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NO. COA06-596

NORTH CAROLINA COURT OF APPEALS

Filed: 1 May 2007

STATE OF NORTH CAROLINA

v.

Forsyth County
No. 05 CRS 53724

BARBARA HUTCHENS JOHNSON,
Defendant.

Appeal by defendant from judgment entered 13 December 2005 by Judge Andy Cromer in Forsyth County Superior Court. Heard in the Court of Appeals 16 April 2007.

Attorney General Roy Cooper, by Assistant Attorney General Melissa H. Taylor, for the State.

Terry W. Alford for defendant-appellant.

GEER, Judge.

Defendant Barbara Hutchens Johnson appeals from her conviction for robbery with a dangerous weapon. On appeal, defendant argues that the trial court erred by denying her motion to dismiss because, according to defendant, the State failed to present sufficient evidence to indicate that defendant was acting in concert with her car's passenger when he robbed a nearby bicyclist. We conclude that, when viewed in the light most favorable to the State, substantial evidence supports the inference that defendant acted pursuant to a common plan with her passenger to commit the robbery. Accordingly, we find no error.

Facts

The State's evidence at trial tended to show the following facts. At approximately 3:30 p.m. on 20 March 2005, Bob Blackley was riding his bicycle into a shopping center in Winston-Salem, North Carolina when he nearly collided with a white car in the parking lot driven by a woman, later identified as defendant, and containing a male passenger. Following the near-collision, defendant "threw up her hand" as if apologizing and drove out of the shopping center.

Mr. Blackley proceeded to an ATM in the shopping center, where he withdrew \$60.00 and began to return home. As he was leaving the shopping center, Mr. Blackley again saw the white car, still containing defendant and her passenger, parked in front of the shopping center's grocery store. Defendant and her passenger "appeared to just be sitting there and talking."

About five minutes later, Mr. Blackley encountered the white car again as he was riding home. Defendant and her passenger motioned for Mr. Blackley to pull his bicycle over, and the passenger asked Mr. Blackley for directions to a nearby road. Although Mr. Blackley provided directions, defendant and her passenger did not listen but, rather, were talking to each other. Nevertheless, they thanked Mr. Blackley for the directions and drove away.

Mr. Blackley resumed his trip home. Several minutes later, however, defendant and her passenger again found Mr. Blackley and motioned for him to stop. This time, the passenger got out of the

car, walked approximately 15 feet to where Mr. Blackley was standing, and demanded his wallet. When Mr. Blackley offered to surrender only his money, the passenger opened his coat, displayed a pistol in his waistband, and told Mr. Blackley, "I'm not playing with you." Mr. Blackley turned over his wallet and the passenger got back into the car. As defendant drove away, Mr. Blackley observed that the white car was a Hyundai and memorized the license plate number. He then called the police from a nearby house.

Detective Rick Shelton of the Winston-Salem Police Department was investigating unrelated matters on 24 March 2005 when he saw a white Hyundai pull into a driveway. Detective Shelton observed defendant exit the vehicle and, because he was "familiar with [defendant] from dealings in the past," the detective took down the vehicle's license plate number. The detective subsequently determined that defendant was not the registered owner of the vehicle.

Later that day, Detective Shelton related what he had seen to Detective Philip Cox, the lead investigator in the robbery of Mr. Blackley. Detective Cox recognized the white Hyundai's license plate number as the same one Mr. Blackley had provided. Detective Cox thereafter compiled a photographic lineup that contained defendant's photograph and asked Mr. Blackley to view it. Mr. Blackley immediately identified defendant as the driver of the white Hyundai, but was unable to recognize the passenger in any other photographic lineups presented to him.

Defendant was subsequently indicted for robbery with a

dangerous weapon. Upon a plea of not guilty, the matter came to trial at the 12 December 2005 Criminal Session of Forsyth County Superior Court. At the close of the State's evidence, defendant's motion to dismiss the charge for insufficient evidence was denied, and defendant did not present any evidence. The jury returned a verdict finding defendant guilty of robbery with a dangerous weapon, and the trial court sentenced her within the presumptive range of 100 to 129 months imprisonment. Defendant timely appealed to this Court.

Discussion

Defendant's sole argument on appeal is that the trial court erred by denying her motion to dismiss the charge for insufficient evidence. Such a motion should be denied if there is substantial evidence: (1) of each essential element of the offense charged and (2) of defendant's being the perpetrator of the offense. *State v. Scott*, 356 N.C. 591, 595, 573 S.E.2d 866, 868 (2002). Substantial evidence is that amount of relevant evidence necessary to persuade a rational juror to accept a conclusion. *Id.* at 597, 573 S.E.2d at 869. On review of a denial of a motion to dismiss, this Court must view the evidence in the light most favorable to the State, giving the State the benefit of all reasonable inferences. *Id.* at 596, 573 S.E.2d at 869. Contradictions and discrepancies do not warrant dismissal of the case, but rather are for the jury to resolve. *Id.*

The essential elements of robbery with a dangerous weapon are: (1) an unlawful taking of personal property from the person of another, (2) by use of a dangerous weapon, (3) whereby that

person's life is threatened. *State v. Barden*, 356 N.C. 316, 351-52, 572 S.E.2d 108, 131-32 (2002), *cert. denied*, 538 U.S. 1040, 155 L. Ed. 2d 1074, 123 S. Ct. 2087 (2003). See also N.C. Gen. Stat. § 14-87(a) (2005) (defining robbery with firearms or other dangerous weapons). In the present case, defendant does not dispute that the State presented substantial evidence showing that her passenger satisfied each of these elements, but instead argues that the evidence was insufficient to support a finding that she was acting in concert with her passenger.

"Under the doctrine of acting in concert, it is not necessary that the defendant do any particular act constituting a part of the crime charged, if [s]he is present at the scene and acting together with another or others pursuant to a common plan or purpose to commit the crime." *State v. Taylor*, 337 N.C. 597, 608, 447 S.E.2d 360, 367 (1994). Thus, a defendant may be convicted of a crime "so long as [s]he is present at the scene of the crime and the evidence is sufficient to show [s]he is acting together with another who does the acts necessary to constitute the crime pursuant to a common plan or purpose" *State v. Joyner*, 297 N.C. 349, 357, 255 S.E.2d 390, 395 (1979). For purposes of the doctrine, "[a] person is constructively present during the commission of a crime if he or she is close enough to be able to render assistance if needed and to encourage the actual perpetration of the crime." *State v. Willis*, 332 N.C. 151, 175, 420 S.E.2d 158, 169 (1992).

Here, the State presented testimony tending to show that defendant and her passenger observed Mr. Blackley withdraw cash

from an ATM machine. After talking in a nearby parking lot, defendant drove the car while they specifically located and stopped Mr. Blackley twice, with the first time apparently being a pretext. The second time, defendant waited in the car as her passenger, using a pistol visibly positioned in his waistband, committed robbery only 15 feet from the car. After her passenger returned from committing the robbery, defendant drove them away.

When viewed in the light most favorable to the State, a rational juror could have concluded that this testimony provided substantial evidence that defendant was constructively present at the scene of the crime and that she and her passenger were acting pursuant to a common plan to stalk and rob Mr. Blackley. See, e.g., *State v. Jones*, 157 N.C. App. 110, 115-16, 577 S.E.2d 676, 680 (2003) (sufficient evidence of acting in concert where defendant entered store, returned to car to tell others who was in the store, and others left car and committed a robbery while defendant waited as a "getaway driver"); *State v. Robinson*, 136 N.C. App. 520, 523-24, 524 S.E.2d 805, 808 (2000) (sufficient evidence of acting in concert when defendant entered store with another individual, and the other individual robbed the cashier). This assignment of error is, therefore, overruled.¹

No error.

Judges WYNN and ELMORE concur.

Report per Rule 30(e).

¹Defendant failed to set out her remaining assignments of error in her brief. Consequently, they are deemed abandoned. N.C.R. App. P. 28(b)(6).