey sweatshirt with a hoodie and light-colored jeans. In the living room of Leah's house around a coffee table, officers found miscellaneous jewelry, a bag of coins, a gray-colored safe, Everhart's check book, and television boxes.

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After the conclusion of the evidence, defendant made a general motion to dismiss. It was denied. Defendant did not present any evidence. The jury returned guilty verdicts against defendant on the charges of first-degree burglary, second-degree kidnapping, and common law robbery. The trial court entered separate judgments for each charge in accordance with the jury verdicts. For first-degree burglary, defendant was sentenced to an active term of 72 to 99 months. For common law robbery, defendant was sentenced to 13 to 25 months. And for second-degree kidnapping, defendant was sentenced to a term of 28 to 46 months, all sentences to be served consecutively. Defendant appeals.

On appeal, defendant argues that the trial court erred by failing to grant his motion to dismiss the kidnapping charge. Defendant contends that there was insufficient evidence of kidnapping apart from the restraint used as a portion of the robbery. We disagree.

“We review the denial of a motion to dismiss *de novo*.” *State v. Chillo*, 208 N.C. App. 541, 545, 705 S.E.2d 394, 397 (2010) (citation omitted).

When ruling on a motion to dismiss for insufficient evidence, the trial court must consider the evidence in the light most favorable to the State, drawing all reasonable inferences in the State's favor. Any contradictions or conflicts in the evidence are resolved in favor of the State, and evidence unfavorable to the State is not considered. The trial court must decide only whether there is substantial evidence of each essential element of the

offense charged and of the defendant being the perpetrator of the offense.

State v. Miller, 363 N.C. 96, 98–99, 678 S.E.2d 592, 594 (2009) (citations and quotation marks omitted).

Pursuant to North Carolina General Statutes, section 14-39, “[a]ny person who shall unlawfully confine, restrain, or remove from one place to another, any other person . . . without the consent of such person . . . shall be guilty of kidnapping” N.C. Gen. Stat. § 14-39(a) (2015). “If the person kidnapped was released in a safe place by the defendant and had not been seriously injured or sexually assaulted, the offense is kidnapping in the second degree” *Id.* § 14-39(b).

[However,] [t]he restraint involved in the offense of kidnapping must not be the restraint that is an inherent, inevitable element of another felony such as armed robbery or rape. Similarly, the removal element of kidnapping must be an asportation that is not an inherent part of the commission of another felony such as armed robbery.

State v. Roberts, 176 N.C. App. 159, 165, 625 S.E.2d 846, 851 (2006). “The key 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 . . . robbery itself.” *State v. Beatty*, 347 N.C. 555, 559, 495 S.E.2d 367, 369–70 (1998) (first alteration in original) (citation and quotation marks omitted).

In applying these principals to the facts before us, we find guidance in *Beatty*, 347 N.C. 555, 495 S.E.2d 367. There, the defendant argued that “his kidnapping convictions should be vacated because there was insufficient evidence of restraint separate and apart from that inherent in the crime of robbery with a dangerous weapon to support those convictions.” 347 N.C. at 557, 495 S.E.2d at 368. The defendant along with others sought to rob a drive-in restaurant in Charlotte. The robbers entered the restaurant and saw one man, Poulos, on his knees washing the floor and another man, Koufaloitis, at the back, standing near the safe. *Id.* at 557, 495 S.E.2d at 368–69. One robber put a gun to Poulos’s head and stood beside him during the robbery. *Id.* at 557, 495 S.E.2d at 369. Another robber bound Koufaloitis’ wrists with duct tape and forced him to the floor, where he was kicked in the back twice. *Id.* Our Supreme Court held that as to Poulos, the robbers did not move or injure him in any way that was not essential to commit the armed robbery. *Id.* at 560, 495 S.E.2d at 370. As to Koufaloitis, who was bound by his wrists, forced to lie on the floor, and kicked in the back, the Court reasoned that the victim was exposed to greater danger than that inherent in the armed robbery itself. *Id.* at 559, 495 S.E.2d at 370. “Such actions constituted sufficient additional restraint to satisfy the restraint element of kidnapping under N.C.G.S. § 14–39,” in addition to the robbery charge. *Id.*

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Here, the evidence shows that after pushing his way into Everhart's home, grabbing her arm and throwing her against the wall, defendant twisted Everhart's arm behind her back, slung her onto the love seat, and pinned her down with his knee, then threatened to hurt her before allowing her to sit up. Such actions exposed Everhart to greater danger than was inherent in the robbery itself. *See id.* Therefore, there was sufficient evidence of restraint apart from that inherent in the robbery itself to support the trial court's ruling to deny defendant's motion to dismiss the charge of second-degree kidnapping. Accordingly, defendant's argument is overruled.

NO ERROR.

Judges TYSON and INMAN concur.

Report per Rule 30(e).