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NO. COA01-1191

NORTH CAROLINA COURT OF APPEALS

Filed: 16 July 2002

STATE OF NORTH CAROLINA

v.

WILLIAM CONRAD SPEASE

Forsyth County
Nos. 00 CRS 20202
00 CRS 20205
00 CRS 21098

Appeal by defendant from judgments entered 2 March 2001 by Judge Michael E. Helms in Forsyth County Superior Court. Heard in the Court of Appeals 1 July 2002.

Attorney General Roy Cooper, by Special Deputy Attorney General Gayl M. Manthei, for the State.

R. Michael Bruce for defendant appellant.

BRYANT, Judge.

Defendant was found guilty of two counts of robbery with a dangerous weapon and one count of felony larceny. In judgments entered 2 March 2001, Judge Michael E. Helms sentenced defendant to three consecutive terms of imprisonment totaling 245 to 314 months. Defendant gave notice of appeal in open court.

The charges against defendant stemmed from two armed robberies committed three weeks apart, on 25 March 2000 and 14 April 2000. The State moved to join the charges for trial, alleging that defendant committed both robberies with the same accomplice,

Richard Snowden. The first of the two incidents involved the theft of \$53 in cash from Ricky Leon Miller and the theft of Miller's BMW automobile occurring in the parking lot of a Wilco store on Reynolda Road in Winston Salem. Defendant and Snowden were riding as passengers in Miller's car and committed the robbery and larceny when Miller pulled into the Wilco parking lot to turn the car around. The second incident was an armed robbery of cash and cigarettes from the same Wilco store. On this occasion, defendant and Snowden entered the store. Defendant drew a knife on a customer after she recognized him. Snowden pulled the handgun and robbed the store clerk. In seeking joinder, the State argued that the two incidents occurred at the same time of night at the same location, involved the use of the same small black handgun and the same co-defendant, and involved victims who knew defendant.

Defendant opposed the State's motion, arguing that the incidents involved "means and objects that [we]re totally different." He noted that the March 25 robbery was committed against the driver of a car in which defendant was a passenger and occurred in the Wilco parking lot. The April 14 incident, by contrast, involved a robbery of the store. Defendant also pointed out that he was accused of wielding a gun on March 25 and a knife on April 14.

In allowing the motion for joinder, the trial court found that the charged offenses were both "closely connected in time, place and circumstance" and "part of a common plan or scheme[.]"

At trial, Miller testified that defendant, Snowden and

Snowden's girlfriend came to his home on 25 March 2000. After drinking beer for awhile, the group drove around in Miller's car. Snowden and defendant sat in the back seat. Miller mistakenly turned right off of Reynolda onto Shattalon Drive and pulled into the Wilco parking lot to turn around. Defendant put a gun to the back of Miller's head and asked for his money. Miller got out of the car and asked defendant, "[W]hy are you doing this?." Defendant fired the gun into the ground and told Snowden to take the car. As Miller ran away from the scene, defendant fired two or three shots. Snowden drove away in the car. When Miller returned to the parking lot, he saw defendant running across the road toward a school. The car was following him. When police arrived, Miller reported the robbery and identified defendant by name as his assailant. He later picked defendant and Snowden out of photographic lineups.

Michael Watts, who was the clerk at the Wilco store on 14 April 2000, testified that a black male and a white male came into the store with bandanas covering their faces between 10:00 p.m. and 11:00 p.m. Rhonda Hill, who was a customer in the store at the time, asked the black male, "Peanut, what are you doing playing with a bandana on your face?" When Hill pulled down the bandana, the man denied being Peanut, pulled a knife, and took \$5 from Hill. Seeing him without the bandana, Watts recognized the black male as defendant, whom he had known for seven years. The white male drew a handgun and took the money in the cash register and some cigarettes. Watts, who was dating Snowden's mother, recognized

Snowden's voice. Hill also identified defendant at trial as the black male assailant.

Miller and Hill identified a gun introduced into evidence by the State as the gun used in the two robberies. Watts testified that the gun was similar to the one used by Snowden.

On appeal, defendant challenges the trial court's decision to join the March 25 and April 14 offenses for trial. He argues the two events lacked the transactional connection required for joinder under N.C.G.S. § 15A-926(a) (2001). The fact that the robberies were committed in the same area by the same two persons was insufficient to warrant joinder, he avers, in light of the three-week gap between the crimes and the "manifestly different" circumstances surrounding them.

Under N.C.G.S. § 15A-926, a trial court may join offenses for trial if they "are based on the same act or transaction or on a series of acts or transactions connected together or constituting parts of a single scheme or plan." Our Supreme Court has interpreted the statute to require some "'transactional connection'" between the joined offenses. *State v. Bracey*, 303 N.C. 112, 117, 277 S.E.2d 390, 394 (1981) (quoting *State v. Powell*, 297 N.C. 419, 255 S.E.2d 154 (1979)). Although the decision to join offenses is left to the sound discretion of the trial court, the initial determination of whether a transactional connection exists is a question of law fully reviewable on appeal. See *State v. Holmes*, 120 N.C. App. 54, 61, 460 S.E.2d 915, 920 (1995).

However, a defendant seeking relief on appeal must show both that the trial court erred in joining the offenses and that he was prejudiced thereby. See *State v. Perry*, 142 N.C. App. 177, 182, 541 S.E.2d 746, 749 (2001). A defendant is prejudiced by joinder only if there is a "reasonable possibility that a different result would have been reached" had the offenses been tried separately. *Id.*

Because defendant has not shown any prejudice arising from the trial court's ruling, we need not decide whether joinder was proper. Even if the two robberies lacked the transactional connection required by N.C.G.S. § 15A-926, they were sufficiently related to be admissible as "other crimes" evidence under N.C.R. Evid. 404(b). See *State v. Floyd*, ___ N.C. App. ___, ___, 558 S.E.2d 237, 240 (2002); *State v. Diehl*, 147 N.C. App. 646, 557 S.E.2d 152, 157 (2001). Thus, at trial for either of the individual robberies, evidence of defendant's participation in the second robbery would have been admissible under Rule 404(b) to show his identity or his *modus operandi* in using the handgun to commit robberies at the Wilco station with Snowden. Although not conclusive on the question of prejudice, the fact that the jury would have heard evidence of both crimes even absent joinder is significant. See *State v. Bowen*, 139 N.C. App. 18, 29, 533 S.E.2d 248, 255 (2000); *State v. Montford*, 137 N.C. App. 495, 499, 529 S.E.2d 247, 251 (2000). We further note that the trial court joined three charges arising out of only two incidents, thus limiting the risk that the jury would be confused or would unjustly find defendant guilty on

some charges based on his participation in numerous similar crimes. Finally, all three victims in this case knew defendant before the robberies and offered uncontradicted testimony identifying him as their assailant. Under such circumstances, any error below as to joinder was harmless.

No error.

Judges MARTIN and HUNTER concur.

Report per Rule 30(e).