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NO. COA01-598

NORTH CAROLINA COURT OF APPEALS

Filed: 2 April 2002

STATE OF NORTH CAROLINA

v.

MAX FELTON MITCHELL,
Defendant.

Wake County
Nos. 99 CRS 81140
99 CRS 81141

Appeal by defendant from judgments entered 13 January 2000 by Judge David Q. LaBarre in Wake County Superior Court. Heard in the Court of Appeals 11 March 2002.

Attorney General Roy Cooper, by Assistant Attorney General Douglas W. Corkhill, for the State.

John T. Hall for defendant-appellant.

BRYANT, Judge.

Defendant was indicted on 25 October 1999 on charges of robbery with a dangerous weapon and assault with a deadly weapon with intent to kill inflicting serious injury. The case was tried at the 12 January 2000 Criminal Session of Wake County Superior Court.

The State presented evidence at trial which tended to show the following: The defendant, Max Felton Mitchell, and the victim, Lisa Dickens, had known each other for many years and had two children together, although they had never married. On 17

September 1999, at about 11 p.m., Dickens was returning home with the couple's daughter when defendant approached her in her driveway. At the time, the two were separated. As defendant approached, Dickens saw that defendant was holding a steak knife. Defendant stabbed Dickens four or five times, stabbing her in the stomach, under her breast, and slicing her nipple. Dickens ran away into her home and her nephew called the police. Meanwhile, defendant drove away in Dickens' car.

Defendant was convicted of assault with a deadly weapon with intent to kill inflicting serious injury and common law robbery. Defendant was sentenced to 133 to 169 months imprisonment for the assault conviction, and 20 to 24 months for the robbery conviction. Defendant appeals.

We first consider whether there was sufficient evidence to support the conviction for assault with a deadly weapon with intent to kill inflicting serious injury. Defendant contends that the statutory definition of serious injury has not been met. Defendant notes that there were no internal injuries or extended hospitalization. Defendant further notes that the State did not produce evidence from any medical personnel, and there was no evidence that the injury required surgery or was permanent. Defendant additionally argues that the State failed to prove that he had the specific intent to kill Dickens.

After careful review of the record, briefs and contentions of the parties, we find no error. To survive a motion to dismiss, the State must present substantial evidence of each essential element

of the charged offense. *State v. Cross*, 345 N.C. 713, 716-17, 483 S.E.2d 432, 434 (1997). “Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.” *Id.* at 717, 483 S.E.2d at 434 (quoting *State v. Olson*, 330 N.C. 557, 564, 411 S.E.2d 592, 595 (1992)). The essential elements of an assault with a deadly weapon with intent to kill inflicting serious injury are: “(1) an assault, (2) with a deadly weapon, (3) with intent to kill, (4) inflicting serious injury, (5) not resulting in death.” *State v. Wampler*, ___ N.C. App. ___, ___, 549 S.E.2d 563, 566 (2001) (citing N.C.G.S. § 14-32(a)).

“Whether serious injury has been inflicted turns on the facts of each case and is generally a determination for the jury. Pertinent factors for jury consideration include hospitalization, pain, blood loss, and time lost at work.” *State v. Woods*, 126 N.C. App. 581, 592, 486 S.E.2d 255, 261 (1997) (citing *State v. Hedgepeth*, 330 N.C. 38, 53, 409 S.E.2d 309, 318 (1991)). Here, the State presented evidence that defendant stabbed Dickens four or five times with a knife with a serrated blade that was five to five-and-a-half inches long. Defendant stabbed her in the stomach, under her breast, and on her left nipple. Dickens had to have surgery to make sure her kidneys were not damaged, and it took seventeen staples to close her wounds. She further testified that she was sore for a week, and was unable to return to work for two weeks. The marks left by the wounds on her stomach were still visible at trial. In the light most favorable to the State, a

reasonable mind could conclude from this evidence that defendant assaulted Dickens with a deadly weapon and caused serious injury. *Cross*, 345 N.C. at 717, 483 S.E.2d at 434.

In regards to defendant's argument that there was insufficient evidence that he intended to kill Dickens, this Court has stated:

'Proof of an assault with a deadly weapon inflicting serious injury not resulting in death does not, as a matter of law, establish a presumption of intent to kill. Such intent must be found by the jury as a fact from the evidence.' However, '[a]n intent to kill may be inferred from the nature of the assault, the manner in which it was made, the conduct of the parties, and other relevant circumstances.'

Wampler, ___ N.C. App. at ___, 549 S.E.2d at 566. Here, defendant repeatedly stabbed Dickens after lying in wait for her. As noted above, he stabbed her in the stomach, under her chest, and on her breast. This evidence was sufficient to support an inference that defendant intended to kill Dickens. Accordingly, this assignment of error is overruled.

We next consider whether there was sufficient evidence to support the conviction of common law robbery. Defendant contends that there was no evidence in the record to indicate that he did not know he was not entitled to use the car. Defendant notes that Dickens had given him a key to the car and permission to use it for his own personal purposes. We are not persuaded.

"Common law robbery requires proof of four elements: (1) felonious, non-consensual taking of (2) money or other personal property (3) from the person or presence of another (4) by means of force." *State v. Robertson*, 138 N.C. App. 506, 508, 531 S.E.2d

490, 492 (2000) (citing *State v. Hedgecoe*, 106 N.C. App. 157, 161, 415 S.E.2d 777, 780 (1992)). Here, defendant disputes the element of consent. However, Dickens testified that she did not give defendant permission to use her car that day. Although defendant had been given a key about a month prior to the assault, she stated that she had not been able to get it back from him. Dickens testified that "if he wanted to use my car he would ask, so it won't [sic] like he had, he had access to my car any time he wanted it." In the light most favorable to the State, a reasonable mind could conclude from this evidence that defendant knew he did not have permission to use Dickens's car. Accordingly, we find no error.

No error.

Judges WYNN and THOMAS concur.

Report per Rule 30(e).