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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-359

Filed: 5 November 2019

Caswell County, No. 14CRS050657-58, 61-62, 15CRS00016

STATE OF NORTH CAROLINA

v.

HAROLD LEE WILLIAMS, JR., Defendant.

Appeal by Defendant from judgment entered 26 October 2018 by Judge Carl R. Fox in Caswell County Superior Court. Heard in the Court of Appeals 15 October 2019.

*Attorney General Joshua H. Stein, by Assistant Attorney General Wes Saunders, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Kathryn L. VandenBerg, for Defendant.*

BROOK, Judge.

Harold Lee Williams, Jr., ("Defendant") appeals from judgment entered upon jury verdict finding him guilty of second-degree kidnapping. Defendant argues the trial court erred in denying his motion to dismiss the kidnapping charge, because there was insufficient evidence to support the conclusion that the restraint used for

the kidnapping was separate and apart from that used for the underlying armed robbery. For the following reasons, we disagree.

## I. Factual and Procedural History

Donald Phillip Riley, Jr., testified at trial that on 15 December 2014 he was in his pasture baling hay when he noticed a car pulling into his driveway. Mr. Riley did not see anyone in the car but saw that his shop door was open. As he walked over to the shop, an African-American male came out of the shop and pointed a gun at Mr. Riley's head. A white male then came out of the west side of the shop and positioned himself behind Mr. Riley. Both men were wearing masks and gloves. Law enforcement officers later determined Defendant to be the African-American man and Ronald Whitfield, Jr., to be the white man.

Defendant ordered Mr. Riley to give him money or he would be "a dead MF."[1] Mr. Riley responded that he did not have any money, and Mr. Whitfield tied Mr. Riley's hands and feet with a speaker cord and a phone charger that was inside the shop while Defendant kept the gun trained on Mr. Riley. Defendant again ordered Mr. Riley give him money, or he would kill him. Mr. Riley repeated he did not have any money on him, but that there was about $94 or $96 in cash with his credit cards on the kitchen counter. Defendant told Mr. Whitfield to check for the money inside the house and told Mr. Riley to lie face down on the shop floor. Mr. Whitfield came

[1] For ease of identification, names have been inserted where Mr. Riley referred to his assailants as "the black man" or "the white man."

back into the shop and alerted Defendant that a "white woman," Mr. Riley's wife, was "coming down the driveway." Defendant and Mr. Whitfield got back into their car, backed down the driveway, and left. They took three chainsaws, a jar full of coins, a .22 Marlin rifle, a .380 Ruger pistol, Mr. Riley's credit cards, and five of Mr. Riley's beers with them.

At trial, Mr. Riley testified that he later learned his son, Donald Riley, III, ("DJ Riley"), had planned the robbery. Prior to the robbery, the two had not spoken in at least three years, because Mr. Riley suspected his son had previously stolen from him. DJ Riley also testified at trial and said Defendant, whom he referred to as "Spoon," had threatened to kill DJ Riley's son if he did not replace guns that had apparently gone missing out of Defendant's car. It was then that DJ Riley told Defendant his father had guns and rode with Defendant and Mr. Whitfield to his father's house. DJ Riley was dropped off near the house. Mr. Whitfield testified he and Defendant picked DJ Riley up after the robbery, and the three then drove to Greensboro and disposed of the coins, firearms, and chainsaws.[2] They split the proceeds from the sale of the firearms and chainsaws three ways along with the coins, which they converted to cash at a Coinstar.

[2] Mr. Whitfield also testified that he never touched a gun and never went into the house, which ran contrary to Mr. Riley's version of events. However, the State recalled Mr. Riley who confirmed the white man, Mr. Whitfield, had gone into the house.

A witness testified he contacted police the next day, because he believed he had been sold stolen guns. Law enforcement quickly identified the weapons as Mr. Riley's and brought DJ Riley in for questioning since he had sold the guns to the witness. DJ Riley admitted his involvement and identified Mr. Whitfield and Defendant as his accomplices.[3] Defendant was subsequently charged with robbery with a dangerous weapon, second-degree kidnapping, possession of firearm by a felon, two counts of breaking and entering, felony larceny, and habitual breaking/entering status.

At the close of the State's evidence at trial, Defense counsel moved to dismiss Defendant's charges for insufficient evidence. The motions were denied. Defense counsel renewed the motions at the close of all evidence, and they were again denied.

The jury ultimately found Defendant guilty of all charges. The trial court imposed four consecutive active sentences: 95 to 126 months for robbery; 32 to 51 months for kidnapping; 32 to 51 months for two breaking/entering charges with habitual status, consolidated; and a mitigated range sentence of 12 to 24 months for possession of firearm by felon. Defendant's total sentence is 171 to 252 months.

Defendant timely appealed.

## II. Analysis

On appeal, Defendant argues the trial court erred in denying his motion to dismiss the kidnapping charge, because there was insufficient evidence of restraint

[3] DJ Riley pleaded guilty to one count of felony larceny and one count of breaking and entering in exchange for a dismissal of several of his other charges. DJ was sentenced to probation.

that was separate and apart from that inherent in the commission of the armed robbery. We disagree.

A. Standard of Review

We review the denial of a motion to dismiss *de novo*, *see State v. Robledo*, 193 N.C. App. 521, 525, 668 S.E.2d 91, 94 (2008), viewing all evidence in the light most favorable to the State, *see State v. Dick*, 126 N.C. App. 312, 317, 485 S.E.2d 88, 91 (1997). At trial, the State must have presented substantial evidence of each element of the offense charged and of the defendant's guilt in order to overcome a motion to dismiss. *State v. Barnes*, 334 N.C. 67, 75, 430 S.E.2d 914, 918 (1993) (citation omitted). Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *State v. Turnage*, 362 N.C. 491, 493, 666 S.E.2d 753, 755 (2008) (citations and marks omitted). If substantial evidence exists, then "the motion to dismiss is properly denied." *State v. Earnhardt*, 307 N.C. 62, 65-66, 296 S.E.2d 649, 651-52 (1982).

B. Motion to Dismiss

Second-degree kidnapping is the unlawful confinement, restraint, or removal of a person from one place to another, without that person's consent, for facilitating the commission of a felony or flight of any person following the commission of a felony.

N.C. Gen. Stat. § 14-39(a)(2) (2017). Certain felonies, like armed robbery,[4] also involve the restraint of a person, and so our Supreme Court has held that the restraint involved in the kidnapping must be "separate and apart" from that involved in the commission of the underlying felony in order to avoid violating the constitutional prohibition against double jeopardy. *State v. Fulcher*, 294 N.C. 503, 523, 243 S.E.2d 338, 351 (1978). The "key question" is whether the person is exposed to greater danger than that inherent in the other felony or is subjected to the kind of danger and abuse the kidnapping statute was designed to prevent. *State v. Pigott*, 331 N.C. 199, 210, 415 S.E.2d 555, 561 (1992) (internal marks and citations omitted).

Our appellate courts have repeatedly found that the act of tying up or binding a robbery victim is sufficient evidence of an act of restraint beyond that inherent in the underlying robbery such that it supports a separate conviction for kidnapping. For example, in *State v. Beatty*, 347 N.C. 555, 495 S.E.2d 367 (1998), our Supreme Court upheld the defendant's kidnapping conviction, because the defendant

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[4] Armed robbery is defined as follows:

> [a]ny person or persons who, having in possession or with the use or threatened use of any firearms or other dangerous weapon, implement or means, whereby the life of a person is endangered or threatened, unlawfully takes or attempts to take personal property from another or from any place of business, residence or banking institution or any other place where there is a person or persons in attendance, at any time, either day or night, or who aids or abets any such person or persons in the commission of such crime, shall be guilty of a Class D felony.

N.C. Gen. Stat. § 14-87 (2017).

restrained a restaurant employee with duct tape during an armed robbery. *Id.* at 559, 495 S.E.2d at 370. According to the Court, binding the employee's wrists "increased the victim's helplessness and vulnerability beyond what was necessary to enable him and his comrades to rob the restaurant" and constituted sufficient evidence of a restraint independent from the robbery. *Id.*

In *Pigott* the defendant robbed his employer in his home at gunpoint, and then bound his employer's hands with a sash from his robe after forcing him to lie on the floor. 331 N.C. at 202, 415 S.E.2d at 557. Threatening the employer with the gun was "all the restraint necessary and inherent to the armed robbery" and binding his hands and feet exposed him to greater danger, which supported the separate kidnapping conviction. *Id.* at 210, 415 S.E.2d at 561. Again in *State v. Ly*, 189 N.C. App. 422, 658 S.E.2d 300 (2008), during the commission of an armed robbery, the defendants bound and blindfolded each person as he or she entered the home. *Id.* at 428, 658 S.E.2d at 305. This Court upheld the separate kidnapping convictions because, again, "the victims were placed in greater danger than that inherent in the offense of robbery with a dangerous weapon." *Id.*

Here, after threatening and restraining Mr. Riley with a gun, Defendant and Mr. Whitfield bound Mr. Riley's hands and feet and forced Mr. Riley to lie face down on the ground. Threatening Mr. Riley with the gun was "all the restraint necessary and inherent to the armed robbery." *Pigott*, 331 N.C. at 210, 415 S.E.2d at 561.

Defendant then took additional steps to restrain Mr. Riley by moving him into the shop, tying his hands and feet together, and ordering him to lie face down on the ground. As in *Beatty*, *Pigott*, and *Ly*, the additional restraint of Mr. Riley exposed him to a greater danger than that inherent in the armed robbery, and thus was an independent act sufficient to sustain the kidnapping conviction.

## III. Conclusion

For the reasons stated above, we hold the trial court did not err in denying Defendant's motion to dismiss.

NO ERROR.

Judge BRYANT and Judge TYSON concur.

Report per Rule 30(e).