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NO. COA06-247

NORTH CAROLINA COURT OF APPEALS

Filed: 20 February 2007

STATE OF NORTH CAROLINA

v.

Mecklenburg County
Nos. 04CRS224860-61

VINCENT DEWAYNE THOMPSON
DEFENDANT

Appeal by defendant from judgment entered 7 October 2005 by Judge Linwood O. Foust in Mecklenburg County Superior Court. Heard in the Court of Appeals 13 February 2007.

Attorney General Roy Cooper, by Assistant Attorney General Gregory P. Roney, for the State.

William D. Auman for defendant-appellant.

WYNN, Judge.

Defendant Vincent DeWayne Thompson appeals from a judgment entered upon his conviction of robbery with a dangerous weapon and second-degree kidnapping. We find no error.

The State's evidence tended to show that at about 2:00 a.m. on 26 May 2004, Princeton Bess was asleep at his home when he was awakened by the doorbell. Bess opened the front door and saw Tommy Moses standing at his door, and Defendant and a third man sitting on his front porch steps. Moses pulled out a handgun and told Bess to get into the house. Once inside, Defendant and the third man

pulled out their handguns. The three men escorted Bess to his room and ordered Bess to "get on your knees." Moses pointed his gun at Bess while Defendant and the third man searched Bess's room. The three men took money, gold teeth, a gold necklace, Timberland boots, tennis shoes, a National Football League team jersey, and the keys to Bess's 1965 Oldsmobile. The three men then escorted Bess outside.

Defendant entered Bess's Oldsmobile while Moses and the third man ordered Bess into the trunk of a Chevy Lumina parked outside Bess's house. Moses and the third man drove the Lumina, with Defendant apparently following in the Oldsmobile, to a house on LaSalle Street, where Bess was released from the trunk. Moses ordered Bess to tell anybody from the house that he had bought the Oldsmobile. Moses attempted to remove the wheel rims from the Oldsmobile, but when he realized the key to remove the rims was at Bess's house, he ordered Bess to drive his Oldsmobile to retrieve the key with the men as passengers. At his house, Bess retrieved the key; on the return trip, Moses rode in the front passenger seat and Defendant rode in the "back seat directly behind [Bess] with a gun." Thereafter, Defendant and the third man removed speakers from the Oldsmobile, put them in the back seat of the Lumina, and drove off in the Lumina. Moses switched the rims of Bess's Oldsmobile with the rims of his vehicle and thereafter allowed Bess to drive away in his Oldsmobile with four of the five bolts to lock each wheel.

Following a jury trial finding Defendant guilty of robbery

with a dangerous weapon and second-degree kidnapping, and acquitting him of possession of a firearm by a felon, the trial court sentenced Defendant to 82 to 108 months' imprisonment.

On appeal from that judgment, Defendant contends the trial court erred by (I) denying his motion to dismiss based on insufficiency of the evidence, and (II) denying his motion to sever the charge of possession of a firearm by a felon from the charges of first-degree kidnapping and robbery with a dangerous weapon.

I.

Defendant argues the trial court erred by denying his motion to dismiss based on insufficiency of the evidence. Defendant asserts that he was merely present at a crime scene but did not actively participate in the offenses. We disagree.

The standard for ruling on a motion to dismiss "is whether there is substantial evidence (1) of each essential element of the offense charged and (2) that defendant is the perpetrator of the offense." *State v. Lynch*, 327 N.C. 210, 215, 393 S.E.2d 811, 814 (1990). Substantial evidence is that relevant evidence which a reasonable mind might accept as adequate to support a conclusion. *State v. Patterson*, 335 N.C. 437, 449-50, 439 S.E.2d 578, 585 (1994). In ruling on a motion to dismiss, the trial court must consider all of the evidence in the light most favorable to the State, and the State is entitled to all reasonable inferences which may be drawn from the evidence. *State v. Davis*, 130 N.C. App. 675, 679, 505 S.E.2d 138, 141 (1998). "Any contradictions or discrepancies arising from the evidence are properly left for the

jury to resolve and do not warrant dismissal." *State v. King*, 343 N.C. 29, 36, 468 S.E.2d 232, 237 (1996).

"To convict defendant of second-degree kidnapping ..., the State [i]s required to prove beyond a reasonable doubt defendant, acting by himself or acting in concert, confined, restrained, or removed the victims from one place to another for the purpose of facilitating the commission of a felony." *State v. Ripley*, 360 N.C. 333, 340, 626 S.E.2d 289, 293 (2006); see also N.C. Gen. Stat. § 14-39(a), (a) (2) (2005). Robbery with a dangerous weapon is "(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), *appeal after remand*, 353 N.C. 400, 545 S.E.2d 190, *cert. denied*, 534 U.S. 1046, 151 L. Ed. 2d 548 (2001). This Court has stated that

[a] defendant may be convicted for a crime committed by another if the State proves the defendant acted "in concert" with the other to commit the crime. . . . In addition to the proof requirements associated with acting in concert, if the crime is a specific intent crime, such as robbery with a dangerous weapon, the defendant, like the actual perpetrator, must be shown to have the requisite specific intent. "The specific intent may be proved by evidence tending to show that the specific intent crime was a part of the common plan."

State v. Robinson, 136 N.C. App. 520, 523, 524 S.E.2d 805, 807 (2000) (quoting *State v. Blankenship*, 337 N.C. 543, 557-58, 447 S.E.2d 727, 736 (1994), *overruled on other grounds*, *State v.*

Barnes, 345 N.C. 184, 481 S.E.2d 44 (1997), *cert. denied*, 523 U.S. 1024, 140 L. Ed. 2d 473 (1998)).

Here, Bess testified that Defendant and two other men came into his house, that all three men brandished weapons, and that Defendant and the other man took his clothes and jewelry. Viewing this evidence in the light most favorable to the State, there is substantial evidence to support the robbery with a dangerous weapon charge. Bess further testified that the three men escorted him from his home and forced him into the trunk of a vehicle and that he was driven to the LaSalle Street house only to be forced to drive back to his home to retrieve a key to unlock the rims from his Oldsmobile. Upon returning to the LaSalle Street house, Defendant and the third man took the Oldsmobile's speakers and Moses took the Oldsmobile's rims. Defendant provided no evidence to refute Bess's account of the incident. In the light most favorable to the State, this evidence permits an inference that Defendant acted in concert to kidnap Bess for the purpose of robbing Bess of personal property. Accordingly, the trial court properly denied Defendant's motion to dismiss.

II.

Defendant also contends the trial court erred by denying his motion to sever the charge of possession of a firearm by a felon from the charges of first-degree kidnapping and robbery with a dangerous weapon. In requesting a severance, Defendant argued to the trial court that he would be prejudiced in his trial for robbery with a firearm and kidnapping if the jury learned of his

prior felony conviction, an essential element of the charge of possession of a handgun as a convicted felon.

We note that Defendant failed to renew his motion for severance "before or at the close of all the evidence," pursuant to N.C. Gen. Stat. § 15A-927(a)(2) (2005). This Court has held that a defendant's "failure to renew a motion to sever as required by G.S. 15A-927(a)(2) waives any right to severance and that on appeal the Court is limited to reviewing whether the trial court abused its discretion in ordering joinder at the time of the trial court's decision to join." *State v. McDonald*, 163 N.C. App. 458, 463-64, 593 S.E.2d 793, 797, *disc. review denied*, 358 N.C. 548, 599 S.E.2d 910 (2004). The joinder of criminal charges for trial requires only that there be "some sort of 'transactional connection' between" them. *State v. Bracey*, 303 N.C. 112, 117, 277 S.E.2d 390, 394 (1981) (quoting *State v. Powell*, 297 N.C. 419, 255 S.E.2d 154 (1979)).

Here, Defendant's alleged use of a handgun during the robbery and kidnapping was sufficient to establish the requisite connection between the cases. Accordingly, the trial court did not abuse its discretion in electing to consolidate the charges.

No error.

Judges ELMORE and GEER concur.

Report per Rule 30(e).