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NO. COA03-567

NORTH CAROLINA COURT OF APPEALS

Filed: 18 May 2004

STATE OF NORTH CAROLINA

v.

ARTURIO SHEVIGA LITTLEJOHN

Gaston County
Nos. 02 CRS 54645, 54648-
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Appeal by defendant from judgments entered 27 January 2003 by Judge David S. Cayer in Gaston County Superior Court. Heard in the Court of Appeals 3 May 2004.

Attorney General Roy Cooper, by Assistant Attorney General John W. Congleton, for the State.

William B. Gibson, for defendant-appellant.

CALABRIA, Judge.

On 1 April 2002, Arturio Sheviga Littlejohn ("defendant") was indicted on two counts of robbery with a dangerous weapon and one count of possession of a firearm by a felon. Following a trial which began on 21 January 2003, defendant was convicted of two counts of robbery with a dangerous weapon and possession of a firearm by a felon. Defendant appeals asserting the weapons seized were improperly admitted into evidence and therefore there was insufficient evidence of the weapon for the charges of robbery with

a dangerous weapon and possession of a firearm by a felon. We find no error.

On 22 March 2002, Jacky Burgan and Fred Robinson were working at R&W Tire Store in Bessemer City, North Carolina. Sometime during the afternoon, defendant came to the store in a white Nissan Stanza. Defendant was accompanied by another man, as well as a passenger in the back seat whose head was covered by a jacket. Defendant told Burgan that one of his tires was leaking. Burgan had sold the tires to defendant about two weeks earlier. Burgan took the tire off the car and tested it, but could not find any leaks. Defendant and the other male then went into the tire store to look at tires. Eventually, a man named David Murphy arrived, and defendant followed him and left the store.

About two minutes after they left, defendant pulled back up to the store. Defendant told Burgan and Robinson that Murphy had robbed him of his marijuana. Defendant asked if there was a phone so they could "call the law." Robinson told him "Yeah, I got a phone, I'll call." However, defendant changed his mind and told Robinson "don't call the police."

Burgan and Robinson went back into the store to help other customers. Shortly thereafter, Robinson went to answer the phone, and the man accompanying defendant "slapped" the phone out of Robinson's hand. The man grabbed Robinson by the shirt, pointed a "big gun" at him, threatened to shoot him and took his wallet. At the same time, defendant pointed a pistol at Burgan and took some money that was in Burgan's shirt pocket. The two men then ran out

of the store, got in their car and drove away. Burgan and Robinson then called the police.

A short time later, Officer Scott Bates of the Lowell Police Department received a call to be on the lookout for a white Nissan that had been involved in an armed robbery. Officer Bates spotted the defendant's car traveling on I-85 traveling northbound, called for backup, and stopped the vehicle. The defendant and a man in the passenger seat were removed from the vehicle and secured. A third person, Wyshena Rankin, was found in the rear passenger side of the vehicle. In plain view, Officer Bates observed a handgun laying on the floorboard, as well as a black wallet. Detective Eddie Atkinson of the Gastonia City Police Department testified that another detective, Detective Eddie Green, recovered a wallet and two pistols from the car.

Defendant appeals asserting the trial court erred by: (I) admitting the weapons into evidence; and (II) failing to dismiss the charges which were premised upon use of the weapon.

We first consider whether the weapons seized from defendant's vehicle were properly admitted into evidence. Defendant contends there existed confusion as to the actual weapons seized, and thus Detective Eddie Green, the person who actually seized the weapons from the arrest scene, should have testified and identified them at trial. In the absence of Detective Green's testimony, defendant argues there existed a material break in the chain of custody.

After careful review of the record, briefs and contentions of the parties, we find no error. This Court has stated:

[A] complete chain of custody with no missing links is not always a prerequisite to the admissibility of articles seized by the police. Where the articles objected to have been identified as being the same objects seized and in somewhat the same condition, as happened here, proving a continuous chain of custody is unnecessary.

State v. Hart, 66 N.C. App. 702, 704, 311 S.E.2d 630, 631 (1984) (citations omitted). Furthermore, "[a] detailed chain of custody need be established only when the evidence offered is not readily identifiable or is susceptible to alteration and there is reason to believe that it may have been altered." *State v. Campbell*, 311 N.C. 386, 389, 317 S.E.2d 391, 392 (1984).

In the case *sub judice*, several witnesses identified State's Exhibit #2, the Larson .22 caliber pistol, as the weapon that defendant possessed on the date of the robbery. Burgan stated that the Larson pistol was the gun that defendant pointed at him during the robbery. Rankin also testified that the pistol was the same that defendant possessed on 22 March 2002. Detective Atkinson later testified that the Larson pistol "appear[ed] to be the one that was taken from the vehicle by Detective Green." There was no allegation that the pistol had been altered in any way, and Rankin testified that it was in the same condition as it was on the day of the robbery. Thus, we conclude that the Larson pistol was properly admitted into evidence. Moreover, we note that "any weak links in a chain of custody relate only to the weight to be given evidence and not to its admissibility." *Campbell*, 311 N.C. at 389, 317 S.E.2d at 392 (citing *State v. Montgomery*, 291 N.C. 91, 229 S.E.2d 572 (1976)). Accordingly, the assignment of error is overruled.

Defendant next argues that there was insufficient evidence to support the conviction for robbery with a dangerous weapon. We are not persuaded.

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)). When reviewing the sufficiency of the evidence, “[t]he trial court must consider such evidence in the light most favorable to the State, giving the State the benefit of every reasonable inference to be drawn therefrom.” *State v. Patterson*, 335 N.C. 437, 450, 439 S.E.2d 578, 585 (1994) (citing *State v. Vause*, 328 N.C. 231, 237, 400 S.E.2d 57, 61 (1991)).

In the instant case, defendant was charged with robbery with a dangerous weapon. The essential elements of robbery with a dangerous weapon are: “(1) an unlawful taking or an attempt to take personal property from the person or in the presence of another, (2) by use or threatened use of a firearm or other dangerous weapon, (3) whereby the life of a person is endangered or threatened.” *State v. Call*, 349 N.C. 382, 417, 508 S.E.2d 496, 518 (1998) (citing N.C. Gen. Stat. § 14-87; *State v. Small*, 328 N.C. 175, 400 S.E.2d 413 (1991)). Here, the only issue raised by defendant was whether he possessed a dangerous weapon. However, we

have already determined that the Larson pistol was properly admitted into evidence. Accordingly, in the light most favorable to the State, a reasonable mind could conclude that defendant committed the offense of robbery with a dangerous weapon. *Cross*, 345 N.C. at 717, 483 S.E.2d at 434.

Defendant finally argues that there was insufficient evidence to sustain the conviction for possession of a firearm by a convicted felon. Defendant contends that there was testimony that he possessed a fake gun, and thus could not be convicted of possession of a firearm by a felon.

We find no error. North Carolina law provides:

It shall be unlawful for any person who has been convicted of a felony to purchase, own, possess, or have in his custody, care, or control any handgun or other firearm with a barrel length of less than 18 inches or an overall length of less than 26 inches, or any weapon of mass death and destruction as defined in G.S. 14-288.8(c).

N.C. Gen. Stat. § 14-415.1(a) (2003). Here, both Rankin and Burgan testified that defendant possessed the .22 caliber Larson pistol on the date of the robbery. To the extent that evidence was admitted in conflict with Rankin and Burgan's testimony, "[i]t was thus for the jury to determine the nature of the weapon." *State v. Allen*, 317 N.C. 119, 125-26, 343 S.E.2d 893, 897 (1986). Accordingly, the assignment of error is overruled.

No error.

Judges TIMMONS-GOODSON and ELMORE concur.

Report per Rule 30(e).