

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA06-474

NORTH CAROLINA COURT OF APPEALS

Filed: 21 November 2006

STATE OF NORTH CAROLINA

v.

Wake County  
Nos. 05CRS13137, 14148

DOMINIC JEFFRIES

Appeal by defendant from judgment entered 14 June 2005 by Judge Evelyn W. Hill in Wake County Superior Court. Heard in the Court of Appeals 13 November 2006.

*Attorney General Roy Cooper, by Special Deputy Attorney General Richard E. Slipsky, for the State.*

*M. Alexander Charns for defendant-appellant.*

LEVINSON, Judge.

Dominic Jeffries (defendant) appeals from judgment entered consistent with a jury verdict finding him guilty of attempted robbery with a dangerous weapon and his admission to habitual felon status. For the reasons stated herein, we find no error.

Defendant was charged with attempted robbery with a dangerous weapon and, by a separate indictment, charged with having attained habitual felon status. The State's evidence tended to show that on the afternoon of 21 February 2005, Noelan Orange (Orange) was delivering pizza to an apartment off of Rock Quarry Road. As he parked his vehicle, Orange noticed two men at the end of the

parking lot. Orange delivered the pizza to an apartment and got back in his vehicle. One of the two men in the parking lot approached the driver's side of Orange's vehicle. The man, later identified as defendant, asked Orange about job opportunities and Orange explained that the company was hiring only delivery drivers who had their own cars. Orange noticed the second man standing at the passenger's side door. When Orange tried to put his vehicle in reverse, he saw defendant reach for something in his waist band. Defendant opened the driver's side door, charged at Orange with a knife and cut Orange's hand. Orange grabbed defendant's hand holding the knife. Defendant told Orange, "[G]ive me your car. [G]ive me your car." Orange and defendant struggled over the knife.

Raleigh City Police Officer J. L. Bloodworth, who was driving to the Southgate Police Substation in Raleigh, noticed two males around a white car. The defendant was "engaged in some activity with the driver of the vehicle" and the other male was trying to open the passenger-side door. Officer Bloodworth saw defendant's hand "going into the vehicle in a punching or stabbing motion" and, upon a closer look, saw a knife in defendant's hand. Defendant made eye contact with Officer Bloodworth and ran, as did the other male. After checking the condition of Orange, who was bleeding from a hand wound, Officer Bloodworth followed defendant in his police vehicle. Officer Peter Ford exited his patrol vehicle and gave chase on foot. When defendant fell, Officer Bloodworth saw the knife in defendant's hand. Officer Ford apprehended defendant and

directed Officer Bloodworth to the location he had seen defendant throw an item to the ground. Officer Bloodworth recovered a knife from the location. The officers returned to the scene with defendant and the knife. Orange identified defendant as the man who tried to rob him and the knife as the knife defendant used to attack him.

Defendant presented no evidence. A jury found defendant guilty of attempted robbery with a dangerous weapon. Defendant subsequently admitted his habitual felon status. The trial court determined defendant had eleven record level points and was a prior record level IV. The trial court sentenced defendant to 120 to 153 months imprisonment, which is within the presumptive range for a Class C felon at a prior record level IV. Defendant appeals.

Defendant first contends the trial court erred by denying his motion to dismiss based on insufficiency of the evidence. Defendant argues that there was insufficient evidence as to whether a weapon was used in the attempted robbery. We disagree.

When ruling on a motion to dismiss, "the trial court must determine only whether there is substantial evidence of each essential element of the offense charged and of the defendant being the perpetrator of the offense." *State v. Crawford*, 344 N.C. 65, 73, 472 S.E. 2d 920, 925 (1996).

Evidence is substantial if it is relevant and adequate to convince a reasonable mind to accept a conclusion. In considering a motion to dismiss, the trial court must analyze the evidence in the light most favorable to the State and give the State the benefit of every reasonable inference from the evidence. The trial court must also resolve any

contradictions in the evidence in the State's favor. The trial court does not weigh the evidence, consider evidence unfavorable to the State, or determine any witness' credibility.

*State v. Robinson*, 355 N.C. 320, 336, 561 S.E.2d 245, 255-56 (2002) (internal citations and quotation marks omitted). "[T]he rule for determining the sufficiency of evidence is the same whether the evidence is completely circumstantial, completely direct, or both." *State v. Crouse*, 169 N.C. App. 382, 389, 610 S.E.2d 454, 459 (2005) (quoting *State v. Wright*, 302 N.C. 122, 126, 273 S.E.2d 699, 703 (1981)).

"The essential elements of attempted armed robbery, as set forth in G.S. sec. 14-87(a), are: (1) the unlawful attempted taking of personal property from another; (2) the possession, use or threatened use of a firearm or other dangerous weapon, implement or means; and (3) danger or threat to the life of the victim." *State v. Rowland*, 89 N.C. App. 372, 376, 366 S.E.2d 550, 552 (1988). A knife is not always a dangerous weapon per se; instead, the circumstances of the case are determinative. See *State v. Smallwood*, 78 N.C. App. 365, 368, 337 S.E.2d 143, 144-145 (1985). The determination of whether an object is a dangerous weapon "depends upon the nature of the instrument, the manner in which the defendant used it or threatened to use it, and in some cases the victim's perception of the instrument and its use." *State v. Peacock*, 313 N.C. 554, 563, 330 S.E.2d 190, 196 (1985). A pocketknife may be a dangerous weapon. See *State v. Sturdivant*, 304 N.C. 293, 301, 283 S.E.2d 719, 726 (1981).

Here, defendant brandished a knife and cut Orange's hand with

the knife. Furthermore, police recovered a knife where defendant was apprehended, Orange identified the knife as the one defendant used to attack him and the knife was introduced into evidence. In light of this evidence, we hold a jury could reasonably conclude that defendant attempted to rob Orange with a dangerous weapon and that Orange perceived the knife as a dangerous weapon. Accordingly, the trial court properly denied defendant's motion to dismiss.

Defendant also challenges the trial court's assessment of an additional record point pursuant to N.C. Gen. Stat. § 15A-1340.14(b)(6) as a violation of his Sixth Amendment rights under *Blakely v. Washington*, 542 U.S. 296, 159 L. Ed. 2d 403 (2004). The trial court assigned an additional point to defendant's prior record level based upon defendant's prior conviction of robbery with a dangerous weapon. See N.C. Gen. Stat. § 15A-1340.14(b)(6) (2005) ("If all the elements of the present offense are included in any prior offense for which the offender was convicted, whether or not the prior offense or offenses were used in determining prior record level, 1 point."). Defendant asserts that under *Blakely*, he is entitled to a new sentencing hearing because a jury did not find that all of the elements of his prior offense are included in his present offense.

This Court, however, recently decided this particular issue against defendant. In *State v. Poore*, 172 N.C. App. 839, 616 S.E.2d 639 (2005), we held that "*Blakely* [does not] preclude the trial court from assigning a point in the calculation of one's prior record level where 'all the elements of the present offense

are included in [a] prior offense.'" *Id.* at 843, 616 S.E.2d at 642 (quoting N.C. Gen. Stat. § 15A-1340.14(b)(6) (2003)). Accordingly, we overrule defendant's assignment of error.

No error.

Judges TYSON and BRYANT concur.

Report per Rule 30(e).