

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA02-259

NORTH CAROLINA COURT OF APPEALS

Filed: 31 December 2002

STATE OF NORTH CAROLINA

v.

Forsyth County
No. 00 CRS 058276

DEVON LESTER WEBSTER

Appeal by defendant from judgment dated 19 October 2001 by Judge Richard L. Doughton in Forsyth County Superior Court. Heard in the Court of Appeals 30 December 2002.

Attorney General Roy Cooper, by Assistant Attorney General Kathryn J. Thomas, for the State.

Russell J. Hollers, III for defendant appellant.

GREENE, Judge.

Devon Lester Webster (Defendant) appeals a judgment dated 19 October 2001 entered consistent with a jury verdict finding him guilty of robbery with a dangerous weapon.

Defendant was indicted for robbery with a dangerous weapon on 22 January 2001. At trial, the evidence revealed that, at approximately 2:30 p.m. on 10 November 2000, Defendant entered a Fairway One Stop convenience store on South Broad Street in Winston-Salem, North Carolina, which was operated by Hyeon Jung (Jung). Jung observed Defendant asking other customers for money.

When Jung told him to stop, Defendant asked Jung for some beer "on credit." Jung refused and instructed Defendant to leave the store. Defendant became confrontational and began grabbing cigarettes, cigars, and other merchandise off the checkout counter and putting the items into his pockets. When Jung said he was going to telephone the police, Defendant pulled a knife from his pocket, showed it to Jung, and demanded money. Jung went behind the store counter and retrieved a handgun. As Jung came back around the counter, Defendant brandished his knife at Jung with the blade open. Jung then pointed his gun at Defendant and took away the knife. Jung walked back behind the store counter to telephone the police.

Winston-Salem Police Officer Catrin Giles (Officer Giles) arrived at the store within a few minutes of Jung's call. Jung described Defendant to Officer Giles and gave her the knife Defendant had used during the incident. Defendant was subsequently spotted by another police officer while walking down South Broad Street approximately 400 yards from Jung's store. When approached by the officer, Defendant attempted to run but was taken into custody. The police found cigarettes and cigars on Defendant, although these were not presented to Jung for identification.

At the end of the State's evidence and at the end of all the evidence, Defendant moved to dismiss the charge against him. The trial court denied both motions.

The issue is whether there was substantial evidence to

withstand Defendant's motion to dismiss at the close of all the evidence.

Defendant contends the trial court erred in denying his motion to dismiss for want of sufficient evidence. He claims the State made no showing he endangered or threatened Jung's life with a dangerous weapon or that he accomplished a taking by violence or by putting Jung in fear of violence. Defendant notes his behavior during the robbery did not deter Jung from retrieving his gun and "did nothing to further the theft of the cigarettes."

In order to withstand a motion to dismiss, the State must present substantial evidence of each essential element of the offense and of the defendant's identity as the perpetrator. See *State v. Riddle*, 300 N.C. 744, 746, 268 S.E.2d 80, 81 (1980). "Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *State v. Morgan*, 111 N.C. App. 662, 665, 432 S.E.2d 877, 879 (1993). In reviewing the trial court's denial of a motion to dismiss, the evidence must be construed in the light most favorable to the State. *State v. Neal*, 109 N.C. App. 684, 686, 428 S.E.2d 287, 289 (1993).

The elements of robbery with a dangerous weapon are: (1) a taking or attempted taking of property from the person or presence of another; (2) the use or threatened use of a dangerous weapon to accomplish the taking; and (3) a threat to or endangerment of the person's life. N.C.G.S. § 14-87(a) (2001); *State v. Wiggins*, 334 N.C. 35, 431 S.E.2d 755, 765 (1993). "[T]he temporal order of

the threat or use of a dangerous weapon and the taking is immaterial." *State v. Cunningham*, 97 N.C. App. 631, 634, 389 S.E.2d 286, 288 (1990). Rather, the offense occurs when "the threat or use of the dangerous weapon and the taking are 'so joined in time and circumstances as to be inseparable.'" *State v. Barnes*, 125 N.C. App. 75, 78, 479 S.E.2d 236, 238 (quoting *State v. Lilly*, 32 N.C. App. 467, 469, 232 S.E.2d 495, 497 (1977)), *aff'd*, 347 N.C. 350, 492 S.E.2d 355 (1997).

The State introduced substantial evidence Defendant stole or attempted to steal merchandise from the counter of Jung's convenience store. When Jung protested, Defendant pulled a knife on Jung and demanded money. Defendant subsequently opened the knife blade and pointed it at Jung. The knife was introduced into evidence at trial, creating at least a jury question on its status as a dangerous weapon. See generally *State v. Smallwood*, 78 N.C. App. 365, 369, 337 S.E.2d 143, 145 (1985) ("[i]n cases where the knife has not been produced or described in detail, and the victim has not suffered injury or death, the question of whether a knife is a dangerous weapon is generally for the jury"). Moreover, the display of a dangerous weapon accompanied by a demand for money "conveys the message loud and clear that the victim's life is being threatened." *State v. Green*, 2 N.C. App. 170, 173, 162 S.E.2d 641, 643 (1968); accord *State v. Harris*, 71 N.C. App. 141, 144, 321 S.E.2d 480, 483 (1984). Even assuming Defendant placed the merchandise in his pockets before producing the knife, his display of a weapon when confronted by Jung was an act in furtherance of

and inseparable from the actual taking. See *Barnes*, 125 N.C. App. at 79, 479 S.E.2d at 238-39. Finally, the fact that Jung was not intimidated by the knife does not affect the sufficiency of the State's proffer. "The question in an armed robbery case is whether a person's life was in fact endangered or threatened by [the] defendant's . . . threatened use of a dangerous weapon, not whether the victim was scared or in fear of his life." *State v. Joyner*, 295 N.C. 55, 63, 243 S.E.2d 367, 373 (1978). Accordingly, Defendant's motion to dismiss was properly denied. Although the record on appeal contains additional assignments of error, we deem them abandoned as they were not addressed in Defendant's brief to this Court. See N.C.R. App. P. 28(b)(6).

No error.

Judges TIMMONS-GOODSON and TYSON concur.

Report per Rule 30(e).