NO. COA10-1614
NORTH CAROLINA COURT OF APPEALS

Filed: 6 September 2011

STATE OF NORTH CAROLINA

v. Guilford County
Nos. 09 CrS 84048-49,
RAYMOND LAMONT DUMAS 84051-52, 84055

Appeal by defendant from judgment entered 15 July 2010 by William Z. Wood, Jr., in Superior Court, Guilford County. Heard in the Court of Appeals 16 August 2011.

Attorney General Roy Cooper, by Assistant Attorney General Scott Stroud, for the State.

Appellate Defender Staples Hughes, by Assistant Appellate Defender Constance E. Widenhouse, for defendant appellant.

McCULLOUGH, Judge.

Raymond Lamont Dumas ("defendant") appeals from judgments based on his convictions for robbery with a dangerous weapon. Defendant was charged in five indictments for robbery with a dangerous weapon and the cases were consolidated for trial. A jury found defendant guilty on all five indictments and the trial court sentenced defendant to a presumptive term of 468 to 604 months in the North Carolina Department of Correction.

Defendant gave notice of appeal in open court. For reasons stated herein, we find no error.

I. Background

Between 26 April 2009 and 5 May 2009, five similar convenience store robberies occurred in Greensboro, North Carolina. Each involved the store employees being robbed at gun point. The first robbery occurred late on the night of 26 April 2009 at a Great Stops on North Church Street. Two African-American men entered the store, approached the employee, Patrick Daley, and asked about taffy candy. One was tall and the other short. The tall man pulled out a gun and told Daley to open the register, while the small man hopped over the counter and collected the money. The men directed Daley to lie on the floor as they fled.

Lanese Thompson, who was outside the store, told police that she pulled up just after midnight and saw three men running from the store with a till. Two of the men ran across the street to get in a car while the other man ran down the street. She did not see the men get in a vehicle, but did notice a Mercury automobile speed off which was "pretty old" and "burgundy." On 26 May 2009, Ms. Thompson picked Cyrus Davis from a photographic line-up and was "90 percent sure the person in the photograph

[was] the shorter of the guys that robbed the store." Surveillance cameras also captured the robbery.

The second robbery occurred on 27 April 2009, around 9:00 p.m. at a J.B. Express on Randleman Road. Again, a tall man and a short man entered the store. One was wearing shorts, a red hat, and sunglasses, while the other had on a red shirt, hat, and sunglasses. The men took candy and drinks to the counter and the small man proceeded to point a "medium-sized caliber" handgun at the two employees, Yong Bryant and George Ray, Jr. The small man told Mr. Ray to put the money in the bag or he would "make mush out of [his] head." The taller man went around the counter and held a bag while Mr. Ray opened the register and put the money in the bag. The men left the candy on the counter as they absconded with the money. Ms. Bryant and Mr. Ray could not identify the men from photographic line-ups. Fingerprints from the candy left by the shorter man matched those of Cyrus Davis.

On 29 April 2009, sometime around midnight, Tarik Griche, the cashier at the Shell gas station on Summit Avenue, looked up and saw three men. One was standing just outside of the store, while the other two entered. One of the men, wearing a black sweater and black hat, pointed a "little gun" at Mr. Griche. A

short man, with a red hat and reddish orange sweater, went behind the counter, told Mr. Griche to open the register, and emptied the money into a bag. Because there was not much money in the register, the short man directed Mr. Griche to open the safe. Mr. Griche replied that he could not open the safe and the short man in anger punched Mr. Griche in the face. The short man demanded a box of Newport cigarettes and put it in the bag along with the cash. He told Mr. Griche to lie on the floor and not do anything until the men were gone.

Tracy Moore, a customer and friend of Mr. Griche, who used to work across the street, was at the Shell station pumping gas when he saw three men crossing the street. He watched as two men entered the store, while one, later identified by Mr. Moore in court as defendant, waited outside. Mr. Moore began to enter the Express Mart, but perceived what was happening and waited outside with defendant. He witnessed the robbery, but did not see the use of a gun. Following the robbery, he watched the three men as they took off running.

Also in the early morning of 29 April 2009, Aliune Cisse and Paula Chandler were working at the Great Stops on West Lee Street when two men entered the store. A short man carried a large blue bag containing some money and a carton of Newport

cigarettes. The taller man had a black handgun. Ms. Chandler heard one man say "don't move" and something along the line of "I got somebody outside." The short man jumped over the counter and told Mr. Cisse to open the register. The short man put the whole drawer in the blue bag and told Mr. Cisse to open the other drawer. Mr. Cisse could not open the other drawer, so the short man jumped back over the counter and the two men left. Mr. Cisse and Ms. Chandler could not identify either of the men and did not see a getaway car.

Around the same time on 29 April 2009, Victoria Brooks stopped at the Great Stops to buy gas. She noticed three men walking towards the store. Two went inside just before Ms. Brooks, while the other stayed outside. She watched as the shorter man hopped the counter and put the money in his bag, which already contained cash and Newport cigarettes. He was wearing a bright orange shirt with a black label and the taller man was carrying a "little small gun." The taller man told her to "be cool, little mama[,] [w]e're not going to hurt you." She did not get a good look at the men, but on 27 May 2009 she was able to identify Quincy Hill in a photo line-up. She was 70 percent sure he was the man with the gun.

The final robbery occurred on 5 May 2009 at the CITGO on Summit Avenue. Marc Harrison and Karin Johnson were working when a man wearing a white t-shirt entered the store around 1:45 a.m. He was described as being around 5'2" with a baby face and no facial hair. He took a bottle of water to the counter and asked for a box of Newports, but then pulled out a small handgun, "like a little .380," and told everyone to put their hands up. The robber told Mr. Harrison to open the register and asked for a bag to put the money in. Mr. Harrison remained calm and got a good look at the man. After the man left, Mr. Harrison went outside and saw what appeared to be a burgundy Ford Fusion leaving the parking lot. Surveillance cameras recorded the event and on 26 May 2009 Mr. Harrison, after picking Cyrus Davis out of a photo line-up, was 80 percent sure that he was the one that robbed the store.

Based on a lead, Detective Richard Montgomery ran the tags on a burgundy Lincoln Continental believed to be used in the robberies. It was registered to defendant's mother and around 10:00 p.m. on 5 May 2009, the car was located in High Point with defendant driving. After detaining defendant, Detective Montgomery proceeded to question him about the robberies. Defendant waived his Miranda rights and the police collected his

clothing, which consisted of jeans and a red shirt with a large dollar sign on the front.

Initially, defendant denied taking part in the robberies. He continued to deny his participation upon being shown a photo from the cameras at the J.B. Express. Detective Montgomery pointed out that defendant had on the same red t-shirt that he had on in the photograph from the robbery. Defendant admitted that he was the person in the picture, but still maintained that he did not take part in the robbery. After viewing other pictures, some with him behind the counter, defendant admitted being involved in the J.B. Express robbery.

Next, Detective Montgomery showed defendant pictures from 26 April 2009 at the Great Stops on North Church Street. Defendant stated that he stood outside, but identified the two men inside as "Chris" and Cyrus Davis. He told Detective Montgomery that he was only involved in three robberies. Defendant noted that the robberies were not really planned, but "any store [Davis] goes into, he goin' rob it." Defendant went on to say "a lot of robberies happen [sic], but I didn't have a lot to do with them." He eventually said he was present for four or five of them. When shown a picture of the gun used, defendant said it was a .22 or .25 caliber and "rusty looking."

Detective Montgomery talked to defendant again on 8 May 2009 at the Guilford County Jail where defendant again waived his rights and discussed the four other robberies. He identified "Chris" as Quincy Lamar Hill and said they grew up together. He knew Davis only as "Cy" and had met him through Hill. Hill and Davis had supposedly spent time in jail together. Defendant pointed out Davis as the shortest in the surveillance camera photographs.

Detective Montgomery mentioned the 5 May 2009 CITGO robbery, but defendant was not aware it had been robbed. Defendant refused to write a statement, but signed notes made by officers during questioning, attesting to their accuracy. The notes state that defendant stood outside during the Great Stops robbery on North Church Street. He also stood outside with his back to the store for the Shell station and Great Stops on West Lee Street robberies, because he did not want to see the robberies. At the Shell station he heard a scuffle inside and turned around to see Davis "hitting the white dude behind the counter." Finally, defendant drove Davis and Hill to the CITGO where Davis went inside, came back out, and got back in the car. Defendant contends that he did not know Davis robbed the CITGO until Detective Montgomery questioned him about it.

Defendant did not present any evidence at trial. He was found guilty by a jury on all counts. Defendant appeals.

II. Analysis

A. Motion to Dismiss

Defendant raises two arguments on appeal. Defendant first argues that the trial court should have dismissed the charge of robbery with a dangerous weapon for the CITGO robbery on Summit Avenue. Defendant contends that the State failed to present sufficient evidence that defendant robbed the CITGO himself or, in the alternative, acted in concert with the actual perpetrator. We disagree.

The denial of a motion to dismiss for insufficient evidence is a question of law reviewed *de novo* on appeal. *State v. Rouse*, 198 N.C. App. 378, 381-82, 679 S.E.2d 520, 523 (2009). When reviewing a motion to dismiss for insufficient evidence, the trial court must determine whether the State presented substantial evidence of "(1) . . . each essential element of the offense charged, . . . and (2) defendant's being the perpetrator of such offense." *State v. Scott*, 356 N.C. 591, 595, 573 S.E.2d 866, 868 (2002). "Substantial evidence is that amount of relevant evidence necessary to persuade a rational juror to accept a conclusion[]" and is viewed in a light most favorable

to the State. *Id.* at 597, 573 S.E.2d at 869. Where there are discrepancies or contradictions due to the evidence, the jury is left to resolve the issues. *Rouse*, 198 N.C. App. at 381, 679 S.E.2d at 523.

Here the trial court instructed the jury that it could find defendant guilty of robbery with a dangerous weapon if defendant committed the crime himself, or acted in concert with the actual perpetrator with whom defendant shared a common purpose to commit the crime. To be found guilty of robbery with a dangerous weapon the State must prove: "(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); *see* N.C. Gen. Stat. § 14-87 (2009).

Defendant did not commit the armed robbery himself, as the evidence shows he sat in the car while Cyrus Davis robbed the CITGO, but as the judge instructed, the jury could find defendant acted in concert with Davis. "To act in concert means to act together, in harmony or in conjunction one with another pursuant to a common plan or purpose." *State v. Joyner*, 297 N.C.

349, 356, 255 S.E.2d 390, 395 (1979) (denial of defendant's motion to dismiss on charges for acting in concert).

> It is not, therefore, necessary for a defendant to do any particular act constituting at least part of a crime in order to be convicted of that crime under the concerted action principle so long as he is present at the scene of the crime and the evidence is sufficient to show he is acting together with another who does the acts necessary to constitute the crime pursuant to a common plan or purpose to commit the crime.

Id. at 357, 255 S.E.2d at 395.

"Constructive presence is not determined by the defendant's actual distance from the crime; the accused simply must be near enough to render assistance if need be and to encourage the actual perpetration of the crime." *State v. Combs*, 182 N.C. App. 365, 370, 642 S.E.2d 491, 496, *aff'd*, 361 N.C. 585, 650 S.E.2d 594 (2007). Therefore, "the driver of a 'get-away' car may be constructively present at the scene of a crime although stationed a convenient distance away." *Id.*; *see State v. Wiggins*, 16 N.C. App. 527, 531, 192 S.E.2d 680, 682 (1972); *State v. Lyles*, 19 N.C. App. 632, 636, 199 S.E.2d 699, 702 (1973). Defendant's mere presence at the crime scene does not make him guilty of the charged offense, but the State must show

that he also acted pursuant to a common scheme or purpose with Davis.

Defendant admitted that he took part in one robbery and acted in concert on three more, but contends that he was not aware of Davis' intent to rob the CITGO on Summit Avenue. It seems unlikely that defendant took part in the first four robberies and made the comment, "any store [Davis] goes into, he goin' rob it," yet was not aware that Davis intended to rob the CITGO on the night of 5 May 2009. Defendant further stated, "As far as robberies went down, it wasn't anything that we had planned, you know what I'm saying. It was just, like, we're going to do -- we're going to go to the store . . . and, boom, he's goin' do what he's goin' do." A reasonable juror could infer that having taken part in four previous robberies with Davis, defendant knew of the final robbery and was also under the impression that a robbery could happen at any time when with Davis.

In support of its argument the State cites to ***State v. Davis***, 301 N.C. 394, 271 S.E.2d 263 (1980), where the defendant accompanied his friend to a store, sat in the car while the friend robbed the store, and then provided a means of getting away from the scene following the robbery. A sheriff

subsequently located the defendant and his friend asleep in the described getaway car. *Id*. The defendant was in the driver's seat and his friend was in the passenger seat, each with a gun under his seat. *Id*. Money was found in a paper bag on the seat between the defendant and his friend, as well as on the defendant's person. *Id*. Our Supreme Court held "[t]he evidence was sufficient to support a jury finding that defendant was the person under the steering wheel of the car at the time the robbery was committed; that he was acting in harmony with [his friend] pursuant to a common plan or purpose to rob the Country Store; and that he accompanied [his friend], the actual perpetrator, to the vicinity of the offense and provided a means by which [his friend] got away from the scene upon the completion of the offense." *Id*. at 399, 271 S.E.2d at 265. Although defendant, in the case at hand, was not found in the getaway car with the stolen money sitting in the seat next to him, the evidence presented is sufficient for the jury to determine that defendant was present for the CITGO robbery, was aware of Davis' potential intentions, and provided a means to get away from the scene of the robbery. Consequently, the evidence was sufficient to support a finding of acting in

concert and as a result we find no error on behalf of the trial court.

B. Acting in Concert Instruction

Defendant's second argument is a recitation of his first argument, merely in a different form. Defendant objected to the trial court's instruction on acting in concert based on the argument that it was not supported by the evidence. As stated above, we disagree.

Challenges to jury instructions are reviewed *de novo*. *State v. Osorio*, 196 N.C. App. 458, 466, 675 S.E.2d 144, 149 (2009). Defendant argues that the trial court erred by giving one instruction on acting in concert for all five robberies instead of repeating the instruction for each robbery indictment. He argues that the jury should not have been instructed on acting in concert for the CITGO robbery. Defendant notes that his burden, pursuant to N.C. Gen. Stat. § 15A-1443(a) (2009), is to show "a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises." Defendant attempts to argue that the jury was unsure of defendant's guilt because it asked for an explanation of the acting in concert instruction.

Defendant cites to *State v. Hargett*, 255 N.C. 412, 121 S.E.2d 589 (1961), where our Supreme Court found a jury instruction on acting in concert improper. *Hargett*, however, can be distinguished in that it involved a murder in which the defendant was sleeping in the back of the car and protested the killing, but was too intoxicated to do anything. *Id.* Alternatively, in the case at hand, defendant knowingly drove Davis away from the CITGO following the robbery and was aware that a robbery could happen at any time with Davis. As stated above, this evidence was sufficient to support a jury finding defendant acted in concert with Davis and it is unlikely the jury would have come to a different conclusion had the trial court given separate instructions for each charge. Even further, a jury's request for an explanation of the acting in concert instruction does not signify that the jury had doubts regarding defendant's guilt. Therefore, the trial court did not err in instructing the jury on acting in concert.

III. Conclusion

Based on the foregoing reasons, we find no error on the part of the trial court.

No error.

Judges McGEE and ERVIN concur.

Report per Rule 30(e).