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NO. COA01-1074

NORTH CAROLINA COURT OF APPEALS

Filed: 6 August 2002

STATE OF NORTH CAROLINA

v.

SYLVESTER CORNELIUS ROBINSON

Buncombe County
Nos. 00 CRS 8254-55
00 CRS 8285-86
00 CRS 55503

Appeal by defendant from judgments entered 19 October 2000 by Judge Marvin Gray in Buncombe County Superior Court. Heard in the Court of Appeals 29 July 2002.

Attorney General Roy Cooper, by Special Deputy Attorney General Richard E. Slipsky, for the State.

Joel S. Trilling, for defendant appellant.

BIGGS, Judge.

Sylvester Cornelius Robinson (defendant) was tried by a jury and found guilty of robbery with a dangerous weapon, conspiracy to commit robbery with a dangerous weapon, and three counts of second-degree kidnapping. After consolidating his kidnapping offenses for judgment, the trial court sentenced defendant to concurrent and consecutive prison terms totaling 114 to 155 months.

The State's evidence tended to show the following: on 18 January 1999, defendant, Millis Bryson (Bryson), and Leslie Burrell (Burrell) entered the Peddler Steakhouse (Peddler) on Montford

Avenue in Asheville. Burrell had previously worked at the Peddler and had suggested robbing the restaurant, because the owner, Frank Puett (Puett), kept a large amount of cash in the office. The three sat down at a table and ordered drinks from the waitress, Ingrid Carson (Carson). Bryson stood up and said, "[o]kay, it's about to go down[.]" After hesitating briefly, defendant joined Bryson, leaving Burrell at the table. When Carson returned to the table, Burrell stood, took Carson by the arm and pushed her down into a chair, saying, "I promise we won't hurt you, just sit right here." Bryson drew a gun, walked to the cash register at the front of the store, and ordered Puett down to the ground. He then forced Puett to crawl into the dining room while kicking him in the head. Defendant went to the kitchen to round up the remaining employees. At Bryson's signal, Burrell helped Bryson unlock the office door and collect the money.

Defendant brought four employees, including waitress Laura Stalker (Stalker), from the kitchen into the dining room at gunpoint. He made Stalker get down on the floor beside Puett. Bryson saw another employee, Betty Daniels (Daniels), walking past defendant. Bryson briefly turned his attention back to Puett. When he looked back toward defendant, Daniels was gone. Concluding that Daniels had exited the building, Bryson told defendant, "it's to late now. You've got to just go through with it." Bryson left defendant to watch the remaining employees while he returned to the office to help Burrell with the money. When Bryson emerged from the office, defendant and the restaurant employees were gone.

Bryson took what money he could and caught up with Burrell at the car. Puett waved down a passing police car. After leading police on a short high-speed chase, Burrell stopped her car and was taken into custody. Bryson escaped on foot but was apprehended a week later. Bryson and Burrell subsequently identified defendant as their accomplice and led police to him.

Defendant argues on appeal that the trial court erred in refusing to grant a mistrial based on the prosecutor's alleged violation of *Brady v. Maryland*, 373 U.S. 83, 10 L. Ed. 2d 215 (1963). Under *Brady*, the State has an affirmative obligation to provide defendant with any material exculpatory evidence obtained by the police. *State v. Johnson*, 128 N.C. App. 361, 496 S.E.2d 805 (1998) (quoting *Kyles v. Whitley*, 514 U.S. 419, 131 L. Ed. 2d 490 (1995)). "However, there is 'no constitutional requirement that the prosecution make a complete and detailed accounting of the defense of all police investigatory work on a case.'" *Id.* at 367, 496 S.E.2d at 809 (quoting *Moore v. Illinois*, 408 U.S. 786, 795, 33 L. Ed. 2d 706, 713 (1972)). In order to prevail under *Brady*, defendant must show "a reasonable probability that had the evidence been disclosed, the outcome of the trial would have been different." *State v. Smith*, 337 N.C. 658, 664, 447 S.E.2d 376, 379 (1994).

Defendant's claim arises from the revelation, during his cross-examination of Stalker, that police presented her with a photographic line-up "within the week after the robbery." Defense

counsel moved for a mistrial on the ground that the prosecutor had not disclosed the existence of this line-up in pre-trial discovery. A *voir dire* proceeding revealed that the line-up viewed by Stalker did not contain defendant's photograph. Although the police generated a second photographic line-up approximately one year later, there was no evidence that it was ever seen by Stalker. Moreover, Stalker did not identify defendant at trial as a participant in the robbery. She merely described the assailants as "two black men" and noted that "[o]ne was taller and thinner than the other." Because the photographic line-up shown to Stalker was not exculpatory and because Stalker never purported to identify or exclude defendant as a perpetrator of the robbery, the trial court did not abuse its discretion in denying defendant's motion for a mistrial. *Cf. Johnson*, 128 N.C. App. at 367, 496 S.E.2d at 809.

Defendant next claims that the testimony of Bryson and Burrell, who had entered into plea agreements with the State, was insufficient to prove his participation in the robbery beyond a reasonable doubt. Defendant characterizes such evidence as "notoriously unreliable[,] " and notes that none of the restaurant employees identified him as a perpetrator. However, it is well established that the credibility of witnesses is a jury question, see *State v. Lucas*, 353 N.C. 568, 581, 548 S.E.2d 712, 721 (2001), and that accomplice testimony is sufficient to support a conviction. See *State v. Tilley*, 239 N.C. 245, 249, 79 S.E.2d 473, 476 (1954). Accordingly, the State's proffer was sufficient to establish defendant's identity as the second gunman. Defendant

makes no additional argument regarding the sufficiency of the evidence as to the elements of any specific offense, therefore this assignment of error is overruled.

Defendant also challenges the admission into evidence, pursuant to N.C.R. Evid. 803(6), of a guest ledger reflecting his registration at the Townhouse Motel on the day of the robbery. Defendant cites no authority in support of this claim. Accordingly, this argument is deemed abandoned. N.C.R. App. P. 28(b)(6).

We hold that defendant received a fair trial free of prejudicial error.

No error.

Judges WALKER and THOMAS concur.

Report per Rule 30(e).