NO. COA01-190

NORTH CAROLINA COURT OF APPEALS

Filed: 7 May 2002

STATE OF NORTH CAROLINA

v. Gaston County
No. 98 CRS 25427

ETHEL HAZELINE BRIDGES

Appeal by defendant from judgment entered 1 November 2000 by Judge Marcus L. Johnson in Superior Court, Gaston County. Heard in the Court of Appeals 9 January 2002.

Attorney General Roy Cooper, by R. Marcus Lodge, Special Deputy Attorney General, for the State.

Andrew C. Blumenberg for defendant.

McGEE, Judge.

Ethel Hazeline Bridges (defendant) was indicted on 7 August 2000 for common law robbery. The evidence for the State at trial tended to show that Shan McAteer (Ms. McAteer) and defendant were co-workers at the Pharr Yarns plant in McAdenville, North Carolina. Ms. McAteer was employed at the plant from 1994 to 1998. Ms. McAteer and defendant worked beside each other at the plant and Ms. McAteer described their relationship as a "regular co-worker relationship." According to Ms. McAteer, the relationship between her and defendant began to change when a man named Philip Roberts (Mr. Roberts), who was also employed at the plant, began speaking

to Ms. McAteer daily. Ms. McAteer testified that on several occasions, defendant said things to Ms. McAteer about Mr. Roberts that Ms. McAteer described as "hostile, little small, short conversations[.]"

As Ms. McAteer was leaving the plant around 10:00 p.m. on 12 February 1998, she placed her leather handbag on a railing outside the door in order to get her keys out of it. Her head was down as she looked for her keys and someone ran up to her, grabbed the top of her hair, and pulled her over the railing. Ms. McAteer fell on the pavement and her attacker began kicking her. Ms. McAteer looked up and saw defendant was her attacker. During the altercation, Ms. McAteer's handbag fell to the ground. Ms. McAteer testified that she and defendant were not struggling over the handbag. Defendant kicked Ms. McAteer about ten times and hit her all over her body with her hands. Ms. McAteer stated that she saw her handbag lying on the ground and started to get it but "it was closer to [defendant] and [defendant] got it." Ms. McAteer testified that defendant never verbally asked her for the handbag.

Ms. McAteer testified that she went back inside the plant and from a window saw defendant grab her handbag and get into a friend's car with it. Ms. McAteer told her supervisor what happened and called the police. Ms. McAteer testified she never found her handbag, which contained her keys, her payroll check, work items and some cash.

A McAdenville police officer testified that he responded to a call at Pharr Yarns on 12 February 2000 around 10:35 p.m. He

interviewed Ms. McAteer, who was obviously upset. He corroborated Ms. McAteer's testimony that another employee had fought with her, taken her handbag and left. He testified he searched the area but was unable to locate Ms. McAteer's handbag.

At the close of the State's evidence, defendant moved to dismiss the common law robbery charge, which was denied by the trial court. Defendant testified that she had a problem with Ms. McAteer because they both liked Mr. Roberts. Defendant testified that she left work around 10:00 p.m. on the night of the altercation. She went outside to the parking lot where Ms. McAteer called her a "black B[.]" Defendant went over to Ms. McAteer, grabbed her and "jerked her down and . . . proceeded in kicking her." Defendant testified that two of her friends intervened, and she then got into her sister's car. Defendant testified that she "believe[d] that [Ms. McAteer] had her [handbag]" and that she did not take Ms. McAteer's handbag. Defendant testified that as she was fighting Ms. McAteer, her "attention wasn't on [the handbag.]"

At the close of all the evidence, defendant renewed her motion to dismiss the common law robbery charge, which the trial court denied. The jury found defendant guilty and the trial court imposed an intermediate punishment with a suspended sentence of twelve to fifteen months imprisonment. Defendant appeals.

Defendant assigns as error the trial court's denial of her motion to dismiss the charge of common law robbery arguing that the evidence was insufficient to sustain the charge.

Upon review of a denial of a motion to dismiss, we must

determine "whether there is substantial evidence: 1) of each essential element of the offense charged . . . and 2) of defendant's being the perpetrator of the offense. If each of these requirements are satisfied, the motion is properly denied." *State v. Richardson*, 308 N.C. 470, 474, 302 S.E.2d 799, 802 (1983). *See also State v Duncan*, 136 N.C. App. 515, 520, 524 S.E.2d 808, 811 (2000). Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Smith*, 300 N.C. 71, 78-79, 265 S.E.2d 164, 169 (1980). All evidence is to be viewed in a light most favorable to the State, and the State must have the benefit of all reasonable inferences from the evidence. *State v. Baker*, 338 N.C. 526, 558 451 S.E.2d 574, 593 (1994).

"Common law robbery is the felonious, non-consensual taking of money or personal property from the person or presence of another by means of violence or fear." *State v. Smith*, 305 N.C. 691, 700, 292 S.E.2d 264, 270, *cert. denied*, 459 U.S. 1056, 74 L. Ed. 2d 622 (1982). *See also State v. White*, 142 N.C. App. 201, 204, 542 S.E.2d 265, 267 (2001). As our Supreme Court stated in *State v. Davis*, 325 N.C. 607, 630, 386 S.E.2d 418, 430 (1989), *cert. denied*, 496 U.S. 905, 110 L. Ed. 2d 268 (1990),

> [t]o withstand a motion to dismiss a common-law robbery charge, the State must offer substantial evidence that the defendant feloniously took money or goods of any value from the person of another, or in the presence of that person, against that person's will, by violence or putting the person in fear.

The "felonious taking" required for common law robbery, like

that of armed robbery, is an intent to permanently deprive the owner of the owner's property for the use of the taker. *State v. Smith*, 268 N.C. 167, 169, 150 S.E.2d 194, 198 (1966). This intent may be found where a person without any right to property "takes property (1) with the specific intent wholly and permanently to deprive the owner of it, or (2) under circumstances which render it unlikely that the owner will ever recover his property[.]" *Id.* at 173, 150 S.E.2d at 200.

The means of violence or fear used "must precede or be concomitant with the taking, or be so joined by time and circumstances with the taking as to be part of one continuous transaction." *State v. Olson*, 330 N.C. 557, 566, 411 S.E.2d 592, 597 (1992).

In the case before us, defendant argues that the evidence shows that the alleged taking of Ms. McAteer's handbag was merely an "afterthought" and thus "separate and distinct" from the physical confrontation between defendant and Ms. McAteer. Defendant argues that "at the time force was used by [] defendant there was [no] intention of depriving the victim of her handbag." As support for her argument, defendant claims that she did not ask for or demand Ms. McAteer's handbag at any point during the altercation, nor was there ever a struggle over the handbag. Further, defendant argues that it was only after Ms. McAteer "retreated to the inside of the mill, after the physical confrontation was over, [that defendant was] accused of taking the handbag from the middle of the parking lot."

Defendant argues that her case is similar to *State v. Richardson*, 308 N.C. 470, 302 S.E.2d 799 (1983), wherein the evidence showed that the victim was physically attacked by the defendant. In order to protect himself from the defendant during the altercation, the victim threw his duffel bag at the defendant. The evidence at trial showed that the defendant's threats and use of violence were not made in order to induce the victim to separate with his property; thus, the defendant did not have the intent to deprive the victim of his property. It was only sometime later, after the victim left the scene, that the defendant looked through the victim's duffel bag and discovered the victim's wallet. In *Richardson*, our Supreme Court found that the evidence presented was insufficient to sustain the charge of armed robbery because there was "no evidence that defendant's threats or use of violence preceded or were concomitant with the taking of the victim's property." *Id.* at 477, 302 S.E.2d at 803.

We find *Richardson* is distinguishable, because unlike in *Richardson*, the events in this case were part of a continuous transaction. Defendant physically separated Ms. McAteer from her handbag by hitting and kicking her and continued to use force and violence until Ms. McAteer fled back into the plant. Thus, as the State argues, "[h]aving eliminated any interference from the victim, [] defendant immediately took physical possession of the [handbag] and removed it from the scene." Further, defendant took Ms. McAteer's handbag with such force and violence that it was unlikely Ms. McAteer would recover her handbag, thus establishing

defendant's intent to deprive Ms. McAteer of her property.

Viewing the evidence in the light most favorable to the State, we find the record here satisfies the substantial evidence standard for denying defendant's motion to dismiss the charge of common law robbery. We find no error by the trial court and affirm the trial court's denial of defendant's motion to dismiss.

No error.

Judges WALKER and BIGGS concur.

Report per Rule 30(e).