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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-442

No. COA20-172

Filed 17 August 2021

Wake County, Nos. 17 CRS 208896, 210187

STATE OF NORTH CAROLINA

v.

THOMAS MICHAEL GAVIN

Appeal by defendant from judgments entered 10 July 2019 by Judge Henry W. Hight, Jr. in Wake County Superior Court. Heard in the Court of Appeals 26 May 2021.

*Attorney General Joshua H. Stein, by Civil Bureau Chief Shannon J. Cassell, for the State.*

*Anne Bleyman for defendant.*

DIETZ, Judge.

¶ 1 Defendant Thomas Gavin appeals his conviction for first degree kidnapping. He contends that there was insufficient evidence that he confined, restrained, or removed the victim for the purpose of terrorizing her.

¶ 2 The State's evidence showed that the victim secured a no-contact order after Gavin repeatedly stalked and harassed her; that Gavin called the victim on the night

of the kidnapping and lied about his whereabouts so that she would answer a knock at the door; that Gavin refused to leave when she asked; and that, when the victim refused Gavin's request for sex, he repeatedly beat the victim causing serious injuries. When officers arrived responding to a 911 call, they found blood and blood spatter throughout the apartment, including the living room, bedroom, and bathroom. No one answered when the officers initially knocked on the victim's door, but an officer observed Gavin pacing back and forth shirtless in the living room through a window and then saw Gavin appear to cover something on the floor with a blanket. Gavin did not answer the door until several minutes later.

¶ 3 From this evidence, a reasonable jury could infer Gavin's intent to terrorize the victim through a combination of stalking, deception, and repeated beatings after she asked him to leave and declined his request for sex. This, in turn, means the trial court properly denied the motion to dismiss. We therefore find no error in the trial court's judgments.

### **Facts and Procedural History**

¶ 4 In 2016, Debbie Vandenburg was introduced to Thomas Gavin by mutual friends. Vandenburg testified that Gavin routinely made her feel uncomfortable. On more than one occasion, she caught him watching her apartment, leaving her unwanted food and gifts, and sitting alone outside her doorstep. Gavin sometimes texted or called Vandenburg up to 30 times per day, and he also sent her an

unsolicited sexually explicit photo. Vandenburg told him repeatedly to stop contacting her, but he did not stop. Gavin would knock on Vandenburg's apartment door, and she would not answer. Gavin's actions ultimately led to a conviction for misdemeanor stalking.

¶ 5 In November 2016, Vandenburg sought a no-contact order against Gavin under N.C. Gen. Stat. § 50C-1 for stalking and nonconsensual sexual contact. After a hearing, the trial court ordered Gavin to stay at least 300 yards away from Vandenburg for one year from the date of the order. The order also prohibited Gavin from contacting Vandenburg by phone. Gavin continued to contact Vandenburg by phone after the order was entered.

¶ 6 In May 2017, Gavin called Vandenburg. At the time, Vandenburg was at her apartment in Knightdale. During that call, Vandenburg asked Gavin where he was to confirm that he was not in town. Gavin lied and told Vandenburg that he was not in Knightdale.

¶ 7 Shortly after, Gavin knocked on her door. Believing Gavin was out of town and thus did not pose a risk, Vandenburg opened the door. Gavin entered the apartment and immediately began describing his desire to have sex with Vandenburg. When she refused, Gavin hit her across the face. Vandenburg told Gavin to leave. Gavin then punched Vandenburg repeatedly.

¶ 8 At 3:59 a.m., three police officers responded to a 911 call concerning a

disturbance in Vandenburg's apartment. When the officers first knocked, no one answered. One of the officers then looked into a window of the apartment and saw a man without a shirt pacing back and forth in the living room. The officer saw the man leave the room and come back with what appeared to be a blanket and throw it over something on the floor. The officers continued to knock and, eventually, Gavin answered the door.

¶ 9 The officers asked to speak with the occupants of the apartment. Vandenburg told the officers that Gavin had beaten her. There was blood on the couch in the living room, blood spatter on Vandenburg's bed, and blood in the bathroom. Vandenburg does not remember being moved around her apartment. Gavin told the police that the blood was from when Vandenburg ran into the shower wall.

¶ 10 At the hospital later that same day, an officer documented Vandenburg's injuries with photographs. Doctors later confirmed that Vandenburg had a hemorrhage in her brain. She sustained a broken eardrum and had bruises all over her body. Due to the severity of her injuries, Vandenburg required several surgeries.

¶ 11 The State charged Gavin with first degree kidnapping and a number of other charges, including assault inflicting serious bodily injury and felony stalking. The jury found Gavin guilty of first degree kidnapping and these other charges, and the trial court sentenced Gavin to consecutive terms of 21 to 35 months, 96 to 128 months, and 21 to 35 months in prison. Gavin appealed.

### **Analysis**

¶ 12 Gavin argues that the trial court erred by denying his motion to dismiss the first degree kidnapping charge. He argues that the State presented insufficient evidence that he unlawfully confined, restrained, or removed Vandenberg for the specific purpose of terrorizing her.

¶ 13 This Court reviews the trial court's denial of a motion to dismiss *de novo*. *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007). A defendant's motion to dismiss is properly denied if "there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense." *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (2000). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Smith*, 300 N.C. 71, 78–79, 265 S.E.2d 164, 169 (1980). When reviewing for substantial evidence, we "consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor." *State v. Rose*, 339 N.C. 172, 192–93, 451 S.E.2d 211, 223 (1994).

¶ 14 The relevant provision of the kidnapping statute criminalizes "confinement, restraint or removal" of a person without consent for the purpose of doing "serious bodily harm to or terrorizing the person so confined, restrained or removed or any

other person.” N.C. Gen. Stat. § 14-39(a)(3).

¶ 15 Because “kidnapping is a specific intent crime, the State must prove that the defendant unlawfully confined, restrained, or removed the person” for a purpose set out in the statute. *State v. Moore*, 315 N.C. 738, 743, 340 S.E.2d 401, 404 (1986). “Intent, or the absence of it, may be inferred from the circumstances surrounding the event and must be determined by the jury.” *State v. White*, 307 N.C. 42, 48, 296 S.E.2d 267, 271 (1982). To show the specific intent to “terrorize” a person under the statute, there must be sufficient evidence that the defendant put “that person in some high degree of fear, a state of intense fright or apprehension.” *Moore*, 315 N.C. at 745, 340 S.E.2d at 405. When assessing 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 her.” *Id.* The “victim’s subjective feelings of fear, while not determinative of the defendant’s intent to terrorize, are relevant.” *State v. Baldwin*, 141 N.C. App. 596, 604, 540 S.E.2d 815, 821 (2000).

¶ 16 Considered in the light most favorable to the State, the evidence was sufficient to permit a reasonable juror to infer the specific intent to terrorize. Gavin knew Vandenburg did not want to encounter him because, after numerous prior stalking and sexual harassment incidents, Vandenburg secured a no-contact order. Gavin had previously gone to Vandenburg’s home and knocked on the door but Vandenburg refused to open the door because she knew it was Gavin knocking.

¶ 17 When Gavin called Vandenburg in May 2017, he lied to her about his whereabouts, leading her to believe he was not near her home in Knightdale. This, in turn, led her to open the door when he arrived and knocked. He then requested to have sex with her, despite her repeated past statements that she was not interested in any relationship or any other contact with him. After Vandenburg expressed no desire to have sex with him, Gavin hit her across the face. When Vandenburg then demanded that he leave, Gavin refused and punched Vandenburg repeatedly.

¶ 18 Although there is no direct evidence of what happened next, the investigating officers later arrived at Vandenburg's apartment and found blood on the couch in the living room, blood spatter on Vandenburg's bed, and blood in the bathroom. After the officers initially knocked on the door of Vandenburg's apartment and no one answered, an officer observed Gavin pacing back and forth in Vandenburg's living room without his shirt on and appearing to use a blanket to cover something on the floor.

¶ 19 From this evidence, a reasonable jury could infer Gavin's intent to terrorize Vandenburg through a combination of stalking, deception, physical violence, and refusal to answer law enforcement's knocks on the door, all of which occurred while Gavin refused Vandenburg's requests to leave and violently attacked Vandenburg in various locations throughout her apartment. *See Baldwin*, 141 N.C. App. at 604, 540 S.E.2d at 821. Accordingly, there was substantial evidence of the essential elements

of first degree kidnapping, and the trial court properly denied Gavin's motion to dismiss.

**Conclusion**

¶ 20

We find no error in the trial court's judgments.

NO ERROR.

Judges INMAN and WOOD concur.

Report per Rule 30(e).