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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-850

Filed 16 May 2023

Cleveland County, Nos. 21 CRS 51432, 51433, 51436, 51437

STATE OF NORTH CAROLINA

v.

TERRANCE BROWN

Appeal by Defendant from judgments entered 12 April 2022 by Judge Gregory R. Hayes in Cleveland County Superior Court. Heard in the Court of Appeals 26 April 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Melody R. Hairston, for the State.

Dunn, Pittman, Skinner & Cushman, PLLC, by Rudolph A. Ashton, III, for Defendant.

WOOD, Judge.

Defendant appeals the denial of his motions to dismiss the charges of armed robbery, larceny of a firearm, and second-degree kidnapping. For the reasons outlined below, we hold that the trial court did not err in denying Defendant's motions.

I. Background

What ended with Defendant's paranoid delusions of "sharpshooters in the trees" and subsequent charges of armed robbery, larceny, and kidnapping began with an offer to help a friend move. David Pearson ("Pearson") needed assistance moving his trailer and asked Defendant to travel with him in Pearson's vehicle to a rental facility where Pearson could rent a truck. The two friends met at a drug rehabilitation center and later lived together for a short time. Defendant, at one point, had sold a pistol to Pearson.

The two traveled very early in the morning from Gaffney, South Carolina, to Shelby, North Carolina, where Pearson intended to rent a truck. While on the way, Defendant and Pearson engaged in a heated argument about religion. The quarrel peaked when Defendant, for unknown reasons, told Pearson to crash the car he was driving while the two were still inside and informed Pearson that Defendant had with him the gun that he previously had sold to Pearson. When Pearson refused to intentionally crash the vehicle, Defendant attempted to wrestle the steering wheel from Pearson who was able to regain control of the vehicle. Defendant soon attempted to force a collision once more, but Pearson stopped the vehicle in the middle of the highway after narrowly avoiding hitting another car.

In disbelief, Pearson quickly exited the vehicle and began running up a nearby hill. Pearson's athleticism failed him, however, and Defendant soon caught up to Pearson who had stopped running. Holding the firearm, Defendant ordered Pearson

to get back in the vehicle and drive them to their original destination. Pearson agreed and would later testify that he obliged Defendant “[b]ecause at that point I was afraid that he would shoot me if I didn’t.”

Before continuing down the road, Defendant placed the firearm in the vehicle’s trunk but later retrieved it when the two approached what appeared to be a police checkpoint. Defendant pointed the gun at Pearson and told him, “Do not stop. Keep going.” At some point during the journey, Pearson attempted to call 911 on his cell phone, but Defendant took Pearson’s phone and threw it into the woods.

When the two arrived at the rental facility, Defendant gave his cell phone to Pearson so that Pearson could complete the online check-in process to rent a truck. Pearson took this opportunity to walk away from the vehicle and call 911 instead. Defendant, still in the vehicle, demanded that Pearson get back into the vehicle with him, but Pearson continued to distance himself from Defendant. Defendant then drove off in Pearson’s car with the firearm.

Soon after, police were called to a local gas station where Steve Alexander (“Alexander”) reported that a man fitting Defendant’s description stole his car. Alexander had pulled into the Citgo gas station to greet a friend before Defendant drove into the parking lot, exited Pearson’s vehicle, and approached both of them. Alexander was still sitting in his vehicle when Defendant demanded that Alexander’s friend step away and repeatedly told Alexander to step out of his vehicle. Alexander saw that Defendant had a gun in his hand, but he did not get out of the vehicle until

Defendant cocked the hammer of the firearm and pointed it at him. Defendant expressed his demands with urgency but then drove away in Alexander's car with caution to obey the nearby traffic signals. When police arrived at the gas station, they discovered a syringe containing some residue in Pearson's abandoned vehicle.

Later that morning, police received another call, this time from a nearby church. A local resident, Clyde Buckner ("Buckner"), happened upon Defendant lying down and crying near Alexander's vehicle in a church parking lot. Defendant told Buckner that he believed that sharpshooters in the nearby trees had shot him and that they were still trying to shoot him. Buckner was confused and assured Defendant that there were no sharpshooters in the trees. Defendant thanked Buckner profusely for this revelation and blamed his misperception on the meth he was taking. Buckner was gentle with Defendant and ensured that he was well before asking, "Well, don't you think we . . . should call for some help?" Defendant responded, "Yes, please." Buckner called 911 and secured the firearm Defendant had placed on top of the car. Defendant also informed Buckner he had thrown the keys to the vehicle some distance away.

Defendant was indicted on 10 May 2021 on charges of larceny of a firearm, larceny of a motor vehicle, robbery with a dangerous weapon, and second-degree kidnapping. His trial was held on 11 and 12 April 2022. Defendant moved to dismiss the charges after the State presented its evidence and again at the conclusion of all evidence. The trial court denied both motions. The jury returned guilty verdicts on

all four charges on 12 April 2022. The trial court arrested judgment on the larceny of a motor vehicle charge and sentenced Defendant on the remaining three charges. The trial court sentenced Defendant to 64 to 89 months for robbery with a dangerous weapon, consecutive 25 to 42 months for second-degree kidnapping, and 6 to 17 months for larceny of a firearm to run concurrently with the robbery conviction.

Pursuant to Section 15A-1444(a) of our General Statutes, Defendant appeals the trial court's denial of his motions to dismiss.

II. Standard of Review

"[W]e review the denial of a motion to dismiss de novo." *State v. Crockett*, 368 N.C. 717, 720, 782 S.E.2d 878, 881 (2016). " 'Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment' for that of the lower tribunal." *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008) (quoting *In re The Greens of Pine Glen Ltd.*, 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003)). Here, then, we consider "whether 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. If so, the motion is properly denied." *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). In other words, we look to "whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Barnette*, 304

N.C. 447, 458, 284 S.E.2d 298, 305 (1981). Circumstantial evidence may be considered and “withstand a motion to dismiss . . . even when the evidence does not rule out every hypothesis of innocence.” *State v. Stone*, 323 N.C. 447, 452, 373 S.E.2d 430, 433 (1988) (citing *State v. Stephens*, 244 N.C. 380, 384, 93 S.E.2d 431, 433 (1956)). We must consider the evidence “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, 451 S.E.2d 211, 223 (1994) (citing *State v. Sumpter*, 318 N.C. 102, 107, 347 S.E.2d 396, 399 (1986)).

III. Discussion

Defendant argues that he lacked the requisite intent to charge him with the crimes of armed robbery, larceny of a firearm, and kidnapping. We address these charges respectively.

A. Armed Robbery

The armed robbery charge stemmed from Defendant’s interaction with Alexander at the Citgo gas station. Defendant challenges the denial of his motion to dismiss this charge, arguing that the State failed to produce at trial substantial evidence to support the intent element of armed robbery. Defendant claims that he could not have intended to permanently deprive Alexander of his vehicle when the evidence shows that Defendant later exited the vehicle and disposed of the vehicle’s keys.

A person commits armed robbery when he, “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.” N.C. Gen. Stat. § 14-87(a) (2022). Defendant is correct in noting that he must have “intended to permanently deprive the owner of his property,” but such intent need only be shown “*at the time the taking occurred.*” *State v. Richardson*, 308 N.C. 470, 474, 302 S.E.2d 799, 802 (1983). Further, “intent to permanently deprive an owner of his property could be inferred where there was no evidence that the defendant ever intended to return the property, but instead showed a complete lack of concern as to whether the owner ever recovered the property.” *State v. Barts*, 316 N.C. 666, 690, 343 S.E.2d 828, 843-44 (1986) (citing *State v. Smith*, 268 N.C. 167, 150 S.E.2d 194 (1966)).

Our Supreme Court held in *State v. Mann* that a motion to dismiss the charge of armed robbery was properly denied when the defendant steals and later abandons a vehicle. 355 N.C. 294, 304, 560 S.E.2d 776, 783 (2002). “[B]y abandoning property, the thief ‘puts it beyond his power to return the property and shows a total indifference as to whether the owner ever recovers it.’ ” *Id.* (quoting *Barts*, 316 N.C. at 690, 343 S.E.2d at 844).

Here, the State presented evidence showing that Defendant, armed with a firearm, approached Alexander at the Citgo gas station and demanded possession of his vehicle. Alexander refused to hand over control of his vehicle until Defendant

cocked the hammer of his firearm. Alexander then relinquished the vehicle to Defendant who subsequently drove off. Defendant later parked the vehicle at a church and threw the keys away.

Similar to the defendant in *Mann*, evidence here tended to show that Defendant abandoned the vehicle after he stole it. Though Defendant may have later determined that he did not wish to keep the vehicle, a reasonable jury could have concluded that Defendant intended to steal the vehicle at the time he took it. Substantial evidence supported the charge of armed robbery; therefore, the motion to dismiss was properly denied.

B. Larceny of a Firearm

Defendant next challenges the denial of his motion to dismiss the charge of larceny of a firearm. As in his previous argument, Defendant asserts that the requisite intent element of this charge was not supported by substantial evidence. Defendant contends, given his historically close personal relationship with Pearson, he could not have intended to permanently deprive Pearson of his firearm when he drove away with it. We disagree.

Larceny is the “wrongful taking and carrying away of the personal property of another without his consent, and this must be done with felonious intent; that is, with intent to deprive the owner of his property and to appropriate it to the taker’s use fraudulently.” *State v. Griffin*, 239 N.C. 41, 45, 79 S.E.2d 230, 232 (1953). Larceny of a firearm is specifically classified as a felony under Section 14-72(b)(4) of our

General Statutes.

The State presented evidence tending to show that Defendant took Pearson's firearm from the center console and, later, the trunk of Pearson's car without Pearson's consent. It further showed that Defendant then drove away from Pearson with the firearm after failing to force Pearson back into the vehicle. In the light most favorable to the State, the evidence presented could support a finding that Defendant took Pearson's property, specifically a firearm, without his consent with the intent to deprive him of it. Truly, as Defendant argues, Defendant had previously sold Pearson the firearm at issue, and evidence was presented of a close friendship once existing between Defendant and Pearson. The jury was at liberty to weigh this latter evidence in Defendant's favor; however, the presence of such evidence is not dispositive when a jury has ample evidence of Defendant's guilt. "Contradictions and discrepancies do not warrant dismissal of the case but are for the jury to resolve." *State v. Fritsch*, 351 N.C. 373, 379, 526 S.E.2d 451, 455 (2000). We hold that the State presented substantial evidence to overcome the motion to dismiss.

C. Kidnapping

Last, Defendant challenges the trial court's denial of his motion to dismiss the kidnapping charge. Defendant was charged with second-degree kidnapping in connection with the incident involving Pearson and their travel to the rental facility. Defendant argues insufficient evidence was presented to maintain the intent element

of kidnapping and that Defendant could not have kidnapped Pearson when Pearson did not testify that he experienced any trauma. We disagree.

A person commits the offense of kidnapping if he “unlawfully confine[s], restrain[s], or remove[s] from one place to another, any other person 16 years of age or over without the consent of such person . . . for the purpose of . . . terrorizing the person so confined, restrained or removed,” among other reasons. N.C. Gen. Stat. § 14-39(a)(3) (2022). The State here proceeded with a kidnapping prosecution upon the underlying theory that Defendant confined, restrained, or removed Pearson “for the purpose of . . . terrorizing” him. As with the above charges, terrorizing requires the perpetrator’s “purpose” or intent. *Id.* Terrorizing, in this sense, means “more than just putting another in fear. It means putting that person in some high degree of fear, a state of intense fright or apprehension.” *State v. Moore*, 315 N.C. 738, 745, 340 S.E.2d 401, 405 (1986). “[T]he 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 State presented evidence tending to show that, after Pearson stopped the vehicle in the middle of the road, he ran away from Defendant. Defendant, wielding a firearm, chased after Pearson and commanded him to get back into the vehicle. Pearson complied, fearing for his life, and continued to drive Defendant to the rental facility. When asked at trial why he returned to the vehicle with Defendant, Pearson responded, “I was afraid that he would shoot me if I didn’t.” Pearson would later

attempt to call 911, but Defendant took Pearson's phone and threw it into the woods.

Our Supreme Court's decision in *State v. Moore* informs our decision here. The defendant in that case trapped his girlfriend at gunpoint for three hours after beating her and threatened to kill himself in front of their three-year-old son. *Id.* at 746, 340 S.E.2d at 406. She testified, "I was very scared. I was horrified. I just knew he was going to shoot—shoot me and then shoot himself." *Id.* That evidence was sufficient, when viewed in the light most favorable to the State, to support a theory that the defendant intended to terrorize his victim, and the trial court did not err in submitting a kidnapping charge to the jury upon such a theory.

Likewise, a rational fact finder here could have concluded from the evidence that Defendant intended to terrorize Pearson. Pearson testified that he feared for his life when Defendant, carrying a gun, commanded him to re-enter the vehicle, pointed the weapon at him as they approached a perceived police checkpoint, and disposed of Pearson's phone to prevent him from calling 911. We therefore hold that the trial court did not err in denying Defendant's motion to dismiss the kidnapping charge.

IV. Conclusion

Because substantial evidence supports the elements of intent required by the charges of armed robbery, larceny, and kidnapping, we hold the trial court did not err when it denied Defendant's motions to dismiss. Defendant received a fair trial, free from prejudicial error.

STATE V. BROWN

Opinion of the Court

NO ERROR.

Judges DILLON and FLOOD concur.

Report per Rule 30(e).