IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-35

Filed: 20 September 2016

Wayne County, Nos. 14 CRS 51011-12

STATE OF NORTH CAROLINA

v.

TERRELL PRINCE JAMES

Appeal by defendant from judgments entered 15 April 2015 by Judge Arnold O. Jones II in Wayne County Superior Court. Heard in the Court of Appeals 22 August 2016.

Roy Cooper, Attorney General, by Lisa K. Bradley, Assistant Attorney General, for the State.

William D. Spence for defendant-appellant.

DAVIS, Judge.

Terrell Prince James ("Defendant") appeals from his convictions for assault on a female and second-degree kidnapping. On appeal, he contends that the trial court erred in denying his motions to dismiss. After careful review, we conclude that Defendant received a fair trial free from error.

Factual Background

The State presented evidence at trial tending to establish the following facts: In the early morning hours of 15 March 2014, Seimeco Thompson ("Thompson") and Malika Atkinson ("Atkinson") were leaving a strip club called "Sid's ShowGirls." As they were walking to Thompson's car, they noticed Defendant following them. Defendant yelled loudly at Atkinson, "Hey, where your sister at? You know, she got my items; where your sister at?" Thompson ignored Defendant and continued walking.

Upon reaching Thompson's car, Thompson unlocked the vehicle and got into the driver's seat while Atkinson sat in the front passenger seat. Defendant then opened the back door of Thompson's car and sat in the back seat directly behind Atkinson. At this point Atkinson called her sister on Thompson's cellphone and informed her of Defendant's statements. Atkinson's sister told her, "I don't have nothing of his, and I'm going to tell you all you all need to get away from him, and get him out of your car now."

Thompson ordered Defendant to get out of her car and he refused. Thompson then told Defendant she was going to drive to the police station, and Defendant responded by threatening her and Atkinson that "[b]y the time you get to the police station I'll be done choke both of you b****es out." At that point, Atkinson quickly exited the vehicle.

Defendant ordered Thompson to drive, stating "b****, drive right now. I'm fixing to, I'm fixing to shoot you. I'm fixing to hit you, b****; drive right now." Thompson was unaware of whether Defendant was armed as she was too frightened to look back at Defendant.

Thompson drove to the Alpha Arms apartment complex ("Alpha Arms") where she lived, hoping that friends and relatives of Defendant — whom she knew lived there as well — might be able to help her. Upon arriving at Alpha Arms, which was approximately 10 minutes away, Thompson attempted to take out her cellphone to call for help, but Defendant grabbed her by the shoulder and forcibly took her phone away from her. Defendant then told her "b**** I'm kidnapping you tonight."

Thompson began screaming for help and repeatedly honking the car horn. She attempted to escape, but Defendant pulled her back inside and punched her in the face. She continued to scream and honk the horn until Defendant climbed from the backseat of the car to the driver's seat. He then kicked Thompson out of the car, and after she had fallen to the ground, he continued to hit her repeatedly until bystanders intervened. Defendant then got back in the driver's seat of Thompson's vehicle and fled the scene. Thompson called 911 and informed the dispatcher of what had transpired. Law enforcement officers were dispatched and found Defendant at his home with Thompson's vehicle parked outside. Defendant was placed under arrest.

On 5 January 2015, Defendant was indicted on charges of assault on a female and second-degree kidnapping.[1] A jury trial was held before the Honorable Arnold O. Jones II in Wayne County Superior Court on 14 April 2015. At the conclusion of trial, Defendant moved to dismiss the charge of second-degree kidnapping on sufficiency of the evidence grounds at the close of the State's evidence and again at the close of all the evidence. The trial court denied these motions.

The jury found Defendant guilty of both charges. The trial court sentenced Defendant to consecutive sentences of 36-56 months imprisonment for Defendant's second-degree kidnapping conviction and 75 days imprisonment for his assault on a female conviction.

Analysis

I. Appellate Jurisdiction

As an initial matter, we must address whether we have jurisdiction over the present appeal. On 20 April 2015, five days after entry of the trial court's judgments, Defendant filed a *pro se* written notice of appeal. The notice did not identify the trial court from which he was appealing as required by Rule 4(b) of the North Carolina Rules of Appellate Procedure, nor is there evidence in the record that notice was

[1] It appears from the trial transcript that Defendant was also charged with larceny of a motor vehicle. However, an indictment for this charge is not included in the record. In any event, the trial court dismissed this charge prior to the charge conference, and the charge is therefore not material to the present appeal.

properly served on the State as required by Rule 4(b)(2). However, on 4 February 2016, Defendant filed a petition for writ of *certiorari* with this Court.

We have held that where a *pro se* defendant's notice of appeal designates the incorrect trial court from which appeal is taken and was not properly served on the State, we may nevertheless elect to reach the merits of Defendant's appeal if he has also filed, in the alternative, a petition for *certiorari*. *See State v. Rowe*, 231 N.C. App. 462, 465-66, 752 S.E.2d 223, 225-26 (2013) ("[*Pro se*] Defendant filled out a form incorrectly indicating that his case was disposed of in the Henderson County District Court and did not state that he was appealing to this Court. . . . In addition, Defendant failed to serve notice of his appeal on the State. Accordingly, Defendant lost his right to appeal the trial court's judgment. . . . We [nevertheless] grant Defendant's petition [for *certiorari*] in our discretion and review this case on its merits."). We likewise elect to grant Defendant's petition for *certiorari* in the present case and reach the merits of his appeal despite his Rule 4 violations.

II. Motions to Dismiss

Defendant's sole argument on appeal is that the trial court erred in denying his motions to dismiss the charge of second-degree kidnapping on sufficiency of the evidence grounds. We disagree.

> 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 being the

> perpetrator of such offense. Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. In reviewing challenges to the sufficiency of the evidence, we must view the evidence in the light most favorable to the State, giving the State the benefit of all reasonable inferences. . . . When ruling on a motion to dismiss, the trial court should only be concerned with whether the evidence is sufficient to get the case to the jury; it should not be concerned with the weight of the evidence.

State v. Holanek, __ N.C. App. __, __, 776 S.E.2d 225, 232 (internal citations and quotation marks omitted), *disc. review denied*, 368 N.C. 429, 778 S.E.2d 95 (2015), *cert. denied*, __ U.S. __, __ L.Ed.2d __ (2016).

"Second-degree kidnapping occurs when the victim is released in a safe place without having been sexually assaulted or seriously injured and the following elements, in relevant part, are met: (1) unlawful confinement, restraint, or removal from one place to another; (2) of a person; (3) without the person's consent; (4) for the purpose of terrorizing the victim." *State v. Petro*, 167 N.C. App. 749, 752, 606 S.E.2d 425, 427 (2005) (citation, quotation marks, and brackets omitted).

> 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. In determining the sufficiency of the evidence, 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 the victim.

State v. Harrison, 169 N.C. App. 257, 264, 610 S.E.2d 407, 413 (2005) (internal citations and quotation marks omitted), *aff'd per curiam*, 360 N.C. 394, 627 S.E.2d

461 (2006). Nevertheless, "the victim's subjective feelings of fear, while not determinative of the defendant's intent to terrorize, are relevant. . . . The presence or absence of the defendant's intent or purpose to terrorize [the victim] may be inferred by the fact-finder from the circumstances surrounding the events constituting the alleged crime." *State v. Baldwin*, 141 N.C. App. 596, 604-05, 540 S.E.2d 815, 821 (2000); *see State v. Surrett*, 109 N.C. App. 344, 349, 427 S.E.2d 124, 127 (1993) ("[I]ntent for the purpose of [kidnapping], may be inferred from the circumstances surrounding the event and must be determined by the jury." (citation and quotation marks omitted)).

In the present case, Defendant only challenges the sufficiency of the evidence as to the intent to terrorize element of the offense of second-degree kidnapping. Specifically, he claims that his actions were not sufficient to inflict the high degree of fear required by our courts for this offense.

Here, the evidence demonstrates both that Defendant intended to terrorize Thompson and that she was, in fact, terrorized. The record shows that Defendant (1) threatened to seriously injure or kill Thompson by shooting, beating, or choking her; (2) alluded to having a gun when he threatened to shoot her — a fact Thompson could not confirm because he was seated behind her in her car; (3) spoke in a "very hard and angry" tone while making these threats; (4) seized Thompson by the shoulder and prevented her from using her cellphone to call for help by forcibly taking

it from her; (5) physically restrained her when she attempted to escape her vehicle at Alpha Arms and then punched her in the face; and (6) told her "b**** I'm kidnapping you tonight."

Thompson also testified at trial as to her subjective feelings of fear, stating that she worried she would never see her children again. She further discussed her feelings while driving to Alpha Arms as follows: "I'm scared; I see this is going very serious. This is something not to play with; I see something that's going on. I'm very scared. I'm scared at this time." Witnesses, including an officer who responded to Alpha Arms after the incident, described Thompson as "hysterical," "scared," and "shaking" after the ordeal. Moreover, we note there was no evidence presented at trial that Defendant had any other intention other than to terrorize Thompson.

We conclude that ample evidence was presented at trial from which a jury could determine that Thompson was in a state of intense fright and that Defendant intended to terrorize her. Defendant's argument on this issue is overruled.[2]

Conclusion

For the reasons stated above, we conclude that Defendant received a fair trial free from error.

NO ERROR.

[2] Defendant also makes a cursory argument that Thompson was not terrorized because she did not incur any serious injuries. Physical injury, however, is not a requirement of second-degree kidnapping.

Judges ELMORE and DIETZ concur.

Report per Rule 30(e).