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NO. COA01-911

NORTH CAROLINA COURT OF APPEALS

Filed: 21 May 2002

STATE OF NORTH CAROLINA

v.

RAY BELTRAN

Guilford County  
Nos. 00 CRS 77520, 77522,  
77526-27, 77530, 77532,  
77534-35

Appeal by defendant from judgments entered 2 April 2001 by Judge W. Douglas Albright in Guilford County Superior Court. Heard in the Court of Appeals 13 May 2002.

*Attorney General Roy Cooper, by Assistant Attorney General Richard G. Sowerby, for the State.*

*Mark E. Hayes for defendant-appellant.*

TYSON, Judge.

I. Facts

The State's evidence tended to show that at approximately 7:00 p.m. on New Year's Eve, 1999, two men in ski masks entered the Xanadu Video Boutique in Greensboro, brandishing handguns. One of the gunmen ordered store clerk, James Bell, Jr. ("Bell"), to open the cash register. After taking \$227 in cash from the register, the robber put his gun to Bell's back and led him through the store to join the customers. The second gunman initially ordered the customers down to the floor and then led them to the arcade in the

back of the store one by one. The customers were forced to lay face-down on the arcade floor and turn over their money. While the first gunman watched, the second gunman took twenty dollars in cash from Bell, two dollars from Bethany Ann Murray, and sixty dollars from Bobby Joe Murray, Jr. No money was removed from a third customer, who produced only a credit card. The robbers demanded that Bell turn over the videotape from the surveillance cameras. When Bell was unable to unlock the door to the video control room, the gunmen led Bell back into the arcade, and fled through the front door.

Pursuant to a plea agreement with the State, Chad Jackson testified at trial, and admitted his role in the robbery and implicated Ray Beltran ("defendant") as his accomplice. Jackson identified clothing worn by defendant and the weapon he used during the robberies. Jackson recounted the incident in detail and confirmed that the store surveillance tape which was played to the jury accurately reflected their actions during the robbery. Another witness identified a "multicolor-looking jacket" recovered from defendant's house as having been worn by one of the robbers.

Defendant was convicted of three counts of robbery with a dangerous weapon, one count of attempted robbery with a dangerous weapon, and four counts of second-degree kidnapping. The trial court sentenced defendant to four consecutive prison terms of 96 months minimum to 125 months maximum for the robbery and attempted robbery offenses. The court consolidated the kidnapping counts and imposed an additional consecutive sentence of 34 months minimum to

50 months maximum. Defendant appeals.

## II. Issues

### A. Present Sense Impression

Defendant claims the trial court erred in allowing into evidence a statement given to police by Bell at the crime scene. Bell did not testify at trial, but his statement was read into evidence by Greensboro Police Officer Matt Menshew ("Menshew"). In the statement, Bell described the gunman's theft of the money from the cash register and from his person. Like the other victims, however, Bell was able to give only a general description of the two robbers. Defendant maintains that this out-of-court statement was inadmissible hearsay.

On *voir dire* following defendant's objection, Menshew testified that he arrived at the crime scene within five minutes of the police call and took Bell's statement "probably ten minutes" thereafter. Although Menshew could not specifically recall Bell's demeanor during his statement, he noted the "excited atmosphere" in the store in the aftermath of the robbery. The trial court ruled Bell's statement admissible under the "present sense impression" and "excited utterance" exceptions to the hearsay rule. N.C. Gen. Stat. § 8C-1, Rule 803(1), (2) (1983).

The North Carolina Rules of Evidence allow a declarant's present sense impressions into evidence as an exception to the hearsay rule. Rule 803(1) defines a present sense impression as "[a] statement describing or explaining an event . . . made while the declarant was perceiving the event . . ., or immediately

thereafter." N.C. Gen. Stat. § 8C-1, Rule 803(1). "The underlying theory of the present sense impression exception is that closeness in time between the event and the declarant's statement reduces the likelihood of deliberate or conscious misrepresentation." *State v. Gainey*, 343 N.C. 79, 87, 468 S.E.2d 227, 232 (1996) (citation omitted).

We conclude that Bell's statement was admissible under Rule 803(1). Evidence established that Officer Menshew arrived at the scene within five minutes of the dispatcher's call, and took Bell's statement "probably ten minutes" later. Bell had only moments before been robbed at gunpoint and had been ordered around the store with a gun at his back. Under the circumstances, Bell's account of the robbery was given "immediately thereafter" and was sufficiently reliable to qualify as a present sense impression under Rule 803(1). See *State v. Odom*, 316 N.C. 306, 313, 341 S.E.2d 332, 336 (1986) (admitting eyewitness declarant's statement to police officer who arrived at the scene ten minutes after declarant reported the crime); see also *State v. Cummings*, 326 N.C. 298, 314, 389 S.E.2d 66, 75 (1990) (statement made after declarant had driven from Willow Springs to Raleigh).

#### B. Confrontation of Witness

Defendant also asserts that the admission of Bell's statement violated his constitutional right to confrontation. Defendant cites no authority to support his position. This claim is without merit. "Evidence which falls within a firmly rooted hearsay exception does not violate a defendant's right to confront and

cross-examine witnesses." *Gainey*, 343 N.C. at 86, 468 S.E.2d at 231-32 (citing *State v. Stager*, 329 N.C. 278, 317, 406 S.E.2d 876, 898 (1991); *State v. Roper*, 328 N.C. 337, 359, 402 S.E.2d 600, 618, *cert. denied*, 502 U.S. 902, 116 L. Ed. 2d 232 (1991)).

### C. Sufficiency of Evidence

Defendant next challenges the sufficiency of the State's evidence concerning the robbery and kidnapping of Bell. This claim is based upon defendant's position that Bell's out-of-court statement was inadmissible at trial. Our ruling to the contrary also disposes of this issue.

Defendant's remaining claim concerns the sufficiency of the evidence identifying him as one of the two robbers. He argues that Jackson was "completely untrustworthy and unreliable" as a witness, rendering his testimony insufficient to establish defendant's identity as the perpetrator. We disagree. Jackson testified as both an eyewitness to and participant in the robberies and was thus in a position to identify his own accomplice. "[T]he credibility of the witness and the weight of his identification testimony is for the jury." *State v. Cox*, 289 N.C. 414, 423, 222 S.E.2d 246, 253 (1976). This assignment of error is overruled.

We hold that defendant received a trial free from errors that he assigned.

No error.

Judges GREENE and HUDSON concur.

Report per Rule 30(e).