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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-809

Filed: 5 June 2018

Iredell County, No. 11CRS057344

STATE OF NORTH CAROLINA

v.

JAMES LEON RUCKER, JR., Defendant.

Appeal by Defendant from judgment entered 3 October 2016 by Judge Joe Crosswhite in Iredell County Superior Court. Heard in the Court of Appeals 25 January 2018.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Marc Bernstein, for the State.

Lisa Miles for the Defendant.

DILLON, Judge.

James Leon Rucker, Jr., ("Defendant") appeals from judgment entered upon jury verdicts finding him guilty of first-degree murder, first-degree kidnapping,[1] felony breaking or entering, and larceny after breaking or entering.

[1] The trial court arrested judgment on the kidnapping charge because it was an element of Defendant's charge for first-degree murder.

I. Background

Defendant and another man, Sidney Anderson, were charged with first-degree murder in connection with the death of Anthony Bradley (the "victim"). The State's evidence tended to show as follows: The victim was an alcoholic who, when drinking, would become angry, use offensive language, and sometimes cause disturbances at his apartment complex. On the day of his death, the victim went to a tattoo shop to get a tattoo but was repeatedly turned away for being rude to other customers and for being intoxicated. Defendant was also "hanging around" outside the tattoo shop that evening.

At trial, Mr. Anderson's testimony was the sole evidence of Defendant's involvement in the victim's death. Mr. Anderson testified that on the night in question, he went to Defendant's scooter repair shop and found Defendant there with the victim, who appeared to be intoxicated. The victim made derogatory comments toward Defendant, and in response, Defendant punched the victim, knocking him down. Mr. Anderson testified that Defendant then hit the victim "about four times." Defendant purportedly said that he had gotten into a "previous altercation" with the victim and that he "had been wanting to get [the victim], but he didn't have an opportunity." Defendant punched the victim at least once more before asking Mr. Anderson to bring him a trash can. With Mr. Anderson's help, Defendant wrapped the victim in a tarp, secured the tarp with zip ties, placed the victim head first in the

trash can, and locked the victim in his own storage unit. Defendant and Mr. Anderson used bleach to clean up the scene in the shop, poured motor oil on one of the bloody areas, and moved items in the shop to cover blood stains. Mr. Anderson also stated that Defendant had taken the victim's scooter from the storage unit. Approximately seven days later, another person was cleaning near the victim's apartment when he noticed "[a] rotten smell." He entered the storage unit, discovered the victim's body in a garbage can, and called the police.

During the course of their subsequent investigation, detectives began to suspect that Defendant had been involved in the victim's death. Detectives interviewed Defendant, and then based on Defendant's statement that he had been with Mr. Anderson the night the victim was killed, detectives interviewed Mr. Anderson. When Detectives spoke with Mr. Anderson, he confessed to being involved in the victim's death and explained to detectives how it had happened; specifically indicated where the victim had fallen, and where he had been bleeding; drew a diagram of the scooter shop; and explained how he and Defendant had moved cabinets to conceal evidence.

Based on Mr. Anderson's statements, police obtained a search warrant to search the scooter shop. During the search, police discovered red stains on the wall behind the cabinets, black zip ties, and a bottle that smelled like bleach. The red

stains were swabbed and tested, and were confirmed to be blood which matched the victim's DNA profile.

Defendant was arrested and indicted for several crimes in connection with the victim's death. The jury found Defendant guilty of first-degree murder, first-degree kidnapping, felony breaking and entering, and felony larceny. The trial court arrested judgment on the kidnapping charge and sentenced Defendant to life imprisonment without parole for his conviction for first-degree murder.[2] Defendant gave oral notice of appeal in open court.

II. Analysis

Defendant makes two arguments on appeal. First, Defendant contends that the trial court erred in allowing a detective to testify regarding Mr. Anderson's truthfulness during his interview with police. Second, Defendant contends that the trial court erred in denying Defendant's request for a special instruction on kidnapping. We address each argument in turn.

A. Detective's Testimony

Defendant first contends that the trial court erred in permitting a detective to testify at trial regarding his opinion of Mr. Anderson's truthfulness during his interviews with law enforcement in the aftermath of the victim's death. The recording of the interview was played for the jury at trial. During the interview, the

[2] The trial court further sentenced Defendant to fifteen to eighteen months imprisonment for his convictions for breaking and entering and larceny.

detective repeatedly states that he "knows" Mr. Anderson is not telling the truth. Defendant also contends that the following statement, elicited from the detective at trial, constituted impermissible opinion testimony:

> [Detective:] Initially . . . when we met with [Mr.] Anderson he denied. We continued to talk. It was a lengthy conversation that we had. . . . *As we continued to talk, it was clear to me that he wasn't telling the truth.* I made it clear to him that we thought there was more to it and we would like to hear the whole truth[.] And at some point he changed his story and then confessed to what he testified to [on the stand at trial].

(Emphasis added). We disagree.

Our Court has recently reiterated that "[t]estimony elicited to assist the jury in understanding a law enforcement officer's investigative process is admissible under Rule 701 [of our Rules of Evidence]." *State v. Daughtridge*, ___ N.C. App. ___, ___, 789 S.E.2d 667, 672 (2016). Rule 701 provides:

> If the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue.

N.C. Gen. Stat. § 8C-1, Rule 701 (2015). Our Court has also considered whether the trial court erred in permitting an officer's testimony regarding statements he made during an interrogation that a defendant was "telling a lie" and giving an inaccurate account of a fight. *See State v. Castaneda*, 215 N.C. App. 144, 148-49, 715 S.E.2d 290,

294 (2011). In *Castaneda*, our Court concluded that the officer's statements did not constitute improper opinion evidence under Rule 701 because they were part of an interrogation technique and "were not made for the purpose of expressing an opinion as to [the] defendant's credibility or veracity at trial[.]" *Id.* at 150-51, 715 S.E.2d at 295.

Here, as in *Castaneda* and *Daughtridge*, it is clear from the context of the detective's testimony that he was "simply explaining the steps he took in furtherance of his ongoing investigation. His statements expressing skepticism over [the] [individual's] account of [the] events served merely to provide context and explain his rationale for continuing to subject the [individual] to additional scrutiny." *Daughtridge*, ___ N.C. App. at ___, 789 S.E.2d at 672. Accordingly, we find no error in the admission of these statements.

B. Special Jury Instruction

Defendant's counsel requested a special jury instruction specifically stating that the jury had to find that the victim was *alive* at the time he was "restrained" or "removed" in order to find Defendant guilty of first-degree kidnapping. On appeal, Defendant contends that the trial court's refusal to do so warrants the grant of a new trial. We disagree.

We review issues involving jury instructions *de novo*. *State v. Osorio*, 196 N.C. App. 458, 466, 675 S.E.2d 144, 149 (2009). The trial court is required to instruct the

jury on all substantial features of a case. *State v. Smith*, 360 N.C. 341, 347, 626 S.E.2d 258, 261 (2006). Where an instruction is a correct statement of the law and is supported by the evidence, the trial court must give the instruction. *State v. Monk*, 291 N.C. 37, 54, 229 S.E.2d 163, 174 (1976) (emphasis added). However, "[i]t is sufficient if the trial court gives the requested instructions in substance." *State v. Vause*, 328 N.C. 231, 239, 400 S.E.2d 57, 63 (1991). In order to show error, a defendant must show that the requested instruction "[was] not given in substance and that substantial evidence supported the omitted instruction[]." *State v. Garvick*, 98 N.C. App. 556, 568, 392 S.E.2d 115, 122 (1990).

Here, the trial court gave the pattern jury instruction for first-degree kidnapping. Specifically, the trial court instructed the jury:

> If you find from the evidence beyond a reasonable doubt that on or about the alleged date, [Defendant] . . . unlawfully restrained the person or removed the person from one place to another and that the person did not consent to this restraint or removal and that this was done for the purpose of committing a felony . . . or doing serious bodily injury to the person, and that this restraint or removal was a separate, complete act, independent of and apart from committing burglary or larceny or injury and that the person restrained or removed was not released by [Defendant] in a safe place or had been seriously injured, it would be your duty to return a verdict of guilty of first degree kidnapping.

We conclude that this statement, along with the trial court's other instructions further detailing each element of first-degree kidnapping, was sufficient to instruct

the jury on all substantial features of the charge of kidnapping. *See Vause*, 328 N.C. at 239, 400 S.E.2d at 63. The instruction repeatedly referred to a "person" being restrained or removed, a "person" suffering serious bodily injury, and whether a "person" had been seriously injured. It is clear from the instructions that in order to be found guilty of first-degree kidnapping, the victim must have been alive at the time of the commission of the act or acts which form the basis of the offense. *See State v. Keller*, 198 N.C. App. 639, 645, 680 S.E.2d 212, 215 (2009) (concluding that the offense of kidnapping set forth in N.C. Gen. Stat. § 14-39 "inherently requir[es] a live victim"). N.C. Gen. Stat. § 14-39 "makes confinement, restraint, or removal unlawful without consent, something that necessarily must be given by a living person." *Id.* Accordingly, we conclude that the trial court did not err in declining to give Defendant's requested instruction. The trial court gave the requested instruction in substance and also allowed Defendant's counsel to explicitly argue to the jury, in closing, that the victim must have been alive at the time he was alleged to have been "restrained or removed."

NO ERROR.

Judges STROUD and INMAN concur.

Report per Rule 30(e).