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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-845

Filed 5 December 2023

Franklin County, No. 18-CRS-50124

STATE OF NORTH CAROLINA

v.

CHRISTOPHER LEON MINOR

Appeal by defendant from judgments entered 1 December 2021 by Judge John M. Dunlow in Franklin County Superior Court. Heard in the Court of Appeals 5 September 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Matthew Tulchin, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Nicholas C. Woome-Deters, for defendant-appellant.

ZACHARY, Judge.

Defendant Christopher Leon Minor appeals from judgments entered upon his conviction of robbery with a dangerous weapon and second-degree kidnapping. After careful review, we affirm.

I. Background

STATE V. MINOR

Opinion of the Court

On 11 January 2018, Samantha Castagna, an employee of the Dollar General in Louisburg, North Carolina, was restocking the candy shelves at the check-out counter when a man wearing a black jacket, blue mask, and blue gloves “ran into the store and pointed a gun at [her] face.” Castagna testified that the man “told [her] that if [she] did everything that he said[,] [she] wasn’t going to f***** die today[.]” At his command, Castagna walked with him “to the register . . . and popped it open.”

Fourteen-year-old E.W.¹ approached the counter to check out in the midst of the robbery. E.W. testified that she did not know that the store was being robbed until she “set [her] basket down at the register, . . . looked up[,] and made eye contact with a man with a blue mask on.” E.W. “saw [a] black object, which [she] was assuming was a gun” because of “the fact that he pointed at me with it” and “the fact that the store was being robbed.” Although her “immediate reaction was to run away[,]” the man “told [her] not to move” and she complied “[b]ecause [she] was scared that [she] would lose [her] life.”

Castagna testified that before E.W. arrived at the checkout counter, the man had Castagna “lift up the drawer to make sure there weren’t any big bills. . . . And then [E.W.] walked up, and then he pointed the gun at her and told her not to move.” Castagna “handed him the money” and the man “just casually . . . walked around and walked out.”

¹ To protect her identity, we refer to the minor child by her initials.

Approximately five minutes after the robbery, as Traci Dent and her daughter pulled out of their driveway, they saw an older model Honda Accord come “flying by” them, run “through the stop sign and hit . . . a little embankment” with a stump.² The wreck was only about a five-minute drive from the Dollar General. Ms. Dent and her daughter “w[ere] right behind [Defendant] when he wrecked[,]” and they “got out of the[ir] car and . . . immediately called 911.” Ms. Dent approached Defendant, who emerged from the car holding a can, from which “he took a swig”; he then “threw [the can] in the car along with the rest of the belongings[,]” “t[ook] his coat off[,] and . . . started walking down the street.” Ms. Dent noticed that Defendant would “duck[] down” whenever a car drove by, and as traffic increased, he “took a left and started walking really fast.”

Officers from the Franklin County Sheriff’s Office responded to the robbery at the Dollar General. Detective Ashley Camp testified that the officers “were not there long” when “the car accident came out” and they “immediately started getting phone calls from patrol . . . that, ‘Hey, this may be our guy.’”

After Detective Camp reviewed the surveillance video at the Dollar General, she traveled to the scene of the automobile accident, where she saw blue gloves “in plain view” on the passenger-side floorboard. From the Dollar General video, Detective Camp “could tell that the gloves that [the robbery suspect had] on were blue

² In fact, the vehicle was a 1997 Toyota Camry.

or purple[,]” and therefore, she “thought that this car probably was involved in our armed robbery.” Detective Camp also saw the jacket that Defendant had thrown into the car before he left the accident scene; she testified that it “looked like [the] jacket” in the Dollar General video, which “was black . . . [and] had a little white lining . . . along the bottom.”

Detective Camp and the other officers “decided that [they] should tow [the wrecked vehicle] to the Sheriff’s office and secure it . . . to be processed.” They then followed the path taken by Defendant as he left the accident scene. Detective Camp testified that they “came across . . . a blue do-rag” in the road that was still clean. She explained that the do-rag was significant because, based on her recollection of the surveillance footage, the robbery suspect was wearing something on his head during the robbery of the Dollar General, and she felt that it was probably the blue do-rag.

Officers obtained a warrant to search the vehicle, and found several items including a jacket, a beer can, blue latex gloves, and “various paper documents bearing [the] name Christopher L. Minor, located on [the] front passenger seat, rear seat, and rear floorboard.” DNA testing revealed that the profile of the DNA collected from the beer can “was consistent with the profile . . . collected from [Defendant]” and that the probability of “randomly selecting an individual [whose] profile is consistent with the profile” of DNA taken from the beer can was “one in 290 decillion” for the African-American population. In addition, fingerprints taken from the vehicle’s door and the beer can matched Defendant’s fingerprint sample.

On 9 April 2018, a Franklin County grand jury indicted Defendant for robbery with a dangerous weapon and two counts of second-degree kidnapping. On 1 November 2021, Defendant filed a motion to waive his right to a jury trial and to proceed with a bench trial, which the trial court granted following a hearing on 12 November 2021. The matter came on for a bench trial on 30 November 2021, and at the conclusion of the State’s evidence, defense counsel moved to dismiss the charges for insufficiency of the evidence, which the trial court denied. The following day, the court found Defendant guilty of robbery with a dangerous weapon and one count of second-degree kidnapping; the trial court found Defendant not guilty of the other count of second-degree kidnapping. From these judgments, Defendant timely filed written notice of appeal.

II. Discussion

On appeal, Defendant argues that Defendant’s “kidnapping conviction should be vacated because there was insufficient evidence of restraint beyond that inherent in the robbery.” We disagree.

A. Standard of Review

“This Court reviews a trial court’s denial of a motion to dismiss *de novo*.” *State v. Stroud*, 252 N.C. App. 200, 208, 797 S.E.2d 34, 41 (italics omitted), *appeal dismissed and disc. review denied*, 369 N.C. 754, 799 S.E.2d 872 (2017).

B. Second-Degree Kidnapping

“A defendant is guilty of the offense of second-degree kidnapping if he (1) confines, restrains, or removes from one place to another (2) a person (3) without the person’s consent, (4) for the purpose of facilitating the commission of a felony.” *State v. Allred*, 131 N.C. App. 11, 19–20, 505 S.E.2d 153, 158 (1998); *see also* N.C. Gen. Stat. § 14-39(a)(2) (2021). “The key question is whether the kidnapping charge is supported by evidence from which a jury could reasonably find that the necessary restraint for kidnapping exposed the victim to greater danger than that inherent in the armed robbery itself.” *Allred*, 131 N.C. App. at 20, 505 S.E.2d at 159 (cleaned up). In determining whether a victim was exposed to greater danger than that inherent in the armed robbery itself, our Courts have frequently looked to the specific facts of the case to determine whether the restraint of the specific victim was “an integral part of the crime [] or necessary to facilitate the robbery.” *State v. Warren*, 122 N.C. App. 738, 741, 471 S.E.2d 667, 669 (1996).

For example, in *State v. Irwin*, our Supreme Court reversed the kidnapping conviction of a defendant who forced the victim to move, at knifepoint, to the back of the store to open a safe containing prescription drugs. 304 N.C. 93, 103, 282 S.E.2d 439, 446 (1981). The Court reasoned that the victim’s “removal to the back of the store was an inherent and integral part of the attempted armed robbery” because “to accomplish [the] defendant’s objective of obtaining drugs it was necessary that . . . [the victim] go to the back of the store to the prescription counter and open the safe.” *Id.*

STATE V. MINOR

Opinion of the Court

In *State v. Allred*, the defendant appealed his convictions for multiple separate counts of second-degree kidnapping, all of which occurred during an armed robbery. 131 N.C. App. at 13, 505 S.E.2d at 154. In that case, the defendant and his accomplice entered the living room, in which several people were gathered. *Id.* Both the defendant and his accomplice brandished firearms and ordered the people to hand over their money and jewelry; they robbed two of them. *Id.* at 13, 505 S.E.2d at 154–55. Then the accomplice kicked in the bedroom door and discovered another man, who he “grabbed . . . by the collar, dragged . . . into the living room, and pushed . . . down on the couch.” *Id.* at 13, 505 S.E.2d at 155. “Neither [the] defendant nor [his accomplice] attempted to take anything from [this victim].” *Id.*

This Court vacated the defendant’s convictions for the second-degree kidnapping of the two victims who were robbed in the living room because “the restraint used against these victims was an inherent part of the armed robbery and did not expose them to any greater danger than that required to complete the robbery offense.” *Id.* at 20, 505 S.E.2d at 159. However, this Court affirmed the defendant’s conviction for second-degree kidnapping of the man who the accomplice forced from his bedroom and into the living room but did not rob. *Id.* at 21, 505 S.E.2d at 159. We concluded that “this removal was not an integral part of any robbery committed against him, but a separate course of conduct designed to prevent him from hindering [the] defendant and his accomplice from perpetrating the robberies against the other occupants.” *Id.*

Here, the State presented the testimony of the two primary witnesses to the robbery, Castagna and E.W. During her testimony, Castagna explained that *before* E.W. approached the checkout counter: (1) Defendant had restrained Castagna by pointing a gun at her face; (2) Castagna had given Defendant access to the cash in the register; (3) Defendant had confirmed that there were no larger bills underneath the drawer; and (4) Defendant had placed the money from the register into a bag.

Defendant's restraint of E.W. was "not an integral part of the . . . robbery[.]" *Warren*, 122 N.C. App. at 741, 471 S.E.2d at 669, but a "separate course of conduct designed to prevent [E.W.] from hindering [D]efendant . . . from perpetrating the robber[y]." *Allred*, 131 N.C. App. at 21, 505 S.E.2d at 159. Therefore, Defendant's restraint of E.W. "exposed [her] to [a] greater danger than that inherent in the armed robbery itself." *Id.* at 20, 505 S.E.2d at 159 (citation omitted). Accordingly, the trial court did not err in denying Defendant's motion to dismiss the charge of the second-degree kidnapping of E.W.

C. Ineffective Assistance of Counsel

Alternatively, Defendant contends that if our Court concludes that "trial counsel's motion to dismiss was insufficient to preserve the above argument for appellate review, [Defendant] received ineffective assistance of counsel."

However, we need not address this argument on appeal, as we agree with Defendant that "when a defendant properly moves to dismiss, the defendant's motion preserves *all sufficiency of the evidence issues* for appellate review." *State v. Golder*,

374 N.C. 238, 245, 839 S.E.2d 782, 787 (2020) (emphasis added). In the instant case, defense counsel properly moved to dismiss for insufficiency of the evidence, thereby “preserv[ing] all sufficiency of the evidence issues for appellate review.” *Id.* Therefore, Defendant has not shown “that his counsel’s performance was deficient” as is required under the first prong of the *Strickland* test for ineffective assistance of counsel. *State v. Allen*, 360 N.C. 297, 316, 626 S.E.2d 271, 286, *cert. denied*, 549 U.S. 867, 166 L. Ed. 2d 116 (2006).

III. Conclusion

For the foregoing reasons, we conclude that the trial court did not err in denying Defendant’s motion to dismiss and that Defendant did not receive ineffective assistance of counsel.

AFFIRMED.

Judges HAMPSON and FLOOD concur.

Report per Rule 30(e).