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NO. COA02-44

NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2002

STATE OF NORTH CAROLINA

v.

Cumberland County  
No. 00 CRS 58099

MARCUS RUDOLPH KEYS

Appeal by defendant from judgment entered 18 April 2001 by Judge D. Jack Hooks, Jr. in Cumberland County Superior Court. Heard in the Court of Appeals 30 September 2002.

*Attorney General Roy Cooper, by Assistant Attorney General Kristine L. Lanning, for the State*

*Margaret Creasy Ciardella, for defendant-appellant.*

BIGGS, Judge.

Marcus Rudolph Keys (defendant) was convicted of robbery with a dangerous weapon and conspiracy to commit robbery with a dangerous weapon. Defendant was sentenced to sixty-four to eighty-six months imprisonment for the robbery conviction, and twenty to thirty-three months imprisonment for the conspiracy conviction. We find no error.

The State's evidence at trial tended to show the following: On 8 December 1997, Christopher Davis, an officer with the Fayetteville Police Department, was contacted by a confidential

informant (informant). Davis went to the Tropical Motel in Fayetteville and met with the informant. They proceeded to Room 66 where they met a man, Samuel Smith, and informed him they were there to purchase narcotics. After a short conversation, the informant and Davis went to another hotel to get the informant a room. They then called Smith back at Room 66 of the Tropical Hotel and arranged for an ounce of cocaine to be delivered to the informant's room in five to ten minutes. However, the cocaine was never delivered. A short time later, they received a phone call in their room and were told to return to the Tropical Hotel to meet a man in a plaid jacket.

Davis and the informant pulled up to the Tropical Hotel and observed a black man in a plaid jacket and another black male in a yellow jacket. Davis identified defendant as the man in the plaid jacket, while the man in the yellow jacket was identified as Johnny McMillian. Both men got in the back of Davis' car, and Davis asked them if they had the cocaine. They told Davis that they did not, and Davis told them to get out of his car. However, Davis told them he still wanted to do the deal. Davis testified that he was holding \$970 in anticipation of completing the transaction. Davis, defendant and McMillian agreed to a neutral place to complete the transaction, and defendant sent McMillian back to Room 66. A short time later, McMillian returned to the car and Davis drove them to the agreed upon location, a Hardees restaurant, to complete the deal.

When they arrived at the Hardees, defendant told McMillian to

"see if the dope was on the way." McMillian then got out of the car and walked towards a restaurant called Chanello's. About ten minutes later, Davis spotted McMillian walking back, and McMillian was motioning Davis to drive towards him. Davis pulled the car up to McMillian, parked in front of Chanello's and got out of the car. As soon as he got out of the car, Davis spotted another black male, Antonio Wilson. Davis walked toward Wilson, who motioned for him to walk down an alley. Davis stopped when it got too dark for safety, and asked "who's got the dope." Davis turned towards Wilson when he heard somebody behind him say "give me your money." Davis turned around and saw a gun pointed at him. Davis pulled the money out of his pocket and threw it down on the ground. Davis then testified that McMillian grabbed the money and started running. Davis pulled out his gun and fired his weapon as all three men ran away. Davis called for backup. A short time later the manager of the Chanello's came out with Wilson, and Wilson was arrested. McMillian was wounded, suffering a gunshot wound to the thigh, and was apprehended a short distance away. Defendant was not immediately apprehended.

In April 1998, Davis received a phone call from Criminal Investigation Division at Fort Bragg. Davis was informed that defendant may have been the third man involved in the robbery.

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Defendant's sole argument on appeal is that there was insufficient evidence to convict him. Defendant argues that the only evidence was that he had any prior knowledge that an armed

robbery was going to occur was the suspect testimony of McMillian. Defendant asserts that McMillian's testimony was uncorroborated. Furthermore, defendant notes that McMillian never mentioned that defendant was involved until more than three years after the robbery. Defendant contends that the evidence raised no more than a mere suspicion that defendant was involved in the robbery.

After careful review of the record, briefs and contentions of the parties, we find no error. To survive a motion to dismiss, the State must present substantial evidence of each essential element of the charged offense. *State v. Cross*, 345 N.C. 713, 483 S.E.2d 432 (1997). "Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Id.* at 717, 483 S.E.2d at 434 (quoting *State v. Olson*, 330 N.C. 557, 564, 411 S.E.2d 592, 595 (1992)).

In the instant case, defendant was charged with robbery with a dangerous weapon and conspiracy to commit robbery with a dangerous weapon. The essential elements of robbery with a dangerous weapon are: "(1) an 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. Call*, 349 N.C. 382, 417, 508 S.E.2d 496, 518 (1998) (citing N.C.G.S. 14-87; *State v. Small*, 328 N.C. 175, 400 S.E.2d 413 (1991)). "A criminal conspiracy is 'an agreement between two or more persons to do an unlawful act or to do a lawful act in an unlawful way or by unlawful means.'" *State v. Tabron*,

147 N.C. App. 303, 306, 556 S.E.2d 584, 586 (2001) (quoting *State v. Bindyke*, 288 N.C. 608, 615, 220 S.E.2d 521, 526 (1975)).

A review of the evidence reveals that Davis was robbed of \$970 by McMillian and that McMillian used a gun to commit the robbery. Davis identified defendant and testified that he was present at the robbery. McMillian corroborated Davis' testimony, and identified defendant as a participant in the robbery. McMillian also testified that defendant helped plan the robbery, and agreed, along with two others, to help him rob Davis. Furthermore, the State presented evidence that room 66 at the Tropical Motel was rented by defendant before the robbery. A subsequent search of the room turned up a rifle that had been purchased by defendant.

Defendant presented alibi evidence, specifically, that he was out-of-state on the day of the robbery, and argues that the evidence of his presence and participation in the conspiracy is based on McMillian's uncorroborated and "inherently suspect" testimony. However, defendant's alibi evidence and protestations regarding McMillian's credibility goes to the weight and not the sufficiency of the evidence. See *State v. Callahan*, 83 N.C. App. 323, 350 S.E.2d 128 (1986) (credibility of the witnesses and weight of the evidence is a question for the jury to determine), *disc. review denied*, 319 N.C. 225, 353 S.E.2d 409 (1987). When reviewing the sufficiency of the evidence, "[t]he trial court must consider such evidence in the light most favorable to the State, giving the State the benefit of every reasonable inference to be drawn therefrom." *State v. Patterson*, 335 N.C. 437, 450, 439 S.E.2d 578,

585 (1994). Accordingly, in the light most favorable to the State, a reasonable mind could conclude from this evidence that defendant conspired to rob and assisted in the robbery of Davis with a dangerous weapon. *Cross*, 345 N.C. at 717, 483 S.E.2d at 434.

No error.

Judges WALKER and THOMAS concur.

Report per Rule 30(e).