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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-331

No. COA20-530

Filed 6 July 2021

Alamance County, Nos. 17 CRS 55101, 17 CRS 55089

STATE OF NORTH CAROLINA

v.

GEORGE THOMAS FREEMAN, III, Defendant.

Appeal by Defendant from judgment entered 15 May 2019 by Judge Rebecca Holt in Alamance County Superior Court. Heard in the Court of Appeals 27 April 2021.

Attorney General Joshua H. Stein, by Assistant Deputy Attorney General LeeAnne N. Lawrence, for the State-Appellee.

Mark L. Hayes for Defendant-Appellant.

GORE, Judge.

¶ 1 On 15 May 2019, George Thomas Freeman, III, (“Defendant”) was convicted of First Degree Kidnapping and Assault on a Female. Defendant appeals the trial court’s denial of his motion to dismiss for insufficiency of the evidence, arguing that the State did not present evidence supporting a finding that he restrained Brandi Smith (“Ms. Smith”) for the purpose of inflicting serious bodily harm. We discern no

error.

I. Factual and Procedural Background

¶ 2 On 27 September 2017, Ms. Smith drove to Defendant’s workplace to pick him up. At the time, Ms. Smith and Defendant were in a romantic relationship. When Ms. Smith arrived, Defendant got in the driver’s seat of her vehicle and complained that the gas light was on. As Defendant started driving out of the parking lot, he began screaming at Ms. Smith, calling her “a whore” and choking her with both hands.

¶ 3 Ms. Smith struggled with Defendant, using her feet to push him away. Ms. Smith asked to be let out of the vehicle, but Defendant refused. Defendant held down the lock preventing Ms. Smith from opening her door, and he abruptly sped out of the parking lot going about 60 miles per hour in a 35 mile per hour zone.

¶ 4 As Defendant sped down the road, Ms. Smith repeatedly requested that he slow down. When Defendant did not make a turn that they made daily to reach her home, Ms. Smith again attempted to exit the vehicle. Defendant reached over with an extended arm and prevented her from getting out. Defendant then struck Ms. Smith on the head with such force that her ear started to ring.

¶ 5 Defendant made a 911 call claiming that Ms. Smith was beating and kidnapping him, and Ms. Smith screamed for help. Defendant then exclaimed, “You’re going to die today, bitch”, as he accelerated towards an intersection. As they

rapidly approached the intersection, Defendant further stated, “I’m running it,” “you’re going to die,” and “you’re not going to see your kids no more.”

¶ 6

Defendant ultimately slowed down as he approached a stop sign at the intersection, and Ms. Smith jumped out of the moving vehicle. At that time, off-duty police officer Joseph Moody (“Officer Moody”) and his wife also approached the intersection. Officer Moody observed Ms. Smith “laying in the roadway with injuries to her right leg, right arm, and possibly her face and head.” As Officer Moody assessed the situation, Defendant approached him while on the phone with 911. Officer Moody took the phone and communicated directly with 911 dispatch.

¶ 7

At first, Officer Moody believed there had been a collision. He tried to keep Ms. Smith still in case she had suffered any head injuries. He then observed Defendant going back and forth between Ms. Smith and the vehicle asking, “why did she jump out of the car?” Ms. Smith clung to the side of Officer Moody’s leg as they waited for emergency services to arrive.

¶ 8

Shortly thereafter, Deputy Chris Walbourn (“Deputy Walbourn”) of the Alamance County Sheriff’s Office responded to the 911 call and arrived on scene. Before Ms. Smith was transported to Alamance Regional Hospital, she advised Deputy Walbourn that there was an argument and altercation between her and Defendant, which led to her exiting the vehicle and sustaining injuries. Deputy Walbourn briefly spoke with Defendant and arrested him for assault on a female.

¶ 9 On 27 August 2018, Defendant was indicted on charges of Assault on a Female, First Degree Kidnapping, and Assault with a Deadly Weapon Inflicting Serious Injury (“AWDWISI”). Defendant entered a plea of not guilty. At the close of the evidence, Defendant moved to dismiss based on insufficiency of the evidence. The trial court denied the motion. On 15 May 2019, a jury returned a verdict finding Defendant guilty of First Degree Kidnapping and Assault on a Female. Defendant was found not guilty on the charge of AWDWISI. Defendant was sentenced in the presumptive range to a term of 108 months to 144 months imprisonment, and he entered oral notice of appeal in open court.

II. Discussion

¶ 10 On appeal, Defendant argues that the trial court erred in denying his motion to dismiss the kidnapping charge. Specifically, Defendant contends that the State presented evidence showing he restrained Ms. Smith as an inherent part of his plan and not that the restraint was imposed for the purpose of inflicting harm. We disagree.

A. Standard of Review

¶ 11 “This Court reviews the trial court’s denial of a motion to dismiss *de novo* and views the evidence in the light most favorable to the State, giving the State every reasonable inference therefrom, and resolving any contradictions or discrepancies in the State’s favor.” *State v. Miles*, 222 N.C. App. 593, 599, 730 S.E.2d 816, 822 (2012)

(citations omitted).

In a motion to dismiss, the question presented is whether the evidence is legally sufficient to support a verdict of guilty on the offense charged, thereby warranting submission of the charge to the jury. In order to withstand a motion to dismiss, the State's evidence as to each element of the offense charged must be substantial. Substantial evidence in this context means more than a scintilla.

State v. McConnaughey, 66 N.C. App. 92, 94, 311 S.E.2d 26, 28 (1984) (internal citations omitted).

B. Restraint, Kidnapping, and Serious Bodily Harm

¶ 12

The statute defines the offense of kidnapping, in pertinent part:

(a) Any person who shall unlawfully confine, restrain, or remove from one place to another, any other person 16 years of age or over without the consent of such person, or any other person under the age of 16 years without the consent of a parent or legal custodian of such person, shall be guilty of kidnapping if such confinement, restraint or removal is for the purpose of:

.....

(3) Doing serious bodily harm to or terrorizing the person so confined, restrained or removed or any other person[.]

N.C. Gen. Stat. § 14-39 (2020).

¶ 13

“Since kidnapping is a specific intent crime, the State must prove that the defendant unlawfully confined, restrained, or removed the person for one of the eight purposes set out in the statute.” *State v. Moore*, 315 N.C. 738, 743, 340 S.E.2d 401, 404 (1986). “Furthermore, the indictment in such cases must clearly state the

purpose or purposes upon which the State intends to rely, and the State is restricted at trial to proving the purposes alleged in the indictment.” *State v. Baldwin*, 141 N.C. App. 596, 603, 540 S.E.2d 815, 821 (2000) (quotation marks and citation omitted).

¶ 14 Here, the indictment alleged that Defendant kidnapped Smith “by unlawfully restraining the victim, without the consent of the victim, and for the purpose of doing serious bodily injury to [her].” The trial court’s instruction to the jury was consistent with the indictment, requiring the jury to find “that the defendant restrained that person for the purpose of doing serious bodily injury to that person” and “that this restraint was a separate, complete act, independent and apart from the injury.”

¶ 15 Defendant argues that the motion to dismiss should have been granted because the State failed to present sufficient evidence that he restrained Smith for the purpose of doing serious bodily harm. Defendant relies on *State v. Ackerman*, 144 N.C. App. 452, 551 S.E.2d 139 (2001) and *State v. China*, 370 N.C. 627, 811 S.E.2d 145 (2018), to support his contention that the restraint and the infliction of harm in this case were not two independent acts but effectively the same act. However, reliance on these decisions is misplaced. Both *Ackerman* and *China* involved a first degree sexual offense and rape, respectively.

¶ 16 “The test of the independence of the act is whether there was substantial evidence that the defendant restrained or confined the victim separate and apart from any restraint necessary to accomplish the acts of [a separate felony].” *State v.*

STATE V. FREEMAN

2021-NCCOA-331

Opinion of the Court

Harris, 140 N.C. App. 208, 213, 535 S.E.2d 614, 618 (2000) (citation omitted). “The term ‘restrain,’ while broad enough to include a restriction upon freedom of movement by confinement, connotes also such a restriction, by force, threat or fraud, without a confinement.” *State v. Fulcher*, 294 N.C. 503, 523, 243 S.E.2d 338, 351 (1978). “It is self-evident that certain felonies (*e.g.*, forcible rape and armed robbery) cannot be committed without some restraint of the victim.” *Id.* This is distinguishable from the facts in this matter because restraint is not an inherent feature of inflicting serious bodily harm.

¶ 17 Further, Defendant argues that he was unable to inflict serious bodily harm, and Smith’s more serious injuries resulted from her escape from the vehicle. However, this argument is without merit. The State need not present evidence that Defendant actually harmed Smith, or that the harm was serious, but only that he had the specific intent to do so. *See State v. Washington*, 157 N.C. App. 535, 539, 579 S.E.2d 463, 466 (2003) (finding that “[w]hile [victim] suffered a cut above his eye and several bruises, the extent of physical damage to [victim] is not in issue. The question is whether defendant’s actions could show a specific intent on his part to do serious bodily harm to [victim].”).

¶ 18 “Specific intent can be inferred through circumstantial evidence of the actions of the defendant.” *Id.* (citation omitted). In this case, the evidence tended to show that Defendant started choking Ms. Smith after entering her vehicle. Defendant

struck Ms. Smith and ignored her repeated requests to be let out of the vehicle. Defendant held down the locks and put his arm on top of her to prevent escape. Defendant stated, “You’re going to die today bitch,” and sped towards an intersection. As they approached the intersection, Defendant further told Ms. Smith that, “I’m running it,” “you’re going to die,” and “you’re not going to see your kids no more.” When viewing the evidence in a light most favorable to the State, there was substantial evidence from which a jury could infer that Defendant restrained Smith for the purpose of inflicting serious bodily harm, regardless of the severity of the injury or whether the injury occurred.

III. Conclusion

¶ 19 For the foregoing reasons, we hold the trial court did not err in denying Defendant’s motion to dismiss based on insufficiency of the evidence.

NO ERROR.

Judges INMAN and GRIFFIN concur.

Report per Rule 30(e).