NO. COA02-46

NORTH CAROLINA COURT OF APPEALS

Filed: 3 September 2002

STATE OF NORTH CAROLINA

v. Guilford County
No. 01 CRS 31377

DONALD ANTHONY CARTER

Appeal by defendant from judgment entered 16 August 2001 by Judge Peter M. McHugh in Guilford County Superior Court. Heard in the Court of Appeals 26 August 2002.

Attorney General Roy Cooper, by Assistant Attorney General Mary S. Mercer, for the State.

Terry W. Alford for defendant-appellant.

WYNN, Judge.

Following his conviction for assault with a deadly weapon on a government official, defendant appeals based on two issues: (1) The trial court's failure to grant his request to admit photographic evidence not offered by his attorney, and (2) The trial court's failure to dismiss the charge against him because of insufficient evidence. We find no error and therefore uphold his conviction and sentence of 19 to 23 months imprisonment.

The State's evidence tended to show that on 6 March 2001, Forsyth County law enforcement pursued defendant who drove a pickup

truck in an easterly direction on Interstate 40. Once defendant crossed the county line into Guilford County, Greensboro Police Captain Alfred C. Stewart, Jr. and Officer Brett E. Davis joined in the chase. Defendant exited Interstate 40 and proceeded on Mount Church Road. After Officer Davis bumped defendant's truck, the truck stalled in deep sand on the shoulder of the road. Captain Stewart placed his patrol vehicle in front of defendant's vehicle to prevent defendant from fleeing. Defendant rocked his vehicle back and forth, ramming into Captain Stewart's patrol vehicle. Defendant backed out of the sand and drove down Old Liberty Road. Officer Davis pursued defendant in his patrol vehicle with its lights and siren activated.

The pursuit continued into Randolph County at speeds exceeding 100 miles per hour. Defendant attempted to make a left turn at an intersection, missed the turn, drove through a parking lot and crashed into a brick building. When Officer Davis followed defendant into the parking lot, defendant put his truck into reverse, spun around and struck the left side of Officer Davis' patrol vehicle. Defendant then accelerated and pushed Officer Davis' patrol vehicle into the curb, which broke the axle of the patrol vehicle and rendered the vehicle inoperable. Officer Davis testified that defendant had "plenty of room to go around my vehicle." Defendant eventually came to a stop and was taken into custody.

On appeal from his conviction of assault with a deadly weapon on a law enforcement officer (Officer Davis), defendant first

contends the trial court erred by not allowing him to introduce pictures of his pickup truck into evidence. During direct examination, defendant testified that Officer Stewart rammed his car into his passenger side "[a]nd I have pictures of the truck here. (Indicated.)" After defendant's attorney concluded her questioning on redirect, the following colloquy took place:

> [DEFENSE ATTORNEY]: Thank you. Nothing further, Your Honor.
>
> THE DEFENDANT: But what about my pictures? Do I get to show them?
>
> THE COURT: You need to step down. Your attorney hasn't offered them.
>
> (The witness left the stand)
>
> [DEFENSE COUNSEL]: Your Honor, that would be the evidence for the defense.

Defendant, relying on *State v. Ali*, 329 N.C. 394, 407 S.E.2d 183 (1991), argues that his attorney should have honored his request to introduce the photographs. In *Ali*, our Supreme Court held that "when counsel and a fully informed criminal defendant client reach an absolute impasse as to . . . tactical decisions, the client's wishes must control[.]" *Ali*, 329 N.C. at 404, 407 S.E.2d at 189. In a subsequent decision, our Supreme Court held that *Ali* did not apply where there was no indication of an absolute impasse, and at no time did defendant voice any complaints to the trial court as to tactics of defense team. *State v. McCarver*, 341 N.C. 364, 385, 462 S.E.2d 25, 36 (1995), *cert. denied*, 517 U.S. 1110, 134 L. Ed. 2d 482 (1996).

Like *McCarver*, the record here reveals no indication of "an

absolute impasse" between defendant and his attorney concerning trial tactics and defendant did not voice any complaints to the trial court as to his attorney's tactics. Accordingly, this assignment of error is without merit.

Defendant also contends the trial court erred by denying his motion to dismiss based on insufficiency of the evidence. The standard for ruling on a motion to dismiss "is whether 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. Lynch*, 327 N.C. 210, 215, 393 S.E.2d 811, 814 (1990). "Substantial evidence is that which a reasonable juror would consider sufficient to support the conclusion that each essential element of the crime exists." *State v. Baldwin,* 141 N.C. App. 596, 604, 540 S.E.2d 815, 821 (2000). In ruling on a motion to dismiss, the trial court must consider all of the evidence in the light most favorable to the State, and the State is entitled to all reasonable inferences which may be drawn from the evidence. *State v. Davis*, 130 N.C. App. 675, 679, 505 S.E.2d 138, 141 (1998). "Any contradictions or discrepancies arising from the evidence are properly left for the jury to resolve and do not warrant dismissal." *State v. King,* 343 N.C. 29, 36, 468 S.E.2d 232, 237 (1996).

To prevail on the charge against defendant in this case, the State must present substantial evidence of: (1) an assault; (2) with a deadly weapon; (3) on a law enforcement officer; (4) in performance of his official duties. N.C. Gen. Stat. § 14- 34.2

(2001). Assault with a deadly weapon on a government officer is a general intent offense. Therefore, the jury is not required to find that defendant possessed any intent beyond the intent to commit the unlawful act, and this will be inferred or presumed from the act itself. *See State v. Page,* 346 N.C. 689, 700, 488 S.E.2d 225, 232, *cert. denied,* 522 U.S. 1056, 139 L. Ed. 2d 651 (1997).

Defendant argues the State failed to prove he "'intentionally' rammed his car into the [police vehicle]." We disagree. Here, the State's evidence showed that defendant reversed his pick up truck and struck Officer Davis' patrol vehicle. He then accelerated and pushed Officer Davis' patrol vehicle into the curb, breaking the axle of the patrol vehicle. Defendant did this despite having "plenty of room to go around [Officer Davis's] vehicle." From these facts, a reasonable jury could infer defendant's intentional act constituted an assault on Officer Davis. Accordingly, the trial court properly denied defendant's motion to dismiss.

No error.

Judges MCGEE and CAMPBELL concur.

Report per Rule 30(e).