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NO. COA06-45

NORTH CAROLINA COURT OF APPEALS

Filed: 21 November 2006

STATE OF NORTH CAROLINA

v.

TERRENCE LaQUINTON WELLS,
Defendant.

Mecklenburg County
Nos. 04 CRS 217364
04 CRS 220263
04 CRS 47680-81

Appeal by defendant from judgments entered 23 September 2005 by Judge Timothy S. Kincaid in Mecklenburg County Superior Court. Heard in the Court of Appeals 16 October 2006.

Attorney General Roy Cooper, by Assistant Attorney General Philip A. Lehman, for the State.

Lynne Rupp for defendant-appellant.

BRYANT, Judge.

Defendant Terrence LaQuinton Wells appeals from judgments entered 23 September 2005 consistent with jury verdicts finding him guilty of robbery with a dangerous weapon, common law robbery and attaining habitual felon status. For the reasons stated below, we find no error.

Facts and Procedural History

Prior to trial, on 28 July 2005, the State filed a motion for joinder of defendant's cases and served the motion on defendant's attorney the same day. The trial court allowed joinder.

Defendant's case came on for trial on 20 September 2005. The State's evidence tended to show that in the early morning hours of 18 April 2004, Pamela Camp, Samera Prince and Komeka Watts drove to a Charlotte McDonald's in Camp's vehicle. The women had placed their drive-through order and had driven to the take-out window when Camp observed defendant walk toward her vehicle. Defendant put a gun to the head of Komeka Watts, who was driving Camp's vehicle, and ordered the women to exit the vehicle. Watts and Prince exited the vehicle, but Camp pleaded with defendant to "just take the pocketbooks, just leave me my car." Defendant took the pocketbooks and left.

At around 9:30 a.m. on 18 April 2004, Stacey Giannatos was working at the Eat Well Family Restaurant she owned in Charlotte, when she noticed defendant in the back of the kitchen pointing a gun at her son. Giannatos went to the register, pulled the silent alarm and called 911 to report a robbery in progress. Giannatos then went to the kitchen and told defendant, "he has no money. . . . Come up front and I will give it to you." Defendant followed Giannatos to the front of the restaurant. Giannatos opened the cash register, threw the money into a small garbage can and handed the garbage can to defendant. Defendant yelled at Giannatos to open "register B." After Giannatos opened the other register, defendant grabbed more money and left the restaurant through the kitchen.

On the morning of 19 April 2004, Komeka Penn drove her three-year-old son to the Medicaid dental office in Charlotte for an

appointment. Upon parking her Honda Accord, defendant opened the door and told Penn to "get out of the car because he had a gun." Penn did not see the gun. Penn was scared so she grabbed her son and proceeded to the dental office building. Defendant told Penn to give him her purse, but Penn kept walking towards the building. Penn went into the office and called 911.

A jury found defendant guilty of robbery with a firearm of Stacey Giannatos, common law robbery of Komeka Penn and of attaining habitual felon status. The jury did not reach a verdict regarding the robbery of Pamela Camp. The trial court sentenced defendant to two consecutive terms of 133 to 169 months imprisonment. Defendant appeals.

Defendant raises two issues on appeal: whether the trial court committed error in (I) denying his motion to dismiss the count of common law robbery due to lack of sufficient evidence; and (II) granting the prosecutor's motion to join all offenses pending against defendant. For the following reasons, we overrule defendant's arguments.

I

Defendant first contends the trial court erred by denying his motion to dismiss the common law robbery charge based on insufficiency of the evidence. Defendant asserts the State failed to present substantial evidence that she did not give defendant permission to take her vehicle. 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). "Common law robbery is the felonious, non-consensual taking of money or personal property from the person or presence of another by means of violence or fear." *State v. Smith*, 305 N.C. 691, 700, 292 S.E.2d 264, 270 (1982).

Here, defendant approached Penn when she arrived at the dental office with her young son, defendant told Penn to get out of her vehicle because he had a gun. Penn, who had never seen defendant, grabbed her child and walked away, leaving the keys in the car because she was scared. Penn called 911 as defendant drove away in her car. We conclude that based upon this evidence, considered in the light most favorable to the State, a jury could reasonably infer that defendant took Penn's vehicle against her will by threat

of force and by putting her in fear and, thereby, committed common law robbery. Accordingly, the trial court properly denied the motion to dismiss.

II

Defendant also contends the trial court erred by granting the prosecutor's motion for joinder of all the charges. The consolidations of charges is governed by N.C. Gen. Stat. § 15A-926, which states:

(a) Joinder of Offenses.-- Two or more offenses may be joined in one pleading or for trial when the offenses, whether felonies or misdemeanors or both, are based on the same act or transaction or on a series of acts or transactions connected together or constituting parts of a single scheme or plan. Each offense must be stated in a separate count as required by G.S. 15A-924.

N.C.G.S. § 15A-926(a) (2005). "A defendant is not prejudiced by the joinder of two crimes unless the charges are 'so separate in time and place and so distinct in circumstances as to render the consolidation unjust and prejudicial to defendant.'" *State v. Howie*, 116 N.C. App. 609, 615, 448 S.E.2d 867, 871 (1994) (quoting *State v. Hammond*, 112 N.C. App. 454, 458, 435 S.E.2d 798, 800 (1993)), *disc. rev. denied*, 335 N.C. 562, 441 S.E.2d 126 (1994). "[T]he decision to consolidate the charges is left to the 'sound discretion of the trial judge and that ruling will not be disturbed on appeal absent an abuse of discretion.'" *State v. Weathers*, 339 N.C. 441, 447, 451 S.E.2d 266, 269 (1994) (citation omitted).

We note that defendant has not cited to any place in the transcript or record where he objected to the motion for joinder or

made a motion for severance pursuant to N.C.G.S. § 15A-927(a)(2). Nevertheless, the crimes here took place in Charlotte within a thirty hour period. Furthermore, defendant acted alone and threatened the victims by brandishing a gun or by claiming to have a gun. No evidence in the record tends to suggest that the trial court abused its discretion in joining the cases for trial. We find no error.

No error.

Judges TYSON and LEVINSON concur.

Report per Rule 30(e).