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NO. COA01-1111

NORTH CAROLINA COURT OF APPEALS

Filed: 4 June 2002

STATE OF NORTH CAROLINA

v.

DAVID LOUIS CAMP, JR.

Lincoln County  
Nos. 00CRS005500  
00CRS005501

Appeal by defendant from judgments entered 11 July 2001 by Judge Beverly T. Beal in Lincoln County Superior Court. Heard in the Court of Appeals 28 May 2002.

*Attorney General Roy A. Cooper, III, by Assistant Attorney General Steven A. Armstrong, for the State.*

*Leslie C. Rawls for defendant-appellant.*

HUNTER, Judge.

David Louis Camp, Jr. ("defendant") was charged with assault with a deadly weapon with intent to kill inflicting serious injury and attempted robbery with a dangerous weapon. The State's evidence tended to show that on the evening of 29 November 2000, a group of people, including Brian Keith Littlejohn, Raymond Nicholes and T. J. Smith, were assembled at the apartment of Ronnie Dale Carte and his girlfriend, located at 137 Deaton Avenue, in an area of Lincolnton, North Carolina known as "the hill." "The hill" has a reputation for illegal drug activity.

Shortly before 10:00 p.m., Littlejohn, Nicholes and Carte left the apartment together. Once outside, Carte and the two others encountered Smith, who had left the apartment earlier, and defendant. Defendant repeatedly demanded of Carte, "get your hands out of your pockets" and "[g]ive me your jacket." Carte complied with defendant's demand and showed that he did not have anything in his hands, whereupon defendant pulled a handgun from his coat pocket and hit Carte several times in the face with the gun. Defendant then dropped a forty ounce bottle of beer he had been holding and attempted to take Carte's jacket. When defendant's attempts failed, he suddenly began to fire his handgun at Carte in quick succession. The first bullet stuck Carte in the left ankle, while four additional bullets struck other parts of Carte's legs. A final bullet narrowly missed Carte's stomach. Smith, who was also armed, began shooting into the air. Littlejohn assisted Carte in getting back to his residence, where someone called for emergency assistance. In response, Sergeant John Caudle of the Lincolnton Police Department arrived at the scene at approximately 9:45 p.m. Thereafter, Carte was transported to the hospital in Lincolnton. Carte was later transferred to Carolinas Medical Center in Charlotte, North Carolina, where he stayed four days while being treated for his injuries. At trial, Carte still walked with a noticeable limp due to his injuries.

Defendant did not present any evidence. The jury found defendant guilty as charged. The trial court found two aggravating factors and no mitigating factors, and determined that the

aggravating factors outweighed the mitigating factors. The trial court then sentenced defendant to consecutive aggravated terms of 33-49 months' imprisonment for the assault with a deadly weapon inflicting serious injury conviction and 90-117 months' imprisonment for the attempted robbery with a dangerous weapon conviction. Defendant appeals. We find no error.

By his sole assignment of error brought forward on appeal, defendant argues that the trial court erred in denying his motion to dismiss. Specifically, defendant contends that the State failed to prove the following: (1) the subject crimes occurred in North Carolina, and (2) he possessed the requisite intent to commit the crime of robbery.

"A motion to dismiss is properly denied if 'there is substantial evidence (1) of each essential element of the offense charged and (2) that defendant is the perpetrator of the offense.'" *State v. Wheeler*, 138 N.C. App. 163, 165, 530 S.E.2d 311, 312 (2000) (citation omitted). Substantial evidence has been defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Franklin*, 327 N.C. 162, 171, 393 S.E.2d 781, 787 (1990). In ruling on a motion to dismiss, the trial court must consider the evidence in the light most favorable to the State, allowing the State the benefit of every reasonable inference derived therefrom. *Wheeler*, 138 N.C. App. at 165, 530 S.E.2d at 312.

As to defendant's contention that the State failed to prove the crime occurred in this jurisdiction, we note that at no time

prior to, nor during trial did defendant raise the issue of the trial court's jurisdiction over this matter. See *State v. Batdorf*, 293 N.C. 486, 493, 238 S.E.2d 497, 502 (1977) (providing that "jurisdiction is a matter which, when contested, should be proven by the prosecution as a prerequisite to the authority of the court to enter judgment" (emphasis omitted)). Further, defendant failed to request a jury instruction that the State was required to prove, beyond a reasonable doubt, that defendant committed these offenses in North Carolina. See N.C.R. App. P. 10(b)(2) (requiring that a party object to a jury charge or omission therefrom to assign error on appeal). It is, therefore, questionable whether defendant preserved this matter for appellate review. See N.C.R. App. P. 10.

Assuming *arguendo* that the matter is properly before the Court, we conclude that there was sufficient evidence on this record to show that the crime occurred in North Carolina: the testimony established that the crime occurred outside an apartment complex in Lincolnton, defendant was indicted for the instant felonies by a Lincoln County, North Carolina grand jury, the crime was investigated by the Lincolnton Police Department, and defendant was first transported to a hospital in Lincolnton before being sent to Carolinas Medical Center. Accordingly, Lincoln County, North Carolina was the proper venue, and Lincoln County Superior Court properly exercised jurisdiction over this matter.

We proceed, then, to defendant's contention that there was not sufficient evidence to show that he possessed the intent to commit the robbery as charged. Robbery with a dangerous weapon has been

defined as “(1) the unlawful taking or an attempt to take personal property from the person or in the presence of another (2) by use or threatened use of a firearm or other dangerous weapon (3) whereby the life of a person is endangered or threatened.” *State v. Wilson*, 354 N.C. 493, 506, 556 S.E.2d 272, 281 (2001) (quoting *State v. Beaty*, 306 N.C. 491, 496, 293 S.E.2d 760, 764 (1982)). “An attempted robbery with a dangerous weapon occurs when a person, with the specific intent to unlawfully deprive another of personal property by endangering or threatening his life with a dangerous weapon, does some overt act calculated to bring about this result.” *Id.* (quoting *State v. Allison*, 319 N.C. 92, 96, 352 S.E.2d 420, 423 (1987)).

As defendant contends, the evidence does tend to show that he initially approached Carte and demanded that Carte remove his hands from his pockets. The evidence also, however, tends to show that defendant demanded of Carte, “[g]ive me your jacket,” that defendant tugged at Carte’s jacket in an attempt to take it from him, and that when defendant’s attempts to remove the jacket proved unsuccessful, he shot Carte several times.

While defendant contends that the evidence was only sufficient to show that he approached Carte to ascertain whether he was armed, we disagree. In the light most favorable to the State, there was sufficient evidence from which the finder-of-fact could find that defendant intended to deprive Carte of his jacket. See *State v. Harris*, 71 N.C. App. 141, 144, 321 S.E.2d 480, 483 (1984) (holding that there was sufficient evidence to submit the charge of

attempted robbery with a dangerous weapon to the jury where the defendant ordered the victim to "empty his pockets," and rejected the three pennies produced, said "[t]hat ain't crap'" and left). Accordingly, this assignment of error is overruled.

Defendant has not brought forward his remaining assignments of error, and therefore, they are taken as abandoned. See N.C.R. App. P. 28(b)(5). In light of the foregoing, we hold that defendant received a fair trial, free from prejudicial error.

No error.

Judges MARTIN and BRYANT concur.

Report per Rule 30(e).