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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1067

Filed: 15 October 2019

Pitt County, Nos. 16 CRS 2529, 58516-17, 17 CRS 00022

STATE OF NORTH CAROLINA

v.

THOMAS R. STREETER, Defendant.

Appeal by defendant from judgments entered 21 September 2017 by Judge Marvin K. Blount, III in Pitt County Superior Court. Heard in the Court of Appeals 22 August 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General LaShawn S. Piquant, for the State.

James F. Hedgpeth, Jr., for defendant-appellant.

BERGER, Judge.

Thomas R. Streeter (“Defendant”) appeals from judgments entered upon his convictions for hit and run, common law robbery, first-degree kidnapping, assault on a female, and attaining habitual felon status. After careful consideration, we conclude that Defendant received a fair trial free from prejudicial error.

Factual and Procedural Background

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On November 23, 2016, Emily Andrews, an employee of Pierce Insurance Agency in Farmville, North Carolina, left work to take her lunch break at approximately 1:00 p.m. As she exited the building to go to her vehicle in the parking lot, Ms. Andrews encountered Defendant, and the two exchanged greetings. After getting into her vehicle and starting the engine, Ms. Andrews saw Defendant standing beside her driver side window. Defendant tapped on the window and asked for a dollar. When Ms. Andrews lowered her window to give Defendant a dollar, Defendant grabbed her hand, opened the car door, and forced his way inside the vehicle. Defendant got on top of Ms. Andrews and began forcing her into the passenger side of the vehicle. Ms. Andrews managed to free one hand and honk her car horn.

Two of Ms. Andrews' co-workers, Kristi Harris and Yvette Wooten, ran outside and began attacking Defendant. Defendant put the car in gear and "slammed the gas pedal down to the floor." As Defendant "t[ook] off through the parking lot," the passenger side door came open, and Ms. Andrews rolled out of the moving vehicle. Defendant pulled out of the parking lot, leaving Ms. Andrews "laying [on the pavement] screaming and crying." Defendant was later apprehended.

Defendant was indicted on charges of hit and run, common law robbery, felony larceny, first-degree kidnapping, assault on a female, and attaining habitual felon status. Defendant's case came on for trial on September 19, 2017 in Pitt County

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Superior Court. The jury found Defendant guilty of all charges. The trial court arrested judgment on the felony larceny conviction, and Defendant was sentenced to 110 to 144 months in prison for common law robbery, 127 to 165 months in prison for first-degree kidnapping to run at the expiration of the first sentence, and 150 days for assault on a female and hit and run.

Defendant appeals, arguing that the trial court erred in denying his motion to dismiss the first-degree kidnapping charge. More specifically, Defendant contends that there was no substantial evidence showing that Ms. Andrews had suffered a “serious injury.” We disagree.

Standard of Review

“The denial of a motion to dismiss for insufficient evidence is a question of law, which this Court reviews *de novo*.” *State v. Bagley*, 183 N.C. App. 514, 523, 644 S.E.2d 615, 621 (2007) (internal citation omitted). “In considering a motion to dismiss, the trial court does not weigh the evidence, consider evidence unfavorable to the State, or determine any witness’ credibility.” *State v. James*, 248 N.C. App. 751, 755, 789 S.E.2d 543, 547 (2016) (quotation marks and citation omitted).

Analysis

In considering “a defendant’s motion for dismissal on the ground of insufficiency of the evidence, the trial court must determine only whether there is substantial evidence of each essential element of the offense charged and of the

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defendant being the perpetrator of the offense.” *State v. Vick*, 341 N.C. 569, 583, 461 S.E.2d 655, 663 (1995). “Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.” *Id.* at 583-84, 461 S.E.2d at 663.

Evidence is sufficient to sustain a conviction when, viewed in the light most favorable to the State and giving the State every reasonable inference therefrom, there is substantial evidence to support a jury finding of each essential element of the offense charged, and of defendant’s being the perpetrator of such offense.

James, 248 N.C. App. at 755, 789 S.E.2d at 547 (quotation marks and citation omitted).

The offense of kidnapping occurs, in relevant part, when “[a]ny person . . . unlawfully confine[s], restrain[s], or remove[s] from one place to another” any other person, without consent, where the purpose of the act is to facilitate “the commission of any felony.” N.C. Gen. Stat. § 14-39(a)(2) (2017). The offense is elevated to first-degree kidnapping when “the person kidnapped either was not released by the defendant in a safe place or had been seriously injured or sexually assaulted.” N.C. Gen. Stat. § 14-39(b) (2017).

In this case, the indictment for first-degree kidnapping alleged that Ms. Andrews was seriously injured during the kidnapping. The trial court instructed the jury that “serious injury is injury that causes great pain and suffering or mental injury that extends for some appreciable time beyond the crime.” Defendant accepts

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this definition of “serious injury” as correct but contends that there was not substantial evidence that Ms. Andrews did, in fact, suffer a serious injury.

This Court has stated that “[w]hether an injury is serious is a finding of fact to be determined by a jury.” *State v. Gates*, 245 N.C. App. 525, 528, 781 S.E.2d 883, 886 (2016). Additionally, our Supreme Court has stated that “[a] jury may consider such pertinent factors as hospitalization, pain, loss of blood, and time lost at work in determining whether an injury is serious. Evidence that the victim was hospitalized, however, is not necessary for proof of serious injury.” *State v. Hedgepeth*, 330 N.C. 38, 53, 409 S.E.2d 309, 318 (1991) (citations omitted).

Ms. Andrews testified that Defendant “was hurting me” when he first entered her vehicle, and Ms. Harris recalled hearing Ms. Andrews “repeatedly” screaming “he is hurting me” during the attack. After Ms. Andrews fell out of the moving vehicle, Ms. Harris testified that Ms. Andrews “bounced up a foot.” When asked whether she sustained any injuries during the encounter, she replied “to my ankle and my leg was hurting.” Ms. Andrews was checked by paramedics that had been called to the scene and was thereafter escorted by her husband to receive medical attention at a doctor’s office. The State introduced photographs taken shortly after the encounter showing visible injuries to Ms. Andrews’ right leg and ankle. Ms. Andrews testified that at the time of the trial, almost ten months after her encounter with Defendant, one side

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of her right ankle “hurts just a little bit every once in a while” and that she still has “some marks” that “never went away.”

The evidence introduced at trial, viewed in the light most favorable to the State, demonstrated that Ms. Andrews was in pain both during and after her encounter with Defendant, that she had visible injuries to her right leg and ankle for which she received medical attention, and that she still experienced pain ten months later as a result of her encounter with Defendant. In light of this evidence, the trial court correctly denied the motion to dismiss and submitted the charge of first-degree kidnapping to the jury to allow it to perform its fact-finding duty of determining whether Ms. Andrews’ injuries were serious.

Conclusion

Accordingly, we conclude that Defendant received a fair trial free from prejudicial error.

NO ERROR.

Judges ARROWOOD and COLLINS concur.

Report per Rule 30(e).