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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-525

Filed 21 May 2024

New Hanover County, No. 21 CRS 53673

STATE OF NORTH CAROLINA

v.

REBECKER WILSON

Appeal by Rebecker Wilson (“Defendant”) from judgment entered 14 November 2022 by Judge Frank Jones in New Hanover County Superior Court following a jury verdict finding Defendant guilty of second-degree kidnapping. Heard in the Court of Appeals 7 February 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Danielle M. Orait, for the State.

Lisa Miles, for the Defendant.

WOOD, Judge.

I. Factual and Procedural History

Paul Stojancic (“Stojancic”) celebrated a friend’s wedding on Saturday, 15 May 2021 and into the early morning hours of Sunday, 16 May 2021. On Saturday night, the wedding reception ended at approximately 10:00 p.m. After the wedding

reception, Stojancic and other friends who attended the wedding visited a few bars in downtown Wilmington. Stojancic, who was over the age of twenty-one, consumed alcohol at the wedding reception and at the bars. At the conclusion of their celebrations, Stojancic's friend waived down what he believed to be a cab so Stojancic could return to his hotel. Stojancic got into a white minivan, sat on the passenger side of the back seat, and gave the male driver the address to his hotel. A female, Defendant, sat in the front passenger seat.

While on the way to the hotel, Stojancic suddenly felt the cab hit something, causing a large impact. He immediately told the driver and Defendant, "We got to pull over; I don't know what that was." He called 911 and told the dispatcher, "something crazy just happened," then hung up abruptly because, in Stojancic's words, "they were just arguing with me It was a bit threatening and yelling, and so I wasn't sure what . . . they had up there." Stojancic testified that the male driver and Defendant threatened him, stating that they had weapons. He asked to be let out of the cab approximately five to ten times and "was telling them the whole time to stop."

The driver and Defendant finally let Stojancic out in a residential neighborhood, and he did not know where he was. They drove away but then "came back around," got out of the vehicle, and "beat [Stojancic] up on the ground." In Stojancic's second phone call to 911, he can be heard saying:

He is threatening me right now, I'm running away from the person. He's leaving, he's gone now . . . He's driving away now, I'm standing here . . . He's back here again asking for me to pay him . . . You ran over somebody, man . . . Listen, I will pay.

During this call, scuffling sounds can be heard indicating physical contact between Stojancic and another person. He testified both the driver and Defendant beat him and stomped on him while he was on the ground. He further testified that throughout the altercation, "they were telling me that they had other things to harm me with."

After the physical altercation, Stojancic threw his wallet and both his work and personal cell phones on the ground as the driver and Defendant were demanding payment, and they took Stojancic's belongings. Eventually, he was able to flag down an officer in the street. At trial, a responding officer's bodycam footage was admitted into evidence. The video showed Stojancic sitting on the sidewalk as three officers questioned him about the incident as part of their investigation. Stojancic can be heard saying:

These people tried to murder me when they realized I tried to call you guys . . . These people tried to kill me . . . These people were trying to stop me from saying something . . . They kept circling around . . . They were following me . . . They threw me out of the car . . . They tried to kill me multiple times.

One of the officers responded, "You keep saying they." Another officer explained that Stojancic was "saying there was a passenger in the passenger seat just sitting there." Upon returning to his hotel, Stojancic and the officers learned that the driver of the

cab had returned both phones to the hotel's front desk. Stojancic returned to his home in Charlotte on Sunday. From there, he had a phone interview with Wilmington Police Officer Scott Bramley ("Officer Bramley), who was assigned to the department's traffic unit. He provided Officer Bramley with photos of bruising on his chest and arm inflicted as a result of Stojancic being stomped, which were admitted at trial.

The same night of the incident, Officer Bramley responded to a call regarding a pedestrian who had been hit by a vehicle at the intersection of Martin Luther King Parkway and North Kerr Avenue. At the scene, he looked for the area of impact and for debris and determined what he believed to be the point of impact from the biological matter on the roadway. The distance between the first appearance of biological matter and the location of the deceased victim, Taliyah Andrews ("Andrews"), measured 162 feet. Officer Bramley testified "it was obvious that she had been underneath a vehicle as she had significant injuries to her buttocks." Officer Bramley also testified that Andrews' mother was on the scene, but he did not want her to see Andrews' body in the condition it was in, so he had her show him a photo of her daughter on her phone. Officer Bramley was able to confirm the identity of Andrews as the victim from the photo her mother showed him.

At the scene, officers collected two black pieces of plastic that appeared to be from the undercarriage of a vehicle. Officer Bramley located a part number on one of the plastic pieces. He entered it into a database and found that the make, model, and

year range for the type of vehicle from which it originated matched a 2011-2013 Chrysler Town & Country minivan. Officer Bramley decided to begin searching the Department of Motor Vehicles (“DMV”) database to look for registered owners of 2012 Chrysler Town & Country minivans. Officer Bramley and another officer from his unit went “door to door” canvassing the registered owners of Chrysler Town & Country minivans, but they did not locate a suspect. Thereafter, he reached out to the public for assistance by releasing a still photo from a video of a suspect.

On Monday, 17 May 2021, Officer Bramley received an anonymous tip identifying the driver as “Mr. Small” (“Small”). The individual stated Small often used his minivan as an illegal taxi. Officer Bramley located Small in the DMV database and discovered he had a 2010 Chrysler minivan registered in his name. Eleven minutes after receiving the first tip, Officer Bramley received another tip confirming Small as the individual in the photo law enforcement had released to the public. The caller of the second tip reported Small’s address as 109 North Kerr Avenue.

Upon arriving at that address, Officer Bramley observed a silver Chrysler minivan backed into a parking space. Comparing it to the similar-looking silver Chrysler minivan seen in a downtown Wilmington Street camera video, he believed it was the suspect’s vehicle. The vehicle in the parking space also had a roof rack and a large navigation screen or phone holder similar to the Chrysler minivan shown in the video of the hotel’s front lobby. Officer Bramley laid down on the pavement to

check underneath the minivan and observed biological matter on the undercarriage of the vehicle.

Officer Bramley went inside the apartment building and knocked on Small's door. Defendant, who was Small's girlfriend, answered the door. Defendant allowed Officer Bramley to enter the apartment to speak with them. Small was sitting on a couch. According to Officer Bramley, Defendant did not seem nervous until he began speaking to her about the events of early Sunday morning. She told Officer Bramley they had picked up a passenger from downtown Wilmington on the night of the incident. She stated she was asleep in the vehicle when she "woke up to a jar" and Stojancic repeatedly asking to get out of the vehicle. She reported that Small and Stojancic tussled and that Small returned to the vehicle with both of Stojancic's phones. Defendant told the officer she never got out of the vehicle. After speaking with Defendant, Officer Bramley obtained a search warrant for the minivan. He was present when it was executed and observed "biological matter from the front bumper all the way to the rear bumper."

On 4 April 2022, Defendant was indicted for robbery with a dangerous weapon and second-degree kidnapping. Defendant's trial was held during the 7 November 2022 criminal session of New Hanover County Superior Court. The jury found Defendant not guilty of robbery with a firearm but guilty of second-degree kidnapping. On 14 November 2022, the trial court sentenced Defendant to 15-30 months of imprisonment. Defendant gave oral notice of appeal in open court.

II. Analysis

Defendant argues the trial court erred in denying her motion to dismiss the charge of second-degree kidnapping. She also argues the trial court erred in admitting two photos, one of Andrews and one of biological matter on the undercarriage of the minivan. We address each argument in turn.

A. Motion to Dismiss

Defendant argues the trial court erred in denying her motion to dismiss the charge of second-degree kidnapping because the evidence was insufficient to show she joined in a common purpose with Small to kidnap Stojancic when Small chose to flee the scene after he struck and killed Andrews.

Our Supreme Court has set forth the standard of review of a defendant's motion to dismiss as follows:

[T]he question for the Court is 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.

If the evidence is sufficient only to raise a suspicion or conjecture as to either the commission of the offense or the identity of the defendant as the perpetrator of it, the motion should be allowed. This is true even though the suspicion so aroused by the evidence is strong.

...

The evidence is to be considered in the light most favorable to the State; the State is entitled to every reasonable intendment and every reasonable inference to be drawn

therefrom; contradictions and discrepancies are for the jury to resolve and do not warrant dismissal; and all of the evidence actually admitted, whether competent or incompetent, which is favorable to the State is to be considered by the court in ruling on the motion.

The trial court in considering such motions is concerned only with the sufficiency of the evidence to carry the case to the jury and not with its weight.

State v. Powell, 299 N.C. 95, 98–99, 261 S.E.2d 114, 117 (1980) (citations omitted).

“We review the evidence in the light most favorable to the State, giving the State the benefit of all reasonable inferences.” *State v. Elder*, 278 N.C. App. 493, 499, 863 S.E.2d 256, 264 (2021) (quotation marks omitted).

N.C. Gen. Stat. § 14-39 defines second-degree kidnapping in pertinent part:

(a) Any person who shall unlawfully confine, restrain, or remove from one place to another, any other person 16 years of age or over without the consent of such person, or any other person under the age of 16 years without the consent of a parent or legal custodian of such person, shall be guilty of kidnapping if such confinement, restraint or removal is for the purpose of:

...

(2) Facilitating the commission of any felony or facilitating flight of any person following the commission of a felony

...

(b) . . . If the person kidnapped was released in a safe place by the defendant and had not been seriously injured or sexually assaulted, the offense is kidnapping in the second degree and is punishable as a Class E felony.

N.C. Gen. Stat. § 14-39(a)–(b). “[T]he offense of kidnapping under N.C. Gen. Stat. § 14-39 is a single continuing offense, lasting from the time of the initial unlawful confinement, restraint or removal until the victim regains his or her free will.” *State v. White*, 127 N.C. App. 565, 571, 492 S.E.2d 48, 51 (1997). Regarding acting in concert with another in the commission of a crime, our Supreme Court has held:

If two persons join in a purpose to commit a crime, each of them, if actually or constructively present, is not only guilty as a principal if the other commits that particular crime, but he is also guilty of any other crime committed by the other in pursuance of the common purpose or as a natural or probable consequence thereof.

State v. Barnes, 345 N.C. 184, 233, 481 S.E.2d 44, 71 (1997) (cleaned up). A defendant’s “intent to aid” another’s commission of a crime “may be inferred from his actions and from his relation to the actual perpetrators.” *State v. Sanders*, 288 N.C. 285, 291, 218 S.E.2d 352, 357 (1975).

Here, substantial evidence showed Defendant acted in concert with Small to “unlawfully confine, restrain, or remove [Stojancic] from one place to another.” N.C. Gen. Stat. § 14-39(a). Stojancic testified that after he felt the minivan hit something large and dialed 911, he was forced to hang up because Small and Defendant were being “a bit threatening and yelling.” He testified both the driver and Defendant were threatening him, saying that they had weapons. He asked to be let out of the cab approximately five to ten times and testified, “I was telling *them* the whole time to stop.” (Emphasis added). If an anonymous tipster was aware Small operated his

minivan as an illegal taxi, it would not have been unreasonable for the jury to believe Defendant, Small's girlfriend, was aware he operated it as an illegal taxi. *Sanders*, 288 N.C. at 291, 218 S.E.2d at 357. Therefore, Small and Defendant should not have allowed Stojancic to enter the minivan under the pretense of providing transportation in exchange for legal payment. The impact of the collision was large enough to cause Stojancic to call 911 and repeatedly ask to be let out of the vehicle. Defendant should have been aware she and Small needed to let him out of the vehicle when he asked to be released. Stojancic was adamant in his testimony that he asked to be released from the vehicle "the whole time," but Defendant threatened him, saying she and Small had weapons. Therefore, we conclude substantial evidence demonstrates Defendant acted in concert with Small to confine Stojancic in the vehicle against his will. Such confinement continued when, according to Stojancic's testimony, Small returned to where he had dropped him off, and both he and Defendant beat and stomped on him while demanding payment. Stojancic testified he did not feel free to leave in that moment, and he did not leave until he managed to crawl and then to run away. Therefore, substantial evidence demonstrated Defendant continued to confine Stojancic outside the vehicle against his will. This is true despite "contradictions and discrepancies" in Defendant's statements to Officer Bramley that she was asleep until she was awakened by a "jar" and that she never left the vehicle. *Powell*, 299 N.C. at 99, 261 S.E.2d at 117. Resolving such contradictions and discrepancies is the jury's responsibility. *Id.*

Substantial evidence showed Defendant confined, without consent, one who was “16 years of age or over.” N.C. Gen. Stat. § 14-39(a). Officer Bramley testified Stojancic was over the age of twenty-one and could legally drink alcohol the night of the incident.

Substantial evidence also showed Defendant acted in concert with Small in the commission of a felony or in facilitating the flight of a person following the commission of a felony. N.C. Gen. Stat. § 14-39(a)(2). In certain circumstances, hit-and-run may be a felony under North Carolina law. *See* N.C. Gen. Stat. § 20-166(a)–(a)(1) (defining felony hit-and-run). After Small struck and killed Andrews, Defendant threatened Stojancic, told him she and Small had weapons, and refused to let him out of the vehicle despite his requests to be released. Therefore, substantial evidence demonstrates Defendant acted in concert with Small to confine Stojancic against his will while Small fled the scene of the collision. In other words, Defendant acted in concert with Small in “facilitating” the commission of felony hit-and-run and/or in “facilitating” his flight following the commission of such felony, satisfying the statutory definition of second-degree kidnapping. N.C. Gen. Stat. § 14-39(a)(2).

Accordingly, we hold substantial evidence demonstrated Defendant acted in concert with Small in the commission of second-degree kidnapping. Mere “contradictions and discrepancies are for the jury to resolve and do not warrant dismissal.” *Powell*, 299 N.C. at 99, 261 S.E.2d at 117.

B. The Photos

Defendant next argues the trial court erred in admitting a photo of Andrews and a photo of biological matter on the undercarriage of the minivan because they inflamed the jury, causing it to decide the case based on passion.

Rule 10 of the Appellate Rules of Procedure states in pertinent part:

In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context. It is also necessary for the complaining party to obtain a ruling upon the party's request, objection, or motion.

N.C. R. App. P. 10(a)(1). "In criminal cases, an issue that was not preserved by objection noted at trial . . . nevertheless may be made the basis of an issue presented on appeal when the judicial action questioned is specifically and distinctly contended to amount to plain error." N.C. R. App. P. 10(a)(4). "[A] defendant may not assert on appeal a new theory" as the basis for an objection which was made at trial. *State v. Smarr*, 146 N.C. App. 44, 56, 551 S.E.2d 881, 888 (2001).

Here, the State sought to admit the photo of Andrews taken from her mother's phone which Officer Bramley used to confirm that the victim's body was in fact Andrews. Defendant's counsel objected, and the trial court held an unrecorded bench conference. The trial court overruled defense counsel's objection. The trial court later placed the bench conference on the record, stating:

Let the record reflect that during the direct examination of Officer Bramley and specifically the State's proposed introduction of [the photo of Andrews], defense counsel

lodged an objection. The Court inquired whether counsel desired to be heard outside of the presence of the jury.

Defense counsel responded with a request to approach, which was allowed. And for the record, the Court inquired of the basis for the objection. The best evidence rule was cited. The Court informed counsel for the State and defendant that in the exercise of discretion, Rule 1004. -- subparagraph 4, the Court felt that the photograph was not, quote, closely related to a controlling issue and, therefore, respectfully overruled the objection.

Although Defendant objected to the admission of the photo of Andrews, the objection was based on the best evidence rule, not unfair prejudice under N.C. R. Evid. 403. On appeal, Defendant does not renew any argument based on the best evidence rule; nor does she specifically contend the trial court committed plain error by allowing the photo of Andrews to be entered into evidence. *See* N.C. R. App. P. 10(a)(4). Accordingly, we do not reach this issue.

As for the photo depicting biological matter on the undercarriage of the minivan, Defendant objected on the basis of, among other things, N.C. R. Evid. 403, thus preserving this issue on appeal. Our standard of review of a trial court's ruling on a Rule 403 objection is abuse of discretion. *State v. Tysinger*, 275 N.C. App. 344, 351–52, 853 S.E.2d 189, 194 (2020). “Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988).

“ ‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” N.C. R. Evid. 401. “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” N.C. R. Evid. 403. “ ‘Unfair prejudice’ means an undue tendency to suggest a decision on an improper basis, usually an emotional one.” *Hennis*, 323 N.C. at 283, 372 S.E.2d at 526.

[E]vidence may be admissible where it is not directly probative of the crime charged if it pertains to the chain of events explaining the context, motive and set-up of the crime and is linked in time and circumstances with the charged crime, or if it forms an integral and natural part of an account of the crime, or is necessary to complete the story of the crime for the jury.

Barnes, 345 N.C. at 221, 481 S.E.2d at 64 (cleaned up). “Photographs are usually competent to explain or illustrate anything that is competent for a witness to describe in words. . . . [However, w]hen a photograph adds nothing to the State’s case, then its probative value is nil, and nothing remains but its tendency to prejudice.” *Hennis*, 323 N.C. at 283, 286, 372 S.E.2d at 526–27 (citation, quotation marks, and brackets omitted).

Here, in the trial court’s order allowing the admission of the photo of biological matter on the undercarriage of the minivan, it noted that the State sought to offer

only one photo on the subject matter. In allowing the jury to view the photo, the trial court directed the sheriff deputy to hold the photo and “move at a steady pace from right to left a single time,” and then return the photo to the clerk. The trial court took further precautions by directing the line of questioning laying the foundation for the admission of the photo to occur the next “morning to avoid any unintended prejudicial effect by having this jury look at the photograph overnight.”

The photo was corroborative of Officer Bramley’s testimony that he discovered biological matter under the minivan when he arrived at Small’s address. The photo illustrated Officer Bramley’s testimony regarding his efforts to find the perpetrators of the hit-and-run and of the kidnapping of Stojancic. Discovering the biological matter on the undercarriage of the minivan helped solidify Officer Bramley’s suspicion that he had discovered the minivan involved in the incident. This, in turn, confirmed his belief that he had arrived at the correct address and could enter the apartment complex to question the inhabitants of the address connected to Small as the registered owner of the minivan. Therefore, the photo was relevant to explain Officer Bramley’s investigative efforts and his discovery of the perpetrators.

The photo was not unfairly prejudicial or cumulative because it was shown to the jury only once, and it was the only photo of a potentially violent or gruesome nature. The trial court was careful in its presentation of the photo to the jury, ensuring it was published to the jury in a manner that minimized unfair prejudice.

Accordingly, we hold the trial court did not abuse its discretion in allowing the admission of the photo.

III. Conclusion

We hold the trial court did not err in denying Defendant's motion to dismiss because there was substantial evidence of each element of the offense of second-degree kidnapping and that she was the perpetrator acting in concert with Small. Finally, we hold the trial court did not abuse its discretion in allowing the admission of the photo of biological matter on the undercarriage of the minivan. Thus, we hold Defendant received a fair trial, free from error.

NO ERROR.

Judges COLLINS and GORE concur.

Report per Rule 30(e).