NO. COA11-319
NORTH CAROLINA COURT OF APPEALS

Filed: 4 October 2011

STATE OF NORTH CAROLINA

v. Northampton County
Nos. 08 CRS 51057-58
08 CRS 51065-66
09 CRS 83; 85

COATNEY RANDALL WILLIAMS

Appeal by defendant from judgments entered 15 July 2010 by Judge Alma Hinton in Northampton County Superior Court. Heard in the Court of Appeals 12 September 2011.

Attorney General Roy Cooper, by Special Deputy Attorney General Jennie Wilhelm Hauser, for the State.

Duncan B. McCormick, for defendant-appellant.

CALABRIA, Judge.

Coatney Randall Williams ("defendant") appeals from judgments entered upon jury verdicts finding him guilty of attempted murder, robbery with a dangerous weapon ("RWDW"), first degree burglary, assault with a deadly weapon ("AWDW"), felony larceny, larceny of a firearm, and felony possession of

stolen goods. We find no error in part, vacate in part, and remand for resentencing.

I. Background

On 29 December 2007, Mary Elizabeth Davis ("Ms. Davis") was home alone and speaking to someone on the telephone when the line went dead. Ms. Davis went to bed, but soon heard a loud "bang." Defendant and three others entered her house. Ms. Davis believed she was being robbed and consequently retrieved a handgun before attempting to conceal herself beside her bed.

Two masked men, Antonio Freeman ("Freeman") and Jamal Thomas ("Thomas"), appeared in Ms. Davis' doorway and demanded to know where her valuables were located. Freeman took Ms. Davis' gun. He then pointed a shotgun at her and ordered her to remove her clothing. After Ms. Davis complied, Freeman placed the shotgun inside her vagina. Another robber, Karon Moses ("Moses") entered the bedroom and Freeman gave him the shotgun. Freeman continued to point Ms. Davis' handgun at her.

The men were interrupted by the sound of Ms. Davis' son, Tacoma, coming home. Defendant and Moses told Tacoma to get out and chased him outside with the shotgun. Tacoma ran past his friend, Erel Jordan ("Jordan"), who had driven home with Tacoma and was waiting in Tacoma's car. Tacoma told Jordan to run. At

that point, one of the robbers who had chased Tacoma came out with the shotgun, moved toward Jordan, and shot him as he ran away. The shooting resulted in shotgun pellets being embedded in Jordan's face, behind his ear, and in his side.

Shortly thereafter, the four men left the Davis home and drove away. Ms. Davis' neighbor, Jennifer Williams ("Ms. Williams"), briefly chased the men in her own automobile. When the men noticed they were being followed, they pulled into a driveway and as Ms. Williams drove by, Freeman fired the handgun towards her. Ms. Williams ceased her pursuit and returned home.

The four robbers took Ms. Davis' handgun, pocketbook, credit cards, jewelry, and cash. They also took an Xbox, Xbox games, and several articles of Tacoma's clothing, including a pair of Timberland boots. The boots were eventually recovered from defendant's home.

Defendant was arrested and indicted for attempted murder, first degree burglary, RWDW, AWDW with intent to kill, felony larceny, larceny of a firearm, and felony possession of stolen goods. Beginning 12 July 2010, defendant was tried by a jury in Northampton County Superior Court.

At trial, Freeman, who had already pled guilty to charges associated with the robbery pursuant to a plea arrangement,

testified about defendant's involvement in the robbery. At the close of the State's evidence, defendant made a motion to dismiss all charges against him. This motion was denied by the trial court.

Defendant presented evidence that he was in Philadelphia, Pennsylvania at the time of the robbery. In addition, defendant testified on his own behalf and stated that he was not involved with the robbery and had received the boots from Thomas sometime after the robbery. At the close of all evidence, defendant renewed his motion to dismiss, and the trial court again denied the motion.

On 15 July 2010, the jury returned verdicts finding defendant guilty of attempted murder, RWDW, first degree burglary, felony larceny, larceny of a firearm, felony possession of stolen goods, and the lesser included offense of AWDW. For the conviction for attempted murder, the trial court sentenced defendant to a minimum of 251 months to a maximum of 311 months. For the RWDW conviction, the trial court sentenced defendant to a minimum of 117 months to a maximum of 150 months. For the first degree burglary conviction, the trial court sentenced defendant to a minimum of 117 months to a maximum of 150 months. The AWDW conviction was consolidated with the

larceny of a firearm conviction, and the trial court sentenced defendant to a minimum of 11 months to a maximum of 14 months for these convictions. Finally, the felony larceny and felony possession of stolen goods convictions were consolidated for judgment, and the trial court sentenced defendant to a minimum of 11 months to a maximum of 14 months for these convictions. The sentences were to be served consecutively in the North Carolina Department of Correction. Defendant appeals.

II. Motion to Dismiss

Defendant argues that the trial court erred by denying his motion to dismiss the charge of attempted murder. Specifically, defendant contends that there was insufficient evidence of premeditation, deliberation and the specific intent to kill to submit the charge to the jury. We disagree.

> The standard of review for a motion to dismiss is well known. A defendant's motion to dismiss should be denied if there is substantial evidence of: (1) each essential element of the offense charged, and (2) of defendant's being the perpetrator of the charged offense. Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion. The Court must consider the evidence in the light most favorable to the State and the State is entitled to every reasonable inference to be drawn from that evidence.

State v. Johnson, ___ N.C. App. ___, ___, 693 S.E.2d 145, 148 (2010)(internal quotations and citations omitted). "The elements of attempted first-degree murder are: (1) a specific intent to kill another; (2) an overt act calculated to carry out that intent, which goes beyond mere preparation; (3) malice, premeditation, and deliberation accompanying the act; and (4) failure to complete the intended killing." *State v. Tirado*, 358 N.C. 551, 579, 599 S.E.2d 515, 534 (2004).

Initially, we note that the identity of the gunman was not conclusively established at trial, as both defendant and Moses were seen chasing Tacoma out of his house. Nonetheless,

> [i]f two persons join in a purpose to commit a crime, each of them, if actually or constructively present, is not only guilty as a principal if the other commits that particular crime, but he is also guilty of any other crime committed by the other in pursuance of the common purpose[.]

State v. Erlewine, 328 N.C. 626, 637, 403 S.E.2d 280, 286 (1991)(internal quotations and citation omitted). Thus, so long as substantial evidence was presented that the gunman committed the offense of attempted murder, defendant would be equally guilty regardless of whether he or Moses was the actual gunman.

A. Premeditation and Deliberation

Defendant first contends that the State did not provide sufficient evidence of the gunman's premeditation and deliberation.

> Our Supreme Court has stated that premeditation means that the act is thought out beforehand for some length of time, however short, but no particular amount of time is necessary for the mental process of premeditation. The Court has also defined deliberation as an intention to kill, executed by the defendant in a cool state of the blood, in furtherance of a fixed design to gratify a feeling of revenge, or to accomplish some unlawful purpose[.]

State v. Watkins, 181 N.C. App. 502, 509-10, 640 S.E.2d 409, 415 (2007)(internal quotations and citations omitted). "This Court has consistently held that [lack] of provocation is a circumstance[] from which premeditation and deliberation may be inferred." *State v. Chapman*, 359 N.C. 328, 375, 611 S.E.2d 794, 828 (2005)(internal quotations and citation omitted). Moreover, the manner in which the killing was attempted can also provide circumstantial evidence of premeditation and deliberation. *See State v. Peoples*, 141 N.C. App. 115, 118, 539 S.E.2d 25, 28 (2000).

In the instant case, defendant and Moses chased Tacoma from his home while threatening him with a shotgun. One of the two men then went outside and, without provocation, shot Jordan with

the shotgun from a short distance as he tried to run. This was sufficient evidence of premeditation and deliberation to withstand a motion to dismiss. This argument is overruled.

B. Intent to Kill

Defendant additionally contends that the State presented insufficient evidence to demonstrate that the gunman possessed a specific intent to kill Jordan. However, "[w]here the defendant points a gun at the victim and pulls the trigger, this constitutes evidence from which intent to kill may be inferred." *State v. Cromartie*, 177 N.C. App. 73, 77, 627 S.E.2d 677, 680 (2006). In the instant case, Jordan testified that one of the robbers walked towards him and was only a short distance away when he pointed and fired the shotgun at Jordan. Jordan's testimony was sufficient for the jury to be able to infer a specific intent to kill. This argument is overruled.

III. Sentencing

Defendant argues, and the State concedes, that defendant was improperly sentenced for RWDW, felony larceny, larceny of a firearm, and felony possession of stolen goods, when all of the offenses involved property which was taken during a single continuous transaction. We agree.

"[L]arceny is a lesser included offense of armed robbery[.]" *State v. White*, 322 N.C. 506, 518, 369 S.E.2d 813, 819 (1988). As a result, our Supreme Court has held that "convictions of a defendant for both robbery with a dangerous weapon and larceny may be upheld, but only if the larceny and the robbery with a dangerous weapon involved two separate takings." *State v. Jaynes*, 342 N.C. 249, 275-76, 464 S.E.2d 448, 464 (1995)(internal quotations and citation omitted). This is because only "[a] single larceny offense is committed when, as part of one continuous act or transaction, a perpetrator steals several items at the same time and place." *State v. Adams*, 331 N.C. 317, 333, 416 S.E.2d 380, 389 (1992)(internal quotations and citation omitted). In addition, this Court has held that a defendant may not be subjected to "multiple punishments for both robbery and the possession of stolen goods that were the proceeds of the same robbery." *State v. Moses*, ___ N.C. App. ___, ___, 698 S.E.2d 688, 696 (2010).

In the instant case, all of the property in the Davis home that was stolen by the four men was taken during a single continuous robbery. Consequently, the trial court could not impose multiple punishments for RWDW and larceny from this single transaction. *Jaynes*, 342 N.C. at 275-76, 464 S.E.2d at

464. Moreover, the trial court could not impose multiple punishments for RWDW and possession of stolen goods that were the proceeds of the robbery. *Moses*, ___ N.C. App. at ___, 698 S.E.2d at 696. Accordingly, we vacate the trial court's judgments resulting from defendant's convictions for felony larceny, larceny of a firearm, and felony possession of stolen goods. Since the larceny of a firearm conviction was consolidated for judgment with the AWDW conviction, we must remand the AWDW conviction for resentencing. This disposition makes it unnecessary to address defendant's argument regarding the clerical error in defendant's AWDW judgment, as the error will be corrected on resentencing.[1]

IV. Conclusion

The State presented sufficient evidence that the robber who shot Jordan acted with premeditation, deliberation, and the specific intent to kill. The trial court erred by entering consecutive sentences for RWDW, felony larceny, larceny of a firearm, and felony possession of stolen property when all of the property was stolen during a single continuous transaction. Therefore, the judgments entered on the larceny and possession of stolen goods convictions must be vacated. Since the AWDW

[1] We note that the judgment incorrectly reflected that defendant was convicted of AWDW with intent to kill, rather than AWDW.

conviction was consolidated with the larceny of a firearm conviction, we remand for resentencing on the AWDW conviction.

No error in part, vacated in part, and remanded for resentencing.

Chief Judge MARTIN and Judge BRYANT concur.

Report per Rule 30(e).