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NO. COA06-156

NORTH CAROLINA COURT OF APPEALS

Filed: 17 October 2006

STATE OF NORTH CAROLINA

v.

Columbus County  
No. 04 CRS 54711

KENNETH DARRIAN JONES

Appeal by defendant from judgment entered 21 September 2005 by Judge John W. Smith in Columbus County Superior Court. Heard in the Court of Appeals 25 September 2006.

*Attorney General Roy A. Cooper, III, by Assistant Attorney General Kimberly D. Potter, for the State.*

*Thomas R. Sallenger, for defendant-appellant.*

JACKSON, Judge.

Kenneth Darrian Jones ("defendant") appeals from a judgment entered upon a jury verdict finding him guilty of robbery with a dangerous weapon.

On 10 December 2004, two masked men, one carrying a large gun, entered Sam's Pit Stop, a store and gasoline station in Hallsboro, and demanded all of the money in the cash register. The cashier gave them all of the money in the register, and the two men exited the store. The cashier could not identify the two men.

At about the same time, Sgt. James Pierce of the Columbus County Sheriff's Department was patrolling the area of Sam's Pit

Stop store. He saw a vehicle parked behind the store. Thinking this was unusual, Sgt. Pierce turned his vehicle around and went back to the store to investigate. As Sgt. Pierce's vehicle approached, the vehicle behind the store left the parking lot of the store and proceeded down the road. About a minute later, Sgt. Pierce received a dispatch that the store was being robbed. Sgt. Pierce called for backups and gave a description of the vehicle he saw leaving the store.

Deputy Adam Sellers also heard the dispatch. Deputy Sellers encountered a vehicle matching the description given by Sgt. Pierce. Deputy Sellers stopped the vehicle, which was being driven by defendant. Two other officers subsequently arrived to assist. One of the officers brought defendant back to the store, but the store clerk could not identify defendant as one of the perpetrators.

One of the officers asked defendant to sit in his car with the officer and talk to him. Defendant complied, and sat in the officer's passenger seat and told the officer what had happened. Defendant gave a written signed statement that he drove two men, Jonathan Moore ("Moore") and Corey Peterson ("Peterson"), to the store at their request. The two men were talking about "being hungry." Defendant interpreted the statement as meaning "they were hungry for money." Peterson, carrying a long black gun, and Moore exited the vehicle and entered the store. As defendant waited in the vehicle, he saw a sheriff's car. Upon seeing the sheriff's vehicle, he decided to leave. He did not wait for the other two

men to return, and he drove to his sister's house. He then decided to return to the store to check on Moore and Peterson. On the way, a Sheriff's Deputy stopped his vehicle.

A jury found defendant guilty, and the trial court sentenced defendant to an active term of eighty-two to 108 months. Defendant appeals to this Court.

On appeal, defendant assigns as error that: (1) the trial court erred in denying his motion to dismiss because the evidence was insufficient to convince a rational trier of fact of defendant's guilt beyond a reasonable doubt; (2) the trial court erred, or committed plain error, when it instructed the jury of acting in concert when such instruction was not supported by law or fact; and (3) the trial court erred, or committed plain error, when it instructed the jury of aiding and abetting when such instruction was not supported by law or fact.

Defendant argues his first two assignments of error together, and contends the trial court erred by denying his motion to dismiss the charge of robbery with a dangerous weapon. In deciding a motion to dismiss, the trial court determines whether there is substantial evidence to establish each element of the offense charged and to identify the defendant as the perpetrator. *State v. Earnhardt*, 307 N.C. 62, 65-66, 296 S.E.2d 649, 651 (1982). The trial court must consider the evidence in the light most favorable to the State, giving it the benefit of every reasonable inference that may be drawn from the evidence. *State v. Brown*, 310 N.C. 563, 566, 313 S.E.2d 585, 587 (1984). "The trial court's function is to

determine whether the evidence will permit a *reasonable inference* that the defendant is guilty of the crimes charged." *State v. Vause*, 328 N.C. 231, 237, 400 S.E.2d 57, 61 (1991) (quoting *Earnhardt*, 307 N.C. at 67, 296 S.E.2d at 652) (emphasis in original).

Robbery with a dangerous weapon is defined in North Carolina General Statutes, Section 14-87 as:

(a) Any person or persons who, having in possession or with the use or threatened use of any firearms or other dangerous weapon, implement or means, whereby the life of a person is endangered or threatened, unlawfully takes or attempts to take personal property from another or from any place of business, residence or banking institution or any other place where there is a person or persons in attendance, at any time, either day or night, or who aids or abets any such person or persons in the commission of such crime, shall be guilty of a Class D felony.

N.C. Gen. Stat. § 14-87(a) (2005). A person is a party to an offense and is equally as guilty as the principal perpetrator if he (1) "either actually commits the offense or does some act which forms a part thereof, or [(2)] if he assists in the actual commission of the offense or of any act which forms part thereof, or [(3)] directly or indirectly counsels or procures any person to commit the offense or to do any act forming a part thereof." *State v. Keller*, 268 N.C. 522, 526, 151 S.E.2d 56, 58 (1966) (citing 22 C.J.S., Criminal Law, § 79, 1961) . If two or more persons join in a purpose to commit a crime, each of them, if actually or constructively present, is guilty as a principal of any crime committed by the others in pursuance of the common purpose or as a

natural or probable consequence thereof. *State v. Barnes*, 345 N.C. 184, 233, 481 S.E.2d 44, 71 (1997), *cert. denied*, 523 U.S. 1024, 140 L. Ed. 2d 473 (1998).

We conclude that a reasonable inference may be drawn from the evidence that defendant acted in concert with the two other men to commit robbery with a dangerous weapon. Defendant knew the men were seeking money when he dropped them off at the store. Defendant saw one of the men carry a gun into Sam's Pit Stop store. When defendant saw the sheriff's vehicle, he fled. He later returned to offer assistance to the two men, but was stopped by law enforcement before he could return to the store. The State presented physical and testimonial evidence that corroborated both defendant's written signed statement, and that two men committed armed robbery at the store. Therefore, the State presented sufficient evidence in which a reasonable juror could conclude that defendant acted in concert with others who committed robbery with a dangerous weapon. Accordingly, defendant's first two assignments of error are overruled.

Defendant next contends that the trial court erred by instructing the jury of aiding and abetting. Defendant argues the aiding and abetting instruction was not supported by the evidence or the indictment, which charged that he acted in concert with the others in committing robbery with a dangerous weapon.

Since defendant failed to object to this instruction at trial, we are limited to plain error review. *State v. Jordan*, 333 N.C. 431, 440, 426 S.E.2d 692, 697 (1993). "Under the plain error rule,

defendant must convince this Court not only that there was error, but that absent the error, the jury probably would have reached a different result." *Id.* (citing *State v. Faison*, 330 N.C. 347, 411 S.E.2d 143 (1991)). In the present case, defendant has failed to show that the trial court's instruction for aiding and abetting was error so fundamental that the jury would have reached a different verdict. Furthermore, our Supreme Court has stated that a trial court's instruction both on acting in concert and aiding and abetting is not prejudicial. See *State v. Roache*, 358 N.C. 243, 312, 595 S.E.2d 381, 425 (2004). Therefore, the trial court did not err in instructing the jury with aiding and abetting, and defendant's assignment of error is overruled. Accordingly, we hold no error.

No Error.

Chief Judge MARTIN and Judge CALABRIA concur.

Report per Rule 30(e).