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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-159

Filed 5 November 2024

New Hanover County, Nos. 21 CRS 50509; 22 CRS 1345

STATE OF NORTH CAROLINA

v.

JUWAUN HOWARD HILL, Defendant.

Appeal by defendant from judgment entered 17 March 2023 by Judge R. Kent Harrell in New Hanover County Superior Court. Heard in the Court of Appeals 8 October 2024.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Lisa T. Pakela, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellant Defender Michele A. Goldman, for defendant-appellant.

PER CURIAM.

Defendant Juwaun Howard Hill appeals from a judgment entered following a jury's verdict convicting him of first-degree kidnapping, assault inflicting serious injury, and upon a guilty plea, attaining the status of a habitual felon. For the reasoning below, we conclude Defendant received a fair trial, free of reversible error.

I. Background

Defendant was convicted of assaulting and kidnapping a woman in her late-forties. The issue on appeal is whether the jury should have been given an “acting-in-concert” instruction on the kidnapping charge. Defendant essentially argues on appeal that the evidence showed *either* Defendant acted alone in assaulting and restraining the victim (based on the victim’s testimony) *or* Defendant did not commit the crimes (based on his denial).

The evidence tended to show as follows:

Defendant is blind. The victim lived in her home and occasionally allowed Defendant, another man (Mr. Anderson), and another woman (Ms. Edge) to stay there. The victim engaged in consensual sex with Defendant on occasion.

In the late afternoon of 21 January 2022, a friend of the victim who was concerned about the victim’s welfare visited the victim and found the victim on the floor of her home, naked, beaten, and bloody, with her hands duct-taped together and her feet duct-taped together. Defendant was sitting in the same room when the friend entered and found the victim bound and beaten.

Earlier that day, two police officers had conducted a welfare check on the victim. The officers found Defendant and Mr. Anderson at the home. The officers

found the victim 1.5 miles away, sitting at a bus stop. She made no complaints to the officers about Defendant or anyone else and did not appear to have any injuries.

There was conflicting evidence about what led to the victim being found bound and beaten. There was evidence that could suggest that Defendant was involved and perhaps acted alone. The victim testified that Defendant assaulted her, raped her, and then bound her. There was evidence that Defendant had dried blood and abrasions on his knuckles when police arrived after the victim was bound and beaten. The victim's friend, who found the victim when conducting a welfare check, testified that Defendant stated that the victim was bound because the victim had called the police earlier in the day.

There was evidence tending to show that Defendant was not involved or did not act alone. Defendant testified that he had no idea how the victim came to be bound and beaten. He testified that he, Mr. Anderson, Ms. Edge and the victim were all in the home when he brought a drink to the victim and discovered her bound. (He did not unbind her.) Defendant's fingerprints were not found on the duct tape used to bind the victim. However, Mr. Anderson's fingerprints were found on the duct tape. During an interview with police, the victim at some point stated that Ms. Edge participated in duct-taping her and called Ms. Edge an accomplice.

Defendant's counsel argued during closing that there was evidence that Ms. Edge and Mr. Anderson may have been involved in duct-taping the victim.

II. Analysis

During deliberations, the jury sent a note to the judge asking a series of questions as follows:

1. How should we decide if we do not believe [Defendant] wrapped the tape himself?
2. Is it still kidnapping if [Defendant] found [the victim] bound and did not cut her tape?
3. Or if he directed someone else to wrap her wrists and ankles?

Rather than answering the questions directly, the trial court (upon the State's request) gave the "acting-in-concert" instruction to the jury.

Our General Assembly has provided that a trial court may respond to a question from the jury in one of four ways, including by "[i]nstruct[ing] the jury on a point of law which should have been covered in the original instruction." N.C.G.S. § 15A-1234(a)(4).

We conclude that the trial court did not commit reversible error by instructing the jury on "acting-in-concert" in response to the jury's question.

Defendant argues that there was insufficient evidence to warrant the "acting-in-concert" instruction. However, we conclude there was sufficient evidence to warrant the instruction. There was evidence tending to show that Defendant was involved in beating and binding the victim and that Ms. Edge and/or Mr. Anderson were involved in binding the victim, as described above.

Defendant next argues the trial court erred in merely giving the instruction, as the jury may have believed that it could convict Defendant of kidnapping though believing he merely found the victim bound and failed to release her.

Whether to give additional instruction is within the trial court's discretion. *State v. Williams*, 185 N.C. App. 318, 335 (2007).

The trial court instructed the jury that in order to find Defendant guilty, the jury must find that he “must aid or actively encourage the person committing the crime or in some way communicate to another person [his] intention to assist in the commission.” We conclude that the trial court did not abuse its discretion by instructing the jury in the manner it did.

In Defendant's final argument, he contends that the subsequent “acting-in-concert” instruction conflicted with the earlier “not guilty” mandates such that the jury was without instruction about when it must acquit. We disagree. The trial court expressly and properly instructed the jury on the option to find Defendant “not guilty.” We do not read the subsequent instruction as confusing the jury on this point. The jury's verdict sheet included options to find Defendant “not guilty.” There is no indication that the jury somehow became confused about their ability to find Defendant “not guilty” merely because they were given the “acting-in-concert” instruction.

We conclude Defendant received a fair trial, free of reversible error.

NO ERROR.

STATE V. HILL

Opinion of the Court

Panel consisting of Chief Judge DILLON and Judges MURPHY and THOMPSON.

Report per Rule 30(e).