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NO. COA01-1131

NORTH CAROLINA COURT OF APPEALS

Filed: 7 May 2002

STATE OF NORTH CAROLINA

v.

Wake County  
Nos. 00 CRS 16123-24

ANTHONY DEMARCUS LANGSTON

Appeal by defendant from judgments entered 6 April 2001 by Judge James C. Spencer, Jr. in Wake County Superior Court. Heard in the Court of Appeals 8 April 2002.

*Attorney General Roy Cooper, by Assistant Attorney General Alexandra M. Hightower, for the State.*

*James M. Bell for defendant-appellant.*

TYSON, Judge.

Anthony Demarcus Langston ("defendant") was found guilty of two counts of robbery with a dangerous weapon and was sentenced to consecutive prison terms of a minimum of sixty months and a maximum of eighty-one months.

His sole assignment of error concerns the denial of his motion at the close of all the evidence to dismiss the charges for insufficient evidence.

A motion to dismiss requires the court to determine whether substantial evidence is presented to establish every element of the offense charged and to identify the defendant as a perpetrator.

*State v. Powell*, 299 N.C. 95, 98, 261 S.E.2d 114, 117 (1980). In deciding the motion, the court must examine the evidence in the light most favorable to the State and give the State the benefit of every reasonable inference that may be drawn from the evidence. *State v. Benson*, 331 N.C. 537, 544, 417 S.E.2d 756, 761 (1992). Contradictions and discrepancies in the evidence are to be disregarded and left for resolution by the jury. *Id.* The test is the same whether the evidence is direct, circumstantial or both. *State v. Earnhardt*, 307 N.C. 62, 68, 296 S.E.2d 649, 653 (1982). If the evidence supports a reasonable inference of guilt, then the court must deny the motion and allow the jurors to determine whether the evidence satisfies them beyond a reasonable doubt of the defendant's guilt. *State v. Jones*, 303 N.C. 500, 504, 279 S.E.2d 835, 838 (1981).

The evidence tends to show that three men armed with a sawed-off shotgun and pistols took wallets and cellular telephones from two men chatting in the parking lot of Blinco's, a sports bar in Raleigh, at approximately 2:30 a.m. on 21 June 1999. One of the perpetrators made a call on one of the stolen cellular telephones shortly after taking the telephone. The recipient of the call identified Brian Darden ("Darden") as the person making the call. Darden subsequently confessed to robbing the two men. Raleigh Police Department officers seized from Darden's residence a cellular telephone identified as one of those taken from the victims. Darden identified one accomplice by name, Rico Merritt ("Merritt"), and the other accomplice in court as defendant. The

victims identified defendant as one of the three perpetrators. One victim also identified Merritt and Darden from photographs as two of the robbers. Merritt also testified and identified Darden and defendant as his accomplices in robbing the two men.

Defendant argues the evidence is insufficient to identify him as one of the perpetrators. In support of his argument, he cites evidence that no victim identified defendant as a perpetrator until nine months after the crime, that one victim expressed lack of positiveness in making identifications from photograph lineups, and that the other victim gave vague descriptions of the perpetrators to the police. We reject defendant's argument.

When a witness has "a reasonable possibility of observation sufficient to permit subsequent identification," the credibility of the identification testimony is for the jury to resolve. *State v. Miller*, 270 N.C. 726, 732, 154 S.E.2d 902, 906 (1967). Any doubt as to the identification does not justify the granting of a motion to dismiss unless the identification is inherently incredible given the physical conditions under which the observation is made. *Id.* Here, the evidence shows that the victims viewed the perpetrators, whose faces were visible, in a well-lighted parking lot for approximately five minutes. They had a reasonable opportunity of observation sufficient to make an identification. The victims' identifications of defendant are corroborated by the testimony of Darden and Merritt, two confessed perpetrators.

We hold the trial court properly denied the motion to dismiss. We find no error.

No error.

Judges GREENE and HUDSON concur.

Report per Rule 30(e).