NO. COA03-1610

NORTH CAROLINA COURT OF APPEALS

Filed: 19 October 2004

STATE OF NORTH CAROLINA

v. Guilford County
No. 02 CRS 87132

TERRELL TICE CLARK

Appeal by defendant from judgment entered 30 April 2003 by Judge William Z. Wood, Jr. in Guilford County Superior Court. Heard in the Court of Appeals 18 October 2004.

Attorney General Roy Cooper, by Assistant Attorney General Gaines M. Weaver, for the State.

Allen W. Boyer for defendant-appellant.

LEVINSON, Judge.

On 5 August 2002, the Guilford County grand jury indicted defendant on a charge of robbery with a dangerous weapon. Following a forensic evaluation and observation of defendant, the Forensic Psychiatry Division of Dorothea Dix Hospital on 22 November 2002 found him to be not capable of proceeding to trial. Defendant was subsequently committed to a twenty-four-hour facility for treatment pursuant to an involuntary commitment order. After being readmitted to Dorothea Dix Hospital on 18 March 2003 for evaluation, defendant was found to be capable of proceeding to

trial.

At trial, the State introduced evidence which tended to show the following: On the morning of 6 June 2002, defendant asked Nelson Conner to drive him to Greensboro in order to get some crack cocaine. Another passenger in the car, Chip, purchased the crack cocaine upon their arrival there. After the three men had finished smoking the crack cocaine, defendant asked Conner to stop at the Red Roof Inn on the way back to Yadkinville. Defendant said he wanted to stop to see if he could get some money. Upon arriving at the motel, defendant grabbed a flat-head screwdriver, said he was going to try to get some money, and got out of the car. He told Conner to go to a motel located beside the Red Roof Inn and wait for him. Conner decided to leave defendant at the Red Roof Inn and take Chip back to Yadkinville because he "didn't want to have nothing to do with what [defendant] was doing."

Tori Ann Bolding was working behind the front desk at the Red Roof Inn on the afternoon of 6 June 2002. At around 2:45 p.m., defendant entered the motel and began asking questions about rooms and rates. Defendant then asked if a certain manager still worked there. Elaine Harris-Rich, the other person on duty behind the desk, informed him that the manager's name was Hope and that she was not at work. Defendant suddenly came behind the front desk and held something very sharp to Bolding's side. Bolding believed it was a knife. Defendant told Bolding to open the register, but her hands were shaking so badly that she gave the keys to Harris-Rich to open the register. Harris-Rich saw that defendant had what

appeared to be a screwdriver against Ms. Bolding's side. When defendant realized there was only $78.00 in the register, he became angry. As a customer was entering the motel, defendant ran out yelling threats and profanities. Bolding stated that after defendant left, she "was just shaking and crying so bad, [she] didn't know what to do." Harris-Rich chased defendant as far as the Motel 6 which was next door before returning to the Red Roof Inn. Police subsequently apprehended defendant in a nearby wooded area. The money and the screwdriver were not recovered.

Dr. David Stewart, a clinical psychologist, reviewed defendant's medical records and also examined him on 12 March 2003 and 23 April 2003. He testified that at the time of the robbery defendant was having difficulty distinguishing what was real from what was not. Because of this state of mind, Dr. Stewart opined that defendant "did not have the specific intent when he walked in of going and committing a robbery." Dr. Stewart stated, however, that defendant could appreciate the criminality of his conduct at the time.

Defendant testified that he took various drugs all day on the date in question. He remembered going to Greensboro to get crack cocaine, but he did not remember how he ended up at the Red Roof Inn. He went into the motel to get some money from a friend who used to be the manager of a motel in Indiana. Defendant stated he took either a screwdriver with a broken-off blunt tip or a nutdriver in the motel with him. In order to make the two women at the front desk think that he had something, defendant put the tool

under his shirt before demanding that they give him money. Defendant did not remember grabbing either woman or using profanity with them. He said he was so high that he did not know what he was doing.

On 30 April 2003, a jury found defendant guilty of the charge of robbery with a dangerous weapon. The trial court then imposed a sentence of 103 to 133 months imprisonment. From the trial court's judgment, defendant appeals.

Defendant contends on appeal that the trial court erred by denying his motion to dismiss at the close of the evidence due to insufficient evidence of two elements of the offense. In his first argument, he asserts his evidence rebutted "any presumption raised by the State's evidence that there was intent to deprive the Clerk permanently of monies at the Red Roof Inn on June 6, 2002, by his behavior." In his second argument, defendant argues no weapon was introduced into evidence, no verbal threats to harm the motel employees with a weapon in his possession were made, and he displayed no life-threatening weapon. Defendant's arguments are not persuasive.

When ruling on a defendant's motion to dismiss, the trial court must consider the evidence in the light most favorable to the State; the State is entitled to every reasonable inference which can be drawn from the evidence presented, and all contradictions and discrepancies are resolved in the State's favor. *State v. Davis*, 325 N.C. 693, 696-97, 386 S.E.2d 187, 189 (1989). Evidence is sufficient to withstand a motion to dismiss when it gives "rise

to a reasonable inference of defendant's guilt based on the circumstances." *State v. Styles*, 93 N.C. App. 596, 603, 379 S.E.2d 255, 260 (1989). Once sufficient evidence is adduced at trial, it becomes a question for the jury. *Id.* "This test applies when the evidence is circumstantial, direct, or both." *Id.* Robbery with a dangerous weapon is defined by N.C.G.S. § 14-87 (2002) "as the taking of personal property of another, in his presence or from his person, without his consent by endangering or threatening his life with a firearm or other dangerous weapon, with the taker knowing he is not entitled to the property and intending to permanently deprive the owner of the property." *State v. Washington*, 142 N.C. App. 657, 660, 544 S.E.2d 249, 251 (2001). "The intent required for the offense is the intent to permanently deprive the owner of the property at the time of the taking." *State v. Mann*, 355 N.C. 294, 303-04, 560 S.E.2d 776, 782, *cert. denied*, 537 U.S. 1005, 154 L. Ed. 2d 403 (2002).

The State's evidence shows that defendant asked Conner to stop at the Red Roof Inn on the date in question because he wanted to see if he could get some money. He took a flat-head screwdriver from the car, said he was going to try to get some money, and told Conner to wait for him at an adjacent motel. After entering the motel, he grabbed a motel employee, pressed the screwdriver into her side and demanded that the register be opened. He fled into a nearby wooded area after obtaining the money. Police were unable to locate either the screwdriver or money after apprehending defendant. While Dr. Stewart's testimony that defendant lacked

"the specific intent when he walked in of going and committing a robbery" is some evidence to rebut the State's evidence, the applicable standard is whether there was substantial evidence of defendant's intent when the evidence is viewed in the light most favorable to the State. *See Davis*, 325 N.C. at 696-97, 386 S.E.2d at 189. Because the State's evidence gives rise to a reasonable inference that defendant entered the motel and accosted the two women with the intent to rob the motel, the trial court did not err in denying defendant's motion to dismiss due to insufficient evidence of intent to rob.

As for defendant's second argument, that the evidence regarding the use or threatened use of a dangerous weapon was insufficient, it also is not persuasive. In determining whether a robbery with a particular implement is a violation of G.S. § 14-87, "the determinative question is whether the evidence was sufficient to support a jury finding that a person's *life* was in fact endangered or threatened." *State v. Alston*, 305 N.C. 647, 650, 290 S.E.2d 614, 616 (1982). An implement is a deadly weapon if it is "likely to produce death or great bodily harm under the circumstances of its use . . . ." *State v. Joyner*, 295 N.C. 55, 64, 243 S.E.2d 367, 373 (1978). "[W]hen the question of whether an instrument might be deadly or produce great bodily harm turns on its manner of use, the determination is a question of fact for a jury." *State v. Cody*, 135 N.C. App. 722, 727-28, 522 S.E.2d 777, 781 (1999).

The State's evidence was that defendant took a flat-head

screwdriver from Conner's car into the Red Roof Inn. Defendant grabbed Bolding during the robbery, and she felt something sharp which she thought was a knife in her side. Harris-Rich observed defendant holding what appeared to be a screwdriver against Bolding. After defendant released Bolding and fled, she "was just shaking and crying so bad, [she] didn't know what to do." Defendant himself testified he took either a blunt-tip screwdriver or a nutdriver into the motel, and he described how he put it under his shirt so that the two women would think he had something. When viewed in the light most favorable to the State, this evidence supported the trial court's denial of defendant's motion to dismiss for insufficiency of the evidence. Whether the implement used or as used by defendant would be likely to produce death or great bodily harm was a conflict for the jury to resolve. *See State v. Palmer*, 293 N.C. 633, 642-43, 239 S.E.2d 406, 412-13 (1977). According, the trial court properly denied defendant's motion to dismiss and submitted the charge to the jury. Defendant received a fair trial, free from prejudicial error.

No error.

Judges TIMMONS-GOODSON and CALABRIA concur.

Report per Rule 30(e).